

**CONSTRUCTION SERVICES AGREEMENT
BETWEEN
ITRCC AND CONTRACTOR**

This Construction Services Agreement (this “**Contract**”) is entered into as of May 9, 2024 (“**Effective Date**”), between ITR Concession Company, LLC (“**ITRCC**”) and _____ (the “**Contractor**”). ITRCC and Contractor are each hereafter referred to individually as a “**Party**” and together as the “**Parties**”.

WITNESSETH

WHEREAS, ITRCC desires to engage Contractor to perform certain construction services (the “**Work**”) from Contractor along the Indiana Toll Road (the “**Project**”);

WHEREAS, Contractor desires to provide such Work to ITRCC; and

WHEREAS, ITRCC and Contractor desire to set forth the terms and conditions pursuant to which Contractor shall provide to ITRCC, and ITRCC shall acquire from Contractor, such Work.

NOW, THEREFORE, for good and valuable mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Conditions and Provisions.

- 1.1. Terms. Terms used in this Contract and in other construction documents incorporated by the Contract (the “**Contract Documents**”) shall have their customary meanings except as expressly designated in the Contract Documents.
- 1.2. Contract Documents. The Contract Documents consist of the following (in order of priority, from first to last):
 - a. Signed Change Orders;
 - b. Signed amendments and/or addenda, if any, to this Contract;
 - c. This Contract;
 - d. Exhibits to this Contract (whether or not mentioned in the body of this Contract);
 - e. Invitation for Bids that this Contract was awarded pursuant to;
 - f. Drawings for the Project;
 - g. Written specifications for the Project;med
 - h. Plan Standard Details;
 - i. Agreed allowances or contingencies for the Project;
 - j. ITRCC’s Responsible Contractor Policy; and
 - k. The technical specifications, but not any legal terms and conditions, in Contractor’s proposal, if any.

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

2. Contractor's Duties.

2.1. General Duties.

- 2.1.1. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, permits, telephone, transportation, and other facilities and services necessary for the proper execution and completion of the Work, as further defined in Exhibit A, whether temporary or permanent and whether or not incorporated in the Work. The Contractor shall perform the Work efficiently and in a workmanlike manner and with the requisite expertise, skill, competence and resources. The Contractor shall have control over the means, methods, sequences and techniques of construction.
- 2.1.2. The Contractor shall be responsible for its employees, laborers, Subcontractors and others performing portions of the Work.
- 2.1.3. The Contractor shall be responsible for the security of the Project and the site. Only authorized personnel shall be permitted on the site. Site-parked mobile equipment and operable machinery and hazardous portions of the Project shall be kept locked or otherwise made secure.
- 2.1.4. The Contractor shall comply with and give all notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work. The Contractor shall promptly notify ITRCC if the drawings and specifications are observed by the Contractor to be at variance therewith. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to ITRCC, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

- 2.2. Review of Contract Documents. Before starting each portion of the Work, the Contractor shall carefully study and compare the various drawings, specifications and other Contract Documents relative to that portion of the Work, as well as the information furnished by ITRCC, and shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions or inconsistencies in the Contract Documents. However, any errors, omissions or inconsistencies discovered by the Contractor shall be reported promptly to ITRCC as a request for information in such form as ITRCC may require. Execution of the Contract by the Contractor is a representation that the Contractor 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.

- 2.3. Concession Lease Agreement. ITRCC is a party to that certain Indiana Toll Road Concession and Lease Agreement, dated as of April 12, 2006, by and between ITRCC and the Indiana Finance Authority, as amended, supplemented, restated and/or modified from time to time, (the "**Concession Agreement**"). The Contractor shall perform this Contract in compliance with the standards and specifications as set forth in the Concession Agreement.

- 2.4. Supervision and Construction Procedures. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall be fully and solely responsible for the job site safety thereof unless the Contractor gives timely written notice to ITRCC that such means, methods, techniques,

sequences or procedures may not be safe. The Contractor shall be responsible to ITRCC for acts and omissions of the Contractor's employees, subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its subcontractors.

2.5. Equipment and Materials.

2.5.1. The Contractor warrants to ITRCC that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

2.5.2. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, supplies, construction equipment and machinery, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall deliver, handle, store and install materials in accordance with manufacturers' instructions. The Contractor may make substitutions only with the consent of ITRCC, in accordance with a Change Order.

2.5.3. The Contractor must ensure that equipment furnished under this Contract shall meet the safety guidelines and preventative maintenance standards as established by Federal Motor Carrier Safety Administration (FMCSA), INDOT, OSHA, state, and local laws. Notwithstanding anything to the contrary contained in this Contract, Contractor shall be responsible for damage to or destruction or loss of, from any cause whatsoever, all such construction equipment. The Contractor shall require all insurance policies (including policies of the Contractor and all Subcontractors) in any way relating to such construction equipment to include clauses stating that each underwriter will waive all rights of recovery, under subrogation or otherwise, against ITRCC.

2.5.4. ITRCC may furnish, erect or provide equipment, appurtenances and devices, motorized or otherwise, for Contractor's use to complete the Work. Contractor agrees to insure such equipment against claims for injury or damage caused by such equipment while in its care, custody or control. The Contractor shall name ITRCC as an additional insured on such policy. Liability limits for such equipment shall be the same as those identified in Section 12 and shall be on a "replacement-cost" basis.

2.6. Permits and Fees. The Contractor shall pay all applicable sales, consumer, use and other similar taxes which are legally enacted. Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

2.7. Submittals. The Contractor shall review for compliance with the Contract Documents, approve in writing and submit to ITRCC, drawings, product data, samples and similar submittals required by the Contract Documents ("Submittals") with reasonable promptness. The Work shall be in accordance with such approved Submittals.

2.8. Use of Site. The Contractor shall confine operations at the site to areas permitted by law, ordinances, and permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall provide ITRCC access to the Work in preparation and progress wherever located.

- 2.9. Cutting and Patching. The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.
- 2.10. Clean Up. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Cleanup shall be done on a daily basis. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus material.
- 2.11. Representations. The 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. ITRCC, within its sole discretion, may terminate this Contract with immediate effect and take appropriate legal action as required if such representation is determined to be inaccurate.

3. ITRCC's Duties.

- 3.1. Information Required of ITRCC. ITRCC shall promptly furnish information required of it by the Contract Documents. The Contractor shall be entitled to rely on the accuracy of information furnished by ITRCC but shall exercise proper precautions relating to the safe performance of the Work.
- 3.2. Permits and Fees. Except for permits and fees which are the responsibility of the Contractor as outlined in Section 2.6, ITRCC shall secure and pay for other necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or permanent changes in existing facilities.
- 3.3. ITRCC's Administration of the Contract.
 - 3.3.1. ITRCC will visit the Project site to monitor the Contractor's Work; provided that ITRCC will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.
 - 3.3.2. ITRCC will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the Contractor. ITRCC will make initial decisions on all claims, disputes and other matters in question between ITRCC and Contractor but will not be liable for results of any interpretations or decisions so rendered in good faith.
 - 3.3.3. ITRCC's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

4. Contract Time.

- 4.1. Contract Time. Time is of the essence of this Contract. The Work shall commence on the Effective Date or as stated in a Notice to Proceed issued by ITRCC and shall be completed by **Month, xx, 20XX** ("Substantial Completion Date"), (the "Contract Time"), subject to extensions of the Contract Time as set forth in this Contract. By executing this Contract, the Contractor Agrees that the Project Schedule is reasonable, and agrees that it will perform all Work in accordance with such Project Schedule.
- 4.2. Project Schedule. The Contractor shall coordinate, supervise and direct the Work in accordance with the project schedule described in this Contract, as further described in the attached Exhibit B to this Contract (together, the "Project Schedule"). The Contractor shall, consistent with the Project Schedule, cooperate with ITRCC in scheduling and performing the Work to avoid conflict, delay or interference with ITRCC's own forces and separate contractors.

4.3. Acceleration.

4.3.1. If the Contractor should (1) fail, refuse or neglect to supply a sufficient number of workers or deliver materials or equipment with such promptness as to prevent delay in the progress of the Work; (2) fail to commence and diligently prosecute the Work; or (3) fail to commence, prosecute, finish, deliver or install the different portions of the Work in accordance with the Project Schedule, ITRCC shall have the right to direct the Contractor to prepare a written plan, for ITRCC's approval, to accelerate the Work to comply with the Project Schedule.

4.3.2. If the Contractor (i) fails to prepare a written plan for acceleration within the time period specified by ITRCC or (ii) fails to accelerate the Work in accordance with the written plan approved by ITRCC, if ITRCC does not approve the written plan for acceleration or if the written plan does not accelerate the Work to comply with the Project Schedule, ITRCC may finish the Work or a portion of the Work with ITRCC's own forces, with separate contractors or by whatever reasonable method ITRCC may deem expedient at the Contractor's expense.

4.4. Suspension by ITRCC. ITRCC may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part, for such period of time as ITRCC may determine. The Contractor shall resume the Work as directed by ITRCC. If the Project is resumed after being suspended for more than sixty (60) days, the Contract Time shall be adjusted for increases in the time required for the Contractor to complete the Work caused by suspension, and the Contract Sum may be equitably adjusted. No adjustment shall be made to the extent that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible.

4.5. Contractor Delays. If the Work is delayed, disrupted or interfered with by any act or omission of the Contractor, or its Subcontractors or others for whom they are responsible, or by acts, omissions, events or occurrences for which the Contractor is not expressly entitled to an increase in the Contract Time under this Contract, the Contractor shall compensate ITRCC for all direct damages, losses and expenses, including attorney's fees and tenant claims against ITRCC, if any, incurred by ITRCC as a result of such delay, disruption or interference.

4.6. Differing Site Conditions. If concealed or unknown physical conditions are encountered at the site that differs materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted by Change Order upon written claim by the Contractor; provided that Contractor shall not proceed with any work outside the scope of Work without an executed Change Order. No adjustment in the Contract Time or Contract Sum shall be permitted if the condition does not differ materially from conditions that should have been discovered by the Contractor pursuant to inspections or tests that the Contractor had the opportunity to make in connection with the Project.

4.7. Substantial Completion.

4.7.1. The date of Substantial Completion shall be deemed to have occurred when all of the following events shall have occurred:

- a. ITRCC determines that the Work is substantially complete;
- b. The only remaining items of Work at the Project to be completed are the Punch List Items; and
- c. ITRCC has issued a certificate of Substantial Completion.

- 4.7.2. Punch List Items shall mean a list jointly prepared by ITRCC and the Contractor of items of the Work, the non-completion of which shall not preclude or interfere with ITRCC's use and occupancy of the Project for the purposes intended.
- 4.8. Final Completion. Upon receipt of written notice from Contractor that the Work is ready for final inspection and acceptance and upon receipt of the final Payment Application from the Contractor, ITRCC will promptly make such inspection. When ITRCC determines that the Work is acceptable and fully performed in accordance with the Contract Documents, ITRCC will promptly issue the final payment in accordance with Section 6.7.
5. **Contract Sum**. ITRCC shall pay Contractor a lump sum in the amount of **\$xx** (the "**Contract Sum**"). The Contract Sum shall not be subject to change or escalation, except as expressly provided for in this Contract. Contractor shall be solely responsible for any applicable sales and/or use taxes for equipment or property utilized in the execution of this Contract.
6. **Payments to Contractor**.
- 6.1. Payment Applications.
- 6.1.1. Contractor shall submit for ITRCC's approval applications for payment ("**Payment Application**") in connection with the Work based on the percentage of the Work actually completed.
- 6.1.2. Reserved.
- 6.2. Progress Payments. Payments will be made within forty-five (45) days of ITRCC's receipt of a valid Payment Application. Contractor shall provide a monthly draw-down schedule in line with the scope of work and schedule of work within this contract. In the event there are any disputes regarding invoice amounts, only the undisputed amount will be paid by ITRCC to the Contractor. Upon the achievement of Substantial Completion, the final Payment Application must be submitted to ITRCC within ninety (90) days in order to be eligible for full payment. Should the Payment Application not be submitted within the specified ninety (90) days, the amount due and payable shall be reduced at an interest rate of 1% for each monthly period the invoice remains unsubmitted.
- 6.3. Reserved.
- 6.4. Title and Liens. The Contractor warrants that title to all Work described within any Payment Application will pass to ITRCC no later than the time of payment. The Contractor further warrants that upon submittal of a Payment Application, all Work for which Payment Applications have been previously issued and payments received from ITRCC shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to ITRCC's interests.
- 6.5. Payments to Subcontractors. The Contractor shall promptly pay each of its laborers, employees and Subcontractor, upon receipt of payment from ITRCC. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner. ITRCC has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors' Payments to Subcontractors.
- 6.6. Payment Withholding. Payments may be withheld on account of (1) defective work not remedied; (2) claims relating to the Project filed by any third parties (including, without limitation, liens and personal injury claims not reasonably covered by insurance); (3) failure of the Contractor to make required payments to Subcontractors, laborers, materialmen or providers of equipment; (4) Contractor's failure to carry out the Work in accordance with the Contract Documents; or (5) Contractor's default hereunder. ITRCC may, but is not obligated to, make

direct or joint payments on behalf of the Contractor to its laborers, employees, Subcontractors, and charge such payments against the Contract Sum. If ITRCC makes payments by joint check, the Contractor shall reflect such payment on its next Payment Application.

- 6.7. **Final Payment.** Prior to final payment, the Contractor shall deliver to ITRCC a complete release of all liens arising, or which could arise, out of this Contract or the Project, covering all labor, materials and equipment for which a lien could be filed. The final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by ITRCC to the Contractor after completion of the Project, approval by all necessary government authorities and acceptance by ITRCC. No payment under this Contract shall be conclusive evidence of the performance of this Contract, either in whole or in part, and no payment shall be construed to be an acceptance of improper performance of the work at the Project. The making of final payments shall not waive ITRCC's claims arising from (1) unasserted liens relating to the Project or Work performed hereunder; (2) faulty or defective Work; (3) failure of the Work to comply with the requirements of the Contract Documents; or (4) terms of any warranties required by the Contract Documents.

7. **Changes in the Project.**

7.1. **Changes in the Work.**

- 7.1.1. ITRCC may issue written orders for minor changes in the Work not involving an adjustment to the Contract Sum or the Contract Time and consistent with the intent of the contract documents. ITRCC may make changes in the Work consisting of additions, deletions or other revisions by Change Order to the Contractor and the Contractor shall comply with ITRCC's directives as set forth in a Change Order.

7.2. **Change Orders.**

- 7.2.1. A Change Order is a written agreement between ITRCC and Contractor making a change in the Work. A Change Order shall specify the scope, basis of compensation, and adjustment of the Contract Sum and/or the Contract Time, if any, resulting from the change.
- 7.2.2. The Contract Sum and the Contract Time shall be changed only by Change Order. Contractor shall not be entitled to any compensation or extension of time for any Work that is not in accordance with the Contract Documents and has not been authorized by a Change Order.
- 7.2.3. The Contractor shall submit a properly itemized Change Order within thirty (30) days after the first occurrence of the event giving rise to the Contractor's Claim for such an adjustment, or within thirty (30) days after the Contractor first recognizes or reasonably should have recognized the condition giving rise to Contractor's Claim for such an adjustment. Adjustments to the Contract Sum due to a Change Order shall be determined by mutual agreement of the Parties.

8. **Liquidated Damages.** Unless as a result of a delay caused by ITRCC, in the event Contractor fails to achieve substantial completion of the Work by the Substantial Completion Date, as that date may be adjusted in accordance with this Contract, the parties agree that ITRCC's damages will be difficult or impossible to ascertain and the parties agree that as liquidated damages, and not as a penalty, Contractor will pay to ITRCC the daily amount of Two Thousand Dollars (\$2,000.00) per day for each calendar day after Substantial Completion. The Contractor shall be liable to ITRCC for any damages, including liquidated damages, incurred by ITRCC in connection with lease agreements or other agreements between ITRCC and any third parties, arising from or caused by the Contractor's failure to achieve Substantial Completion and/or Final Completion within the time limits set forth in the Contract Documents. Payments by the Contractor under this Article 8 shall be limited to a maximum amount equal to twenty-five percent (25%) of the Contract Sum.

9. Subcontracts.

- 9.1. General. A subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work (“**Subcontractor**”).
- 9.2. ITRCC Approval. Unless stated otherwise in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to ITRCC the names of all Subcontractors for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor to whom ITRCC has made reasonable and timely objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum shall be increased or decreased by the difference, providing the Contractor provides supporting documentation. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.
- 9.3. Subcontracts. Contracts between the Contractor and Subcontractors shall
 - a. require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the subcontractor’s work, which the Contractor, by the Contract Documents, assumes toward ITRCC; and
 - b. allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor, as afforded to the Contractor by these Contract Documents.
- 9.4. Payments to Subcontractors. The Contractor shall promptly pay each Subcontractor the amount to which such Subcontractor is entitled in accordance with the subcontract. The Contractor shall, by an appropriate agreement with each subcontractor, require each Subcontractor to make payments to its subcontractors or vendors in a similar manner. Nothing contained herein shall create any contractual relationship between any Subcontractor and ITRCC. ITRCC shall have no obligation to pay, or to see to the payment of, any monies to any subcontractor. No subcontractor is intended to be, or shall be deemed, a third-party beneficiary of this Contract.
- 9.5. Continued Obligations.
 - 9.5.1. The Contractor is responsible for each of the various parts of the Work so that no part is left in an unfinished or incomplete condition due to any disagreement between Subcontractors or between a Subcontractor and the Contractor.
 - 9.5.2. In no event shall the right of the Contractor to subcontract relieve the Contractor and its bonding agent or entity from any of their obligations and responsibilities under this Contract including, but not limited to, the satisfactory completion of the Work, payment of wages of laborers and for equipment and materials furnished for the Work, as well as for the payment of indemnities arising out of any labor accident under any law or regulation.
 - 9.5.3. The Contractor agrees that it is fully responsible to ITRCC for the acts and omissions of Subcontractors and of persons either directly or indirectly employed by them.
 - 9.5.4. The Contractor shall ensure that the Subcontractor’s work conforms with the Contractor’s Work. The Contractor is responsible for and shall check the correctness of the performance of any portion of the Work by Subcontractors.
- 9.6. Liens. If any payment claim or lien is made or filed with or against ITRCC or the Project, and the payment claim or lien was not filed as a result of ITRCC’s wrongful failure of payment, the Contractor shall, within twenty (20) days of the filing of the lien or submission of the claim, satisfy, discharge or bond-off the claim or lien, cause ITRCC to be dismissed from any action which may be brought in connection with a claim or lien, and compensate ITRCC for and

indemnify and defend ITRCC against any and all losses, damages, and expenses, including reasonable attorney's fees, sustained or incurred by ITRCC.

10. **Separate Contractors.**

- 10.1. Reservation. ITRCC reserves the right to perform construction or operations related to the Project with ITRCC's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site.
- 10.2. Coordination. The Contractor shall afford ITRCC and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. The Contractor shall provide for coordination of the activities of ITRCC's own forces and of each separate contractor with the Work of the Contractor.
- 10.3. Impacts. ITRCC shall be reimbursed by the Contractor for costs incurred by ITRCC which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of ITRCC or separate contractors.

11. **Protections of Persons and Property.**

- 11.1. Safety Precautions and Programs. The Contractor shall be responsible for maintaining and supervising the Project and shall initiate all necessary safety precautions and programs in connection with the performance of the Work. The Contractor shall comply with the ITRCC Contractor Safety Rules outlined in Exhibit F.
- 11.2. Safety of Persons and Property. Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees and Subcontractors and all persons who may be affected thereby; (2) all the construction and all materials and equipment to be incorporated therein; and (3) other property at the Project site or adjacent thereto.
- 11.3. Injury or Damage to Person or Property.
 - 11.3.1. The Contractor shall immediately report in writing to ITRCC and the Contractor's liability insurers any Project-related accidents and, to the extent required by applicable law, to governmental authorities having jurisdiction over the Project. Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority bearing on the safety of persons and property and their protection from damage, injury or loss.
 - 11.3.2. The Contractor shall promptly remedy all damage or loss to any property caused in whole or in part by the Contractor, or any Subcontractor, or anyone employed by any of them, or by anyone for whose acts any of them may be liable, except damage or loss attributable to the acts of ITRCC or anyone directly or indirectly employed by ITRCC or by anyone for whose acts ITRCC may be liable, and not attributable to the fault or negligence of the Contractor.
 - 11.3.3. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless ITRCC from and against any and all fines or penalties imposed as a result of safety violations arising out of or relating to the Work.

11.4. Hazardous Conditions.

- 11.4.1. Definition. Hazardous Conditions means any material, waste, substance or chemical deemed to be hazardous under applicable law, or the handling, storage, remediation, or disposal of which is regulated by applicable law.
- 11.4.2. Pre-existing Conditions. The Contractor shall not be responsible for pre-existing Hazardous Conditions encountered at the site. Upon encountering a Hazardous Condition, the Contractor shall stop Work immediately in the affected area and notify ITRCC and, if required by applicable law, governmental authorities having jurisdiction over the site. The Contractor shall resume Work at the affected area after written certification that the Hazardous Condition does not exist or has been remediated and necessary approvals have been obtained. The Project Schedule shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Contractor's reasonable costs of shutdown, delay and startup, which adjustments shall be accomplished as provided in this Article 11.
- 11.4.3. Other Conditions. Notwithstanding subparagraph 11.4.2, ITRCC shall not be responsible for Hazardous Conditions which were created subsequent to the date of this Contract or introduced to the site by the Contractor, its Subcontractors or anyone for whose acts they may be liable. Substances that may create a Hazardous Condition shall not be used without the approval of ITRCC. The Contractor shall defend and indemnify ITRCC and the lenders from and against all damages, costs and expenses, including attorneys' fees, arising out of or resulting from such Hazardous Conditions.
- 11.4.4. If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, ITRCC shall reimburse the Contractor for all costs and expenses thereby incurred.

12. **Insurance.**

- 12.1. Contractor's Insurance. Contractor shall maintain during the progress of the Work and during any correction or warranty periods applicable to the Work, insurance with the minimum limits and coverages as shown below with insurance companies rated A-VII or better by the most recent edition of Best's Key Rating Guide and approved by the ITRCC:
 - 12.1.1. Commercial General Liability insurance with a minimum limit of liability for bodily injury, personal injury, including death resulting therefrom, and property damage on an occurrence basis of \$2,000,000 per occurrence and in the aggregate. Such policy shall provide coverage for premises-operations, independent contractors, broad form property damage, contractual liability, products and completed operations and shall be maintained for two (2) years after Substantial Completion or for such longer period of time as is described in the Contract Documents. The additional insured endorsements required by this Section 12.1.1 shall be equivalent in its coverage to the ISO Forms CG2033 10 01 and CG2037 10 01 and shall state that the coverage provided to the Additional Insureds is primary and noncontributory with any other insurance available to the Additional Insureds. A per project aggregate endorsement must be included.
 - 12.1.2. Worker's Compensation insurance in accordance with the laws of the State of in which the Project is located. Such policy shall include occupational disease coverage.
 - 12.1.3. Employer's Liability with a minimum limit of \$1,000,000 each accident.
 - 12.1.4. Commercial Automobile Liability with a minimum limit of \$1,000,000.00 combined single limit. Such policy shall cover all owned, non-owned and hired vehicles.

- 12.1.5. Pollution Liability with a minimum limit of not less than \$5,000,000 per occurrence for bodily injury, property damage, and clean-up costs, including coverage for any claim, suit, penalty, fine, or demand brought by any third party or on behalf of any governmental agency or authority, as a result of the actual, alleged, or threatened discharge, disposal, seepage, migration, release, or escape of any hazardous material or pollutant.
- 12.2. Additional Insureds. ITRCC, the Indiana Finance Authority, the State of Indiana, CITI, and any mortgagee or construction lender identified in writing to Contractor and their officers, employees and representatives (“**Additional Insureds**”) shall be named as additional insureds on the Commercial General Liability coverage outlined above and to the extent required by the indemnification provisions of the Contract. Evidence of this shall be included on all certificates of insurance.
- 12.3. Certificate of Insurance. A certificate of insurance on an approved form must be delivered to Contractor and must state that the coverages will not be altered, cancelled or allowed to expire without thirty (30) days’ written notice by registered mail to ITRCC. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Contractor, its agents, employees or volunteers. Certificates of Insurance, copies of policies, and all applicable endorsements for the above-described insurance shall be available for review to ITRCC before the commencement of any Work. All insurance shall be endorsed as primary and not contributory with respect to other insurance. All liability insurance policies shall be endorsed to include contractual liability. If Contractor fails to provide such certificates as required by the Contract Documents, ITRCC may withhold payments due to Contractor.
- 12.4. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be approved by ITRCC. At the sole option of the ITRCC, ITRCC may direct Contractor to (i) reduce or eliminate such deductibles or self-insured retentions; or (ii) procure a bond guaranteeing payment of losses and related investigation, claim administration and defense expenses.
- 12.5. Waiver of Subrogation. All of the Contractor’s insurance policies shall include a waiver by the insurance company of all rights against the Additional Insureds that arise or might arise by reason of any payment under any policies carried by the Contractor or by reason of any act or omission of the Additional Insureds.
- 12.6. Subcontractor’s Insurance. Equivalent insurance coverage must be obtained from each Subcontractor or supplier, if any, before permitting them on the site of the Project. If Contractor or its Subcontractors fail to furnish and maintain insurance as required by this Article 12, ITRCC, at its option, may purchase such insurance on behalf of Contractor or said Subcontractors, and Contractor shall pay the cost thereof to ITRCC upon demand and shall furnish to ITRCC, or cause to be furnished to ITRCC, any information needed to obtain such insurance.
- 12.7. Third-Party Insurance Claim. In the event the Work is damaged and subject to a third-party claim, Contractor shall provide pricing in relation to the Work in the form provided in Exhibit G.

13. Performance and Payment Bonds.

- 13.1. The Contractor shall, before the award of the Contract, deliver to ITRCC a performance bond and payment bond (collectively, “**Bonds**”). The sum of each Bond shall be one hundred percent (100%) of the Contract Sum. If the Contract Sum is increased during the performance of the Contract, the Contractor shall be required to obtain additional bond protection equal to one hundred percent (100%) of the increase in the Contract Sum.

- 13.2. The surety issuing the Bonds must be acceptable to ITRCC and the Bonds must be submitted on forms subject to ITRCC's reasonable approval. The surety for the Bonds must have a Best's Key Rating Guide of "A-," Class XI or greater. The Bonds shall cover the warranty period required by the Contract.
- 13.3. If the Contractor neglects, fails, or refuses to provide a satisfactory surety within seven (7) days after written notice from ITRCC, ITRCC may declare this Contract forfeited; provided that such forfeiture shall not release the Contractor or its surety from any liability which may have accrued prior to the date of such forfeiture.
- 13.4. If at any time the surety (i) becomes insolvent, (ii) is unsatisfactory, in the sole opinion of ITRCC, or (iii) is unable to respond to damages covered under such Bond, ITRCC will notify the Contractor and direct the Contractor to provide a Bond issued by a satisfactory surety.
- 13.5. The Bonds required by the Contract shall be secured by a guarantee or surety company listed in the latest issue of U.S. Treasury Circular 570.

14. Indemnification.

- 14.1. General Indemnity. Subject to the other terms and conditions of the Contract Documents, to the fullest extent permitted by law, the Contractor shall indemnify, defend (with attorneys reasonably acceptable to ITRCC), and hold harmless ITRCC, the State of Indiana, and the Indiana Finance Authority and its directors, employees, officers, parent companies, subsidiaries, shareholders, employees and affiliates (the "**Indemnified Parties**") from and against third-party claims, damages, losses, and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from (i) performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they are legally liable; (ii) breach by Contractor of any of its obligations, representations, warranties, agreements, or covenants under this Contract; or (iii) violation of any applicable laws. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 14.1. The Contractor's indemnity obligations shall survive the completion, cancellation, or termination of the Contract.
- 14.2. Infringement Indemnity. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Indemnified Parties, from and against all claims, damages, losses and expenses, including without limitation reasonable attorneys' fees, to the extent such claims arise out of or related to any unauthorized use by the Contractor or its Subcontractors or suppliers of the drawings, specifications and other documents, including those in electronic form, furnished to the Contractor by or through ITRCC.
- 14.3. Limitations. The Contractor's indemnity obligations shall not be limited by any insurance maintained by Contractor, worker's compensation statute, disability benefit, or any other employee benefit or similar law. Contractor hereby waives, and shall cause Contractor's Subcontractors and suppliers of any tier to waive, any rights they may have to limit the amount that may be recoverable against them by an indemnified party. Contractor shall designate ITRCC as an explicit third-party beneficiary in each subcontract (of any tier) entered into in relation to the Work.

15. Correction of Work.

- 15.1. Correction of Defective Work. The Contractor shall correct all damaged, defective and non-conforming Work at its expense and without reimbursement by ITRCC. The Contractor shall,

within ten (10) days of receipt of written notice from ITRCC, take meaningful steps to commence the correction of damaged, defective or non-conforming Work, including the correction, removal or replacement of the Work and any related damage to adjacent materials, structures and other parts of the Work. If the Contractor fails to do so, ITRCC may (i) issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; and/or (ii) make good the deficiencies and may deduct the reasonable cost thereof, including ITRCC's expenses, from the payment then or thereafter due the Contractor.

- 15.2. Manufacturer's Warranties. The Contractor agrees to assign to ITRCC at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.
- 15.3. Contractor's Warranty. The Contractor shall correct and cure, at the Contractor's expense, all defective, non-conforming or inoperable Work which appears within two (2) years from Substantial Completion. With respect to any Work completed or corrected after Substantial Completion, the Contractor's warranty shall commence when such Work is satisfactorily completed or corrected by the Contractor. This two (2) year period applies only to the Contractor's obligation to correct defective, non-conforming and inoperable Work and is not intended as a period of limitations for or waiver of any other rights or remedies ITRCC may have against the Contractor under applicable law or the Contract Documents. Neither the acceptance of the Work nor any payment shall constitute a waiver of any claims against the Contractor for defective or nonconforming Work, whether latent or apparent, or otherwise act to release or discharge the Contractor from liability. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.
- 15.4. Warranty Flow-Down. The provisions of this Article 15 apply to work done by Subcontractors as well as work done by direct employees of the Contractor.

16. Termination.

16.1. ITRCC's Termination for Cause.

16.1.1. ITRCC may terminate the Contract if the Contractor:

- a. refuses or fails to supply enough properly skilled workers or proper materials for the timely and proper progress of the Work in accordance with the Contract Documents;
- b. fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- c. disregards or violates any applicable law, ordinance, code, rule, and regulation, including without limitation building codes and standards, or any requirement of a governmental agency with jurisdiction over the Project;
- d. (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudged a bankrupt or insolvent, or has entered against it an order of relief in any bankruptcy or insolvency proceeding; (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding described in subsection (iv); (vi) seeks, consents to or acquiesces in the appointment of a

trustee, receiver or liquidator of its properties and/or its assets; (vii) is the subject of any proceeding against it seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, and such proceeding has not been dismissed within ninety (90) days after its commencement; or (viii) has, without its consent or acquiescence, suffered the appointment of a trustee, receiver or liquidator of itself or of all or any substantial part of its properties and/or its assets, and such appointment is not vacated or stayed within ninety (90) days after such appointment, or if within ninety (90) days after the expiration of any such stay the appointment is not vacated; or

e. otherwise is guilty of a material breach of a provision of the Contract Documents.

16.1.2. In case of such termination for the Contractor's default, ITRCC shall pay the Contractor for Work properly executed prior to such termination in accordance with the requirements of the Contract Documents; provided that to the extent (i) any remaining claims of Subcontractors or others might exist, or (ii) the cost to complete the Work or correct any defective Work, exceed the amounts unpaid to Contractor, ITRCC shall be entitled to withhold one hundred fifty percent (150%) of any amounts claimed due, unpaid or required to complete any Work.

16.2. Contractor's Termination for Cause. The Contractor may terminate the Contract if ITRCC has not made payment on a Payment Application properly due and owing to the Contractor under the terms of the Contract Documents within thirty (30) days of the due date; provided Contractor has provided ITRCC written notice of such nonpayment and ITRCC fails to cure such nonpayment with seven (7) days of such written notice.

16.3. ITRCC's Termination for Convenience.

16.3.1. ITRCC may, at any time, terminate the Contract for convenience and without cause upon thirty (30) days' written notice to Contractor. In the event an attempted termination by ITRCC for cause is determined not to be proper, it shall be deemed a termination for convenience under this Section 16.3.

16.3.2. In case of such termination for ITRCC's convenience, ITRCC shall pay the Contractor for Work properly executed in accordance with the requirements of the Contract Documents, and for the actual, reasonable costs incurred in performing the actions necessary or directed by ITRCC. In no event shall the Contractor be entitled to recover payment for any Work that has not been properly executed prior to the effective date of termination stated in the notice tendered by ITRCC or for any anticipated overhead or profit thereon or for any consequential or incidental damages related to such termination by ITRCC.

17. Force Majeure.

17.1. Force Majeure Event. Contractor shall not be liable or responsible to ITRCC, nor be deemed to have defaulted under or breached this Contract, for any failure or delay in fulfilling or performing any term of this Contract, when and to the extent such failure or delay is caused by or results from acts beyond the Contractor's control including, but not limited to, the following force majeure events ("**Force Majeure Events**"): (a) acts of God; (b) a natural disaster (fires, explosions, earthquakes, hurricanes, flooding, storms, explosions, infestations), epidemic, or pandemic; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Contract; (f) action by any governmental authority; (g) national or regional emergency; and (h) strikes, labor stoppages or slowdowns or other industrial disturbances.

- 17.2. Notice. The Contractor shall promptly notify ITRCC in writing, but in no event later than thirty (30) days from the occurrence of the Force Majeure Event, stating the period of time the occurrence is expected to continue. The Contractor shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Contractor shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.
- 17.3. Termination. In the event that the Force Majeure Event continues for a period of sixty (60) days following notice given by the Contractor, ITRCC may thereafter terminate this Contract. If ITRCC does not terminate the Contract and the Force Majeure Event continues for a period of more than sixty (60) days, the Contractor will be granted an equitable extension of the Contract Time and the Contract Sum.

18. Compliance with Laws.

- 18.1. Maintaining a Drug Free Workplace. Contractor shall provide and maintain a drug-free workplace. Contractor will give written notice to the ITRCC within ten (10) days after receiving actual notice that an employee of Contractor has been convicted of a criminal drug violation occurring in the ITRCC's workplace. 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 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) 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 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 subparagraph (c) above, or otherwise receiving actual notice of such conviction; and
 - e. Within thirty (30) days after receiving notice under subparagraph (c) 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.
- 18.2. Non-Discrimination.
- 18.2.1. Federal Requirements. It will be unlawful employment practice for the Contractor (i) 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, handicap or national origin; or (ii) 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, handicap or national origin. Contractor will comply with the Civil Rights Act of 1964, 42 U.S.C. sec. 2000 et seq. (1988), as amended, Exec. Order No 11,246.30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. sec. 2000(e) note, as amended by Executive Order No. 11,375.32 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. secs. 6101-6106 (1988); Rehabilitation Act of 1973, 29 U.S.C. secs. 793-794 (1988); Americans with Disabilities Act, 42 U.S.C. sec. 12101; and 41 C.F.R. Part 60 (1990).

- 18.2.2. State Requirements. Pursuant to IC 22-9-1-10, 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 subparagraph may be regarded as a material breach of this Contract, including for purposes of Indiana Code § 5-11-5.5-2, 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. Contractor agrees to comply with any and all non-discrimination requirements under the laws of the State of Indiana during the term of this Contract.

18.3. Ethics and Conflict of Interest Requirements.

- 18.3.1. Ethical Requirements. Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State of Indiana, 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.

18.3.2. Conflict of Interest.

18.3.2.1. As used in this section:

- a. "Immediate family" means the spouse and the unemancipated children of an individual.
- b. "Interested party" means:
 - i. The individual executing this Contract;
 - ii. An individual who has an interest of three percent (3%) or more of Contractor; or
 - iii. Any member of the immediate family of an individual specified under subdivision (1) or (2).

- 18.3.2.2. Contractor shall disclose to the ITRCC when an Interested Party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts that Contractor knows or reasonably could know.

18.4. Non-Collusion and Acceptance. Contractor warrants that no employee, representative, agent or officer of Contractor, directly or indirectly, to the best of the Contractor'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.

18.5. Reserved.

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

18.7. Telephone Solicitation. As required by IC 5-22-3-7, Contractor, on its behalf and on behalf of its principals, affiliates, and sub-contractors agrees that neither it nor they shall violate the terms of IC 24-4.7, even if IC 24-4.7 is preempted by federal law.

19. Responsible Contractor.

19.1. Contractor agrees that it will comply with the Responsible Contractor Policy (the “RCP”) attached hereto as Exhibit H. Contractor certifies that it is a Responsible Contractor as defined in the RCP, and agrees to provide ITRCC with documentation using the forms approved by ITRCC to certify Responsible Contractor status and to establish compliance with the RCP. Compliance will be reviewed by ITRCC annually. The RCP applies to all contracts of \$150,000.00 or more for construction contracts.

19.2. Contractor and its Subcontractors shall observe all applicable local, state and federal laws, as set forth in the Concession and Lease Agreement including, but not limited to, those pertaining to insurance, withholding taxes, health, and occupational safety.

20. Confidentiality.

20.1. Confidential Information. The Parties acknowledge that, during the course of performing its obligations under this Contract, a Party, its employees, agents, contractors, and Subcontractors are likely to encounter sensitive information that is non-public, confidential or proprietary to the other Party (“**Confidential Information**”). Confidential Information includes, but is not limited to, all information pertaining to a Party’s business, operations and activities, as well as the terms and conditions of this Contract. The Parties agree that it shall (i) only use Confidential Information for the purposes of fulfilling its obligations under this Contract and (ii) not disclose any Confidential Information to third parties without the prior written agreement of the other Party.

20.2. Exclusions. The obligations under this Contract do not apply to information that: (i) was in the receiving Party’s possession prior to the date of the disclosure by the disclosing Party; (ii) was obtained by a Party after the date of this Contract from a third party who is not known by the receiving Party to be under any obligation of confidentiality with respect to such information; (iii) was independently developed by or on behalf of the receiving Party without benefit of the disclosed Confidential Information; or (iv) became generally available to the trade, or to the public, based on existing records or through sources other than the receiving Party.

20.3. Injunctive Relief. Due to the extremely sensitive nature of the Confidential Information, each Party acknowledges and agrees that the unauthorized disclosure of the other Party’s Confidential Information will create immediate irreparable harm, for which the Party may obtain injunctive relief in addition to other applicable legal remedies.

20.4. Survival. The obligations in this Confidentiality Section will survive (i) for a period of five (5) years following the expiration or termination of this Contract or (ii) until the Confidential Information is no longer deemed to be Confidential Information, whichever is later; provided, however, each Party’s obligations with respect to any trade secrets will continue for so long as the Confidential Information remains a trade secret under applicable laws.

21. **Accounting Records.** The Contractor shall check all materials, equipment and labor entering into the Project and shall keep detailed accounts as necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to ITRCC. ITRCC shall be afforded access to, and shall be permitted to audit and copy, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract. Contractor shall preserve these for a period of three (3) years after final payment, or for such longer period as may be required by law.
22. **Notices.** All Notices required under this Contract shall be sent by certified or registered U.S. Mail. The Contractor shall be responsible for keeping ITRCC currently advised as to the status of any claims made for damages against the Contractor in any way related to this Contract. The Contractor shall send notice of claims related to Work under this Contract to:

If to ITRCC:

ITR Concession Company LLC
 3200 Cassopolis Street
 Elkhart, Indiana 46514
 AStaley@indianatollroad.org
 Attention: Alyssa Staley

If to Contractor:

[REDACTED]
 [REDACTED]
 [REDACTED]

Attention: [REDACTED]

23. **Limitation of Liability.** Neither Party shall be liable, whether based on contract, tort, negligence, strict liability, delay, warranty, indemnity, error and omission, or otherwise, for any consequential, special, incidental, indirect, exemplary, punitive, or multiple damages (including but not limited to loss of profit or loss of business opportunity) arising from or in connection with this Contract. This mutual waiver includes (a) damages incurred by ITRCC for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and (b) damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit.
24. **Dispute Resolution.**
- 24.1. Claims. The Contractor shall make all claims for an increase in the Contract Sum or the Contract Time in accordance with the Contract Documents and in strict compliance with the procedures provided below. If the Contractor claims that it is entitled to additional sums or time, for any reason whatsoever, the Contractor shall give ITRCC written notice of the claim within ten (10) days after the occurrence giving rise to the claim or within ten (10) days after the Contractor first recognizes the condition giving rise to the claim, whichever is later. The notice of the claim shall set forth the circumstances giving rise to the claim, and to the extent reasonably available, facts, documents, backup data and other information supporting the claim and the relief sought. Failure by the Contractor to provide written notice of the claim shall result in a waiver of the claim.
- 24.2. Mediation. If a dispute arises out of or relates to the Project, the Work, the Contract Documents or this Contract or any breach thereof, the Parties agree to endeavor to settle the dispute by mediation administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules. Request for mediation shall be filed in

writing with the other party to this Contract and with the American Arbitration Association. The place of mediation shall be the place of the Project. Mediation shall proceed in advance of legal, but not equitable, proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

- 24.3. Liens. If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the Party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter through mediation or by litigation.
- 24.4. Continued Performance. Unless directed otherwise by ITRCC in writing, the Contractor shall continue performance of the Work pending the resolution of a dispute. The existence of a dispute shall not justify delay or suspension of the Work by the Contractor. The Contractor's failure to proceed shall constitute a material breach of this Contract by the Contractor regardless of the ultimate outcome of the dispute.
25. **Governing Law**. This Contract shall be governed by and construed in accordance with the laws of the State of Indiana. The state and federal courts of the State of Indiana shall be the exclusive forums for resolving all disputes between the parties (excluding any conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction).
26. **Independent Contractor**. The Parties agree that Contractor's relationship to ITRCC shall be that of an independent contractor and not as an agent, employee, partner, or joint venture and that the employees or agents of Contractor shall not be deemed or construed to be employees of ITRCC for any purposes whatsoever.
27. **Modifications**. The terms and conditions of this Contract may not be amended, waived or modified, except as agreed to in writing signed by both Parties.
28. **Assignment**. Contractor shall not assign, transfer or subcontract the whole or any part of this Contract without the prior written consent of ITRCC. In the event that ITRCC approves of an assignment, Contractor agrees to bind its successors, executors, administrators and assigns to all covenants of this Contract.
29. **Severability**. In the event that any provision of this Contract is held invalid or unenforceable in any circumstances by a court of competent jurisdiction, the remainder of this Contract, and the application of such provision in any other circumstances, shall not be affected thereby.
30. **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.
31. **Waiver**. No failure or delay of either Party to exercise any rights or remedies under this Contract shall operate as a waiver thereof, nor shall any single or partial exercise of any rights or remedies preclude any further or other exercise of the same or any other rights or remedies, nor shall any waiver of any rights or remedies with respect to any circumstances be construed as a waiver thereof with respect to any other circumstances.
32. **Entire Contract**. This Contract, including all Contract Documents, represents the entire, integrated agreement between ITRCC and Contractor 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 between ITRCC and a Subcontractor or sub-subcontractor, or between any persons or entities other than ITRCC and Contractor.
33. **Electronic Signatures**. Contractor agrees and understands that using an electronic signature system (if applicable) to sign and execute this Contract is the legal equivalent of the parties having placed a

handwritten signature on this Contract. Contractor understands that by electronically signing and submitting this Contract in this fashion is affirming the truth of the information contained therein.

34. Attachments.

Exhibit A—Scope of Work

Exhibit B—Project Schedule

Exhibit C—Cost of Work

Exhibit D—Lien Waivers and Sworn Statement

Exhibit E—Subcontractor Payment Certification

Exhibit F—ITRCC Contractor Safety Rules

Exhibit G—Contractor Pricing Form

Exhibit H—Responsible Contractor Policy

Exhibit I—Special Provisions

Exhibit J—ITR Concession Company Operation Facilities Procedures

[Signatures appear on next page]

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound, have executed this Contract as of the Effective Date.

ITR CONCESSION COMPANY, LLC

CONTRACTOR:

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

EXHIBIT A
SCOPE OF WORK

EXHIBIT B
PROJECT SCHEDULE

All work is to be completed no later than Month xx, 20XX.

EXHIBIT C
COST OF WORK

EXHIBIT D

RESERVED.

EXHIBIT D-1

RESERVED.

EXHIBIT D-2

RESERVED.

EXHIBIT D-3

RESERVED.

EXHIBIT D-4

RESERVED.

EXHIBIT D-5

RESERVED.

EXHIBIT E

RESERVED.

EXHIBIT F

ITRCC CONTRACTOR SAFETY RULES

Safety:

The safety of ITR Concession Company (“ITRCC”) employees, contractors, customers and first responders are the highest priority on the Indiana Toll Road (the “ITR”). Work must be performed in such a manner that recognizes safety and the hazards posed while working on an interstate, with each job performed resulting in zero injuries. To this end, ITRCC requires all contractors to follow the below safety rules as a means of preventing workplace injuries.

All ITRCC personnel, contractors and sub-contractors are required to follow all federal, state and local traffic laws, including but not limited to, speed and seatbelt use and will be subject to safety violations and police enforcement if found to be in violation of any such rule.

All contractor employees assigned to work on the ITR must go through an ITRCC Safety Orientation and have a ITRCC Safety Orientation decal on their hard hat prior to entering the work zone. Contractors must report to the ITRCC Safety Department any injury and supervisor investigation report of an injury within 24 hours. Any injury that required hospitalization, amputation, or removal of an eye must be reported within 8 hours. Failure to report injuries as prescribed may result in contract termination and/or removal from future work being on the ITR as a general contractor and sub-contractor.

Job hazards are an everyday occurrence on worksites. All tasks and related work zone activities are required to be accompanied by Job Hazard Analysis (JHA). JHAs should be kept at each jobsite location and discussed prior to commencing daily or a new work activity. ITRCC reserves the right to request JHAs for review as part of a broader job site inspection program.

Near Miss Incidents are a reliable leading indicator to safety performance. A Near Miss Incident is an unplanned event that did not result in a recordable injury, property damage, or a fatality. Fortunately, a break in a chain of events prevented the injury, property damage, or fatality from occurring and should be reported. Near Miss Incidents should be reported monthly attached with current-month billing and hours worked.

Contracted employees found to be in violation of ITRCC safety rules or performing other unsafe acts are subject to immediate dismissal from the job site for the remainder of the project and any subsequent project on the Indiana Toll Road.

Projects which expose workers to traffic hazards and/or involve use of heavy equipment are required to follow ITRCC jobsite rules. These rules are to be followed on short- or long-duration projects.

To report any injury or incident on the ITR, please contact our Traffic Management Center (TMC) at: **574-651-2480**

Contractors must call TMC 30 minutes prior to lane closure set-up.

Contractors must call TMC when the last cone is removed during removal.

811 and the Indiana Toll Road must be called a minimum of two working days prior to any digging. Each company must have its own locate ticket. An ‘Underground Facility Locate Request Form’ can be obtained from the Toll Road office.

Documented crane lift plans are mandatory for all lifts involving a crane.

No Work should be performed without proper traffic control and MUTCD guidance.

1. Walking across active lanes of traffic without proper traffic control is prohibited. Any employee found to be walking across a live lane of traffic will be immediately dismissed from the project. The only exception is when ordered to cross a live lane by the Indiana State Police with appropriate traffic control measures in place.
2. ITRCC prohibits left hand turns into or out of all maintenance areas, plazas, and farms. ITRCC requires right hand turns only and use of a large predesignated and approved crossover with DOT markings and 360° lighting.
3. All ITRCC personnel have “Stop Work Authority” for any jobsite that is working for ITRCC, on ITRCC property or may impact ITRCC operations.
4. A Class III Safety Vest is required when working on the ITR unless the wearing of the required clothing is restricted by IOSHA or General Safety Practices.
5. Working in Toll Plaza lanes Gaiters and Guardian Angel (style) lights are required at all times day or night.
6. A Hard Hat is required **at all times**.
7. Steel or Hard Toe boots are required while working on the ITR.
8. Hearing protection shall be used when sound levels are above IOSHA permissible levels (85 dBa or more).
9. Safety Glasses are required when performing work in which debris may enter the eye.
10. Contractors are required to wear the appropriate hand protection when their hands are exposed to hazards.
11. Contractors shall wear and practice Fall Protection in accordance with the IOSHA Fall Protection Plan.
12. Respiratory protection shall be worn when a contractor is exposed to airborne contaminants.
13. Backup alarms are required when the view to the rear is obstructed.
14. Only properly trained personnel shall operate equipment and vehicles.
15. Cell phones are prohibited unless used in a “safe location” free from hazards. No cell phone use while driving or operating equipment. No “walking” and talking, stationary use only.
16. “No Standing Zones” are areas within the construction zone where immediate work is not being performed and employees are subjected to hazards (Examples: lane taper, buffer zone, live traffic, moving machinery).
17. Vehicle/ Truck U turns allowed in hard surface designated areas and only with an approved plan.
 - a. Turn-around areas - if a project requires turn-around locations, the contractor must request areas for approval from ITRCC and Infrastructure departments.
 - b. Vehicles and Trucks must have appropriate 360-degree lights and company name displayed.
 - c. Gross Vehicle Weight Rating (GVWR) of vehicle using turnaround must not exceed 16,000 lbs.
 - d. Must not have a trailer attached.
18. All vehicles shall have emergency lighting visible from 360 degrees.
19. Any item placed on or near ITRCC mainline shall be marked with flashing lights to indicate its position.

20. As a general principle, the strong preference is for all movements onto and off of the ITR to be at toll plaza ramps or where acceleration / deceleration tapers are provided. Should the use of a crossover be authorized, vehicles must have 360° lighting activated.
21. Emergency lights shall be activated before moving to the shoulder and should not be turned off until the vehicle has completed its action (entered a lot or reached normal highway speeds).
 - a. When traveling East or West for safety reasons you should enter a location in the following manner, right turn in, right turn out:
 - i. As your vehicle approaches the location, operator will turn on appropriate directional signal and emergency lights; drive onto the outside shoulder well before driveway. Never slow down on pavement until the entire vehicle is on the shoulder.
 - ii. When approaching the driveway on the outside shoulder, operator will make his/her right turn into the driveway.
 - b. Right-hand turns when leaving a building:
 - i. When leaving any building you will come to a complete stop at the start of the shoulder, and activate emergency lights.
 - ii. When turning right, you will wait until traffic conditions are safe, turn right onto the shoulder and accelerate to a speed of at least **45 MPH** before pulling out onto the highway doing so in a way as to not disrupt traffic. Use appropriate directional signal.

Safety and MS4 Inspections:

Jobsite inspections are required activities at ITRCC. While jobsites should be inspected daily for hazards and environmental concerns, a weekly record shall be maintained to accurately report findings. Weekly (or after a rainfall of 0.5" or more in 24 hours) jobsite environmental inspections are a requirement of all ITRCC projects regardless of size. These inspections should indicate best management practice (BMP) stormwater guidelines outlined by INDOT and shall indicate deficiencies found and corrections made. Reporting of all inspections, regardless of type, should be sent to ITRCC monthly during the billing cycle.

All waste product from jobsites must be removed or placed in a covered receptacle daily. Spoiled piles of dirt, sand, millings or any stockpiles cannot be placed on ITRCC property without written approval from ITRCC's EHS department. All concrete washout materials, including diamond graded concrete, must be placed in proper waste receptacles and removed from ITRCC property.

Reporting:

To truly determine safety outcomes and contractor and sub-contractor safety performance, the number of hours worked on a job site shall be accurately reported. All contractors and subcontractors are required to report total hours worked on the job during the billing cycle to receive payment. During the billing cycle, all requests for payment shall contain accurate number of hours worked, the number of safety inspections performed, and the number of near miss incidents reported.

Tier II:

Projects which will not expose workers to traffic hazards.

1. Walking across active lanes of traffic without proper traffic control is prohibited. Any employee found to be walking across a live lane of traffic will be immediately dismissed from the project.
2. A Class III Safety Vest is required when working on the ITR, unless the wearing of the required clothing is restricted by IOSHA or General Safety Practices.
3. A Hard Hat is required at all times.

4. Steel or Hard Toe boots are required while working on the ITR.
5. Hearing protection shall be used when sound levels are above IOSHA permissible levels (85 dBa or more).
6. Safety Glasses are required when performing Work in which debris may enter the eye.
7. Contractors are required to wear the appropriate hand protection when their hands are exposed to hazards.
8. Contractors shall wear and practice Fall Protection in accordance with the IOSHA Fall Protection Plan.
9. Respiratory protection shall be worn, when a contractor is exposed to airborne contaminants.
10. Backup alarms are required when the view to the rear is obstructed.
11. Only properly trained personnel shall operate equipment and vehicles.
12. All vehicles shall have emergency lighting visible from 360 degrees.
13. Cell phones are prohibited unless used in a "safe location" free from hazards. No cell phone use while driving or operating equipment. No "walking" and talking, stationary use only.
14. "No Standing Zones" are areas within the construction zone where immediate work is not being performed and employees are subjected to hazards (Examples: lane taper, buffer zone, live traffic, moving machinery).
15. Vehicle/Truck U-turns allowed in hard surface-designated areas and only with an approved plan.
 - a. Turn-around areas are designated with orange flags.
 - b. Vehicles and Trucks must have appropriate 360-degree lights and company name displayed.
 - c. Gross Vehicle Weight Rating (GVWR) of vehicle using turnaround must not exceed 16,000 lbs.
 - d. Must not have a trailer attached.

Tier III:

Projects which will not expose workers to traffic hazards, or involve the operation of heavy equipment or vehicles.

1. Walking across active lanes of traffic without proper traffic control is prohibited. Any employee found to be walking across a live lane of traffic will be immediately dismissed from the project.
2. A Class III Safety Vest is required when working on the ITR, unless the wearing of the required clothing is restricted by IOSHA or General Safety Practices.
3. A Hard Hat is required **at all times**.
4. Steel or Hard Toe boots are required while working on the ITR.
5. Hearing protection shall be used when sound levels are above IOSHA permissible levels (85 dBa or more).
6. Safety Glasses are required when performing Work in which debris may enter the eye.
7. Contractors are required to wear the appropriate hand protection when their hands are exposed to hazards.

8. Contractors shall wear and practice Fall Protection in accordance with the IOSHA Fall Protection Plan.
9. Respiratory protection shall be worn when a contractor is exposed to airborne contaminants.
10. Backup alarms are required when the view to the rear is obstructed.
11. Only properly trained personnel shall operate equipment and vehicles.
12. All vehicles shall have emergency lighting visible from 360 degrees.
13. Cell phones are prohibited unless used in a "safe location" free from hazards. No cell phone use while driving or operating equipment. No "walking" and talking, stationary use only.
14. "No Standing Zones" are areas within the construction zone where immediate work is not being performed and employees are subjected to hazards (Examples: lane taper, buffer zone, live traffic, moving machinery).
15. Vehicle/ Truck U-turns allowed in hard surface-designated areas and only with an approved plan.
 - a. Turn-around areas are designated with orange flags.
 - b. Vehicles and Trucks must have appropriate 360-degree lights and company name displayed.
 - c. Gross Vehicle Weight Rating (GVWR) of vehicle using turnaround must not exceed 16,000 lbs.
 - d. Must not have a trailer attached.

Tier IV:

Short duration projects which will not expose workers to traffic hazards, or involve the operation of heavy equipment or vehicles

1. A Class III Safety Vest is required when working on the ITR, unless the wearing of the required clothing is restricted by IOSHA or General Safety Practices.
2. A Hard Hat is required **at all times**.
3. Steel or Hard Toe boots are required while working on the ITR.
4. Hearing protection shall be used when sound levels are above IOSHA permissible levels (85 dBa or more).
5. Safety Glasses are required when performing work in which debris may enter the eye.
6. Contractors are required to wear the appropriate hand protection when their hands are exposed to hazards.
7. Contractors shall wear and practice Fall Protection in accordance with the IOSHA Fall Protection Plan.
8. Respiratory protection shall be worn when a contractor is exposed to airborne contaminants.
9. Backup alarms are required when the view to the rear is obstructed.
10. Only properly trained personnel shall operate equipment and vehicles.
11. All vehicles shall have emergency lighting visible from 360 degrees.

Brian Taylor (574-904-2698) btaylor@indianatollroad.org

Mathew McLaughlin (574-904-2676) mmclaughlin@indianatollroad.org

Brian Bass (574-304-3630) bbass@indianatollroad.org

Josh Smith (574-904-2697) jasmith@indianatollroad.org

CONTRACTOR SAFETY CERTIFICATION**Contractor:****Project:****Invoice Period:**

For the invoice period listed above, [Contractor Name] certifies the following safety items:

Work-Related Injuries	
Lost Time/Days Away	
Near Miss Incidents	
Safety Inspections	
Number of Safety Violations	
Total Hours Worked in the Invoice Period	

Appendix A should be used to report injury, near-miss and safety violations.

Printed Name: _____

Title: _____

Signature: _____

Date: _____

APPENDIX A*(Do not delete past reported issues)*

Reported Issue (injury, near-miss, safety violation)	Date of Occurrence	Location	Narrative	Corrective Action Taken	Lessons Learned	Status (Open/Closed)

EXHIBIT G
CONTRACTOR PRICING FORM

Should a third-party claim occur, ITRCC requires the following information to be able to file a claim with an insurance carrier. All pricing must be broken out and detailed.

Labor

Labor Charges	
Laborer Title	
Standard Hourly Rate	\$
Overtime Hourly Rate	\$

*These rates can include the cost of insurance, benefits, overhead and profit.

Number of Hours Worked	
Standard	
Overtime	

Equipment

Equipment Charges	
Type of Equipment	
Standard Hourly Rate	\$
Overtime Hourly Rate	\$

Number of Hours Used	
Standard	
Overtime	

*These rates can include all cost for fuel, oil, insurance, overhead and profit.

Rental Equipment

Rental Equipment Charges	
Type of Equipment	
Daily Cost	\$
Cost of Fuel and Materials for Use of Equipment	\$
Duration of Equipment Use	

Materials

Depending on the material used, we need it broken down into length, cubic yards, linear yards, square feet, size, gage, etc. The Indiana Department of Transportation has set up guidelines for Standard Specifications. All measurements should be made using the English System of measurement.

<https://www.in.gov/dot/div/contracts/standards/book/sep19/sep.htm>

Materials	
Material Type	
Cost of Material	\$
Number of Items/Loads Used to Complete the Job	

In addition, please include any changes to the original bid separately and include the cost of labor, equipment and materials as previously stated.

EXHIBIT H
RESPONSIBLE CONTRACTOR POLICY

I. PURPOSE

This Responsible Contractor Policy (the “**Policy**”) of ITR Concession Company LLC (“**ITRCC**” or the “**Company**”) is designed to guide, in a manner consistent with the Company’s responsibility in operating the Indiana Toll Road (“**Toll Road**”), the selection of contractors, including subcontractors who provide construction services for the Company (collectively the “**contractors**”). The policy seeks to ensure that the selection process for contractors will include, among other things, a demonstrated ability to provide reliable and high-quality services which may be evidenced by their compliance with applicable statutes and payment of fair compensation to employees, as well as by their relevant experience, reputation, dependability, and ability to provide cost-efficient services.

II. INTRODUCTION

The Company promotes a safe, healthy and profitable business environment through selective negotiation, market competition and control of operating costs. The Company also supports and encourages fair compensation for workers employed by contractors to the extent possible and in a manner consistent with the duties of the Company.

In keeping with these overriding objectives, the Company has adopted the Policy described herein in order to support and promote the engagement of independent contractors who can be expected to provide both competitive and high-quality services to the Company, utilizing appropriately trained and fairly compensated employees. The Company believes that the utilization of such contractors adds value to its operations by ensuring that services are provided by adequately trained, experienced and motivated workers who deliver high-quality products and services.

III. INITIAL REQUIREMENTS OF THE RESPONSIBLE CONTRACTOR POLICY

The Policy provides that the following requirements shall be met:

- A. Best Practices: On applicable contracts, contractors shall be selected through a process that includes factors such as, but not limited to, demonstrated skill, experience, dependability, fees, safety record, and adherence to the Policy.
- B. Local, State and National Laws: All contractors and their subcontractors shall observe all applicable local, state and national laws, as set forth in the Indiana Toll Road Concession and Lease Agreement dated April 12, 2006, by and between the Company and the Indiana Finance Authority, as amended from time to time (“**Concession and Lease Agreement**”) including, but not limited to, those pertaining to insurance, withholding taxes, health, and occupational safety.

IV. SELECTION OF RESPONSIBLE CONTRACTOR

If Initial Requirements A and B (see Section III above) are satisfied, it is a Company preference that a Responsible Contractor be hired.

On an annual basis, the Company shall review summary compliance data provided by contractors for good faith evidence of monitoring and enforcement. Compliance data requested by the Company may include but not be limited to information evidencing payroll, Social Security benefits, worker’s compensation and fringe benefits.

V. DEFINITION OF A RESPONSIBLE CONTRACTOR

A Responsible Contractor, as used in this Policy, is an independent contractor who provides high-quality services in the applicable local market consistent with the desired contracting criteria, and pays workers a fair wage as evidenced by payroll and employee records. What constitutes a “fair wage” will depend on the wages and benefits paid on comparable projects, based upon local market factors that include the nature of

the project, comparable job or trade classifications, and the scope and complexity of services provided. In determining “fair wages” concerning a specific contract in a specific market, items that may be considered include local wage practices, prevailing wages, labor market conditions and other items.

A Responsible Contractor shall comply with all applicable laws as set forth in the Concession and Lease Agreement, including requirements regarding non-discrimination, ethics, and conflict of interest, non-collusion, Minority and Women Business Enterprises, the Buy Indiana Presumptions, prohibitions against telephone solicitation and maintaining a drug-free workplace.

A Responsible Contractor will provide any available Employee Assistance Programs to assist employees and their eligible dependents to help resolve personal problems, such as alcohol and drug abuse. In the event such assistance is not made available by a contractor, a Responsible Contractor may request a reference from the Company, if available, to an Employee Assistance Program that the Responsible Contractor may engage at its own cost and expense.

VI. ENFORCEMENT, MONITORING, AND ADMINISTRATION

- A. Applicable Contracts: The Policy shall apply to all construction contracts exceeding \$150,000.00. However, when the Policy is not applicable by its terms as set out in the previous sentence, contractors shall be encouraged to make a good faith effort to comply with the spirit of the Policy. It is not the policy of the Company to split, subdivide or otherwise separate-out contract work for the purpose of obviating the applicable contract amount set forth in this Section VI.A.
- B. Solicitation Documents: All requests for proposals and invitations to bid covered by this Policy shall incorporate by reference the terms of this Policy. Responses by bidders shall include information to assist Company staff in evaluating a bid.
- C. Contracts and Renewals: All applicable contracts covered by the Policy, including renewals of such contracts, shall incorporate by reference the terms of this Policy. Responsible Contractor compliance will be part of the contract renewal consideration.
- D. Responsibilities: The responsibilities of Company Staff and contractors are defined as follows:
 1. Company Staff: Company Staff shall have the following responsibilities:
 - a. communicate the Policy to all bidding contractors;
 - b. secure agreement to comply with the Policy from contractors; and
 - c. review the relevant contractor’s compliance documentation and make recommendations as needed for action to correct any pattern of non- compliance.
 2. Contractors: Contractors will have responsibility for the following:
 - a. submit to the Company a Responsible Contractor self-certification on a form approved by the Company;
 - b. provide any information requested by the Company in connection with this Policy;
 - c. communicate the Policy to subcontractors;
 - d. attend pre-construction meetings as directed by the Company; and
 - e. hold pre-job conferences with contractors and appropriate union representatives if a contractor is utilizing union contractor (s).
- E. Fair Wages: The Policy avoids a narrow definition of “fair wage” that might not be practical in all areas of contracting. The Policy looks to local practices concerning type of trade and type of project. In determining “fair wages” concerning a specific contract in a specific market, primary consideration will be given to the Indiana Common Construction Wage Act. Additional items that

may be considered include local wage practices, prevailing wages, labor market conditions and other items.

- F. Selection Process: Given the time and expense required to solicit and evaluate potential contractors, it is not required that the Company solicit all potential contractors. The Company must ensure, to the extent commercially reasonable, that there is a selection process that is inclusive of potentially eligible Responsible Contractors. Competitive bidding does not necessarily assure inclusion of Responsible Contractors. However, for the avoidance of any doubt, the Company will retain full commercial discretion to conduct the bidding process in a manner that is consistent with its overriding responsibilities and to seek to minimize or control costs while ensuring the provision of the quality operation of the Toll Road.
- G. Enforcement: The Company shall place a non-complying contractor on a watch list. If the contractor does not modify this pattern of conduct after discussions with the Company's staff, the Company shall consider this pattern of conduct along with other information when it reviews for future renewal. A key indicator is a pattern of conduct that is inconsistent with the provisions of the Policy.
- H. Modification: The Company reserves the right to modify the Policy and, at its sole discretion, suspend and/or terminate the Policy or any provisions thereof. The Company agrees to provide advance notice thirty (30) days prior to any actions taken pursuant to this Section VI.H. to affected contractors and the appropriate Building Trade Unions in which Work is being performed.

RESPONSIBLE CONTRACTOR CERTIFICATION

I, the undersigned, do declare that we will comply with the ITR Concession Company LLC Responsible Contractor Policy (ITRCC Policy No. 08 01). I further declare that we do compensate our employees with a fair wage as described in the Policy listed above and as determined by the practices and prevailing wages of the area.

Contractor _____

Signed _____

Title _____

Date _____

EXHIBIT I
SPECIAL PROVISIONS

1. GENERAL:

1.1. Contract Completion Date:

The Work performed pursuant to the Contract must be completed by [insert completion date].

1.2. Sales Tax:

The Contractor shall be responsible for paying the sales tax on all goods and services liable for sales tax and the tax shall be included in the various items of Work.

1.3. Permits and Other Related Documents:

The Contractor is to obtain, at no cost to ITRCC, all permits, local, state and/or federal. Copies of all of these documents shall be delivered to ITRCC within sixty (60) days of receipt. Contractor shall notify ITRCC immediately if permit applications are denied and provide all correspondence with local, state and/or federal agencies.

1.4. Bids:

Bid prices need to reflect *all* requirements in the IFB including, but not limited to, Mobilization, Demobilization, Construction Engineering, Maintenance of Traffic, etc.

1.5. Utility Locates:

Contractor is responsible to call for all utility locates. (Including both 811 and the ITRCC service.)

1.6. Emergency Phone Numbers:

A list of telephone numbers shall be provided to the ITRCC Project Manager for use in case of emergencies. This list shall include key persons to supervise and operate equipment as needed and during non-work hours. The list shall include at least one person who is an authorized contractor representative.

1.7. Claims:

No claim from the Contractor shall be made for damage including, but not limited to, damage for delay, increased expense, maintenance, startup costs, additional costs due to passage of time arising out of a dispute, work stoppage relating to whether a surface was adequately cleaned or painted, and/or modifications to maintenance of traffic or change in schedule due to planned or unplanned event.

No claim shall be made due to a greater amount of paint used in excess of the minimum required by the contract(s) or for the stoppage of Work.

1.8. Environmental Requirements:

The Contractor is to follow and adhere to all of the Environmental requirements of the Concession Lease Contract (CLA) between ITRCC and the State of Indiana (Web-link for the CLA <http://www.in.gov/ifa/2328.htm>).

1.9. Daily Reports:

Contractor shall submit Daily Report electronically to ITRCC within 2 days.

2. MOBILIZATION AND DEMOBILIZATION:

2.1. Mobilization and Demobilization:

Mobilization and Demobilization shall be as specified in the current INDOT Specification Book. Typically, these items of Work cover the cost to the contractor of moving on (Mobilization) and off (Demobilization) the job site. It is also to include any “up front” costs (Mobilization) associated with the project such as bonds, insurance and permits.

For this project, Mobilization and Demobilization will be a single pay item for each Section. Upon mobilizing to a particular section, the contractor may submit 50% of the Mobilization and Demobilization pay item. The balance can be applied for upon demobilizing and acceptance of the Work. Payment shall be made as follows:

2.2. Pay Item Pay Unit

Mobilization and Demobilization Lump Sum

3. MAINTENANCE OF TRAFFIC:

3.1. Description:

This Work shall consist of maintaining traffic at all locations described in the project including, but not limited to, the Indiana East-West Toll Road mainline, shoulder, at all entry and exit ramps and local roads/streets, parking lots within the limits of the Contract.

3.2. Maintenance of Traffic Plan:

The Contractor shall develop and follow a Maintenance of Traffic plan specifically designed for this project. The plan must be stamped by a Professional Engineer registered in the State of Indiana. All MOT plans and signs must be installed in accordance with the current edition of the Indiana MUTCD, INDOT Design Standards and ITRCC's standards.

Exact placement of traffic control devices used for execution of contract work along the Indiana Toll Road, entry and exit ramps, and local streets/roads, plazas, parking lots, etc. shall be included in the MOT plan and be in accordance with the current IMUTCD, INDOT, and ITRCC Standards and as directed by the ITRCC Project Manager or the ITRCC Representative.

3.3. Lane Closure Policy:

Traffic restrictions on the Indiana Toll Road mainline prior to Memorial Day Weekend (May 27) and following Labor Day Weekend (September 5) shall conform to the ITRCC Lane Closure Policy.

Traffic restrictions after May 30 and prior to September 2 must be performed during nighttime hours (6:00 PM to 6:00 AM local time). Daytime closures will be granted on a case-by-case basis at the sole discretion of the ITRCC but will not be preferred and approval should not be expected.

The contractor must submit a request – and receive approval – for any and all lane closures and/or restrictions.

3.4. Local Road Restrictions and Times:

If restricting a road other than the ITR, it is the Contractor's responsibility to coordinate with all the necessary Local Authorities for approval prior to construction. The ITRCC is not responsible for coordinating these closures. Contractor shall notify ITRCC immediately if such closures are denied and provide all correspondence with local, state and/or federal agencies.

The local authorities will determine the allowed closure times. (The ITRCC Lane Closure Policy does not apply in this circumstance.) The contractor is to submit all documentation to the ITRCC for approval prior to commencing work.

3.5. Lane Occupancy Penalty (Lane Rental Charge):

If a contractor continues to work beyond the allowable hours depicted in Lane Closure Policy without a valid waiver, the contractor will be charged, as a penalty, a "lane rental charge." The rate for the first two hours will be at \$500.00 per hour or fraction thereof. The rate, if the lane occupancy occurs for the third and successive hours, will be at \$1,000.00 per each hour or fraction thereof for each hour that the lane is continued to be occupied.

3.6. Measurement and Method of Payment:

All items, including labor, equipment, and time to setup and take down the closure, shall be included in Maintenance of Traffic. Payment shall be made as follows:

3.7. Pay Item Pay Unit

Maintenance of Traffic Lump Sum

4. CONSTRUCTION ENGINEERING

4.1. General:

The Contractor will be responsible for any and all applicable responsibility listed in the current INDOT Standard Specification section 105.08 (b) for Construction Engineering. In addition, the following will be the contractor's responsibility and included in the cost of Construction Engineering:

- 4.1.1. Keep daily records of Work performed by the Contractor and all of the Subcontractors and are to include:
- 4.1.2. Weather (sunny, cloudy, rain, etc.)
- 4.1.3. Daily temps (high & low)
- 4.1.4. Lane closures
 - 4.1.4.1. Documentation throughout the day that the MOT is in place and is properly visible to traffic.
 - 4.1.4.2. Direction Eastbound (EB) or Westbound (WB)
 - 4.1.4.3. Right lane or left lane
 - 4.1.4.4. Starting Mile Post (MP)
 - 4.1.4.5. Stopping Mile Post (MP)
 - 4.1.4.6. Example: EB right lane from MP 76.5 to MP 77.0
- 4.1.5. Number of workers
- 4.1.6. Description of Work Completed
- 4.1.7. Number of Hours worked
- 4.1.8. Signature of person who prepared document
- 4.1.9. Description of the Work performed
- 4.1.10. Copies of all delivery tickets (where applicable)
- 4.1.11. Copies of any Test Reports
- 4.1.12. Copies of all Materials Used
- 4.1.13. Certification of all Materials Used
- 4.2. All of the above information will be turned into the ITRCC Representative daily and in an organized, categorized and totaled format per pay item or as often as directed by the ITRCC Representative.
- 4.3. All mix designs need to be sent to, reviewed, approved and stamped “Released for Construction” by an independent engineering firm. Then the mix designs are to be sent to the ITRCC Project Manager for review and approval, and stamped “Approved –ITRCC Date: xx-xx-xx.” Mix designs shall satisfy all INDOT Standard Specifications, Sections 401, 402 and 410. Cost for the design approval is to be included in the cost of Construction Engineering.
- 4.4. **Method of Payment:**
 Payment shall be made as follows:

<u>Pay Item</u>	<u>Pay Unit</u>
-----------------	-----------------

EXHIBIT J**ITRCC CONCESSION COMPANY OPERATION FACILITIES PROCEDURES**

ITRCC operational facilities include but are not limited to roadways, bridges, overhead sign structures, cantilever sign structures, plaza canopies, buildings, fiber optic cable, Digital Message Signs (DMS), cameras, Vehicle Detection Sensors, telecommunication cable, electrical (overhead and underground), water and sewer. ITRCC Operational Facilities are installed along and across the rights-of-way of the ITRCC system.

Facilities Locate Process

The Contractor or Sub-Contractor performing the Work shall have all known ITRCC facilities located at all times in the general area of the facility. The location of ITRCC's fiber optic cable, as well as other ITRCC facilities, is not available through the Indiana One Call system. The Contractor shall coordinate with the ITRCC to determine the location of these facilities.

The Contractor shall initiate the locate process for ITRCC facilities by performing the following:

1. Completing *ITRCC Underground Facility Locate Request Form* (see below)
2. Prepare an overview map of the area.
3. Email to itrcclocates@indianatollroad.org.

The completed *ITRCC Underground Facility Locate Request Form* shall be transmitted at least two (2) weeks prior to starting any underground operations, excavations or digging of any type in the general area of the ITRCC facility. If outside factors (weather, construction activity or vandalism) at the dig site have caused the markings to become disturbed and/or indistinguishable, a request for remarks/refresh is required. The request shall be electronically transmitted, at least five (5) business days prior to starting any underground operation. A copy of all completed forms sent to ITRCC shall be always available on site during proposed work.

For assistance in completing a locate request, or any questions related to the utility locate process please direct to:

ITRCC Operations/Infrastructure Administrative Assistant
Phone: 574.286.3800
Email: itrcclocates@indianatollroad.org

Contractor Responsibilities

The Contractor shall take reasonable action to determine the location of any underground utility facilities in and near the area for which such excavation operation is to be conducted; and shall plan the excavation or demolition to avoid or minimize interference with underground utility facilities within the tolerance zone by utilizing such precautions that include, but are not limited to, hand excavation, vacuum excavation methods, and visually inspecting the excavation while in progress until clear of the existing marked facility.

During and following excavation and/or demolition, the Contractor shall protect existing underground utility facilities in and near the excavation or demolition area as required to avoid damage to the facility.

The Contractor shall backfill all excavations in such manner and with such materials as may be reasonably necessary for the protection of existing underground utility facilities in and near the excavation or demolition area.

In addition to establishing the approximate location of the facility, the Contractor shall be required to fully expose the facility to verify its horizontal and vertical location, if underground operations are contemplated within the Tolerance Zone, which is defined to mean the approximate location of underground utility facilities defined as a strip of land at least 3 feet wide, but not wider than the width of the underground facility plus 2.0 feet on either side of the outside edge of such facility based upon the markings made by the ITRCC or operator of the facility. Excavation within the tolerance zone requires extra care and precaution.

ITRCC's Fiber Optic System

The ITRCC's fiber optic system is a Utility Facility providing service to ITRCC and other telecommunication companies. The Contractor is responsible for coordinating and scheduling its work with all necessary work near the fiber optic system, so as not to interfere with any fiber optic system adjustment or relocation work to be done by or on behalf of the ITRCC. The Contractor is responsible for coordinating and scheduling its Work in a manner that such Work to be done by or on behalf of the ITRCC will not cause interference with the Contractor's completion of the Work by the Completion Date.

The Contractor shall immediately notify the ITRCC Project Manager/ Owner's Representative, ITRCC Fiber Optic Maintenance and Management Vendor (EX2) and Utility Administrator in the event the fiber optic cable is damaged or in danger of being damaged. The Contractor shall be responsible for all costs incurred in connection with the repair, restoration, and testing of the system to insure it is operational and in the same condition as prior to the Contractor-caused damage.

In addition, for the interruption in service and the administrative burden, the Contractor shall pay to the ITRCC the amount of \$10,000.00 for each occurrence of Contractor-caused damage to the fiber optic cable. The ITRCC reserves the right to identify each strand of fiber individually as Contractor-caused damage.

ITRCC's Miscellaneous Utility Facilities

Should damage occur to any other ITRCC utility within the contract limits, the Contractor shall immediately notify the ITRCC Project Manager/ Owner's Representative. The Contractor shall repair and be responsible for all costs incurred in connection with the repair, restoration, and testing to insure it is operational and in the same condition as prior to the Contractor-caused damage.

In addition, for the interruption in service and the administrative burden, the Contractor shall pay to ITRCC the amount of \$1,000.00 for each occurrence of Contractor-caused damage to any other ITRCC facility not including the fiber optic cable.

ITRCC's Operational Facilities

The Contractor is responsible for coordinating and scheduling its Work so as not to interfere with the operation or function of ITRCC Facilities.

The Contractor shall immediately notify the ITRCC Project Manager/Owner's Representative, ITRCC Fiber Optic Maintenance and Management Vendor (EX2) and Utility Administrator in the event of any damages to these Operational Facilities within the ITRCC Right-of-Way.

The Contractor shall be responsible for all costs incurred in connection with the repair, restoration, replacement and testing of the system to insure it is operational and in the same condition as prior to the Contractor-caused damage. The Contractor shall also be charged liquidated damages.

Actual damages are difficult or impossible to define with certainty prior to an actual event; therefore, liquidated damages shall be assessed for each direction of traffic impacted based on the below schedule:

(6 AM to 10 PM)		
I-90	West of MP 23.00	\$ Estimated Revenue Loss/hr.
I-90	MP 23.00 – MP 92.00	\$ Estimated Revenue Loss/hr.
I-90	East of MP 92.00	\$ Estimated Revenue Loss/hr.
(10 PM to 6 AM)		
All roadways		\$ Estimated Revenue Loss/hr.

For extraordinary events, in addition to the liquidated damages the Contractor may be responsible for itemized costs associated with Emergency Responders and the ITRCC's loss of collected revenue for the duration of the affected period as calculated by recent revenues, which are indicative of the period in which the event occurred.

ITRCC UNDERGROUND FACILITY LOCATE REQUEST FORM

SUBMIT FORM TO: ITRCCLocates (itrcclocates@indianatollroad.org)

Caller Name: _____

Phone Number: _____

Contractor Name: _____

Contractor Address: _____

Who Work is Being Done For: _____

Project Contact Person: _____

Project Contact Phone Number: _____

Work Description: _____

Is this a Directional Bore, Trenching, or an Excavation?

Location on Mainline, Shoulder or Ramp (Provide the **Mile Marker** and Detailed Description):

Attach a Drawing marked with location(s)

Project Start Date: _____

Contacts from Procedure: _____

Indiana 811 (www.indiana811.org) 1-800-382-5544 or Emergency number only 811

Ticket #: _____

NOTE:

- **Locate requests may take up to five (5) business days to complete. Contractor shall submit locate requests five (5) business days prior to the Effective Date. Requests that are submitted less than five (5) business days could cause a delay in starting work.**
- **The locates are only valid for fourteen (14) calendar days. If work is performed after the fourteenth (14th) day, and/or outside the requested located area, the requestor is solely responsibly and liable to repair damaged infrastructure to a pre-existing state of good repair.**