

## **CONSULTANT SERVICES CONTRACT ITR CONCESSION COMPANY LLC**

This Consultant Services Contract (this “**CONTRACT**”) is made and entered into as of this [ ] day of [month] in the year [year], by and between ITR Concession Company LLC (“**ITRCC**”) having a place of business at 3200 Cassopolis St. Elkhart, Indiana 46514, and [consultant name] (the “**CONSULTANT**”), located at [insert address]. The purpose of this Contract is to memorialize the terms and conditions pursuant to which the Consultant will provide consulting services to ITRCC.

### **Article 1 - The Work**

The services that the Consultant shall perform pursuant to this Contract (the “**Work**” as further defined in Section 5.2) and other particulars is set forth in Attachments A, B and C to this Contract (collectively, the “**Scope of Work**”), attached hereto and made an integral part hereof.

### **Article 2 – Term; Time Limits**

2.1 This Contract shall be in full force and effect as of the date first stated above and shall expire as of [month] [day] in the year [year], unless extended by ITRCC due to logistical issues (the “**Term**”).

2.2 Time limits stated within this Contract are of the essence. By executing the agreement, the Consultant confirms that all such time limits and schedules within the control of the Consultant, set forth in the Contract and the Scope of Work are reasonable for performing the Work.

### **Article 3 – Contract Sum**

3.1 The Work will be performed by the Consultant on a time and materials basis. Under no circumstance shall the aggregate amount ITRCC pays to the Consultant pursuant to this Contract exceed [\$xx.xx], and, for the avoidance of doubt, no expenses will be reimbursed (the “**Contract Sum**”). The Contract Sum shall not be subject to change or escalation, except as expressly provided for in this Contract.

3.2 The Work under this Contract shall be performed pursuant to the schedule set forth in Attachment B. Time is of the essence under this Contract. Payments to the Consultant shall be limited to a maximum amount equal to 30% of the Contract Sum.

## **Article 4 – Payments**

4.1 Payments made by ITRCC to the Consultant with respect to the Work shall be based on the percentage of the Work actually performed in accordance with the Contract Documents and shall be in a form reasonably satisfactory to ITRCC.

4.2 The Consultant will submit an invoice to ITRCC promptly after the end of each month. Payments will be made within 45 days from the last day of the month by ITRCC. In the event there are any disputes regarding invoice amounts, only the undisputed amount will be paid by ITRCC.

4.3 The Consultant warrants that title to all Work included within an invoice will pass to ITRCC no later than the time of receipt of payment of such invoice. The Consultant further represents that upon submittal of an invoice to ITRCC all Work for which payments received from ITRCC shall be free and clear of liens, claims, security interests or other encumbrances adverse to the ITRCC's interests, at the time such payment is received.

## **Article 5 – General Provisions**

5.1 The Contract Documents consist of this Contract, Drawings, specifications, Addenda issued prior to the execution of this Contract, other documents listed in this Contract, including all attachments and exhibits hereto, the Request for Proposal and any written amendment to the Contract signed by both parties after execution of this Contract (the “**Contract Documents**”). The intent of the Contract Documents is to include all items necessary for the proper performance and completion of the Work by the Consultant. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Consultant shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

5.2 The Contract Documents form this Contract. This Contract represents the entire, integrated agreement between ITRCC and the Consultant and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification as described herein. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between ITRCC and a sub consultant or subcontractor of the Consultant of any tier, or (2) between any persons or entities other than ITRCC and the Consultant. The term “**Work**” means the services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Consultant to fulfill the Consultant's obligations. The Work may constitute the whole or a part of the Project.

5.3 Execution of the Contract by the Consultant is a representation that the Consultant has visited the site, become generally familiar with the job conditions under

which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

5.4 During the Term of this Contract, the Consultant shall not engage, on a full or part time or other basis, any ITRCC personnel who have knowledge of ITRCC's confidential information and remain in the employ of ITRCC. During the Term of this Contract, and for a period of one (1) year following the expiration or termination of this Contract the Consultant agrees that it shall not solicit for employment any personnel who have knowledge of ITRCC's confidential information and were in the employ of the ITRCC during the Term of this Contract.

5.5 The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, ITRCC shall have the right to terminate this Contract without any liability to the Consultant or, in its discretion, to deduct from the Contract Sum or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

5.6 Contractor represents and warrants that as of the date of execution of this Contract, no existing contractual obligation, familial relationship, or ownership interest exists between the Contractor and any employee, officer, or director of ITRCC. In the event of a violation of this clause, ITRCC, at its discretion, can terminate this Contract with immediate effect and take appropriate legal action as required.

## **Article 6 - Representations**

6.1 The Consultant represents to ITRCC that: (i) the Consultant shall exercise reasonable professional care to conform the Work to all applicable specifications and requirements of this Contract and Contract Documents; (ii) the Work shall be in compliance with all applicable laws, rules and regulations of applicable Governmental Authorities as reasonably construed in accordance with reasonable professional care, (iii) the Work shall not infringe any Intellectual Property. All representations shall survive inspection, acceptance and payment by ITRCC.

6.2 The Consultant shall pay all costs of and incidental to its discharge of its obligations pursuant to this Contract.

## **Article 7 – Ownership of Documents**

7.1 All documents and electronic files, including survey data, tracings, drawings, drawing files, reports, estimates, specifications, field notes, etc. (the "Documents"), completed or partially completed by the Consultant under the terms of this Contract shall become and remain the property of ITRCC upon demand or expiration or termination of this Contract. Any use of the Documents by ITRCC, its assigns, or any

person, firm or corporation acting on behalf of ITRCC, shall be without additional compensation to the Consultant, however any such reuse on any other project other than what they were intended, shall be without liability to the Consultant and ITRCC agrees to indemnify and hold Consultant harmless from such reuse. Details prepared by the Consultant as part of its specific Scope of Work under this Contract may be transmitted to other persons, firms or corporations acting on behalf of ITRCC without the Consultant's approval. The Consultant retains all of its copyrights not otherwise transferred to ITRCC under this Contract.

7.2 ITRCC agrees that the Consultant shall have no liability for any claims, demands, injury, loss or damage arising out of, or relating to, the use by ITRCC, its assigns or any person, firm or corporation acting on behalf of ITRCC, of the documents, or copies of the documents, for any work or project not included within the specific Scope of Work under this Contract. All of the Consultant's pre-existing or proprietary computer programs or software developed by the Consultant outside of and unrelated to this Contract shall remain the exclusive property of the Consultant, except to the extent that such programs or software may be necessary to read or access the Documents, in which case the Consultant agrees to grant ITRCC a perpetual, transferable license to use the programs or software for the limited purpose of reading or editing said documents and/or electronic files. In that situation, such license shall be granted without additional compensation to the Consultant.

## **Article 8 – Access to Records**

8.1 The Consultant and its sub consultants or subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred and shall make such materials available at their respective offices at all reasonable times during the Term of this Contract and for three years from the date of final payment under the terms of this Contract, for inspection or audit by ITRCC, or its authorized representative, and copies thereof shall be furnished if requested.

8.2 The Consultant agrees that, upon request by any agency participating in federally assisted programs with whom the Consultant has contracted or seeks to Contract, ITRCC may release or make available to the agency any working papers from an audit performed by ITRCC of the Consultant and its sub consultants in connection with this Contract, including any books, documents, papers, accounting records and other documentation which support or form the basis for the audit conclusions and judgments.

## **Article 9 – Responsibility of the Consultant**

9.1 The Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications and other services furnished by the Consultant under this Contract. The Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services if the errors or deficiencies resulted, independently of all other causes, from negligence of the Consultant. Neither ITRCC'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 Consultant shall be and remain liable to ITRCC in accordance with applicable law for all damages to ITRCC caused by the Consultant's negligent performance of any of the services furnished under this Contract.

9.2 The Consultant shall have an affirmative duty to advise ITRCC of any known or obvious errors, omissions or deficiencies in the designs, drawings, specifications, reports or other services of ITRCC or consultants retained by ITRCC that the Consultant becomes aware of during the Term of this Contract.

## **Article 10 – Change in Work**

In the event ITRCC requires a material change in scope, character or complexity of the work after the work has progressed as directed by ITRCC, adjustments in compensation to the Consultant and in time for performance of the work as modified shall be determined by ITRCC, subject to the Consultant's approval. The Consultant shall not commence the additional work or the change of the Scope of Work until a supplemental Contract is executed and the Consultant is authorized in writing by ITRCC to proceed with the Work. This Contract may only be amended, supplemented or modified by a written document executed by both parties in the same manner as this Contract.

## **Article 11 – Delays**

The Consultant agrees that it assumes all liability for any delay, except for those delays beyond the control of the Consultant, in the performance of the Work pursuant to this Contract. No additional compensation will be provided to the Consultant in connection with any delay. In the event of a delay, ITRCC's permitting of the Consultant to continue the Work shall in no way constitute a waiver on the part of ITRCC of any of its rights herein.

## **Article 12 – Termination**

12.1 ITRCC may terminate this Contract at any time by giving written notice to the Consultant if the Consultant fails to carry out any provision of this Contract, or abandons or fails to timely perform any of its duties under this Contract, and fails to remedy that failure within 7 days after receiving notice requiring the Consultant to do so.

12.2 If the Contract is terminated pursuant to this Article 12:

- (a) Any claim of the Consultant shall be settled on the basis of the reasonable costs it has incurred in the performance of the Contract prior to the date of such termination. ITRCC is relieved from future performance with respect to the Contract without prejudice to any right of action that exists at the date of termination;
- (b) ITRCC retains the rights that ITRCC had against the Consultant in respect of any breach, in addition to any other rights, powers or remedies provided by law; and

(c) the Consultant shall indemnify ITRCC in respect of any loss ITRCC may incur in acquiring similar services from alternative consultants.

12.3 ITRCC may at any time for its convenience terminate this Contract, in whole or in part, by written, facsimile or telegraphic notice, or verbal notice confirmed in writing. If this contract is terminated for ITRCC's convenience, any claim of Consultant shall be settled on the basis of the reasonable costs it has incurred-in the performance of this Contract prior to the date of such termination.

12.4 The Consultant may terminate this Contract by providing at least thirty (30) days' advance written notice of termination to ITRCC.

12.5 In case of termination for any reason provided above, the Consultant shall deliver to ITRCC all data, reports, drawings, specifications and estimates completed or partially completed.

### **Article 13 – Reserved.**

### **Article 14 – Relationship between ITRCC and Consultant**

14.1 The Consultant understands and agrees that, as an independent contractor, the Consultant is not entitled to participate in any of ITRCC's benefit offerings or perquisite programs (including, but not limited to, company vehicle, vacation/sick/holiday pay, bonus programs, medical/dental/life insurance coverage, workers' compensation or unemployment insurance, etc.). The Consultant will be responsible for the payment of, if any, the Consultant's workers' compensation, unemployment insurance, disability, health insurance, social security obligations, and other employee-related benefits. In addition, the Consultant shall be responsible for the payment of any and all federal, state, and local taxes that may become due as a result of the compensation earned hereunder. The Consultant hereby indemnifies ITRCC and holds ITRCC harmless from and against any and all claims or demands in respect of taxes or other payments required to be made to any taxing or revenue authority on account of any payments made to the Consultant hereunder, including attorneys' fees and costs associated with any claim made by any taxing or revenue authority arising out of this Contract, which indemnification agreement and obligation under this Contract shall survive the termination of this Contract for any reason.

14.2 The Consultant is engaged in an independent trade or business, and except as provided in this Contract, nothing in this Contract will prohibit the Consultant from providing services to other businesses or entities or from engaging in any employment or other business activities. The Consultant cannot be engaged or employed in any business, trade, or other activity that would create a conflict of interest with ITRCC.

14.3 Except as provided in this Contract, the Consultant has sole discretion and responsibility for the selection of personnel, working hours, procedures, processes, attire, materials, and other incidents of performance of services under this Contract.

14.4 The Consultant will be responsible for supplying tools, materials, and equipment necessary to perform services for ITRCC under this Contract. The Consultant

will be responsible for obtaining any licenses and certifications necessary to perform services for ITRCC under this Contract.

### **Article 15 – Confidentiality**

All information furnished by ITRCC to the Consultant is confidential and Consultant shall not disclose any such information to any other person or corporate entity, or use such information for any purpose other than performing the Work pursuant to this Contract, unless such information is already in the public domain or required by legal representatives in the defense of the Consultant. This paragraph shall apply, without limitation, to specifications, drawings or other documents prepared by the Consultant for ITRCC in connection with this Contract. The Consultant shall not advertise or publish the fact that ITRCC has contracted with the Consultant, nor shall any information relating to this Contract be disclosed without ITRCC's written permission. This Article 15 shall survive the expiration or termination of this Contract. Notwithstanding any other provision of this Contract or any policy of ITRCC, the Consultant will not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made (a) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney if such disclosure is made solely for the purpose of reporting or investigating a suspected violation of law or for pursuing an anti-retaliation lawsuit or (b) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal and the Consultant does not disclose the trade secret except pursuant to a court order.

### **Article 16 – Assignment & Subcontracting and Binding Effect**

16.1 The Consultant shall not assign or subcontract any part of the Contract without the written approval of ITRCC. In the event that ITRCC approves of an assignment or subcontract, Consultant agrees to bind its successors, executors, sub consultants or subcontractors of any tier, administrators and assigns to all covenants of this Contract.

16.2 This Contract shall be binding upon and inure to the benefit of ITRCC and the Consultant and their respective successors and authorized assigns. The Consultant specifically agrees that ITRCC may assign all of its rights, title and interest in, to and under this Contract to the Indiana Finance Authority (“**IFA**”) as collateral security to the IFA for the observation and performance by ITRCC of its covenants and obligations under the Indiana Toll Road Concession and Lease Agreement dated April 12, 2006, (the “**ITR Concession and Lease Agreement**”) by and between ITRCC and IFA, as amended, restated or modified from time to time. Further, Consultant also agrees that ITRCC may assign as security to a Leasehold Mortgagee (as defined in the ITR Concession and Lease Agreement). These permitted assignments shall include this Contract and all present and future specifications, plans, software (including source code), drawings, information and documentation in relation to Toll Road Operations (as defined in the ITR Concession and Lease Agreement) arising out of or relating to this Contract.

### **Article 17 – Negation of Employment & Agency**

This Contract does not create a relationship of employment, agency or partnership between the Consultant and ITRCC. The Consultant is, and shall be, an independent contractor. The Consultant shall not represent themselves to be the agent or the employee of ITRCC or to be related to ITRCC other than as an independent contractor or consultant. In the event that the Consultant's obligations hereunder require or contemplate performance of services by the Consultant's employees, or persons contracting with the Consultant, to be done on ITRCC's property, the Consultant agrees that all such services shall be performed as an independent contractor and that the persons performing such services shall not be considered employees of ITRCC. The Consultant shall maintain all necessary insurance coverages, including public liability and workers' compensation insurance. Consultant shall indemnify, hold harmless ITRCC from all damages and/or liabilities arising out of such Work.

#### **Article 18 – Insurance**

The Consultant agrees to procure and maintain, at its own expense, appropriate insurance covering Consultant's obligations hereunder, and including, as appropriate, ITRCC, the State of Indiana and the Indiana Finance Authority as additional insureds, such insurance to include Worker's Compensation in the statutorily required amount, Commercial General Liability insurance on a per occurrence basis of \$2,000,000 per each bodily injury and property damage occurrence and \$2,000,000 products and completed operations aggregate, and Automobile Insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

#### **Article 19 – Indemnity**

ITRCC and the Consultant acknowledge and agree that the services to be performed by the Consultant under this Contract are to be performed by the Consultant at the Consultant's own risk. The Consultant shall indemnify, and hold harmless, ITRCC, its officers, employees and directors, from and against all liabilities, damages, expenses including, without limitation, reasonable attorneys' fees and costs arising from: (a) any action or claim for alleged infringement of any intellectual property rights arising in connection with the Work performed pursuant to this Contract; (b) any negligent act or omission by the Consultant in connection with this Contract; (c) any misuse or disclosure by the Consultant of confidential information or breach by the Consultant of any obligation of confidentiality set forth in this Contract; (d) any breach by the Consultant of any warranty provided under or any other term or provision of this Contract and, (e) the use by ITRCC of the Work except to the extent that the liabilities, damage, expense or legal cost was caused by the negligent or unlawful act or omission of ITRCC.

#### **Article 20 – Governing Law & Forum**

20.1 Except as otherwise provided herein, this Contract and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the internal laws of the State of Indiana, including the Uniform Commercial Code as enacted in that jurisdiction, without giving effect to that jurisdiction's choice of law principles and, where applicable Federal Law of the United States of America. The



jurisdiction and venue of any legal proceedings for the resolution of disputes arising under or in connection with this Contract shall be in the federal or state courts sitting in Indiana, U.S.A.

20.2 The parties shall endeavor to resolve their disputes by non-binding mediation which, unless the parties mutually agree otherwise, shall be in accordance with the rules and procedures of the American Arbitration Association. Request for mediation shall be filed in writing with the other party to this Contract and with the American Arbitration Association. Mediation shall proceed in advance of legal, but not equitable, proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or by court order. Both parties shall share the cost of mediation equally although personal attorneys, witnesses, and specialists are the direct responsibility of each party and their fees and expenses shall be the responsibility of the individual parties.

## **Article 21 – Compliance with Laws**

21.1 In fulfilling this Contract, the Consultant shall comply with all applicable laws and governmental regulations and orders, federal, state, local and foreign.

### **21.2 Maintaining a Drug Free Workplace**

(a) The Consultant hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Consultant will give written notice to the ITRCC within ten (10) days after receiving actual notice that the Consultant or an employee of Consultant has been convicted of a criminal drug violation occurring in ITRCC's workplace.

(b) The Consultant 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 ITRCC'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 Consultant'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 (i) above that as a condition of continued employment,

the employee will (1) abide by the terms of the statement; and (2) notify ITRCC of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

D. Notifying in writing ITRCC within ten (10) days after receiving notice from an employee under subdivision (iii)(2) above, or otherwise receiving actual notice of such conviction;

E. Within thirty (30) days after receiving notice under subdivision (iii)(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.

### 21.3 Non-Discrimination

#### (a) Federal Requirements

It will be an unlawful employment practice for the Consultant (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, or the terms, conditions, or privileges of his employment, because of such individual's race, color, religion, sex, age, disability or national origin; (2) to limit, segregate or classify his employees or applicants in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, age, disability or national origin.

Consultant will comply with the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e et seq. (1988), as amended. Attention is called to Exec. Order No 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000e note, as amended by Exec Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. sec. 6101-6106 (1988); Rehabilitation Act of 1973, 29 U.S.C. sec. 793-794 (1988); Americans with Disabilities Act, 42 U.S.C. sec. 12101; and 41 C.F.R. Part 60 (1990).

#### (b) State Requirements

Pursuant to IC 22-9-1-10, Consultant shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry.

#### 21.4 Ethics and Conflict of Interest Requirements

(c) Ethics

Consultant 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 Indiana Code § 4-2-6 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004 and Executive Order 05-12, dated January 10, 2005.

(d) Conflict of Interest.

(i) As used in this section:

(1) **“Immediate family”** means the spouse and the unemancipated children of an individual.

(2) **“Interested party”** means:

- a. The individual executing this Contract;
- b. An individual who has an interest of three percent (3%) or more of Consultant; or
- c. Any member of the immediate family of an individual specified under subdivision (1) or (2).
- d. The Consultant has an affirmative obligation under this Contract to disclose to the ITRCC when an Interested Party is or becomes an employee of the State. The obligation under this section extends only to those facts that the Consultant knows or reasonably could know.

21.5 Non-Collusion and Acceptance: The Consultant attests, subject to the penalties for perjury, that no employee, representative, agent or officer of the Consultant, directly or indirectly, to the best of the Consultant’s knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay any sum of money or other consideration for the execution of this Contract other than that which is expressly set forth in this Contract.

21.6 Equal Opportunity and XBE Program: ITRCC is committed to providing fair and representative opportunities for Women, Minority, Veteran, and Disadvantaged Business Enterprises (collectively, “XBE”) in all contracts related to the Indiana Toll Road. Neither ITRCC nor its Contractors shall discriminate on the basis of race, color, religion, sex or national origin in the award and performance of contracts related to the Indiana Toll Road. Furthermore, affirmative action will be taken, consistent with sound procurement policies and applicable Law, to ensure that XBEs are afforded a fair and representative opportunity to participate in ITRCC’s contracts related to the Indiana Toll Road.

XBE Participation means the dollar value of XBE spend in contracts related to the Indiana Toll Road. XBE Participation shall be a minimum of **15%** of the contract value, including such amount as may be amended through change orders or otherwise over the term of the contract (inclusive of the supply chain). In order to qualify as an XBE, a vendor or sub must be certified with the Indiana Department of Administration (IDOA) or Indiana Department of Transportation (INDOT).

**XBE Participation is a requirement – not a goal.**

21.7 Failure to Meet XBE Requirements

- a. If ITRCC determines that the XBE Participation requirements have not been met, it may withhold from the final payment the amount of the discrepancy between the amount of the contractual minimum participation amount and the achieved amount.
- b. Prior to withholding the amount of the discrepancy specified by this section, ITRCC shall notify the Contractor of its intent to withhold. The Contractor shall have, seven (7) days to provide evidence to ITRCC to controvert the fact or amount of the proposed penalty. If the Contractor is unable to provide evidence to controvert the fact or amount of the proposed withholding, the amount will be deducted from Contractor’s final payment.
- c. ITRCC shall use all funds collected from withholdings under this section, exclusively for supporting and developing supplier diversity in northern Indiana.

21.8 Buy Indiana Presumption: If the Consultant subcontracts any of the work to be performed pursuant to this Contract, the Consultant agrees to subcontract work only to an “Indiana businesses” as such term is defined in IC 5-22-15-20.5.

21.9 Telephone Solicitation: As required by IC 5-22-3-7, the Consultant, on its behalf and on behalf of its principals, affiliates, and sub-consultants or subcontractors agree that neither it nor they shall violate the terms of IC 24-4.7 during the Term, even if IC 24-4.7 is preempted by federal law.

## **Article 22 – Penalties, Interest and Attorney’s Fees**

ITRCC will in good faith perform its obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney’s fees, except as may be required by Indiana law.

## **Article 23 – Variation and Waiver**

23.1 No agreement or understanding varying or extending this contract, will be legally binding upon the Consultant or ITRCC unless in writing and signed by both the Consultant and ITRCC.

23.2 No provision of this contract shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party charged with waiver or consent. Any consent by any party to, or waiver of, a breach of the other party, whether expressed or implied, shall not constitute consent to, waiver of, or excuse for any different or subsequent breach.

## **Article 24 – Remedies**

All rights and remedies of ITRCC herein stated are nonexclusive and in addition to other rights and remedies provided by law.

## **Article 25 – Severability**

The invalidity of any section, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Contract. The covenants and restrictions in this Contract are separate and divisible. If any particular covenant, provision or portion of this Contract is determined to be invalid or unenforceable for any reason, such covenant, provision or clause will automatically be deemed reformed such that the contested covenant, provision or portion will have the closest effect permitted by applicable law to the original form and will be given effect and enforced as so reformed to whatever extent would be reasonable and enforceable under applicable law. ITRCC and the Consultant agree that any court interpreting any non-disclosure provision of this Contract will, if necessary, reform any such provision to make it enforceable under applicable law.

## **Article 26 - Section Headings**

Section headings have been included in this Contract merely for convenience of reference. They are not to be considered part of this Contract, or to be used in the interpretation hereof.

## **Article 27 – Status of Claims**

The Consultant shall be responsible for keeping ITRCC currently advised as to the status of any claims made for damages against the Consultant in any way related to this Contract. The Consultant shall send notice of claims related to Work under this Contract to:

[REDACTED]  
ITR Concession Company LLC  
32000 Cassopolis St.  
Elkhart, Indiana 46514  
[REDACTED]@indianatollroad.org

## **Article 28 – Miscellaneous**

28.1 The Consultant represents and warrants that this Contract and the Consultant's performance of the independent contractor services contemplated by this Contract will not constitute a breach of any agreement to which the Consultant is a party.

28.2 Any notice required or permitted under this Contract will be in writing and either delivered personally or sent by nationally recognized overnight courier, express mail, or certified or registered mail, postage prepaid, return receipt requested, at the address listed in the first paragraph of this Contract for the Consultant and at the address listed in Article 27 for ITRCC, unless the party notifies the other party in writing of a change of address. A notice delivered personally will be deemed delivered and effective as of the date of delivery. A notice sent by overnight courier or express mail will be deemed delivered and effective one (1) day after it is deposited with the postal authority or commercial carrier. A notice sent by certified or registered mail will be deemed delivered and effective two (2) days after it is deposited with the postal authority.

28.3 This Contract has been negotiated between the parties, and no party will be deemed the drafter of this Contract. The language of this Contract will in all cases be construed as a whole, according to its fair meaning and not strictly for or against any party.

28.4 The Consultant acknowledges that a breach or threatened breach by the Consultant of this Contract will give rise to irreparable injury to ITRCC and that money damages will not be adequate relief for such injury, and, accordingly, agrees that ITRCC shall be entitled to obtain equitable relief, including, but not limited to, specific performance, temporary restraining orders, preliminary injunctions and/or permanent injunctions, without having to post any bond or other security, to restrain or prohibit such breach or threatened breach, in addition to any other legal remedies which may be available, including the recovery of monetary damages from the Consultant. In addition to all other relief to which it shall be entitled, ITRCC shall be entitled to recover from the Consultant all litigation costs and attorneys' fees incurred by ITRCC any action or proceeding relating to this Contract in which ITRCC prevails in any respect, including, but not limited to, any action or proceeding in which ITRCC seeks enforcement of this Contract or seek relief from the Consultant's violation of this Contract.

28.5 During the Consultant's performance of work for ITRCC, the Consultant will abide by any applicable rules and/or policies that ITRCC currently has or may adopt, amend, or implement from time to time.

**CONTRACT FOR CONSULTING SERVICES**

**[Consultant's Name]**

**ITR Concession Company LLC:**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

**EXHIBIT A**  
**SCOPE OF SERVICES**

See attached proposal dated **[insert date]**



**EXHIBIT B**  
**SCHEDULE OF WORK**

See attached proposal dated [insert date]

**EXHIBIT C**

**MBE / WBE Certifications**

Subconsultant Name	WBE/MBE	Percent
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____