PROFESSIONAL SERVICES CONTRACT

Contract #0000000000000000000062639

This Contract ("Contract"), entered into by and between Indiana Utility Regulatory Commission (the "State") and the Children's Museum of Indianapolis, Inc., an Indiana nonprofit corporation (the "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

- **1. Duties of Contractor**. The Contractor shall provide the services outline in **Exhibit A** under this Contract.
- **2. Consideration**. Total remuneration under this Contract shall not exceed \$190000 as outlined in **Exhibit A**. This contract shall be funded through the Indiana Utility Regulatory Commission's Underground Plant Protection Account Fund.
- **3. Term**. This Contract shall commence on March 01, 2022 and shall remain in effect through December 31, 2023.
- **4. Access to Records**. The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

5. Assignment; Successors.

- A. The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.
- B. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. Additionally, the Contractor shall provide prompt written notice to the State of any change in the Contractor's legal name or legal status so that the changes may be documented and payments to the successor entity may be made.
- **6. Audits**. The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC § 5-11-1, *et seq.*, and audit guidelines specified by the State.

The State considers the Contractor to be a "Contractor" under 2 C.F.R. 200.331 for purposes of this Contract. However, if it is determined that the Contractor is a "subrecipient" and if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), Contractor shall arrange for a financial and compliance audit, which complies with 2 C.F.R. 200.500 *et seq.*

- **7. Authority to Bind Contractor**. The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.
- **8. Changes in Work**. The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Contractor shall make no claim for

additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

9. Compliance with Laws.

- A. The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.
- B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6, et seq., IC § 4-2-7, et seq. and the regulations promulgated thereunder. If the Contractor has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the Contract, the Contractor shall ensure compliance with the disclosure requirements in IC § 4-2-6-10.5 prior to the execution of this Contract. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at http://www.in.gov/ig/. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.
- C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.
- D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.
- E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.
- F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.
- G. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

- H. As required by IC § 5-22-3-7:
 - (1) The Contractor and any principals of the Contractor certify that:
 - (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC §24-4.7 [Telephone Solicitation Of Consumers];
 - (ii) IC §24-5-12 [Telephone Solicitations]; or
 - (iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and

- (B) the Contractor will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.
- (2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor, except for de minimis and nonsystematic violations,
 - (A) has not violated the terms of IC § 24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.
- **10. Condition of Payment.** All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of any federal, state or local statute, ordinance, rule or regulation.
- 11. Confidentiality of State Information. The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC § 4-1-10 and IC § 4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

12. Debarment and Suspension.

A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

- B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.
- **13. Default by State**. If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute measures to collect monies due up to and including the date of termination.

14. Disputes.

- A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs.
- C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include: (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and (3) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within thirty (30) business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner's decision shall be the final and conclusive administrative decision unless either party serves on the Commissioner and the other party, within ten (10) business days after receipt of the Commissioner's decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within thirty (30) business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.
- D. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.
- E. With the written approval of the Commissioner of the Indiana Department of Administration, the parties may agree to forego the process described in subdivision C. relating to submission of the dispute to the Commissioner.
- F. This paragraph shall not be construed to abrogate provisions of IC § 4-6-2-11 in situations where dispute resolution efforts lead to a compromise of claims in favor of the State as described in that statute. In particular, releases or settlement agreements involving releases of legal claims

or potential legal claims of the state should be processed consistent with IC § 4-6-2-11, which requires approval of the Governor and Attorney General.

15. Drug-Free Workplace Certification. As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace;
 (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will: (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.
- **16. Employment Eligibility Verification.** As required by IC § 22-5-1.7, the Contractor swears or affirms under the penalties of perjury that the Contractor does not knowingly employ an unauthorized alien. The Contractor further agrees that:
- A. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC § 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.

- B. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.
- C. The Contractor shall require his/her/its subcontractors, who perform work under this Contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

- 17. Force Majeure. In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.
- **18. Funding Cancellation**. As required by Financial Management Circular 3.3 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
- **19. Governing Law**. This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.
- **20. Indemnification**. The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all third party claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State will not provide indemnification to the Contractor.
- 21. Independent Contractor; Workers' Compensation Insurance. The Contractor is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The Contractor shall provide all necessary unemployment and workers' compensation insurance for the Contractor's employees, and Contractor shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.
- **22.** Indiana Veteran Owned Small Business Enterprise Compliance. Award of this Contract was based, in part, on the Indiana Veteran Owned Small Business Enterprise ("IVOSB") participation plan, as detailed in the IVOSB Subcontractor Commitment Form, commonly referred to as "Attachment A-1" in the procurement documentation and incorporated by reference herein. Therefore, any changes to this information during the Contract term must be approved by IDOA's Division of Supplier Diversity and may require an amendment. It is the State's expectation

that the Contractor will meet the subcontractor commitments during the Contract term. The following certified IVOSB subcontractor(s) will be participating in this Contract: [Add additional IVOSBs using the same format.]

IVOSB COMPANY NAME

PHONE EMAIL OF CONTACT PERSON

PERCENT

N/A

Briefly describe the IVOSB service(s)/product(s) to be provided under this Contract and include the estimated date(s) for utilization during the Contract term:

N/A

A copy of each subcontractor agreement must be submitted to the Division of Supplier Diversity within thirty (30) days of the effective date of this Contract. The subcontractor agreements may be uploaded into Pay Audit (Indiana's subcontractor payment auditing system), emailed to IndianaVeteransPreference@idoa.IN.gov, or mailed to IDOA, 402 W. Washington Street, Room W-462, Indianapolis, IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing IVOSB procurement and may result in sanctions allowable under 25 IAC 9-5-2. Requests for changes must be submitted to mailto: IndianaVeteransPreference@idoa.IN.gov for review and approval before changing the participation plan submitted in connection with this Contract.

The Contractor shall report payments made to certified IVOSB subcontractors under this Contract on a monthly basis using Pay Audit. The Contractor shall notify subcontractors that they must confirm payments received from the Contractor in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: www.in.gov/idoa/mwbe/payaudit.htm. The Contractor may also be required to report IVOSB certified subcontractor payments directly to the Division of Supplier Diversity, as reasonably requested and in the format required by the Division of Supplier Diversity.

The Contractor's failure to comply with the provisions in this clause may be considered a material breach of the Contract.

- 23. Licensing Standards. The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.
- **24. Merger & Modification**. This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

25. Minority and Women's Business Enterprises Compliance.

Award of this Contract was based, in part, on the Minority and/or Women's Business Enterprise ("MBE" and/or "WBE") participation plan as detailed in the Minority and Women's Business Enterprises Subcontractor Commitment Form, commonly referred to as "Attachment A" in the procurement documentation and incorporated by reference herein. Therefore, any changes to this information during the Contract term must be approved by Division of Supplier Diversity and may

require an amendment. It is the State's expectation that the Contractor will meet the subcontractor commitments during the Contract term.

The following Division of Supplier Diversity certified MBE and/or WBE subcontractors will be participating in this Contract: [Add additional MBEs and WBEs using the same format.]

MBE or WBE	COMPANY NAME	PHONE	EMAIL OF CONTACT PERSON	PERCENT
N/A				
•			ce(s)/product(s) to be provided undetion during the Contract term:	er this Contract
N/A				

A copy of each subcontractor agreement must be submitted to the Division of Supplier Diversity within thirty (30) days of the effective date of this Contract. The subcontractor agreements may be uploaded into Pay Audit (Indiana's subcontractor payment auditing system), emailed to MWBECompliance@idoa.IN.gov, or mailed to Division of Supplier Diversity, 402 W. Washington Street, Room W-462, Indianapolis IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing MBE/WBE procurement and may result in sanctions allowable under 25 IAC 5-7-8. Requests for changes must be submitted to MWBECompliance@idoa.IN.gov for review and approval before changing the participation plan submitted in connection with this Contract.

The Contractor shall report payments made to Division of Supplier Diversity certified subcontractors under this Contract on a monthly basis using Pay Audit. The Contractor shall notify subcontractors that they must confirm payments received from the Contractor in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: www.in.gov/idoa/mwbe/payaudit.htm. The Contractor may also be required to report Division of Supplier Diversity certified subcontractor payments directly to the Division, as reasonably requested and in the format required by the Division of Supplier Diversity.

The Contractor's failure to comply with the provisions in this clause may be considered a material breach of the Contract.

26. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). The Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

The State is a recipient of federal funds, and therefore, where applicable, the Contractor and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

- **34. Notice to Parties.** Whenever any notice, statement or other communication is required under this Contract, it will be sent by E-mail or first class U.S. mail service to the following addresses, unless otherwise specifically advised.
- A. Notices to the State shall be sent to:

For payment notices and invoices

Attn: Business Manager Indiana Utility Regulatory Commission 101 West Washington Street, Suite 1500E Indianapolis, Indiana 46204

For legal notices

Beth E. Heline, General Counsel Indiana Utility Regulatory Commission 101 West Washington Street, Suite 1500E Indianapolis, Indiana 46204 email: generalcounsel@urc.in.gov

B. Notices to the Contractor shall be sent to:

Attn: Jennifer Pace Robinson, President and CEO The Children's Museum of Indianapolis, Inc. 3000 North Meridian Street Indianapolis, IN 46208

E-mail: Jennifer@childrensmuseum.org

As required by IC § 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

28. Order of Precedence; Incorporation by Reference. Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Contract, (2) **Exhibit A:** The Sponsorship Agreement, (3) attachments prepared by the State, (4) attachments prepared by the Contractor. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference.

29. Payments.

A. All payments shall be made thirty five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC § 4-13-2-20.

- B. If the Contractor is being paid in advance for the maintenance of equipment, software or a service as a subscription, then pursuant to IC § 4-13-2-20(b)(14), the Contractor agrees that if it fails to fully provide or perform under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.
- **30.** Penalties/Interest/Attorney's Fees. The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC § 5-17-5, IC § 34-54-8, IC § 34-13-1 and IC § 34-52-2.

Notwithstanding the provisions contained in IC § 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

- **31. Progress Reports.** The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.
- **32. Public Record.** The Contractor acknowledges that the State will not treat this Contract as containing confidential information, and the State will post this Contract on the transparency portal as required by Executive Order 05-07 and IC § 5-14-3.5-2. Use by the public of the information contained in this Contract shall not be considered an act of the State.
- **33. Renewal Option**. This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC § 5-22-17-4. The term of the renewed contract may not be longer than the term of the original Contract.
- **34. Severability**. The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.
- **35. Substantial Performance.** This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.
- **36. Taxes**. The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.
- 37. Termination for Convenience. This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to IDOA and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that IDOA shall be deemed to be a party to this Contract with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

38. Termination for Default.

A. With the provision of thirty (30) days' notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:

- 1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
- 2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
- 3. Make progress so as to endanger performance of this Contract; or

- 4. Perform any of the other provisions of this Contract.
- B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.
- C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.
- **39. Travel**. No expenses for travel will be reimbursed unless specifically authorized by this Contract. Permitted expenses will be reimbursed at the rate paid by the State and in accordance with the *Indiana Department of Administration Travel Policy and Procedures* in effect at the time the expenditure is made. Out-of-state travel requests must be reviewed by the State for availability of funds and for conformance with *Travel Policy* guidelines.
- **40. Waiver of Rights.** No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract.
- **41. Work Standards**. The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.
- **42. State Boilerplate Affirmation Clause**. I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's standard contract clauses (as contained in the *2022 SCM Template*) in any way except as follows:
 - 6. Assignment of Antitrust Claims. Removed
 - 13. Continuity of Service. Removed
 - 19. Employment Option. Removed
 - 23. HIPPA Compliance. Removed
 - 27. Information Technology Enterprise Architecture Requirements. Removed
 - **28. Insurance.** Removed
 - 29. Key Person(s). Removed
 - 35. Order of Precedence; Incorporation by Reference. Removed references to the RFP Process
 - 36. Ownership of Documents and Materials. Removed

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the Contract, the Contractor attests to compliance with the disclosure requirements in IC § 4-2-6-10.5.

Agreement to Use Electronic Signatures

I agree, and it is my intent, to sign this Contract by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Contract to the State of Indiana. I understand that my signing and submitting this Contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Contract and this affirmation. I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein. I understand that this Contract will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database: https://secure.in.gov/apps/idoa/contractsearch/

In Witness Whereof, the Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

Childrana sei Museum of Indianapolis	Indjana பெய்யூல் Regulatory Commission
By: Junifer Pau Robinson	By: James F. Huston

Title: President and CEO Title: Chairman

Electronically Approved by: Department of Administration		
By: Rebecca Holw erda, Commissioner	(for)	
Electronically Approved by: State Budget Agency		Electronically Approved as to Form and Legality by: Office of the Attorney General
By: Zachary Q. Jackson, Director	(for)	By: (for) Theodore E Rokita, Attorney General

EXHIBIT A

SPONSORSHIP AGREEMENT

This Sponsorship Agreement ("Agreement") is executed this ____ day of April 2022, by and between The Children's Museum of Indianapolis, Inc. ("Museum") and the Indiana Utility Regulatory Commission ("IURC"). (Museum and IURC may be referenced collectively herein as the "Parties" or individually as a "Party").

Whereas:

- A. The Museum is the world's largest children's museum, whose mission is to create extraordinary learning experiences across the arts, sciences, and humanities that have the power to transform the lives of children and families.
- B. IURC is an administrative agency that helps to ensure the utilities in Indiana are safe and reliable and provide service to residents at just and reasonable rates.
- C. The Parties desire that IURC receive sponsorship rights related to certain Museum experiences, as further set forth herein.

Now, therefore, in consideration of the mutual covenants stated herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Article I Term and Designations

Section 1.1 <u>Term of Agreement</u> The term of this Agreement shall begin on March 1 2022 and end December 31, 2023, unless terminated earlier pursuant to Article VI (the "Sponsorship Term").

Article II Sponsorship of Designated Museum Experience Section 2.1 In consideration for IURC being a sponsor, the Museum hereby grants to IURC the following sponsorship benefits ("Sponsorship Benefits"). All benefits are yearly, prorated for the term of the Agreement:

- a. IURC shall have Presenting Level sponsorship for Dinosphere Opening Week. Recognition will include several high traffic areas throughout the museum, digital promotion and print pieces.
- b. IURC shall receive recognition on the mini documentary "dig to display" story of Dinosphere. This recognition will be on the YouTube landing page as well as Museum's social channels as applicable.
- c. IURC shall receive mutually agreed upon signage and small interactive in the dig pit area of Dinosphere.
- d. IURC shall have Presenting Level sponsorship of the Dino Planet atrium show throughout the duration of this agreement. Recognition will include pre-recorded announcements and signage as applicable.
- e. IURC shall have Presenting Level sponsorship on *Power Play!*, a hockey exhibit, that will open in the Fall of 2022 and close in 2024. This sponsorship will include standard recognition inclusion in paid and earned media, digital, email, print and all collateral materials as applicable. When the exhibit closes, a summary report will be shared with IURC.
- f. IURC will receive special promotion at the Museum on August 11th of 2022 and 2023. This will include mutually agreed upon promotional elements.
- g. IURC shall be given the opportunity to activate onsite as mutually agreed upon with the Museum.
- h. Opportunities for IURC employees to volunteer at the Museum.
- i. Invitations to exhibit previews, special events, and gallery openings as applicable.
- j. Listing in Museum's annual report.
- k. 500 General Admission passes per contract year (1,000 total).

- 1. 30% discount available on any museum rental events.
- m. Corporate Admission Discount Program (for eligible IURC employees);
 - 1. \$2.35 off regular admission child and senior tickets;
 - 2. \$1.90 off day-of regular admission youth (2-17);
 - 3. \$2.25 off day-of regular admission senior (60+);
 - 4. Ten percent (10%) discount on Museum membership (includes Individual + 1, Family, Family + 2, Grandparent, and Grandparent +2 categories).

Section 2.2 <u>Sponsorship Communication and Cooperation</u> During the Sponsorship Term, IURC will receive managed sponsorship activation with the Museum, with measurable outcomes and annual reporting. The Parties will cooperate to develop a brand alignment and recognition plan to take effect during the Sponsorship Term. Upon execution of this Agreement, the Parties shall designate appropriate representatives to be the main points of contact for purposes of fulfilling the terms of this Agreement.

Section 2.3 <u>Intellectual Property</u>

- a. Use of IURC' Intellectual Property Approval
 - 1. IURC' trademarks, logos, and other intellectual property associated with IURC' business shall remain IURC' property, and IURC' shall take all steps reasonably necessary to protect such intellectual property through U.S. federal registrations and foreign registrations as it deems desirable and through reasonable prosecution of infringements. The Museum is hereby authorized to use IURC' intellectual property pursuant to this Agreement, provided IURC shall have the right to approve all such uses in writing in advance.
 - 2. The Museum shall submit all materials containing IURC' intellectual property to IURC in writing, and if IURC does not approve or reject such materials in writing within ten (10) business days after receipt thereof, then IURC shall be deemed to have approved such materials.
 - 3. The right to use IURC' intellectual property is non-exclusive, nonassignable and nontransferable.

- b. Use of Museum Intellectual Property Approval
 - 1. Museum's trademarks, logos, and other intellectual property associated with Museum's business shall remain Museum's property, and Museum shall take all steps reasonably necessary to protect such intellectual property through U.S. federal registrations and foreign registrations as it deems desirable and through reasonable prosecution of infringements. IURC is hereby authorized to use Museum's intellectual property pursuant to this Agreement, provided Museum shall have the right to approve all such uses in writing in advance.
 - 2. IURC shall submit all materials containing Museum's intellectual property to Museum in writing, and if Museum does not approve or reject such materials in writing within ten (10) business days after receipt thereof, then Museum shall be deemed to have approved such materials.
 - 3. The right to use Museum's intellectual property is non-exclusive, nonassignable and nontransferable.

Section 2.4 <u>Other Sponsors</u> The Parties acknowledge and agree that the Museum may pursue sponsorships with other persons and entities for Museum exhibits, programs and other experiences, provided such sponsorships do not conflict with the rights provided to IURC pursuant to this Agreement.

Section 2.5. Reputation. The Parties agree that each has a reputation and mission that is vital to its future. As a result, each Party agrees that it shall have the right to terminate this Agreement, in its full discretion and without any further obligations or liability, at any time upon 10 business days' notice of the occurrence of an act by a representative of the other Party that would reasonably and objectively bring such Party into disrepute, contempt, scandal or ridicule or would adversely affect the reputation or mission and guiding principles of such Party if the business relationship between the Parties was maintained.

Article III Sponsorship Fees

Section 3.1 <u>Sponsorship Fee</u> In consideration for the benefits and rights granted to IURC pursuant to this Agreement, IURC shall pay to Museum the total sum of One Hundred Ninety Thousand Dollars (\$190,000) payable as follows:

- a. \$130,000 due on or before May 1, 2022.
- b. \$60,000 due on or before January 31, 2023.

Sponsor shall pay all undisputed invoices within thirty (30) days of Sponsor's receipt thereof. Each such invoice shall include a reasonably detailed, clear description of the sponsorship execution, including an itemized list of applicable taxes and permitted expenses related thereto (if any). Sponsor shall not be responsible for any taxes based on Museum's gross or net income, capital gains or franchise or other corporate taxes.

Article IV Signage and Creative Control

Section 4.1 <u>Creative Control</u> Museum shall have the final decision regarding the content of all Museum exhibits, programs and experiences, including those sponsored by IURC, and nothing in this Agreement shall be interpreted as requiring the Museum to surrender creative control over any Museum exhibit, program or experience.

Section 4.2 <u>Signage and Other Materials</u> The Museum shall work in good faith with IURC' regarding the size and location of IURC' name, logo, and other branding elements on signage and materials related to the subject matter of this Agreement, provided it is consistent with the Museum's standards. With regard to signage and materials, the Museum's standards call for the IURC logo to appear as 50% of the size of the Museum's logo, with placement to be consistent with Museum's current practices with respect to such level of sponsorship.

- a. The initial cost of signage described in this Agreement, including by way of example, signage for existing, ongoing, and future exhibitions, shall be the responsibility of the Museum. Any other signage not provided for in this Agreement, but later requested by IURC and approved by Museum, shall be the financial responsibility of IURC unless otherwise agreed to by the Parties.
- b. All signage shall be reasonably maintained, normal wear and tear excepted, by Museum.

Section 4.3 <u>Change or Removal of Name</u> IURC shall have the right, at any time and for any reason, to request in writing that the Museum remove IURC' name, or change IURC' name to any new name formally adopted by IURC, from and on any and/or all signage and other materials related to the subject matter of this Agreement. The Museum shall use reasonable efforts to comply with such request,

but if the Museum will incur any expenses in connection with such compliance, it will notify IURC in writing. IURC promptly shall reimburse the Museum for all reasonable expenses related to such request to remove or to change its name on signage and materials.

Article V Indemnity

Section 5.1 <u>Mutual Indemnities</u> Each Party will indemnify, defend and hold harmless the other, its parent, subsidiary and affiliated corporations and their respective directors, trustees, officers, employees, agents, successors and assigns, from and against any and all claims, damages, liabilities, losses, government proceedings and costs and expenses, including reasonable attorneys' fees and costs of suit, arising out of any alleged or actual breach of this Agreement or the inaccuracy of any warranty or representation made by the other or any act or omission by the other in the performance of this Agreement or the purposes hereof, up to an amount equal to the Sponsorship Fee.

Section 5.2 <u>Notices of Claims</u> Each Party will give the other prompt written notice of any claim or suit possibly coming within the purview of any indemnity set forth in this Agreement. Upon the written request of an indemnity, the indemnitor will assume the defense of any such claim, demand, action or proceeding. The indemnitee shall also have the right to provide its own defense at its own expense, provided the indemnitee shall not settle any claim without the indemnitor's consent unless it is willing to release the indemnitor from its obligation of indemnity hereunder. Termination of this Agreement shall not affect the continuing obligations of each of the parties under this Article V.

Article VI Early Termination

Section 6.1 <u>Early Termination</u> This Agreement may be terminated before the end date listed in Section 1.1 in any one of the following manners:

- a. by the mutual written consent of the Parties.
- b. by an event of default that is not cured in the manner set forth in this Section 6.1(b). Failure by Museum or IURC to comply with or perform any material term, covenant or condition of this Agreement shall constitute an event of default. Upon the occurrence of an event of default, the non-defaulting Party shall provide the Party in default with written notice of the event of default. The Party in default shall

have 30 days following receipt of the Notice of Default to cure its default. If it fails to cure its default within that time, the non-defaulting Party, at its sole option, may terminate the Agreement.

- c. as provided in Section 2.5, by either Party upon the occurrence of an act by a representative of the other Party that would reasonably and objectively bring the Party into disrepute, contempt, scandal or ridicule or would adversely affect the reputation or mission and guiding principles of such Party if the business relationship between the Parties was maintained.
- d. if either Party (1) makes an assignment for the benefit of creditors, (2) is adjudicated bankrupt, (3) files a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization, arrangement, readjustment of its debts or for any other relief under Title 11 of the United States Code or any successor or other federal or state insolvency law ("Bankruptcy Law"), (4) has filed against it an involuntary petition in bankruptcy or seeking reorganization, arrangement, readjustment of its debts or for any other relief under any Bankruptcy Law, which petition is not discharged within thirty (30) days, or (5) applies for or permits the appointment of a receiver or trustee for its assets.
- e. there occurs a change in applicable law such that the Museum's status as a nonprofit organization will be threatened unless the Agreement is terminated.

If the Agreement is terminated for any reason, then only those payment installments already due and owing pursuant to Section 3.1 need be made by IURC and all other obligations and liabilities of the Parties shall immediately cease and terminate.

Article VII Miscellaneou

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Section 7.1 Museum Warranties The Museum represents and warrants that:

- a. it has the full right and legal authority to enter into and fully perform this Agreement in accordance with its terms without violating the rights of any other person;
- b. the Museum's trademarks provided to IURC do not infringe the trademarks or trade names or other rights of any other person;

- c. it has all government licenses, permits or other authorizations necessary to perform its obligations under this Agreement; and
- d. it will comply with all applicable laws, regulations and ordinances related to the performance of its obligations under this Agreement.

Section 7.2 IURC Warranties IURC represents and warrants that:

- a. it has the full right and legal authority to enter into and fully perform this Agreement in accordance with its terms without violating the rights of any other person;
- b. IURC's trademarks provided to Museum do not infringe the trademarks or trade names or other rights of any other person;
- c. it has all government licenses, permits or other authorizations necessary to perform its obligations under this Agreement; and
- d. it will comply with all applicable laws, regulations and ordinances related to the performance of its obligations under this Agreement.

Section 7.3 <u>Dispute Resolution</u> The Parties agree that any dispute between them arising out of, based upon or relating to this Agreement shall be discussed between executives of both Parties to attempt to reach an informal resolution. If that effort proves unsuccessful, then any such dispute shall be resolved exclusively by arbitration conducted in accordance with the Commercial Rules of the American Arbitration Association then in effect. Such arbitration shall be held in Indianapolis, Indiana. Judgment upon the award rendered shall be final and non-appealable and may be entered in any court having jurisdiction. Each Party shall bear its own expenses arising out of any such proceeding, except that the fees and costs of any arbitrator(s) shall be borne equally by the Parties. Notwithstanding the obligations set forth in this Section 7.3, each Party shall be permitted to seek equitable relief from a court having jurisdiction to prevent the unauthorized use or misuse of their respective intellectual property.

Section 7.4 <u>Confidentiality</u> The Parties agree to maintain in confidence the terms and conditions of this Agreement except to the extent that a proposed disclosure of any specific terms or conditions hereof by either Party is authorized in advance and in writing by the other Party.

Section 7.5 <u>No Joint Venture or Partnership</u> This Agreement shall not be deemed to create a joint venture, partnership, principal-agent, employer-employee or similar relationship between the Museum and IURC.

Section 7.6 <u>Invalidity</u> The determination that any provision of this Agreement is invalid or unenforceable shall not invalidate this Agreement, all of said provisions being inserted conditionally on their being considered legally valid, and this Agreement shall be construed and performed in all respects as if such invalid or unenforceable provision(s) were omitted.

Section 7.7 <u>Notices</u> All notices required or permitted to be made under this Agreement shall be in writing and shall be deemed to have been duly given when delivered or sent by overnight mail or certified mail, return receipt requested to the following addresses:

If to Museum, to: The Children's Museum of Indianapolis, Inc.

Attention: Jennifer Pace Robinson, President and

CEO 3000 North Meridian Street Indianapolis, Indiana 46208

If to IURC, to: Indiana Utility Regulatory Commission

Attention: James F. Huston,

Chairman 101 West Washington St.,

Suite 1500 E.

Indianapolis, Indiana 46204-3407

or such other address as either Party may designate in writing to the other Party for this purpose.

Section 7.8 <u>Governing Law</u> This Agreement is subject to and shall be construed in accordance with the laws of the State of Indiana, except for choice of law provisions.

Section 7.9 <u>Non-Assignment</u> Neither Party shall assign this Agreement without the prior written approval of the other Party.

Section 7.10 <u>Complete Agreement - Amendments</u> This Agreement represents the entire agreement between the Parties and supersedes all other agreements between them regarding the subject matter of this Agreement. This Agreement may only be amended via a writing signed by both Parties.

Section 7.11 <u>Binding Agreement</u> This Agreement shall be binding upon the Parties, their successors and assigns.

Section 7.12 <u>Maintenance of Records.</u> Museum shall keep and retain accurate records, books, documents and papers ("<u>Records</u>") for at least three (3) years beyond the last

fiscal year to which they apply. If prior to the end of any three-year maintenance period any audit, litigation or other action is started for which the Records might reasonably be required in relation to the performance or enforcement of this Agreement, Museum shall keep the Records until all issues arising out of the audit, litigation or other action are resolved. IURC and/or its authorized representatives may inspect, copy and audit such Records during regular business hours upon ten (10) days' written notice."

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Document Approval Status

Supplier CHILDREN'S MUSEUM OF INDPLS

▼ Review/Edit Approvers

Agency Fiscal Approval



IDOA Approval



SBA Approval



Attorney General Approval



Return to Document Management