

**BOARD OF PUBLIC WORKS AND SAFETY** (Form B-01-2012)  
**Agenda Request Form**

*Organizations and individuals are asked to submit a request form and supporting documents to be placed on the agenda. You will be contacted by the City confirming the date of the meeting in which your request will be heard. Please make sure that your contact information is accurate in case we need to get in touch with you. The Board of Works meets on the 1st and 3rd Monday of each month at 5:00 p.m. in City Hall located at 70 E. Monroe Street.*

<b>Date Submitted:</b>	5/3/2016	<b>Meeting Date:</b>	5/16/16
<b>Contact Information:</b>			
<b>Requested by:</b>	Mark St. John		
<b>On Behalf of Organization or Individual:</b>	Planning & Engineering		
<b>Telephone:</b>	317-736-3631		
<b>Email address:</b>	<a href="mailto:mstjohn@franklin.in.gov">mstjohn@franklin.in.gov</a>		
<b>Mailing Address:</b>	70 E Monroe St., Franklin, IN 46131		
<b>Describe Request:</b>			
Approval of Professional Services Agreement (PSA) with First Group Engineering, Inc. to Update Asset Management Plan & Franklin Road Maintenance Bid Assistance			
<b>List Supporting Documentation Provided:</b>			
Professional Services Agreement			
<b>Who will present the request?</b>			
<b>Name:</b>	Travis Underhill	<b>Telephone:</b>	317-736-3631

*In order for an individual and/or agency to be considered for new business on the Board of Works agenda, this reservation form and supporting documents must be received in the Mayor's office no later than 4:00 p.m. on the Wednesday before the meeting.*

# PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") dated April 29<sup>th</sup>, 2016 is made by and between the **City of Franklin**, acting by and through its Board of Public Works and Safety ("OWNER") and **First Group Engineering, Inc.** ("CONSULTANT") an Indiana corporation organized under the laws of the State of Indiana.

## RECITALS

WHEREAS, OWNER wishes to hire CONSULTANT to provide certain professional services with respect to **Update Asset Management Plan & Franklin Road Maintenance Bid Assistance Services** ("Project"); and

WHEREAS, CONSULTANT has extensive experience, knowledge and expertise relating to these services and has expressed a willingness to furnish the services in connection therewith, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises, the mutual covenants and undertakings herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### **Section I – Services by CONSULTANT**

The engineering services to be performed by CONSULTANT are described in the Fee Proposal letter dated April 28<sup>th</sup>, 2016 and presented as Appendix "A", which is attached hereto, and made a part hereof, and are referred to herein as the "Services".

### **Section II – Information and Services to be furnished by OWNER**

The information and services to be furnished by OWNER are as set out in Appendix "B", which is attached to this Agreement, and incorporated herein by reference.

### **Section III – Commencement of Services and Schedule**

CONSULTANT shall commence performance under this Agreement and shall provide the Services hereunder in accordance with the Schedule contained in Appendix "C", which is attached to this Agreement, and incorporated herein by reference.

### **Section IV – Compensation**

For all Services rendered by CONSULTANT under this Agreement, OWNER agrees to pay CONSULTANT on the basis of fees and charges established in Appendix "D", which is attached to this Agreement, and incorporated herein by reference.

## **Section V – Term and Termination**

### **1. Term**

This Agreement shall commence upon execution by the parties and shall continue until completion of the Services and deliverables as set forth in Appendix “C” or unless terminated as set forth below.

### **2. Termination**

OWNER reserves the right to terminate or suspend this Agreement upon five days advance written notice to CONSULTANT. Upon termination of this Agreement, CONSULTANT shall deliver all Work Product (as defined herein) to OWNER. The dollar amount for any earned but unpaid Services performed by CONSULTANT shall be based upon an estimate of the portions of the total Services completed by CONSULTANT through the effective date of termination, which estimated shall be as made by OWNER in the exercise of its honest and reasonable judgment for all Services to be paid for on a lump sum basis and shall be based upon an audit by OWNER of those Services to be paid for on a cost basis or a cost plus fixed fee basis as described in Section IV hereof.

## **Section VI – General Provisions**

### **1. Subcontracting**

It is recognized that CONSULTANT may engage subconsultants to perform a portion of the work under this Agreement. The engagement of subconsultants by CONSULTANT shall not relieve CONSULTANT of any responsibility for the fulfillment of this Agreement. No subconsultant shall subcontract any portion of its work under this Agreement.

### **2. Ownership of Documents**

All reproducible materials prepared by CONSULTANT or its subconsultants in connection with this Agreement, alone or in combination with others, on any and all media, in whole or in part, and all copies thereof, whether created before, during, or after the term of this Agreement (collectively, the “Work Product”) will be the property of the OWNER.

CONSULTANT shall be allowed to retain copies of all documents included in the Work Product, unless prohibited for reasons of security and as mutually agreed by both parties.

CONSULTANT agrees that written agreements with any and all subconsultants used by CONSULTANT to fulfill CONSULTANT’s obligations hereunder shall contain language substantially similar to that of this Subsection to assign OWNER all Work Product by such subconsultants, and to require cooperation with CONSULTANT on the same terms and conditions as set forth herein.

The provisions of this Subsection shall survive the expiration, suspension, abandonment, termination, or completion of this Agreement.

3. Access to Records

Full access to the work during the progress of the Services shall be available to the OWNER. CONSULTANT and its subconsultants shall maintain all books, documents, papers, accounting records and other evidence pertaining to the cost incurred under this Agreement and shall make such materials available at its respective offices at all reasonable times during the period of this Agreement and for three (3) years from the date of final payment for Services is made by OWNER to CONSULTANT.

4. Liability for Damages

CONSULTANT assumes all risk of loss, damage or destruction to the Work Product, to all of its materials, tools, appliances and property of every description, and for injury to or deaths of its employees or agents arising out of or in connection with the performance of this Agreement, excluding that which occurs due to the acts or failure to act of any third party, and excluding that which is caused by the OWNER.

5. General Liability Insurance

- a. Amounts of Coverage. CONSULTANT shall procure and maintain at its expense insurance of the kind and in the amounts set forth below by companies authorized to do such business in the State of Indiana covering all Services and related activities performed by CONSULTANT.

<u>Coverage</u>	<u>Limits</u>
a. Workmen's Compensation And Disability	Statutory Requirements
b. Employer's Liability Bodily Injury by Accident	\$500,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$500,000 each employee
c. Commercial General Liability (Occurrence Basis) Bodily Injury, personal injury, property Damage, contractual liability, Products-completed operations	\$1,000,000
General Aggregate Limit (other than Products/Completed Operations	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury Limit	\$1,000,000

Each Occurrence	\$1,000,000
Fire Damage (any one fire)	\$50,000
Medical Expense (any one person)	\$5,000
d. Comprehensive Auto Liability (single Limit, owned, hired and non-owned)	\$1,000,000 each accident
Bodily injury and property damage	\$1,000,000
Umbrella Excess Liability	\$2,000,000 each Occurrence and
The Deductible on the Umbrella Liability	\$10,000 shall not be more than

- b. Evidence of Insurance. Before commencing its Services, CONSULTANT shall furnish to OWNER a certificate, or certificates, showing that it has complied with this Section VI.5.b, which certificate or certificates, shall also designate OWNER as an additional named insured. Certificate shall include in the comments section of the document verbiage indicating that "The City of Franklin is Additionally Insured". The policies shall not be changed or canceled unless thirty (30) days prior written notice has been given to OWNER.

6. Worker's Compensation

CONSULTANT shall be responsible for providing all necessary unemployment and Worker's Compensation Insurance for its employees. CONSULTANT shall provide the OWNER with a certificate of insurance indicating that it has complied with this requirement.

7. Changes in Work

- a. Prior Approval. CONSULTANT shall not commence any additional services or change of scope until authorized by OWNER.

- b. Additional Services. Additional services may include, but not be limited to:

- i. Services associated with significant changes in the scope, extent, or character of the portions of the Project required by, but not limited to, changes in scope, complexity or schedule and revisions required by changes in applicable laws and regulations or due to any other causes beyond CONSULTANT's control.

- ii. Preparing to serve or serving as a consultant or witness for OWNER in any litigation or other dispute resolution process related to the Project that does not involve a claim against CONSULTANT or a claim that is based on an alleged act of negligence or breach of contract by CONSULTANT.
- iii. Subject to other provisions of this Agreement, additional or extended services during the Project made necessary by (1) emergencies or Acts of God endangering the Project site, (2) an occurrence of a hazardous environmental condition, (3) damages to OWNER's facilities caused by fire, flood or other cause, (4) acceleration or deceleration of the Schedule involving services beyond normal working hours, (5) significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages and (6) default or failure to perform by other consultants.

8. Non-Discrimination

CONSULTANT and its subconsultants, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of the Services under this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, handicap, national origin or ancestry. Breach of this covenant may be regarded as a material breach of the Agreement.

9. Safety

- a. Responsibility. CONSULTANT shall be directly responsible for the safety requirements and programs applicable to its own employees, its subconsultants and other parties with whom it has contracted to perform Services with respect to the Project.
- b. Compliance. CONSULTANT's safety program shall comply with applicable federal, state and local statutes, rules, regulations and ordinances. CONSULTANT shall report to OWNER, in writing, any injury or accident at the Project site involving its employees, its subconsultants or other parties for which it is responsible, within forty-eight (48) hours or a shorter period of time if required by law.
- c. Notification. CONSULTANT shall not be responsible for the safety requirements or programs applicable to any other person or entity involved with the Project other than CONSULTANT and its subconsultants.

10. Independent Contractor

OWNER and CONSULTANT are acting in an individual capacity in the performance of this Agreement and will not act as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or

construed to be the employees or agents of the other party for any purpose whatsoever. Neither party will assume any liability for any injury (including death) to any persons, nor damage to any property, arising out of the acts or omissions of the agents, employees, or subconsultants of the other party. CONSULTANT shall be responsible for providing all necessary unemployment and worker's compensation insurance for its employees.

11. Indemnification

CONSULTANT agrees to indemnify OWNER, its officials, and employees, and to hold each of them harmless from claims and suits, including court costs, attorney's fees, and other expenses caused by any negligent act, effort or omission of, or by any recklessness or willful misconduct by CONSULTANT, its employees, or subconsultants. CONSULTANT's indemnification and defense obligations hereunder shall extend to Claims occurring after this Agreement is terminated as well as while it is in force, and shall continue until it is finally adjudicated.

12. Notification

All written notices required by this Agreement shall be sent to the parties at the following addresses by certified mail, return receipt:

To OWNER;                    **City Engineer**  
                                      **70 East Monroe Street**  
                                      **Franklin, Indiana 46124**

To CONSULTANT:        **First Group Engineering, Inc.**  
                                      **5925 Lakeside Blvd.**  
                                      **Indianapolis, IN 46278**

13. Authority to Bind Consultant

CONSULTANT warrants that it has the necessary authority to enter into this Agreement. The signatory for CONSULTANT represents that he/she has been duly authorized to execute this Agreement on behalf of CONSULTANT and has obtained all necessary or applicable approval to make this Agreement fully binding upon CONSULTANT when his/her signature is affixed hereto.

14. Successors and Assignees

This Agreement is binding upon and shall inure to the benefit of OWNER and CONSULTANT and their respective successors and permitted assigns. CONSULTANT shall not assign this Agreement without the written consent of OWNER.

15. Entire Agreement; Amendments

This Agreement and its Appendices, each of which is incorporated herein by reference and made a part of this Agreement, constitutes the entire Agreement of the parties with regard to the subject matter hereof and supersedes all prior discussions or agreements

concerning any subject matter related hereto. This Agreement may only be amended, supplemented or modified by a written document executed in the same manner as this Agreement.

16. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana, without giving effect to principles respecting conflicts of laws. Subject to Section 19, any action pursuant to this Agreement shall be brought and tried in a court of competent jurisdiction in Johnson County, Indiana, and each party hereby irrevocably consents to the personal and subject matter jurisdiction of any such court and waives any objection to such jurisdiction and venue.

17. Non-Waiver

It is agreed and acknowledged that no action or failure to act by OWNER or CONSULTANT as to a breach, act or omission of the other shall constitute a waiver of any right or duty afforded either of them under this Agreement, as to any subsequent breach, act or omission of the other nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereof, except as may be specifically agreed in writing. No right conferred on either party under this Agreement shall be deemed waived and no breach of this Agreement excused unless such a waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

18. Invalid Provisions

If any part of this Agreement is later found to be contrary to, prohibited by, or invalid under applicable law, rules or regulations, that provision shall not apply and shall be omitted to the extent so contrary, prohibited or invalid, but the remainder of this Agreement shall not be invalidated and shall be given full force and effect insofar as possible.

19. Dispute Resolution

Any dispute arising out of this Agreement that cannot be resolved through informal discussions between the parties, shall be subject to this Section.

- a. The parties agree that the existence of a dispute notwithstanding, the parties shall continue without delay to carry out all of their respective responsibilities under this Agreement.
- b. Should any dispute arise with respect to this Agreement that cannot be resolved through informal discussions between the parties, a party shall serve written notice to the other party outlining the details of the dispute and demanding mediation. No later than twenty (20) days from the date of the notice demanding mediation, the parties shall confer to discuss the selection of the mediator and agree upon other mediation procedures.

- c. Submission of a dispute under this Agreement to a mediation procedure shall be a condition precedent to filing litigation. No litigation shall be initiated by either party unless the mediation has been completed (unsuccessfully) or a party has failed to participate in a mediation procedure.

20. Employment Eligibility Verification

CONSULTANT affirms under the penalties of perjury that it does not knowingly employ an unauthorized alien.

CONSULTANT shall enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. CONSULTANT is not required to participate should the E-Verify program cease to exist. Additionally, CONSULTANT is not required to participate if CONSULTANT is self-employed and does not employ any employees.

CONSULTANT shall not knowingly employ or contract with an unauthorized alien. CONSULTANT shall not retain an employee or contract with a person that CONSULTANT subsequently learns is an unauthorized alien.

CONSULTANT shall require its subconsultants, who perform work under this Agreement, to certify to CONSULTANT that the subconsultant does not knowingly employ or contract with an unauthorized alien and that the subconsultant has enrolled and is participating in the E-Verify program. CONSULTANT agrees to maintain this certification throughout the duration of the term of an agreement with a subconsultant.

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

21. No Investment in Iran

As required by IC 5-22-16.5, CONSULTANT certifies that it is not engaged in investment activities in Iran. Providing false certification may result in the consequences listed in IC 5-22-16.5-14, including termination of this Agreement and denial of future agreements, as well as an imposition of a civil penalty.

[Signature page follows]

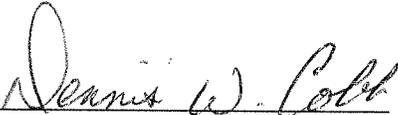
**Non-Collusion.**

The undersigned attests, subject to the penalties for perjury, that he/she is the CONSULTANT, or that he/she is the properly authorized representative, agent, member or officer of the CONSULTANT, that he/she has not, nor has any other member, employee, representative, agent or officer of the CONSULTANT, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears within this Agreement.

In Witness Whereof, the CONSULTANT and the OWNER have, through duly authorized representatives, entered into this Agreement. The parties having read and understand the forgoing terms of this Agreement do by their respective signatures dated below hereby agree to the terms thereof.

First Group Engineering, Inc.  
(CONSULTANT)

CITY OF FRANKLIN  
BOARD OF PUBLIC WORKS AND SAFETY  
FRANKLIN, INDIANA  
(OWNER)

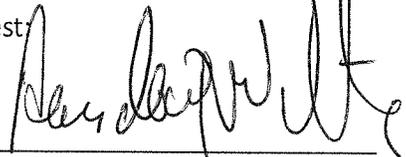
  
\_\_\_\_\_  
Dennis W. Cobb, President

\_\_\_\_\_  
Joseph McGuinness, Mayor

\_\_\_\_\_  
Steve Barnett, Member

\_\_\_\_\_  
Robert Swinehamer, Member

Attest:

  
\_\_\_\_\_

Signee Name and Title  
Randall M. Willing, Exec. Vice President

Attest:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print or type name and title)

**ATTACHMENT A  
SCOPE OF SERVICES**

**Name of Project: Update Asset Management Plan & Franklin Road Maintenance Bid Assistance Services**

**CONSULTANT shall provide CITY with services in connection with the Project as described below:**

- 1) Budget & Planning
  - a) Update Asset Management Plan/Program and Maps for 2016-2020.
    - i) The Professional shall assist in the development of an annual city street maintenance plan given the city provided PASER analysis of existing conditions. The Professional shall assist the city in implementing cost effective maintenance measures that emphasizes preservation of city streets. Annual maintenance measures include preservative sealants (ex. crack sealing), restorative sealants (ex. fog seals), microsurfacing, full depth patching, new pavements, drainage improvements, and other methods the city employs. This plan will utilize the capabilities the city can perform in-house and also evaluate other methods that would be bid to private contractors.
    - ii) The output from the city's pavement inspection will be organized via an ARCGIS database utilizing the city's existing road centerline data. The data will be converted using DBF files with Unique ID's.
    - iii) Final output will be used to generate a plan that will include maps of each year's maintenance improvements for up to the next five years and estimated costs. Order of roadway repair will be calculated based on the PASER rating, anecdotal traffic volume of the roadway, roadway classification, and accident rate (if available). Type of repair will be based on type(s) of distresses noted at each location and their corresponding severity.
    - iv) Gap Analysis will involve the calculation of future PASER score and what the cost to maintain the existing PASER score will require.

Cost of Planning Work = Lump Sum \$16,500

2) Bid Assistance

- a) Review Contract Bid Documents for Preservative (Reclamite or approved equal) Seal Contract. Review standard contract documents for creating bid documents. Provide GIS Exhibits and table from Asset Management Plan.  
  
Review Reclamite / Fog Seal Contract Cost = Lump Sum Lump Sum \$1,000
- b) Prepare Contract Bid Documents for Crack Seal Contract. Review standard contract documents for creating bid documents. Provide GIS Exhibits and table from Asset Management Plan.  
  
Review Crack Seal Contract Cost = Lump Sum \$1,000
- c) Review Contract Bid Documents for Microsurface/Slurry Seal or Cape Seal Contract. Review standard contract documents for creating bid documents. Provide GIS Exhibits and table from Asset Management Plan. First Group will supply technical specifications for material, placement, and approvals. The three methods will be alternatively bid to gauge the most cost effective method given longevity of treatment and cost.  
  
Review Microsurface/ Slurry Seal Contract Prep + Specifications Cost = Lump Sum \$3,000
- d) Review Contract Bid Documents for Paving Overlay & Patching Contract. Review standard contract documents for creating bid documents. Provide GIS Exhibits and table from Asset Management Plan.  
  
Review Paving Overlay & Patching Contract Prep Cost = Lump Sum \$1,000
- e) Review Contract Bid Documents for Paving Reconstruction or Recycling Contract. Review standard contract documents for creating bid documents. Provide GIS Exhibits and table from Asset

**ATTACHMENT A  
SCOPE OF SERVICES**

**Name of Project: Update Asset Management Plan & Franklin Road Maintenance Bid Assistance Services**

Management Plan. First Group will supply technical specifications for FDR Process, Reconstruction Process, material placement, and approvals. The two methods will be alternatively bid to gauge the most cost effective method given longevity of treatment and cost.

Review Paving Reconstruction & Recycling Contract Prep Cost = Lump Sum \$2,500

- f) Attend Requested Meetings. First Group will attend up to two meetings upon request.

Attend Meetings = 2 @ \$500 EA = Not to Exceed \$1,000

**ATTACHMENT B**  
**SERVICES PROVIDED BY THE OWNER**

**Name of Project: Update Asset Management Plan & Franklin Road Maintenance Bid Assistance Services**

The services provided by the owner involve coordination and relevant computer data necessary to complete the following task:

- 1) Budget & Planning
  - a) The City will provide their PASER data and spreadsheet information for developing the 2016-2020 Asset Management Plan.
    - i) The City will provide all relevant GIS data collected to date regarding the city's street assets.
    - ii) The City will work with First Group Engineering, Inc. to determine the preferred budgets, maintenance activities, and schedule for activities between 2016 and 2020.

**ATTACHMENT C  
SERVICES AND SCHEDULE**

**Name of Project: Update Asset Management Plan & Franklin Road Maintenance Bid Assistance Services**

**Schedule of Services in connection with the Project as described below:**

Updating the Asset Management Plan will be completed within 6 weeks of the Notice to Proceed from the City. Bid review & assistance will be provided on an as-needed basis and each package can be finished within 6 weeks of notice to proceed. Notice to Proceed can be given by the city via email or written correspondence.

**ATTACHMENT D  
COMPENSATION**

**Name of Project: Update Asset Management Plan & Franklin Road Maintenance Bid Assistance Services**

CITY shall compensate CONSULTANT for services rendered in accordance with the following:

- |   |                        |
|---|------------------------|
| 1) a) Update Asset Management Plan/Program and Maps for 2016-2020                     | LSUM \$16,500.00       |
|   |                        |
| 2) Bid Review Assistance (As-Needed)  |                        |
| a) Review Contract Bid Documents for Preservative Seal Contract                       | LSUM \$1,000.00        |
| b) Review Contract Bid Documents for Crack Seal Contract                              | LSUM \$1,000.00        |
| c) Review Contract Bid Documents for Microsurface, Slurry Seal, or Cape Seal Contract | LSUM \$3,000.00        |
| d) Review Contract Bid Documents for Paving Overlay & Patching Contract               | LSUM \$1,000.00        |
| e) Review Contract Bid Documents for Paving Reconstruction                            | LSUM \$2,500.00        |
| f) <u>Attend Meetings/City Council as requested (Two Estimated)</u>                   | <u>LSUM \$1,000.00</u> |

TOTAL NOT TO EXCEED COST \$26,000.00

After a period of 12 months from the date of this Agreement, First Group Engineering, Inc. and the City of Franklin can renegotiate new labor rates and fees.

The CITY will be notified in writing of any changes in fees prior to change.

**CERTIFICATION OF COMPLIANCE WITH APPLICABLE LAW**

The undersigned, in consideration of contracting with and/or entering into agreements with the City of Franklin, a governmental entity, does hereby make the below certifications and acknowledges that said representations and compliance with applicable law is a requirement of doing business with a governmental entity and is deemed valuable consideration in entering into a contract with the City of Franklin. The undersigned agrees to be in full compliance with all applicable laws and shall immediately notify the City of Franklin in the event it has failed to comply with this certification. In such event, the City of Franklin may immediately terminate any and all contracts with the undersigned. Compliance with all applicable State and Federal laws shall include, but is not limited to, the following:

- a. Execution of Non-Collusion Affidavits to be provided and submitted on a form required by the State Board of Accounts if requested by the State Board of Accounts;
- b. Applicable wage scale provisions as required by law;
- c. Applicable anti-discrimination provisions as required by law;
- d. E-verify affidavit as required by law.

Furthermore, the undersigned certifies that it is not involved in the Iranian Energy Industry and does not do business with Vendors involved in the Iranian Energy Industry.

Additionally, the undersigned certifies that they/it are not aware of any relationship between the City of Franklin and the undersigned, its agents, employees or assigns which violates Indiana's anti-nepotism laws.

I HEREBY SWEAR AND AFFIRM UNDER PENALTIES FOR PERJURY THAT THE FOREGOING REPRESENTATIONS ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. ALL OF WHICH IS SWORN TO THIS 1st DAY OF May, 2016.

  
 \_\_\_\_\_  
 Duly Authorized Representative of Contracting Party