

*ITR Concession Company LLC
52551 Ash Road
Granger, Indiana 46530*

REQUEST FOR PROPOSAL

FROM: Robert D. Ladson, PE
Infrastructure Manager

DATE: August 15, 2013

SUBJECT: **Removal of Underground Storage Tanks (UST)**

Invitation for Bids (IFB)
 Request for Proposals (RFP)

Overview:

The ITRCC desires to remove and properly close out Underground Storage Tanks (UST) used to store diesel fuel for decommissioned generators. The UST are located at various toll plazas along the Indiana Toll Road.

1.0 INSTRUCTIONS:

1.1 SUBMIT PROPOSALS TO: ITR Concession Company LLC Attn: Robert D. Ladson, PE Email: rladson@indianatollroad.org	LABEL BID/PROPOSAL CONTAINER: Project Title: Removal of UST & associated equipment
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1.2 DUE DATE & TIME FOR SUBMISSION:
Date: September 4, 2013
Time: Noon (EST)

1.3 SUBMITTALS: The proposal is limited to 10 pages and must be submitted electronically. (8 MB is the limit that the ITRCC can receive electronically.) Limit submittal to relevant information. Omit expensive binders, color displays, or other promotional materials that are not germane to the Proposals.

1.4 PROPOSAL FIRM TIME: N/A

1.5 SECURITY: Offer \$ N/A Performance \$ N/A

1.6 PRE-PROPOSAL MEETING:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Mandatory Attendance:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

No meeting is scheduled. However, the contractor is expected to visit each site and thoroughly understand the site conditions.

1.7 **PROJECT CONTACT:**

Attn: ITR Concession Company LLC
Title: Robert D. Ladson, PE
Email: Infrastructure Manager
Phone: rladson@indianatollroad.org
(574) 651-2410

1.8 **CRITERIA FOR EVALUATION AND AWARD**

The ITRCC will evaluate how well each proposal meets the requirements in terms of “responsiveness” to the RFP. Consideration will be given based upon the best price, best product, and best service.

2.0 **SPECIFIC TERMS AND CONDITIONS**

2.1 **INDOT Pre-Qualifications**

N/A

2.2 **RESERVATION**

ITR Concession Company reserves the right to reject any or all Proposals.

2.3 **PAYMENT OF TOLLS**

The Consultant shall be required to pay the full amount of tolls, if any, incurred by it during the duration of the selection process. Said tolls will not be refunded by ITR Concession Company.

2.4 **COMPLIANCE WITH APPLICABLE LAW**

The Firm warrants that it shall comply with all Federal, State, and local laws, statutes, ordinances, rules and regulations.

2.5 **WAGE RATES** N/A

2.6 **SUBCONTRACTING/JOINT VENTURES** X Allowed Not Allowed

ITR Concession Company intends to contract with one entity per contract and that one entity shall be contractually responsible for performance. Assignments for subcontracting are allowable, but information regarding the assignees and subcontractors will be required prior to finalization of a contract. For any joint venture to be acceptable, one entity must take full contractual responsibility for the obligation.

2.7 **EQUAL OPPORTUNITY AND M./W.B.E. PROGRAM**

ITR Concession Company is committed to providing fair and representative opportunities for MBE / W.B.E.s in all contracts related to the ITR. Neither ITR Concession Company nor its consultant or contractors shall discriminate on the basis of race, color, religion, sex or national origin in the award and performance of contracts related to the ITR. Furthermore, affirmative action will be taken, consistent with sound procurement policies and applicable Law, to ensure that MBE / W.B.E.s are afforded a fair and representative opportunity to participate in ITR Concession Company's contracts related to the ITR.

The dollar value of MBE / W.B.E. participation in contracts related to the ITR shall be 6% for each. MBE / WBE must be certified with the Indiana Department of Administration.

Statement of Proposals must include firms with the proper participation of 6% MBE and 6% WBE. Statement of Proposal must also include the IDOA Certificate verifying that the MBE / WBE firm is in fact properly certified by the IDOA. (The Certificates do not count toward the 10 page limit.)

MBE / WBE Participation is a requirement.

3.0 **SCOPE OF SERVICES**

The ITRCC desires to remove and properly close out three Underground Storage Tanks (UST) used to store diesel fuel for decommissioned generators. The UST are located at the following toll plazas along the Indiana Toll Road.

- Mile Marker 72 – South Bend West Toll Plaza
- Mile Marker 77 – South Bend Notre Dame Toll Plaza
- Mile Marker 83 – Mishawaka Plaza

The following is a general Scope of Services.

1. Properly close one (1) 600 gallon capacity UST at South Bend West Toll Plaza, one (1) 600 gallon capacity UST at Mishawaka Toll Plaza, and one (1) 550 gallon capacity UST at South Bend Notre Dame Toll Plaza. UST's are double walled fiberglass USTs and assemblies containing diesel fuel. The interstitial is brine filled. The closure activity is governed under several guidelines, ordinances and regulations which must be followed including – but not necessarily limited to - Risk Integrated System of Closure or whichever rules take precedence at the time. Removal shall include the UST and any fuel containing equipment and other apparatus such as day tanks and any remaining fuel lines either inside or outside the building.
2. All fees and coordination including utility location services of public and private utilities for all related UST closure activities are the responsibility of the contractor and should be included in the contractor's bid price.
3. Work shall also be coordinated with the ITRCC representative in charge of the contract to remove the possibility to impact operation of the toll facilities.
4. Contractor shall follow all Federal, state and local regulations, guidelines, ordinances, etc. for UST closure.
5. Contractor shall request information required from ITRCC for completion of form 45223 to notify the Indiana Department of Environmental Management (IDEM). A draft 45223 for each site will be provided to ITRCC representative for review and Owner Contact signature. Notification shall include filing of the 45223 forms including - but not limited to - a thirty day prior notice to receive IDEM closure approval, a second notice form if the closure is not completed in the ninety days allowed after

approval, closure form and full report within thirty days after closure, and any other follow-up testing or information required to receive IDEM's complete closure or letter of No Further Action.

6. The contractor must provide all closure information necessary and a fully approved by IDEM final report from each closure activity.
7. The contractor shall provide the Section D Consultant/Contractor signature on the 45223 and other closure documentation with the current and valid certification numbers of the contractor's professional UST closure agent.
8. Existing usable fuel in each UST will be removed by ITRCC.
9. Certain parts of the UST assemblies (monitoring equipment, spill containment, overfill protection devices, etc.) may be ITRCC salvage items and will be coordinated with the ITRCC representative. Any items not salvaged including fuel and/or sludge remains in the tank, day tank and lines, fuel suction pump, and other related items will be contractor responsibility for proper disposal as part of the generator fuel system removal. No parts or components of the UST shall be allowed to remain buried and must be properly disposed of by the contractor. This includes but is not limited to concrete cover, fill assembly, manholes, fuel lines, etc. Secondary containment tube on the fuel line route can remain if clean and contaminant free.
10. Clean fill will be required from the contractor to bring the opening to grade and seeded. If a spill occurs or a release in any part of this activity, it shall be immediately reported to the ITRCC contract representative and is the responsibility of the contractor to report and clean up the spill.
11. All sampling, equipment and laboratory costs for required testing of the soils and/or groundwater for the closure site assessment and any related costs required by the UST removals for complete IDEM approved closure are part of the contractor duties and should be included in the bid price.
12. Copies of all communications to and from governing bodies by the Contractor shall be delivered to the ITRCC representative as soon as possible. NOTE: the IDEM System Closure Report Review Checklist (SCRRC) may be six months after final closure forms are filed and may require contractor to perform additional efforts or provide information for UST closure completion.
13. Contractors must understand that the Indiana Toll Road is a toll facility and that traffic delays and backups due to construction detract from the ITRCC's patrons. While it is not anticipated, contractor will not be allowed to close or restrict any lanes at any plaza.
14. Prepare and include a discussion to how the design and construction inspection approach will minimize impact to the use of the ITRCC facility.
15. Prior to submitting a proposal, consultants must perform site visits at each structure location.
16. Tolls will not be reimbursed.
17. Submit a lump sum not-to-exceed fee for the work. Provide a separate cost for each toll plaza.
18. Contractor may submit a bid for all sites or individual sites. The ITRCC reserves the right to award a single contractor for all the sites or multiple contracts for each site.

4.0 STATEMENT OF PROPOSALS FORMAT AND CONTENT

All Proposals must be prepared in a comprehensive manner as to content, but there is no need for expensive binders, color displays, or other promotional materials that are not germane to the Proposal.

Proposals:

- ◆ Submit Proposals electronically.
- ◆ Submit a maximum of 10 pages for the Proposal. (Cover letter and MBE / WBE do not count toward the page limit.)
- ◆ Experience of firm on projects with similar magnitude and complexity in in the work.
- ◆ The Statement of Proposals shall identify the MBE and WBEs needed to meet the MBE / WBE requirement of 6% each.
- ◆ The Statement of Proposals shall identify any and all steps necessary to complete the work to the satisfaction of federal, state and local laws.
- ◆ Contractors must understand that the Indiana Toll Road is a toll facility and that traffic delays and backups detract from the ITRCC’s patrons. As such, any work must not disrupt the flow of traffic.
- ◆ Proposal shall include a schedule documenting the projected timeline needed to complete the project.
- ◆ The review of the bids and the final selection of the firm will solely reside with the ITRCC. Any questions regarding the project should be submitted in writing. The ITRCC will document any questions and provide a written response to all consultants invited to submit a Statement of Proposals.
- ◆ The project will be solely funded by the ITRCC. No state or federal funds will be involved.

EXHIBIT A

Location Maps



Location of UST

Google earth



Mishawaka - MM 83



Google earth

feet
meters



South Bend Notre Dame - MM 77



Google earth

feet
meters



South Bend West - MM 72

EXHIBIT B

Sample Contract

**CONTRACT BETWEEN
ITR CONCESSION COMPANY LLC
AND XXXXXXXX**

This Agreement, entered into this ___ of day XXXXX, by and between ITR Concession Company (“ITRCC” or the “Owner”) and XXXXX. (“XXXX” or the “Contractor”) (collectively, the “Parties”).

WITNESSETH

WHEREAS, ITRCC desires to enter into a contract for certain work for the improvement of XXXXXX located at Mile Post XXXXXX on the Indiana Toll Road, as described in detail in the Contract Documents; and

WHEREAS, Contractor has represented that it has the professional and technical expertise and experience to perform the XXXX Work.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and promises contained herein and in the Contract and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto intending to be legally bound, hereby agree as follows.

Article 1 - The Work of this Contract

The Scope of Work (the “Work”) and other particulars is set forth in Article 30 this Contract.

Article 2 – Date of Commencement and Date of Completion

2.1 The Date of Commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be stated in a Notice to Proceed issued by the Owner. Time of Contract Completion shall be XXXXX.

2.2 The contract time shall be measured from the Date of Commencement.

2.3 Time limits stated in the contract documents are of the essence of the Contract. By executing the agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

2.4 This Contract shall supersede the Letter of Intent, dated XXXX, previously entered into between the Parties, which Letter of Intent shall be terminated as of the date of this Contract.

Article 3 – Contract Sum

The lump sum price for the Contract is XXXXXX (the “Contract Sum”). The Contract Sum shall not be subject to change or escalation, except as expressly provided for in this Contract.

The Contractor shall be solely responsible for any applicable sales and/or use taxes for equipment or property utilized in the execution of this Contract.

Article 4 – Payments

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

4.2 Payments will be made within 45 days of receipt of the invoice by Owner. In the event there are any disputes regarding invoice amounts, only the undisputed amount will be paid by the Owner.

4.3 Retention: 5% will be retained by the Owner from every invoice submitted pursuant to this Article 4. The 5% retainage will be remitted upon issuing of a Warranty/Maintenance Bond for 50% of the contract amount for a period of two (2) years from the issuance of the Certificate of Completion.

4.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for payment have been previously issued and payments received from the Owner 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 the owner's interests.

4.5 Payments to the Contractor – The Contractor shall promptly pay each subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such subcontractor's portion of the work, the amount to which said subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such subcontractor's portion of the work. The Contractor shall, by appropriate agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors in a similar manner.

4.6 The Owner shall not have an obligation to pay or see to the payment of money to a subcontractor except as may otherwise be required by law.

4.7 Substantial Completion is the stage in the progress of the work when the work, or designated portion thereof, is sufficiently complete in accordance with the contract Documents so that the owner can occupy or utilize the work for its intended use. When the Owner determines that the Work is substantially complete, the Owner will issue a Certificate of Substantial Completion which shall establish the date of substantial Completion, establish responsibilities of the owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work.

4.8 Final Completion and Final Payment – Upon receipt of written notice that the work is ready for final inspection and acceptance and upon receipt of a Final Application for Payment, the Owner will promptly make such inspection, and when the Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner will promptly issue a Final Certificate for Payment stating that to the best of the Owner's knowledge, information and belief, that the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable ("Final Completion"). The Owner's final Certificate for Payment will constitute a further representation that the Contractor is entitled to Final Payment.

Article 5 – General Provisions

5.1 Contract Documents – The Contract Documents consist of this Contract, Drawings, Specifications, ITRCC's Responsible Contractor Policy, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, including the documents listed in Exhibit A, the Scope of Work, and all attachments hereto, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed

by both parties, or (2) a Change Order. 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.

5.2 Order of Precedence – in case of conflict between plans and specifications, the Order of Precedence shall be as follows – (1) Plan Detailed drawings, (2) Specifications, (3) Plan Standard Details.

5.3 The Contract Documents form the contract for Construction. The Contract represents the entire, integrated agreement between the Owner 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 (1) between the Owner and a Subcontractor or sub-subcontractor, or (2) between any persons or entities other than the Owner and Contractor. The Work – The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the contractor’s obligations. The Work may constitute the whole or a part of the Project.

5.4 Execution of the Contract – 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.

Article 6 – Owner

6.1 Services required of the Owner – The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner 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.

6.2 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the work, or any portion thereof, until the cause for such order is eliminated. However, the right of the Owner to stop the work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

6.3 Owner’s right to carry out the work – If the Contractor defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform a provision of the contract, the Owner, after 10 days’ written notice to the Contractor may make good such deficiencies and may deduct the reasonable cost thereof, including Owner’s expenses from the payment then or thereafter due the Contractor.

Article 7 – Contractor

7.1 Review of Contract Documents and Field conditions by Contractor – Since the Contract Documents are complementary, 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 the Owner, 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 the Owner as a request for information in such form as the Owner may require.

7.2 Concession Lease Agreement – ITRCC is a party 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 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.

7.3 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 the Owner that such means, methods, techniques, sequences or procedures may not be safe. The Contractor shall be responsible to the Owner 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.

7.4 Labor and Materials – 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 the Owner, in accordance with a Change Order.

7.5 Warranty – The Warranty Period shall be for two (2) years following the issuance by the Owner of a Certification of Completion. The Contractor warrants to the Owner 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. 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.

7.6 The Contractor shall pay 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.

7.7 The Contractor shall comply with and give notice required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work. The Contractor shall promptly notify the Owner 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 the Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

7.8 Submittals – The Contractor shall review for compliance with the Contract Documents, approve in writing and submit to the Owner, Drawings, Product Data, samples and similar submittals required by the Contract Documents with reasonable promptness. The Work shall be in accordance with approved submittals. Drawings, Product Data, samples and similar submittals are not Contract Documents.

7.9 Use of Site – The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. 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. The Contractor shall provide the Owner access to the Work in preparation and progress wherever located.

Article 8 – Owner's Administration of the Contract

8.1 The Owner will visit the site to monitor the Contractor's work activities. However, the Owner will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, since these are the Contractor's responsibilities.

8.2 The owner will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

8.3 Based on the Owner's evaluations of the Work and of the Contractor's Applications for Payment, the Owner will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

8.4 The Owner will have authority to reject Work that does not conform to the Contract Documents.

8.5 The Owner will review and approve or take other appropriate action upon the Contractor's submittals such as Drawings, Product data and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

8.6 The Owner will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the Contractor. The Owner will make initial decisions on all claims, disputes and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions so rendered in good faith.

8.7 The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

Article 9 – Claims and Disputes

9.1 Claims and Disputes – The State and Federal courts of the State of Indiana shall be the exclusive forums for resolving all litigation between the parties (excluding and conflict of laws rule or principle which might refer such interpretation to the laws of another jurisdiction).

9.2 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 by the Owner, by mediation or by litigation.

9.3 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. Mediation shall proceed in advance of legal, but not equitable, proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

9.4 Claims for Consequential damages – The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes (a) damages incurred by the Owner 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.

Article 10 – Subcontractors

10.1 A subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work. 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 the Owner the names of the subcontractors for each of the principal portions of the Work. The Contractor shall not contract with any subcontractor to whom the Owner 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.

10.2 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 the Owner, and (b) allow the subcontractor the benefit of all rights, remedies and redress against the Contractor, as afforded to the Contractor to the Owner by these Contract Documents.

10.3 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.

10.4 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.

10.5 The Contractor shall promptly pay each subcontractor the amount to which such subcontractor is entitled in accordance with its contract. 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.

10.6 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, for the satisfactory Completion of the Work, for 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. The Contractor agrees that it is fully responsible to the Concessionaire for the acts and omissions of subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor shall obtain all necessary information from subcontractors engaged in the Work, in order to ensure that the subcontractors' 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.

Article 11 – Owner's Right to Perform Construction and to Award Separate Contracts

11.1 The Owner reserves the right to perform construction or operations related to the project with the Owner's forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of the contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation.

11.2 The Contractor shall afford the Owner and separate contractor's reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

11.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction by the Contractor.

Article 12 – Performance and Payment Bonds

12.1 The Contractor will, 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. The surety or sureties issuing the Bonds must be acceptable to ITRCC and the Bonds must be in the form provided by ITRCC. 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.

In case of neglect, failure, or refusal of the Contractor to provide satisfactory sureties when so directed with in seven (7) days after such notification, ITRCC may declare this Contract forfeited, but such forfeiture shall not release the Contractor or its surety or sureties from any liability which may have accrued prior to the date of such forfeiture.

If at any time the surety or sureties, or any one of them, upon such Bonds become insolvent, or are, in the sole opinion of ITRCC, unsatisfactory, or unable to respond to damages in case of liability on such bond, ITRCC will notify the Contractor and direct that a bond issued by a satisfactory surety or sureties be provided forthwith.

12.2. Surety for Performance Bond and Payment Bond: 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.

Article 13 – Liquidated Damages

The Work under this Agreement shall be performed pursuant to the schedule set forth in Exhibit B. Time is of the essence under this Agreement. The Owner shall have the right to apply liquidated damages (“LDs”) of \$2,000.00 per day for each day from and after the relevant Completion Date (or such later date) until the actual Completion in accordance with the terms hereof. Payments by the Contractor under this Article 13 shall be limited to a maximum amount equal to 25% of the Contract Price

Article 14 – Changes in the Work

14.1 The Owner, without invalidating the Contract, may order changes in the work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner and Contractor.

14.2 The cost or credit to the Owner from a change in the Work shall be determined by mutual agreement of the parties.

14.3 The Owner will have authority to order minor changes in the work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

14.4 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.

However, in no way shall the contractor proceed with any work that is outside of the original Scope of Work, due to changes or unknown site conditions, or any other event that will cause an increase in the Contract Sum or quantities without first submitting a written Request for Change Order and receiving a written Approved Change Order from the Owner.

At a minimum, the Request for Change Order must include the reason for the request, a revised Scope of Work, revised quantities and revised Contract Sum. The Request for Changer Order must be received by the Owner so that the Owner has sufficient time to review and act of the Request.

The Contractor shall not be compensated any work performed without an Approved Change Order from the Owner.

Article 15 – Protection of Persons and Property

15.1 Safety Precautions and Programs – The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take all reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to (a) employees employed at the project site, (b) the Work and materials and equipment to be incorporated therein, and (c) other property at the site or adjacent to it.

15.2 The contractor shall give notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by them, or by anyone whose acts they may be liable and for which the Contractor is responsible for, except for damage or loss attributable to acts or omissions of the Owner or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor

15.3 Hazardous Materials – If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered on site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and the Contractor. The Contract Time 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 Article 14 of this Agreement.

15.4 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor and subcontractors against claims, damages, losses and expenses, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 15.3 and has not been rendered harmless, 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), and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

15.5 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, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

Article 16 - Indemnification and Defense

16.1 Contractor agrees to indemnify the ITRCC, its directors, officers, parent companies, subsidiaries, shareholders, employees and affiliates, the State of Indiana, and the Indiana Finance Authority from any and all liability, claims, actions, suits, causes of action, or other proceedings arising out of or directly resulting from performance of the Work, including claims relating to Contractor’s employees, subcontractors, affiliates, or subcontractor-employees, or by reason of any claim or dispute of any person or entity for damages from any cause directly or indirectly relating to any action or failure to act by Contractor, its representatives, employees, subcontractors or suppliers, and whether or not ITRCC in any way contributed to the alleged wrongdoing or is liable due to a nondelegable duty. It is the intent of the parties that Contractor shall indemnify ITRCC under this indemnification clause and the insurance clause to the fullest extent permitted by law. Said intent, unless contrary to law, includes Contractor’s agreement to indemnify ITRCC for ITRCC’s sole negligence as contemplated by I.C. 26-2-5-1.

16.2 To the fullest extent permitted by law, Contractor shall defend and hold harmless the ITRCC, its directors, officers, parent companies, subsidiaries, shareholders, employees and affiliates, the State of Indiana, and the Indiana Finance Authority, and shall pay, as incurred, all damages, costs, fees and expenses (including reasonable attorneys' fees) arising out of or relating to any claim, action, suit, or other proceeding directly arising out of or directly resulting from performance of the Work: (a) relating to a breach by Contractor of any of its obligations, representations, warranties, agreements, or covenants under this Agreement; (b) arising out of or relating to the performance of the Work, including, without limitation, any negligent or willful act, or negligent or willful failure to act (resulting in death, bodily injury, or loss or damage to property) by Contractor, its employees, or subcontractors; or (c) relating to any violation of any Federal, State or local laws, ordinances or regulations applicable to the Work or this Agreement.

16.3 The Contractor's indemnity obligation shall not be limited by any Worker's Compensation statute, disability benefit or other employee benefit or similar law or by any other insurance maintained by Contractor. Contractor hereby waives, and shall cause Contractor's subcontractors and suppliers of any tier to waive, any rights any of them may have to limit the amount which may be recoverable against them by the Indemnified Parties and to designate ITRCC as an explicit third-party beneficiary in each sub-subcontract (of any tier) entered into in furtherance of this Agreement.

Article 17 - Insurance

17.1 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 Contractor:

THE FOLLOWING ARE THE MINIMUM AMOUNTS OF CONTRACTOR'S INSURANCE:

<i>Type of Insurance</i>	<i>Limits of Liability</i>
General Liability: Comprehensive Form Premises - Operations Products/Completed Operations Hazard Contractual Insurance	Bodily Injury and Property Damage Combined: \$1,000,000 each occurrence
Broad Form Property Damage Independent Contractors	Personal Injury: \$2,000,000 aggregate
Personal Injury Explosion and Collapse Hazard Underground Hazard	Bodily Injury and Property Damage Combined \$1,000,000 each occurrence
Automobile Liability Comprehensive Form Owned Hired Non-Owned	Bodily Injury and Property Damage Combined: \$1,000,000 each occurrence
Excessive Liability: Umbrella Form	\$3,000,000 each occurrence \$3,000,000 aggregate
Employer's Liability and Worker's Compensation	\$1,000,000 each occurrence Statutory Minimum Amount

17.1.1. The insurance required above shall be endorsed to name as ADDITIONAL INSUREDS ITR Concession Company LLC, the Indiana Finance Authority, the State of Indiana, the Royal Bank of Scotland, CITI, and any mortgagee or construction lender identified in writing to Consultant (collectively, the “Additional Insureds”). Wherever used, the term “Additional Insureds” shall be deemed to include the officers, employees and representative of all of the Additional Insureds. All issuing underwriters shall have rating of A:VII or better in the latest edition of Best’s Key Rating Guide or comparable ratings reasonably acceptable to the Owner.

17.1.2. WORKERS’ COMPENSATION includes Occupational Disease insurance meeting the statutory requirements of the State in which work is to be performed together with a Broad Form All States Endorsement and containing Employers’ Liability insurance. in an amount not less than \$1,000,000.00.

17.1.3. COMMERCIAL GENERAL LIABILITY. The policy shall include the Additional Insureds as defined in Section 17.7.1 above and must provide Premises-Operations, Independent Contractors, Broad Form Property Damage, Contractual Liability, Products and Completed Operations coverages (which shall be maintained in force for a period of two years after substantial completion of the Work or for such longer period of time as is described in the Contract Documents), applicable to operations performed by the Contractor. The Additional Insured Endorsements required by this paragraph shall be equivalent in its coverage to the ISO Forms CG2033 10 01 and CG2037 10 01 and will 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. In addition, Subcontractor shall maintain an umbrella liability policy in the amounts stated above and with the same Additional Insureds as the basic policy.

17.1.4. COMMERCIAL AUTOMOBILE LIABILITY on occurrence basis covering all Owned, Non Owned and Hired Vehicles for limits equal to those identified above.

17.1.5. 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 the Owner 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.

17.1.6. Equivalent insurance coverage must be obtained from each subsubcontractor or supplier, if any, before permitting them on the site of the project. Otherwise, their protection must be included within your insurance policies. If Contractor or its sub-subcontractors fail to furnish and maintain insurance as required by this Paragraph, 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 therefore and shall furnish to ITRCC or cause to be furnished to ITRCC any information needed to obtain such insurance.

17.1.7. ITRCC may furnish, erect or provide equipment, appurtenances and devices, motorized or otherwise, for its use to complete its Agreement with the Owner. Should Contractor use such items, Contractor agrees to insure against other any claims of injury or damage caused by items while in its care, custody or control naming ITRCC as an insured party. Liability limits shall be the same as those identified above. Physical damage insurance against damage in the items themselves shall be on a “Replacement Cost” basis waiving subrogation against Contractor.

17.1.8. Deductibles and Self-Insured Retentions - Any deductibles or self-insured retentions must be declared to and approved by the ITRCC. At the option of the ITRCC, either: the insurer shall reduce or eliminate such deductibles or

self-insured retentions as respects the ITRCC, its officials and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigation, claim administration and defense expenses.

17.1.9. Authorization is hereby granted to ITRCC to withhold payments to the Contractor until a properly executed Certificate of Insurance providing insurance as required herein, accompanied by a signed subcontract are received by ITRCC.

17.1.10. Contractor's Indemnity and Insurance Requirements set forth herein shall become and be part of any contract document issued by ITRCC to Contractor as though fully set forth in this Agreement.

17.1.11. A Waiver of Subrogation in favor of Additional Insured's must be included under all policies.

Article 18 – Correction of Work

18.1 The Contractor shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, shall be at the Contractor's expense.

18.2 In addition to the Contractor's obligations herein, if within two years after the date of Substantial Completion of the work or designated portion thereof or after the date for commencement of warranties established under this Contract, any of the Work is found to be not in compliance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such a condition. The Owner shall give such notice promptly after discovery of the condition. During the two-year period for correction of the Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it at the Contractor's expense.

Article 19 – Assignment

19.1 Contractor shall not assign any part of the Contract without the written approval of the Owner. In the event that the Owner approves of an assignment, Contractor agrees to bind its successors, executors, administrators and assigns to all covenants of this Contract.

Article 20 – Termination

20.1 Termination

ITRCC may terminate this Agreement without cause, for any reason whatsoever, by giving written notice to the Contractor at least 30 days prior to the anticipated termination date. Either Party may terminate this Contract in the event of a material breach of this Contract by the other party (including, without limitation, nonpayment of fees, failure to timely fulfill any responsibilities set forth in the Exhibit A Statement of Work or failure to cooperate in good faith with the other party in connection with the Work), upon giving the other party fifteen (15) days' prior written notice identifying specifically the alleged breach; provided, however, that the breaching party shall have fifteen (15) days after receipt of such notice to cure such breach. During the fifteen (15) day cure period the non-breaching party shall have the right to suspend its performance under this Agreement.

20.2 Insolvency

In the event of Insolvency of Contractor, the Owner may, at its sole option, immediately terminate this Contract effective on notice to Contractor. "Insolvency" of Contractor shall be deemed to occur when Contractor: (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 of 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 the preceding clause (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.

20.3 Effect of Termination.

Upon termination of this Contract, all of the rights and obligations of the Owner and Contractor shall terminate and be of no further force and effect, except that each of the following shall survive such expiration or termination: (i) Owner will promptly pay Contractor all fees, costs and expenses accrued and owed to or incurred by Contractor except to the extent any remaining claims of Contractor's Subcontractors or others might exist and/or the cost of completion of the Work and/or correction of any defective Work, exceed the amounts unpaid to Contractor. In these instances, the Owner shall be entitled to withhold One Hundred Fifty Percent (150%) of any amounts claimed due, unpaid or required to complete any Work. Termination for any cause or under any provision of this Agreement shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.

Article 21 – Compliance with Laws

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

21.1 Maintaining a Drug Free Workplace

Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Contractor will give written notice to the ITRCC within ten (10) days after receiving actual notice that Contractor or 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 subdivision (C2) above, or otherwise receiving actual notice of such conviction;

E. Within thirty (30) days after receiving notice under subdivision (C2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs A through E above.

21.2 Non-Discrimination

(a) Federal Requirements

It will be unlawful employment practice for the Contractor (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, or the terms, conditions, or privileges of his employment, because of such individual's race, color, religion, sex, age, handicap or national origin; (2) to limit, segregate or classify his employees or applicants in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, age, 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. Attention is called to Exec. Order No 11,246.30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000 (e) note, as amended by Exec Order No. 11,375.32 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. sec. 6101-6106 (1988); Rehabilitation Act of 1973, 29 U.S.C. sec. 793-794 (1988); Americans with Disabilities Act, 42 U.S.C. sec. 12101; and 41 C.F.R. Part 60 (1990).

(b) State Requirements

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

21.3. Ethics and Conflict of Interest Requirements

(a) Ethics Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in 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.

(b) Conflict of Interest.

(i) As used in this section:

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

(2) “Interested party” means:

a. The individual executing this Agreement;

b. An individual who has an interest of three percent (3%) or more of Contractor; or

c. Any member of the immediate family of an individual specified under subdivision (1) or (2).

(ii) Contractor has an affirmative obligation under this Agreement to disclose to the ITRCC when an Interested Party is or becomes an employee of the State. The obligation under this section extends only to those facts that Contractor knows or reasonably could know.

21.4 Non-Collusion and Acceptance: Contractor attests, subject to the penalties for perjury, 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.

21.5 MBE/WBE Requirements ITRCC is required to comply with the requirements of IC 4-13-16.5 and 25 IAC 5 to maximize the utilization of minority and women business enterprises (“M./W.B.E.s”) in the procurement and contracting processes. The Contractor agrees to a requirement for participating minority business enterprises of 6% and women’s business enterprises of 6%. All M/WBEs must be certified by the Indiana Department of Administration, Minority and Women Business Enterprises Division. This policy shall be stated in all subcontracts related to this Agreement, circulated to all employees of the Contractor in affected departments, and made known to minority and women business enterprises with whom Contractor may subcontract.

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

21.7 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 during the Term, even if IC 24-4.7 is preempted by federal law.

Article 22 – Responsible Contractor

Contractor agrees that it will comply with the Responsible Contractor Program Policy (“RCP”) as provided by ITRCC and incorporated by reference herein. 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.

Contractor hereby certifies that all subcontractors and employees retained to perform Work or Services under this Agreement receive a “fair wage.” 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.

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.

Article 23– Mechanics’ Liens

Contractor shall provide Owner with a sworn statement and partial waiver of lien to date or final waiver of mechanics’ lien, as applicable, each in the form required pursuant to the Indiana Mechanic’s Lien Act, for itself and each of its subcontractors receiving any part of any payment made by Owner hereunder. The forms of sworn statement and partial and final lien waivers are attached hereto as Exhibit D.

Article 24- Negation of Employment, Partnership and Agency

This Contract does not create a relationship of employment, agency or partnership between the Contractor and ITRCC.

Article 25– Variation and Waiver

25.1 No agreement or understanding varying or extending this contract, will be legally binding upon the Contractor or Owner unless in writing and signed by the Contractor and ITRCC.

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

Article 26– Remedies

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

Article 27– Severability

The invalidity of any section, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Contract.

Article 28- Section Headings

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

Article 29– Notices & Status of Claims

All Notices required under this Contract shall be sent by certified or registered U.S. Mail. The Contractor shall be responsible for keeping the Owner 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:

Robert D. Ladson, PE
ITR Concession Company LLC
52551 Ash Road
Granger, Indiana 46530-7226

Article 30 – Attachments

The scope of this project is detailed in Attachment A attached to these documents. The Construction Schedule is detailed in Attachment B attached to these documents. The Schedule of Payment Values is detailed in Attachment C attached to these documents. Attachment D contains the Contractor's Sworn Statement and Partial Waiver of Mechanic's liens.

Contract For:

XXXXXX

For ITR Concession Co. LLC:

For: **XXXXXXXX**

_____ Name

_____ Name

_____ Title

_____ Title

_____ Date

_____ Date

Attachment A – Scope of Work

Attachment B
Schedule of Work

Attachment C - Payment Schedule

The payment schedule for this contract shall be as set forth in Article 4 of the Contract.

PARTIAL WAIVER OF LIEN-TO AMOUNT PAID

STATE OF INDIANA) Gty# _____
COUNTY OF) Loan# _____

TO WHOM IT MAY CONCERN:

WHEREAS the undersigned has been employed by _____ to furnish labor and materials for the premises known as _____ in _____, Indiana, of which _____ is the owner.

The undersigned, for and in consideration of _____ DOLLARS and _____ CENTS (\$ _____), and other good and valuable consideration, the receipt whereof is hereby acknowledged, do(es) hereby waive and release to the extent only of the aforesaid amount any and all liens or claim of, or right to lien, under the statutes of the State of Indiana, relating to mechanic's liens, with respect to and on said above-described premises, and the improvements thereon, and on the material, fixtures, apparatus or machinery furnished, and on the moneys, funds, or other considerations, due or to become due from the owner, on account of labor, services, material, fixtures, apparatus or machinery heretofore furnished, by the undersigned for the above-described premises.

Given under _____ hand _____ and seal _____ this _____ day of _____, 200__.

Signature _____ and

Seal: _____

NOTE: All waivers must be for the full amount paid. If waiver is for a corporation, corporate name should be used, corporate seal affixed and title of officer signing waiver should be set forth; if waiver is for a partnership, the partnership name should be used, partner should sign and designate himself as partner.

CONTRACTOR'S AFFIDAVIT

STATE OF INDIANA)
COUNTY OF

TO WHOM IT MAY CONCERN:

THE undersigned, being duly sworn, deposes and says that he is _____ for _____, who is the contractor furnishing LABOR and MATERIALS on the property located at _____, Indiana, owned by _____.

That the total amount of the contract including extras is \$ _____ on which he has received payment of \$ _____ prior to this payment. That all waivers are true, correct and genuine and delivered unconditionally and that there is no claim either legal or equitable to defeat the validity of said waivers. That the following are the names of all parties who have furnished material or labor, or both for said work and all parties having contracts or subcontracts for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each, and that the items mentioned include all labor and material required to complete said work according to plans and specifications:

NAMES	WHAT FOR	CONTRACT PRICE	AMOUNT PAID	THIS PAYMENT	BALANCE DUE
TOTAL LABOR AND MATERIAL TO COMPLETE					

That there are no other contracts for said work outstanding, and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with said work other than above stated.

Signed this _____ day of _____, 200__

Signature: _____
 _____, Notary Public

Subscribed and sworn to before me this _____ day of _____ 200__

FINAL WAIVER OF LIEN

STATE OF INDIANA) Gty# _____
 COUNTY OF) Loan# _____

TO WHOM IT MAY CONCERN:

WHEREAS the undersigned has been employed by, _____ to furnish labor and materials for the premises known as _____, of which the _____ is the owner.

The undersigned, for and in consideration of _____ Dollars and 00/100 (\$ _____), and other good and valuable consideration, the receipt whereof is hereby acknowledged, do(es) hereby waive and release any and all liens or claim of, or right to lien, under the statutes of the State of Indiana, relating to mechanic's liens, with respect to and on said above-described premises, and the improvements thereon, and on the material, fixtures, apparatus or machinery furnished, and on the moneys, funds, or other considerations, due or to become due from the owner, on account of labor, services, material, fixtures, apparatus or machinery heretofore furnished, or which may be furnished at any time thereafter, by the undersigned for the above-described premises.

Given under _____ hand _____ and seal _____ this _____ day of _____, 200__.

Signature and Seal: _____

NOTE: All waivers must be for the full amount paid. If waiver is for a corporation, corporate name should be used, corporate seal affixed and title of officer signing waiver should be set forth; if waiver is for a partnership, the partnership name should be used, partner should sign and designate himself as partner.

CONTRACTOR'S AFFIDAVIT

STATE OF INDIANA)
 COUNTY OF)

TO WHOM IT MAY CONCERN:

THE undersigned, being duly sworn, deposes and says that he is the _____ for _____ who is the contractor furnishing LABOR and MATERIALS on the property located at _____, Indiana owned by _____.

That the total amount of the contract including extras is \$_____ on which he has received payment of \$_____ prior to this payment. That all waivers are true, correct and genuine and delivered unconditionally and that there is no claim either legal or equitable to defeat the validity of said waivers. That the following are the names of all parties who have furnished material or labor, or both for said work and all parties having contracts or subcontracts for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each, and that the items mentioned include all labor and material required to complete said work according to plans and specifications:

NAMES	WHAT FOR	CONTRACT PRICE	AMOUNT PAID	THIS PAYMENT	BALANCE DUE
TOTAL LABOR AND MATERIAL TO COMPLETE					

That there are no other contracts for said work outstanding, and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with said work other than above stated.

Signed this _____ day of _____, 200__.

Signature: _____

Subscribed and sworn to before me this _____ day of _____ 200__.

_____, Notary Public