



Standard Form of Request for Qualifications

For progressive design-build project delivery under Indiana Code Section 5-30, as amended

This **REQUEST FOR QUALIFICATIONS** ("RFQ") from the Owner named below invites the submittal of Verified Statement of Qualifications ("VSQ") from firms interested in providing design-build services for the Project described below. By submitting a VSQ, the Offeror represents that it has carefully read the terms and conditions of this RFQ and all attachments and Addenda and agrees to be bound by them. This RFQ is not an offer to enter into a contract, but merely a solicitation of persons interested in submitting VSQ to the Owner for the Project.

DATE: Draft: April 18, 2024

OWNER:

(Name and address)

Griffith Public Schools

602 N Raymond

Griffith, IN 46319

PROJECT:

(Include Project name and location)

2024 Aquatic Center Renovation and Expansion Project

Griffith Jr./Sr. High School

600 North Wiggs Street, Griffith IN 46319

ELECTRONICALLY DELIVER Verified Statement of Qualifications, via e-mail TO:

Griffith Public Schools

602 N Raymond

Griffith, IN 46319

Attn: Leah Dumezich, Superintendent

ldumezich@griffith.k12.in.us

Verified Statement of Qualifications DUE DATE AND TIME

Offeror's VSQ shall be submitted no later than:

Wednesday, May 8, 2024

2:00 PM, Central Daylight Saving Time

All VSQs must be submitted pursuant to the instructions below. It is the Offeror's sole responsibility to ensure that the VSQ is delivered in the manner required by this RFQ and Indiana Code Section 5-30, as amended, by the Due Date and Time. Owner has the right to reject any VSQs not properly delivered.

SECTION 1: OWNER DESCRIPTION

1.1. General

Griffith Public Schools desires to make improvements to existing Aquatic Center facilities at Griffith Jr./Sr. High School.

1.1.1. The current Aquatic Center is not operational.

1.1.1. The School Corporation desires to complete the design and construction of the renovated or new aquatic center as expeditiously as is practically and safely possible.

1.1.2. It is the goal of the School Corporation that the facility be operational in time for the 2025-2026 Girls and Boys High School Swimming Seasons. This is not a project requirement. It is a strong desire of the owner.

1.1.2. The project scope is to be collaboratively defined between the Owner and the Design-Builder during Step 1 Progressive Design-Build Services. The scope shall be confirmed by the Owner's approval of the Design-Builder's Step 1 Report. At the time this RFQ is issued, the scope of the project is understood to include the following:

1.2.1. Renovate or replace the existing 6-lane pool to provide a 25-Yard x 8-lane pool with a separate diving well divided by a bulkhead.

1.2.1.1. Meeting all NFHS standards, including those for depth and safety clearances.

1.2.1.2. The pool must be ADA compliant.

1.2.1.3. Provide new main drain, piping systems, gutters, strainer system, surge tank, pumping, filtration, backwash, autofill, and chemical controls systems, anti-drowning alert system, etc.

1.2.2. Provide at least fifteen feet (15') of clear deck space on each side of the pool. Provide new pool deck finishes, drainage system and markings.

1.2.3. New pool equipment, including diving boards, diving board stands, starting blocks, lane markers, anchors, backstroke stanchions, grab rails, ladders, safety equipment, and ADA access systems, wall mounted AED, watchfire screen system.

1.2.4. New pool timing and scoring system, including a new swimming scoreboard.

1.2.5. New public address and sound reinforcement system

1.2.6. Provide spectator seating the full length of the pool and diving well.

1.2.7. Renovate, or provide new support spaces, including locker rooms, mechanical equipment spaces, chemical storage space, general storage space, competitor deck space, spectator viewing area, offices, meet management station, hospitality suite and other such areas.

1.2.8. Provide all of the above within a new construction addition to the high school, renovated existing construction, or a combination of both.

1.2.8.1. Provide building envelope thermal integrity and air-tightness throughout the renovation and building addition appropriate for an indoor swimming pool (Aquatic Center) environment located in ASHRAE Climate Zone 5. Provide a continuous thermal and air barrier, without thermal bridges, sufficient to exceed the minimum requirements of the Indiana Energy Code, as adjusted for the Aquatic Center environment.

1.2.8.2. Provide renovation of existing and/or new building support systems, including, but not limited to: HVAC heating and cooling systems, dehumidification system, ventilation and exhaust systems, plumbing systems, lighting systems, electrical systems, building automation systems, access control systems, life safety systems, security & alarm systems, CCTV systems, and communications systems.

- 1.2.8.3. Provide interior construction with new interior finishes in all new and renovated spaces. Provide finishes and equipment that are durable, easily maintained, and suitable for a potentially corrosive Aquatic Center environment.
- 1.2.9. Provide sitework related to the project.
- 1.2.10. Master Plan the Aquatic Center to provide for future expansion that may include:
 - 1.2.10.1. A Therapy Pool
 - 1.2.10.2. Community Support Spaces, such as public restrooms, concession stand, breakout spaces, hospitality support, and meeting/instructional areas.
- 1.2. Project Delivery:** The School Corporation intends to complete the project using Progressive Design-Build Project Delivery, in accordance with the Indiana Public Works Design-Build Law (Indiana Code Section 5-30, as amended).
- 1.3. Funding/Authority**
 - 1.3.1. The School Corporation intends to issue First Mortgage Lease-Rental Bonds to fund the project.
 - 1.3.2. The Owner has conducted public hearings for a project with total maximum funding of \$13,100,000.00.
 - 1.3.3. The project completed the 30-day public notification period on March 19, 2024 without taxpayers requesting a petition/remonstrance process and is not subject to any further taxpayer objection.
- 1.4. Access to RFQ | Communications during Proposal Process | Procurement Website**
 - 1.4.1. Legal Notice of Request for Qualifications is published on April 23, 2024. A copy of the Legal Notice of Request for Qualifications is attached to this RFQ as Exhibit A.
 - 1.4.2. As of the date of Publication of Legal Notice of Request for Qualifications noted above, until the completion of the procurement process, all prospective Design-Builders must communicate with the Owner, the TRC and its agents solely through the Design Criteria Developer

Daniel D. Rawlins, RA., DBIA (317) 441-7905
 The Rawlins Group LLC Dan@TheRawlinsGroup.com
 6706 Marmont Circle
 Indianapolis, Indiana 46220

Any Design-Builder who otherwise contacts any employee, agent, TRC member, appointed official, or elected official of the Owner between the initial date of this notification and the award of the Design-Build Contract is subject to disqualification at the sole and complete discretion of the Owner.
 - 1.4.3. This RFQ and other project information is available on the Owner's Website and the Design Criteria Developer's project website. Contact the Design Criteria Developer for access credentials.

SECTION 2: OVERVIEW OF PROJECT

2.1. General

- 2.1.1. The priority of Work items attainable within the project budget will be established jointly between the Owner and Design-Builder as part of the Design-Builder's Step 1 Services Report.

2.2. Project Goals and Objectives

- 2.2.1.** Optimize the quality and scope of work that can be provided within the funding available for the project.
 - 2.2.1.1.** Design-Builder must provide excellent leadership in assisting the Owner to establish priorities and make appropriate trade-off decisions about the Project.
 - 2.2.1.2.** Design-Builder must guide the Project development process through thoughtful consideration of options relating to the function of each programmed area for improvement in order to help the Owner make the most informed decisions about the appropriate design and construction of the project.
 - 2.2.1.3.** As part of Step 1 Services, provide an evaluation of the relative merits of building a new aquatic center vs. renovating the existing aquatic center. Also master plan possible future additions in either scenario. The final Step 1 Report should describe the study and evaluation process and make a recommendation based on the preferred approach.
- 2.2.2.** Establish a collaborative relationship between the Owner and the Design-Build Team to deliver quality design and construction on time and within the Owner's budget.
- 2.2.3.** Design and construct new and remodeled aquatic center and support spaces that are well suited to the PE curriculum and competitive swimming events being delivered in each space.
- 2.2.4.** Design and Construct facilities that are durable, withstanding decades of intense use in a harsh interior environment with minimum need for maintenance and repair.
- 2.2.5.** Design and Construct facilities that are energy efficient, with excellent indoor air quality, acoustics and lighting comfort.
- 2.2.6.** Comply with all applicable Federal, State and Local Building Codes, Ordinances, Legal Constraints, Standards, etc.
- 2.2.7.** Maintain a safe, injury free work site.
- 2.2.8.** Minimize impacts to ongoing community and school operations through close coordination with the Owner.
- 2.2.9.** Provide opportunity for qualified local companies and individuals to participate in the project.
- 2.2.10.** Comply with the Griffith Public Schools Responsible Bidder Policy, attached to this RFQ as Exhibit D
- 2.2.11.** Achieve Substantial Completion of the project in time for the 2025-2026 Girls and Boys Swimming Seasons. This is a goal, not a project requirement.

2.3. Scope of Design-Builder's Services

- 2.3.1.** Design-Builder's services will be provided in a two-phase progressive design-build process. The Owner intends to execute a Progressive Design-Build Contract based on DBIA Document 544 [2022 edition], *Progressive Design-Build Agreement*, and DBIA Document 535 [2022 edition], *Standard Form of General Conditions of Contract Between Owner and Design-Builder*, each edited specifically for this project and to be in compliance with the Indiana Public Works Design-Build Law, IC 5-30. A draft copy of the Agreement and General Conditions of the Contract are attached to this RFQ as Exhibits.
- 2.3.2.** Step 1 Progressive Design-Build Services
 - 2.3.2.1.** Review and confirm the Owner's space program and project performance needs such that they can be accomplished within the Owner's established design-builder's target project budget of \$13,100,000.

- 2.3.2.2.** Prior to beginning design, develop a detailed cost model that accounts for the entire project budget, including design-build services and Owner's project soft costs and Owner's financing costs.
- 2.3.2.2.1.** Develop the cost model in a manner that is easily understood by all stakeholders, allows tracking the impact of design evolution, potential trade-off decisions and advancement of the design in a design-to-budget process, as well as tracking costs as the project moves from design to construction.
- 2.3.2.2.2.** Develop the cost model to a level of detail that is no less than the project narrative described below.
- 2.3.2.2.3.** Develop any contingencies or allowances in collaboration with the Owner. Define the review and approval mechanisms by which contingencies or allowances may be committed to project scope.
- 2.3.2.2.4.** Obtain Owner's concurrence with the Cost Model and accompanying cost control assumptions prior to commencing design work.
- 2.3.2.2.5.** Adjust the cost model as the design is advanced.
- 2.3.2.3.** Provide preliminary design services. Document the design to a level of detail required to achieve understanding by the Owner of the proposed design and scope of the project as well as to allow mutual commitment to a Guaranteed Maximum Price (GMP) or Lump Sum Price for the Design-Build Contract.
 - 2.3.2.3.1.** Design a minimum of two concepts, each with a master plan:
 - 2.3.2.3.1.1.** Renovation/Expansion concept: The project that can be accomplished within the Owner's budget by renovating and expanding the existing aquatic center, with a master plan to accommodate project elements desired by the Owner with future capital projects if they cannot be included in the work of this project.
 - 2.3.2.3.1.2.** New Construction concept: The project that can be accomplished within the Owner's budget if all work is included in new construction. Repurposing the existing aquatic center for another purpose would be included in the future projects master plan for this concept.
 - 2.3.2.3.2.** As a minimum, provide the following drawings:
 - 2.3.2.3.2.1.** Site Plans at the area of the Aquatic Center Addition / Renovation
 - 2.3.2.3.2.2.** Floor Plans of all building renovations, additions and new construction
 - 2.3.2.3.2.3.** Exterior Elevations or renderings of new facilities and building additions
 - 2.3.2.3.2.4.** Building Sections of multi-level structures and wall sections typical of each major condition
 - 2.3.2.3.3.** Provide a complete scope narrative that fully defines the scope, quality and features of the proposed project.
 - 2.3.2.3.3.1.** Narrative to be submitted in the Construction Specifications Institute UniFormat, to a minimum of level 3 detail.
 - 2.3.2.3.3.2.** Identify all building components and systems listed in the UniFormat index at level 3 detail.
 - 2.3.2.3.3.3.** If a particular component or system listed in the index has no work for this project, indicate so by stating "No Work" for that item.

- 2.3.2.3.3.4. If a particular component or system has work as part of this project, provide a description of the work, proposed systems, basis of design products, and other descriptors that will help the Owner understand what is being proposed.
- 2.3.2.3.3.5. The narrative may be developed in greater detail than Level 3 for certain systems at the discretion of the Design-Builder, or specific request of the Owner.
- 2.3.2.3.3.6. The narrative may be supplemented by calculations, equipment cuts, samples or other information that may further inform the Owner's understanding of the scope and quality of the proposal.
- 2.3.2.3.4.** Include a project permit list that identifies all of the permits, governmental agency and utility company submittals, reviews, hearings, variances, waivers, etc. that are required for the project.
 - 2.3.2.3.4.1. Identify the critical submittal dates and review timeframes for each permit, review, etc.
 - 2.3.2.3.4.2. Identify the Owner's role and the Design-Builder's role in obtaining each required permit, review, approval, variance or waiver.
- 2.3.2.3.5.** Provide a detailed schedule for execution of Step 2 Design-Build Services, including but not limited to:
 - 2.3.2.3.5.1. Completion of Design
 - 2.3.2.3.5.2. Permitting
 - 2.3.2.3.5.3. Complete Trade Contractor Engagement, submittals
 - 2.3.2.3.5.4. On-Site Mobilization for Construction and Phasing Plan
 - 2.3.2.3.5.5. Site Preparation, grading and utilities
 - 2.3.2.3.5.6. Building superstructure enclosure, by addition area and/or freestanding buildings
 - 2.3.2.3.5.7. Interior build out of MEP Systems in each area
 - 2.3.2.3.5.8. Interior finishes of each area
 - 2.3.2.3.5.9. Site finishing
 - 2.3.2.3.5.10. Systems Commissioning
 - 2.3.2.3.5.11. Substantial Completion
 - 2.3.2.3.5.12. Closeout
- 2.3.2.3.6.** Provide an executable Step 2 Design-Build Contract, with all terms and conditions fully negotiated, including the Contract Price Exhibit in either the form of a Guaranteed Maximum Price (GMP) or Lump Sum Price.
 - 2.3.2.3.6.1. Provide an exhibit to be attached to the Step 2 Design-Build Contract that establishes in detail the basis for the Contract Price, broken-down in no less detail than the original project cost model.
 - 2.3.2.3.6.2. Provide a summary of differences between the Contract Price and the Pre-Design Cost Model, along with an explanation of the reason for each line-item variation.
- 2.3.2.3.7.** Present all Step 1 Deliverables in a formal written report to the Owner.
 - 2.3.2.3.7.1. Upon receipt of the Step 1 Report, the Owner may take one of three actions:
 - 2.3.2.3.7.1.1. Accept the Step 1 Report as presented and authorize execution of the Step 2 Contract and issuing a Notice to Proceed with the Project.

2.3.2.3.7.1.2. Negotiate further modifications to the Step 1 Report with the Design-Builder prior to accepting a revised report and authorizing execution of the Step 2 Contract and issuing a Notice to Proceed with the project.

2.3.2.3.7.1.3. Cease negotiations with the Design-Builder, and seek to complete the project by other means, which may or may not include commencing negotiations with the 2nd place design-build offeror. If this third option is taken, the Design-Builder shall be due its proposed compensation for preparing the Step 1 Report, but will not receive the Step 2 Contract and Notice to Proceed with the Project.

2.3.2.3.8. Regardless of the Action taken by the Owner, the work products of the Step 1 Report shall belong to the Owner.

2.3.3. Step 2 Progressive Design-Build Services

2.3.3.1. Complete design and permitting for the project.

2.3.3.2. Complete procurement of all goods and services required to construct the project.

2.3.3.3. Mobilize for Construction

2.3.3.4. Monitor Quality Assurance and Quality Control measures during Construction.

2.3.3.5. Establish, implement and maintain a site-specific safety program throughout the Construction and Close-Out phases

2.3.3.6. Complete Construction

2.3.3.7. Achieve Substantial Completion for the entire project

2.3.3.8. Achieve Final Completion for the entire project, including resolution of any non-conforming work issues

2.3.3.9. Provide follow-up for all warranty items that become known prior to 1-year after the Date of Substantial Completion. Provide follow-up on each item until it is fully resolved, regardless of the timeframe of final resolution.

2.4. Project Procurement Schedule

2.4.1. The following is the Project Procurement Schedule. The Owner reserves the right to modify the Project Procurement Schedule via Addenda issued prior to the date set forth for the receipt of Verified Statements of Qualifications.

Date	Event
April 23, 2024	Legal Notice of Request for Qualifications Published
Wednesday 10:00 AM CDT May 8, 2024	Design-Builders' Verified Statements of Qualifications Due. Submit Electronically. See RFQ Section 4.2
Friday 5:00 PM CDT May 10, 2024	Deadline to submit self-reporting forms from Design-Build Entity references
Tuesday 1:00 PM CDT May 14, 2024	TRC Meeting: Shortlisting to most highly qualified, or decide to conduct interviews prior to shortlisting
May 15, 2024	Notify Proposers of shortlisting status. <ul style="list-style-type: none">• If Qualifications phase interviews are to be conducted, notify proposers and adjust the project schedule accordingly; or• Issue Draft RFP to shortlisted proposers

Date	Event
If requested Week of May 20 24, 2024	Pre-Proposal Individual Breakout Meetings with shortlisted Design-Build Teams
May 30, 2024	Last Student Day of 2023-2024 School Year
Tuesday 10:00 AM CDT June 4, 2024	Design-Builder's Proposals Due <ul style="list-style-type: none"> • Qualitative Proposal • Sealed Price Proposal
Wednesday June 5, 2024	TRC Meeting: Qualitative Proposal Interviews and Scoring
June 5, 2024	Open Price Proposals and determine Best Value Proposal
June 13, 2024	School Board Meeting: <ul style="list-style-type: none"> • Select Design-Builder & Authorize Step 1 Progressive Design-Build Services
June 14, 2024	Issue Letter of Intent and Notice to Proceed with Step 1 Progressive Design-Build Services
June-August 2024	Selected Design-Builder meets with Owner's Design Committee per approved Step 1 Schedule
August 8, 2024	School Board Work Session <ul style="list-style-type: none"> • Present draft Step 1 Report to Owner
August 9, 2024 to September 5, 2024	Design-Builder updates Draft Step 1 Report and submits final report for approval
September 12, 2024	School Board Meeting: <ul style="list-style-type: none"> • Approve Step 1 Progressive Design-Build Report, • Execute Design-Build Contract, • Authorize Step 2 Progressive Design-Build Services
Fall 2024	Mobilize for Construction
October 24, 2025	Target date project to be Substantially Complete
October 27, 2025	First allowable date of practice for Girls 2025-2026 Swimming Season
November 10, 2025	First allowable day of practice for Boys 2025-2026 Swimming Season
November 11, 2025	First allowable date for competitive Girls Swimming event
November 24, 2025	First allowable date for competitive Boys Swimming event

2.5. Definitions

- 2.5.1. Business Day:** any day on which the Owner's central office is open for regularly conducted business.
- 2.5.2. Confidential Individual Meetings (Breakout Meetings):** The confidential meeting(s) conducted individually between the Owner and each Shortlisted Offeror after the issuance of the RFP. All Confidential Individual Meetings will be conducted pursuant to the instructions in the Procurement Documents, and all participants will be required to enter into a confidentiality agreement before the meeting.
- 2.5.3. Design-Builder:** The entity with the prime design-build contract with the Owner.
- 2.5.4. Design-Build Team:** All entities listed by the Design-Builder as providing services or construction on the Project. The Design-Builder is not required to list all members of the Design-Build Team in the VSQ. Members of the Design-Build Team may also be referred to as "Team Members."
- 2.5.5. Key Team Member:** Individuals who will be assigned to the Project who play an important role in the design, construction, or management of the Project.
- 2.5.6. Local Participation:** Local is defined as concentric rings of proximity to the project site. Most local is a business entity located within Griffith, Indiana and paying taxes to the School District. Next most local is a business entity located in Lake County, Indiana, or a business entity with employees working on the project that reside in Lake County. Next most local is an Indiana-based business entity located in a county bordering Lake County, Indiana. Next most local is a business entity located within 175 miles of Wadsworth Elementary School.
- 2.5.7. Procurement:** The Owner's process for selecting a Design-Build Team for this Project.
- 2.5.8. Procurement Documents:** All documents issued by the Owner in connection with the Procurement or Project.
- 2.5.9. Projects of Similar Scope and Complexity:** Projects that have achieved Substantial Completion, and that have many or all the following characteristics:
- 2.5.9.1.** Projects of a similar size and budget that include design and construction of classrooms and remodeling/upgrading of existing facilities.
 - 2.5.9.2.** Projects that utilize an integrated delivery method that require strong coordination and integration of the design and construction professionals and early involvement of the construction professionals during design; and
 - 2.5.9.3.** Projects where the Design-Builder was selected prior to the establishment of the final price and schedule and where the Design-Builder collaborated with the Owner to develop the final price and schedule.
- 2.5.10. RFP:** The Owner's Request for Proposals, which will be issued to those Short-Listed Offerors who are selected to proceed to the next phase of this Procurement.

SECTION 3: PROCUREMENT PROCESS

3.1 General Information

3.1.1 Compliance with Legal Requirements

This Procurement will be in accordance with the Indiana Public Works Design-Build Law, Indiana Code Section 5-30, as amended, and all applicable federal, state, and local laws, as well as Owner policies and procedures.

3.1.2 Conflict of Interest and Communications with the Owner

- 3.1.2.1.** Consultants who assist the Owner in the RFQ/RFP preparations may not propose or participate on any Design-Build Team on this Project.

3.1.2.2. Members of the Owner's Technical Review Committee (TRC) may not propose or participate on any Design-Build Team on this Project.

3.1.2.3 Offerors are required to conduct the preparation of their VSQs with professional integrity and free of lobbying activities. Communication with the Owner regarding this Project shall be via email or regular mail only and directed to the Owner's Design Criteria Developer noted in paragraph 1.3.2 above.

Do not communicate about the Project or the Procurement with any other Owner employees, TRC members, representatives, or consultants. Any verified allegation that a responding Offeror or Team Member or an agent or consultant of the foregoing has made such contact or attempted to influence the evaluation, ranking, and/or selection of short-listed Offerors may be the cause for Owner to disqualify the Offeror team from submitting an VSQ or Proposal, to disqualify the Team Member from participating in the Procurement, and/or to discontinue any further consideration of such Offeror or Team Member.

The members of the Owner's Technical Review Committee (TRC) are:

Jessi Adduci	<i>Griffith Public Schools School Board President</i>
Terri Chance	<i>Griffith Public Schools Chief Financial Officer</i>
John Dudlicek, P.E.	<i>Community Member Civil Engineer</i>
Daniel Rawlins, RA, DBIA	<i>Design Criteria Developer Architect</i>
Kathy Ruesken	<i>Griffith Public Schools School Board Secretary</i>
Georgia Smith	<i>Griffith Public Schools Supervisor of Buildings & Grounds</i>
Dan Young	<i>Griffith Public Schools Director of Safety & Security</i>

3.1.2.4 Following the Owner's approval of the Shortlisted Offerors, the Owner anticipates that certain communications and contacts will be permitted. The RFQ, RFP and/or other written communications from Owner will set forth the rules and parameters of such permitted contacts and communications. To the extent any Offeror intends at any time to initiate contact with the general public regarding the Project, the nature of such intended contact and the substance thereof must be approved in writing by the Owner prior to the commencement of such activities.

3.1.3 Expenses of Offeror and Stipend

3.1.3.1 The Owner accepts no liability for the costs and expenses incurred by firms in responding to this Procurement. Each Offeror that enters into the Procurement process shall prepare the required materials, the VSQ, and the Proposal at its own expense and with the express understanding that the Offeror cannot make any claims whatsoever for reimbursement from the Owner for the costs and expenses associated with the process, even in the event the Owner cancels this Project or rejects all Proposals.

3.1.3.2 Due to the simplicity of RFP submittals required by the Owner for this Project, the Owner will not be paying a stipend to the Short-Listed Offerors submitting responsive Proposals to the RFP that remain in competition until the point of Contract award but who are not awarded the Design-Build Contract.

3.1.4 Public Disclosure

3.1.4.1 All documentation and submittals provided to the Owner may be considered public documents under applicable laws and may be subject to disclosure. Offerors recognize and agree that the Owner will not be responsible or liable in any way for any losses that the Offeror may suffer from the lawful disclosure of information or materials to third parties.

3.1.4.2 Any materials requested to be treated as confidential documents, proprietary information, or trade secrets must be clearly identified and readily separable from the balance of the VSQ or Proposal. Such designations will not necessarily be conclusive, and Offerors may be required to justify why such material should not, upon written request, be disclosed by the Owner under the applicable public records act.

3.1.4.3 The Owner will endeavor to provide at least two (2) Business Days' notice to the Proposer of a public records request for material submitted pursuant to this Procurement. Offerors must respond to the notice in writing with any objection to the production of the documents within two (2) Business Days of receipt of the notice, or the requested documents will be released in accordance with the Owner's policy for responding to such requests.

3.1.5 Protest Procedures

The protest procedures applicable to the Procurement are as follows:

- a. All Protests will be directed, in writing, to the Owner's Design Criteria Developer

Daniel D. Rawlins, RA, DBIA
The **Rawlins Group** LLC
6706 Marmont Circle
Indianapolis, Indiana 46220
dan@therawlingroup.com

- b. Any Protest based on the form or content of the Procurement documents, which is or should have been apparent prior to the date established for submittal of the VSQ or Proposal, will not be considered if received by the person set forth above later than seven (7) calendar days prior to the specified submittal date.
- c. Protests based on any other circumstances must be received by the person noted above within five (5) business days from the date the Offeror or Short-Listed Offeror was notified of any selection decision; however, in no event will a protest be considered if all VSQ or Proposals are rejected or if the Protest is received after award of the Contract.
- d. To be considered, a Protest shall be in writing and shall include: (1) the name, street address, and email address of the aggrieved party; (2) the name of the Project for which the Protest is submitted; (3) a detailed description of the specific grounds for the Protest and any supporting legal and/or factual documentation; and (4) the specific ruling or relief requested.
- e. In computing any period of time prescribed by this procedure, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included. Any document received after the close of regular business hours (7:30 a.m. to 4:30 p.m., Eastern Time) shall be deemed received the following Business Day.
- f. The Owner's Design Criteria Developer will initially review the Protest, and may upon review: (1) Act upon the Protest to grant the ruling or relief requested; (2) Deny the Protest on the basis of information provided in the Protest if the facts do not support validity of the Protest; or refer the Protest for review by the School Board.
- g. The decision of the Owner's Design Criteria Developer, if not reviewed by the School Board may be appealed to the School Board. The decision of the School Board is final and binding.
- h. By submitting a VSQ and/or Proposal in response to this Procurement, the Offeror acknowledges that it has reviewed and acquainted itself with the protest procedures herein and agrees to be bound by such procedures as a condition of submitting an VSQ and/or Proposal.

3.2 Owner Rights and Procurement Conditions

- 3.2.1** The Owner reserves without limitation, and may exercise at its sole discretion, the following rights and conditions with regard to this Procurement process:
- 3.2.1.1** To cancel the Procurement process and reject any and all VSQs and/or Proposals;
 - 3.2.1.2** To waive any informality or irregularity;
 - 3.2.1.3** To revise the Procurement Documents and Schedule via an Addendum;
 - 3.2.1.4** To reject any Offeror that submits an incomplete or inadequate response or is not responsive to the requirements of this RFQ;
 - 3.2.1.5** To require confirmation of information furnished by an Offeror, require additional information from an Offeror concerning its VSQ or Proposal and require additional evidence of qualifications to perform the work described in this RFQ or a subsequent RFP;
 - 3.2.1.6** To seek or provide clarifications, or conduct discussions, at any time, with one or more Offerors;
 - 3.2.1.7** To contact references who are not listed in the Offeror's VSQs and investigate statements on the VSQs and/or qualification of the Offeror and any firms or individuals identified in the VSQ;
 - 3.2.1.8** To consider Alternative Technical Concepts and/or approaches identified by Offerors;
 - 3.2.1.9** To take any action affecting the RFQ process, the RFP process, or the Project that is determined to be in the Owner's best interests; and
 - 3.2.1.10** Approve or disapprove of the use of particular Subconsultants, Subcontractors, or Key Team Members and/or substitutions and/or changes to Subconsultants, Subcontractors, or Key Team Members from those identified in the VSQ or Proposal. Such approval or disapproval shall not be unreasonably exercised.

3.3 Outline of the Procurement Process

3.3.1 Request for Qualifications (RFQ).

- 3.3.1.1** This RFQ invites firms to submit VSQs describing in detail their technical, management, and financial qualifications to design, permit, construct, commission, and close out the Project. The issuance of this RFQ is the first phase of the Procurement process.
- 3.3.1.2** Offerors will submit their VSQ and other deliverables required pursuant to this Procurement at the time and in the manner set forth in this RFQ and any Addenda. Offerors will provide a complete and accurate response to the RFQ Questionnaire found in Exhibit B, attached to this RFQ. The Owner will not consider VSQ or other deliverables that are submitted after the Time set forth in the RFQ. Offerors are solely responsible for making sure that the Owner receives the VSQ in a timely fashion.
- 3.3.1.3** The Owner will evaluate the information submitted by each Offeror to:
 - 3.3.1.3.1** Determine whether the Offeror meets the mandatory minimum requirements identified as prerequisites in paragraph 3.4.1 of this RFQ.
 - 3.3.1.3.2** Evaluate the VSQ provided by each Offeror pursuant to the evaluation system identified as weighted evaluation criteria in paragraph 3.4.2 of this RFQ.

- 3.3.1.4** Any Offeror who fails to meet the mandatory minimum requirements set forth in this VSQ will be deemed non-responsive and will not be considered further by the Owner in this Procurement.
- 3.3.1.5** The Owner's Technical Review Committee (TRC) will conduct the evaluations of all VSQs that meet the mandatory minimum requirements. The TRC may elect to conduct the evaluation solely on the basis of the material contained in the VSQ, or may elect to conduct Qualifications phase interviews with some, or all, of the Design-Build Entities submitting a VSQ.
 - 3.3.1.5.1** Should the TRC decide to conduct Qualifications Phase Interviews, all respondents will be notified by the close of business on the date cited for such notification in section 2.4.1 of this RFQ.
 - 3.3.1.5.2** If Qualification Phase Interviews are conducted, the project schedule will be adjusted accordingly.
- 3.3.1.6** All VSQs will be evaluated in accordance solely with the criteria established in the RFQ and any Addenda issued thereto. The evaluation criteria are listed below, including the relative weight or importance given to each criterion.
- 3.3.1.7** The Owner intends that not more than three responsive and responsible firms will be selected as Short-Listed Offerors. Only those firms that have been short-listed will be invited to submit a Proposal in response to the RFP.
- 3.3.1.8** The results of the VSQ evaluations will not directly be carried forward and included in the final evaluation and selection during the RFP phase. The same evaluation criteria, or some similar to them may be included in the RFP evaluation criteria, and Short-Listed Offerors will be re-evaluated according to the RFP evaluation criteria, informed by the interaction with each Short-Listed Offeror during the RFP phase.
- 3.3.1.9** Design-Build Team Members and individual Key Team Members will be evaluated as a basis for selection. Once shortlisted, neither the Offeror nor Team Members that are submitted to the Owner as part of the VSQ or Proposal may substitute a listed consultant, subconsultant or subcontractor, or any individual listed as a Key Team Member.

3.3.2 Request for Proposal (RFP), Confidential Individual Meetings & Selection Process

- 3.3.2.1** The Owner will first issue the RFP to the Short-Listed Offerors in draft form. The RFP will further explain the evaluation criteria, Proprietary Meetings, and other elements of the RFP process.
- 3.3.2.2** Prior to the submission date for Proposals, written questions will be accepted as defined in the RFP.
- 3.3.2.3** The Owner will conduct at least one set of Confidential Individual Meetings with each Short-Listed Offeror as described in the RFP. The format of the Confidential Individual Meetings will be designed to allow the Short-Listed Offerors to ask the Owner questions regarding the Project and the Owner's goals and concerns. All information from the Design-Build Teams provided in the Confidential Individual Meetings will remain confidential during the procurement process; however, see Section 3.15 with respect to the potential public disclosure of information provided during the procurement pursuant to any applicable public records act. The Proprietary meetings will also provide an opportunity for direct interaction between the Short-Listed Offeror and the Technical Review Committee.

- 3.3.2.4** A Short-Listed Offeror may submit suggested proposed changes to the Contract provisions or Alternative Technical Concepts no later than the date set forth in the Schedule. The Owner, at its sole discretion, may revise the RFP, the contract provisions, and/or program documents and issue the Final RFP to all Short-Listed Offerors.
- 3.3.2.5** Short Listed Offerors will submit a Qualitative Proposal and Price Proposal in accordance with the Procurement schedule.
- 3.3.2.5.1** The Qualitative Proposal will define the Offeror's approach to Progressive Design-Build Delivery of the project, including processes, staffing, work plan and schedule.
- 3.3.2.5.2** The Price Proposal will be submitted in a separate, sealed envelope from the Qualitative Proposal and will include an affirmation of the ability of the Design-Builder to deliver the project within the Owner's maximum project budget as well as the basis for establishing a guaranteed maximum price for the project. The Price proposal will also include a price for the Design-Builder to provide Step 1 Services. The cost of Step 1 Services will be part of the Design-Builder's GMP to be established prior to the commencement of 2 Services.
- 3.3.2.6** The Owner's Design Criteria Consultant will initially review each Qualitative Proposal for compliance with the requirements of the RFP and issue a professional opinion of compliance.
- 3.3.2.7** Each member of the Owner's TRC will certify that no conflict of interest exists between any TRC Member and any Offeror.
- 3.3.2.8** The Owner's Technical Review Committee will review and evaluate each Qualitative Proposal Without knowledge of the contents of the Price Proposal.
- 3.3.2.8.1** Each Offeror will have the opportunity to present and discuss its Qualitative Proposal to the Owner's TRC in a confidential Qualitative Proposal Interview.
- 3.3.2.8.2** The Owner's TRC will meet in a public session to assign a written composite score to each Qualitative Proposal, in accordance with the evaluation criteria published in the RFP.
- 3.3.2.9** The Owner will publicly open and read aloud the Price Proposals at the date, time and location Identified in the RFP.

3.3.3 Basis for Award of Progressive Design-Build Contract

- 3.3.3.1** The Price Proposal received from each Offeror will be divided by the written composite score assigned by the TRC to each Offeror's Qualitative Proposal to arrive at an Adjusted Price Score for each Offeror. The calculation will be in accordance with IC 5-30-7-5.
- 3.3.3.2** The Owner will award a two-phase Progressive Design-Build Contract to the Design-Builder offering the Best Value Proposal, defined by IC 5-30-7-6 as the Offeror with the lowest Adjusted Price Score. In accordance with IC 5-30-7-8, the award of contract is subject to successful final negotiation of terms and conditions of the contract.
- 3.3.3.3** The Owner is not required to award the contract to the Offeror submitting the lowest Price Proposal, per IC 5-30-7-6.
- 3.3.3.4** The Owner will provide written notification to all Short-Listed Offerors of the selection decision and make a selection summary available to all Offerors at the conclusion of the Procurement.

3.3.3.5 The Owner reserves the right to not issue a Design-Build Contract or to suspend or cancel the Project for any reason or no reason at all.

3.3.4 Design-Builder's Services under the Progressive Design-Build Contract

3.3.4.1 Upon Award of Contract, the Owner intends to enter into a two-phase Progressive Design-Build Contract with the selected Design-Builder that is based on DBIA Document 544,(as amended for IC 5-30), Progressive Design-Build Agreement for Indiana Public Works Projects Per IC 5-30, and DBIA Document 535, General Conditions of the Contract Between Owner and Design-Builder, as specifically amended for this Project. A draft copy of the Contract and General Conditions are attached to this RFQ as Exhibits E and F.

3.3.4.2 The services required of the Design-Builder in each phase of the Progressive Design-Build Contract are further described in Section 2.3 of this RFQ.

3.3.4.3 By submitting a proposal pursuant to the RFP, the Offeror represents and warrants that the Project Goals, Objectives, Scope, Schedule and Budget set forth in the RFP are realistically attainable through a progressive design-build contract.

3.3.3.4 By submitting a Proposal pursuant to the RFP, the Offeror represents and warrants that it will enter into the first phase of the progressive design-build contract provided by the Owner subject to the terms set forth in its Proposal.

3.4 Qualifications Phase Criteria for Ranking of Offerors

3.4.1 Prerequisites - Pass/Fail Criteria

VSQs will initially be reviewed by the Design Criteria Consultant for compliance with the minimum criteria. The Design Criteria Consultant may seek clarifications or additional information from Offerors prior to completing the initial analysis. The following evaluation criteria will be reviewed on a pass/fail basis:

3.4.1.1 Complete response to the RFQ Questionnaire, found as Exhibit B, attached to this RFQ, and a response that is also in accordance with IC 5-30-5-3.

3.4.1.2 Design-Build Entity submitting the VSQ is legally entitled to provide services in Indiana and is listed as holding a Certificate of Good Standing by the Indiana Secretary of State.

3.4.1.3 Design-Build Entity submitting the VSQ has assembled a team with the licenses, Registrations and credentials necessary to design and construct the project.

3.4.1.4 Design-Build Entity submitting the VSQ has adequately demonstrated the capacity to provide a Performance and Payment Bond of not less than \$13,000,000 from an acceptable surety.

3.4.1.5 Design-Build Entity submitting the VSQ has adequately demonstrated the capacity to provide all of the required insurance coverage identified in Section 4.6 of this RFP from acceptable insurance carriers.

3.4.1.6 Design-Build Entity submitting the VSQ has established and maintained a Safety Program that results in a safety record below industry averages for the three (3) previous years (or has adequately explained a higher than average record) according to the following metrics:

- EMR: Less than 1.0
- TCIR/TRIR: Less than 2.8 [per US Bureau of Labor Statistics 2019 Data]
- DART: Less than 1.1 [per US Bureau of Labor Statistics 2019 Data]

- 3.4.1.7 Design-Build Entity submitting the VSQ has a written plan for Employee Drug Testing, and will cause all team members to maintain a similar plan.
- 3.4.1.8 Design-Build Entity submitting the VSQ has demonstrated compliance with the Federal E-Verify Program and will be able to sign the Owner's E-Verify Affidavit if awarded the project.
- 3.4.1.9 Design-Build Entity submitting the VSQ has a written corporate non-discrimination plan that complies with all federal, state and local requirements.
- 3.4.1.10 Design-Build Entity submitting the VSQ has program in place to perform Background Checks on all of its team members who will be working on the Project Site.
- 3.4.1.11 Design-Build Entity submitting the VSQ has no record of unacceptable past failure to perform on a similar project, as evidenced by reference checks.

3.4.2 Weighted Evaluation Criteria

VSQs that pass the prerequisite criteria identified in paragraph 3.4.1 of this RFP will be further evaluated by the Owner's Technical Review Committee according to the following weighted evaluation criteria. The weighting is assigned by the possible points associated with each criterion:

3.4.2.1 Design-Build Entity's Team Qualifications | 35 possible points

- 3.4.2.1.1 Quality and capabilities of the Design-Build Entity's key management staff assigned to the Project | **0-15 Possible Points**
- 3.4.2.1.2 Composition and completeness of the Design-Build Entity's proposed project team | **0-10 Possible Points**
- 3.4.2.1.3 Experience of the Design-Build Entity's team in the design and construction of projects of similar type, size, scope and schedule, using any project delivery method | **0-10 Possible Points**

3.4.2.2 Design-Build Entity's Past Performance and the Ability to Perform 45 possible points

- 3.4.2.2.1 Demonstrated success of the Design-Build Entity's team providing ***integrated project delivery services together*** previously on similar design-build projects **0-15 Possible Points**
- 3.4.2.2.2 Demonstrated capacity to perform the Work and process to positively engage qualified local companies in the Project. | **0-15 Possible Points**
- 3.4.2.2.3 Demonstrated ***individual successful past performance*** of members of the Design-Build Entity's team on similar projects using the design-build project delivery method. | **0-15 Possible Points**

3.4.2.3 Design-Build Entity's Managerial Resources and Management Plan 20 possible points

- 3.4.2.3.1 Design-Build Entity's management plan to ensure a successful project, including Project safety and maintenance of campus operations during construction. **0-5 Possible Points**
- 3.4.2.3.2 Design-Build Entity's management plan to achieve excellent integration and cohesion of the entire project team | **0-5 Possible Points**

- 3.4.2.3.3 Design-Build Entity's management plan to ensure that the design phases of the Project includes the "voice" of trade contractors, and that the construction phase of the project is adequately staffed with a highly qualified and appropriately trained workforce. | **0-5 Possible Points**
- 3.4.2.3.4 Design-Build Entity's management plan and resources to achieve the highest possible Quality Assurance and Quality Control in both design and construction of the project. | **0-5 Possible Points**

SECTION 4: Verified Statement of Qualifications (VSQ) Documentation Requirements

4.1. VSQ Format Requirements

The VSQs shall comply with the following format requirements:

- 4.1.1 Follow the format outlined in the "*Qualification Questionnaire for Design-Build Services*", attached to this RFQ as Exhibit B.
 - 4.1.1.1 Provide VSQ submittals electronically in .pdf format.
 - 4.1.1.2 Arrange VSQ Documents as 8.5" x 11" pages, arranged in portrait format.
 - 4.1.1.2 Provide dividers between each major heading in the Questionnaire. Major Headings in the Questionnaire are indicated in **BOLD-FACED TYPE AND ALL CAPITAL LETTERS**.
 - 4.1.1.3 Re-state each item in the Questionnaire, exactly as it is written, including the outline reference number. Follow the question with the appropriate response. Check-Box options in the Questionnaire do not need to be repeated. The appropriate choice may be part of the response.
 - 4.1.1.4 Provide a graphic layout of the submittal that makes it easy for the reader to distinguish between Questionnaire items and responses.
 - 4.1.1.5 Some items in the Questionnaire cite a specific paragraph from the Indiana Public Works Design-Build Law (e.g. "IC 5-30-4-3(b)") These items **must** have a direct response, as they are required for a Design-Builder's VSQ submittal by law. Respond directly to the item, even though the follow up questions below address parts of the same topic.

4.2 Submittal of VSQ via E-Mail:

E-Mail the submittal to the Owner and Owner's Design Criteria Developer as follows:

Leah Dumezich

Superintendent

Griffith Public Schools

ldumezich@griffith.k12.in.us

Daniel Rawlins

Design Criteria Developer

The Rawlins Group, LLC

dan@therawlinsgroup.com

- 4.2.1 The Owner's e-mail system will accept documents sized up to 10Mb. Larger documents must be sent via download link to a file transfer website.
- 4.2.2 The date and time stamp on the Superintendent's e-mail noted above shall be the official time of receipt of VSQ, and must be no later than the date and time stated in this RFQ and any addenda.

4.3 Self Reporting Reference Forms:

- 4.3.1** Design-Builders are responsible to ensure that the self-reporting forms from the references the design-builder has identified are e-mailed to the Owner's Design Criteria Developer by the date and time set forth in this RFQ.
- 4.3.2** Failure of references to submit self-reporting forms by the deadline will not be a basis for disqualification of the Design-Builder, but may be reflected in TRC scoring for criteria related to Design-Builder's project management effectiveness.

4.4 Oath and Affirmation

- 4.4.1** Provide a notarized Oath and Affirmation swearing that the facts and information included in the Design-Builder's Verified Statement of Qualifications are true and correct. An electronic version of this form is acceptable for the submittal. The Design-Builder must be able to provide an original document upon request from the Owner.
- 4.4.2** The form of the statement is found in Part 1 of the Qualification Questionnaire for Design-Build Services.

4.4 Team Identification

- 4.4.1** Indiana Code Section 5-30-5-3(b)(1) requires the Design-Builder's Verified Statement of Qualifications to include "A listing of all prime contractors and architectural and engineering firms that participate financially as part of the team." Part 3 of the Qualification Questionnaire for Design-Build Services includes specific questions about the entire project team and when each entity on the team will become engaged in the Design-Build Process.
- 4.3.2** The Owner desires that Most Highly Qualified Design-Build Teams will include early engagement of all key team members to drive both integration and cohesion of the team. Research has shown that projects with higher levels of team integration and team cohesion achieve better project outcomes. The Owner also believes a well-trained and qualified labor force committed to the project team and engaged in the total process will enhance project outcomes.
- 4.3.3** The Most Highly Qualified Design-Builders will be able to demonstrate the following in the Verified Statement of Qualifications:

4.3.3.1 Team Integration

The degree to which team members from separate organizations and disciplines are engaged prior to the start of conceptual design in collaborative, integrated activities, such as:

- Joint goal setting
- Cross-disciplinary design
- BIM Execution planning
- Increased information sharing
- Co-Location for increased team interaction

4.3.3.2 Team Cohesion

The degree to which individual team members have shared task commitment, group pride & interpersonal alignment, including:

- Commitment to shared goals
- High levels of positive team chemistry
- Exemplary communication
- Rock-solid trust of one another

- 4.3.4** While the Questionnaire allows opportunity for Design-Build Teams to commit to certain trade partners after the submittal of the Verified Statement of Qualifications, the Owner believes that early team integration that drives the optimization of the design and construction process will accomplish more to achieve Best Value for the project than will selecting trade partners on price alone after the design is completed. Design-Builders that propose to select trade partners primarily on the basis of price (low bid mentality) will not be regarded as highly as those teams that seek a high level of team integration and team cohesion.

4.4 Professional Licensing and Certification

- 4.4.1** Design-Builder must verify that they employ or are teaming with individuals and entities that are licensed, registered, certified and otherwise qualified in good standing to provide the design and construction services required to complete an Indiana Public Works Project. An outline of the required submittal information is found in Part 3 of the Qualification Questionnaire for Design-Build Services.
- 4.4.2** The Owner also seeks verification of project team qualifications that extend beyond professional or trade licensure. In addition to any validation or disclosure required by this RFQ, Most Highly Qualified Design-Build Teams will be able to demonstrate that individuals with particular knowledge and experience in Design-Build project delivery are serving in meaningful roles on the project team.
- 4.4.3** The Owner encourages the use of Design-Build Institute of America (DBIA) Universal Best Design-Build Practices. Design Build Team members in a meaningful role on the Project who carry a "DBIA Professional Designation" will be considered an asset in the selection process.

4.5 Payment and Performance Bonding

- 4.5.1** In accordance with IC 5-30-8-4, the Design-Builder that is awarded the Design-Build Contract must furnish performance and payment bonds for the portion of the Project related to construction. Bonding is not required for the portion of the Design-Build Contract related to design.
- 4.5.2** For the purpose of evaluating the capacity of the Design-Build Entity to meet this requirement, at the RFQ phase, the Design-Builder is required to provide a letter from surety documenting the ability to provide Performance and Payment Bonding of at least thirteen million dollars (\$13,000,000).
- 4.5.3** The letter must be less than sixty (60) days old and written by a Surety Company authorized to do business in Indiana and is listed in the U.S. Department of Treasury's Circular 570, latest revision, and whose underwriting limitation is at least one hundred twenty million dollars (\$120,000,000). This also excludes any Surety delisted subsequent to the most recent publication of Circular 570.
- 4.5.4** The letter must specifically identify the Design-Build Entity and affirm that the Design-Build Entity has the capacity to obtain Performance and Payment Bonding for the project, stating the Design-Build Entity's single project bonding ability and its aggregate bonding ability.
- 4.5.5** Performance and Payment Bonding is not required as part of the Verified Statement of Qualifications. The Design-Builder that is awarded the Design-Build Contract will be required to provide Bonds upon execution of the Design-Build Contract. The Bonds will be made in favor of the Owner, using the DBIA series of Bond Forms for an amount not less than 100% of the value of the Construction Portion of the Design-Build Contract.
- 4.5.6** The Surety on the Performance and Payment Bonds shall not be released earlier than one (1) year after the date of Final Completion of the Project.

4.6 **Liability Insurance**

- 4.6.1** The Design-Builder must document existing insurance coverage in the following minimum amounts and not less than Indiana statutory requirements. Coverage must be from established insurance carriers with AM Best Rating of at least A- (Very Good). The coverage must be free from any exclusion related to the Design-Build delivery method. It will be a condition of the Design-Build Contract that the Design-Builder must keep the coverage in place for at least three (3) years after the Date of Substantial Completion.
- 4.6.2** If the Design-Builder is currently carrying coverage less than the specified amounts, a letter from the Design-Builder's insurance carrier affirming the Design-Builder's ability to obtain the required coverage, along with a statement by the Design-Builder of its willingness to obtain the required coverage will also meet the documentation requirements of the RFQ.
- 4.6.3** Provide Certificates of Insurance, as outlined in Part 4 of the Qualification Questionnaire for Design-Build Services that document the following minimum insurance coverages.

Worker's Compensation and Liability Insurance

Employer's Liability:	\$1,000,000
<i>Bodily Injury by Accident</i>	<i>each accident</i>
Employer's Liability:	\$1,000,000
<i>Bodily Injury by Disease</i>	<i>policy limit</i>
Employer's Liability:	\$1,000,000
<i>Bodily Injury by Disease</i>	<i>each employee</i>

Commercial General Liability Insurance (Occurrence Based)

General Aggregate Limit (per job):	\$2,000,000
<i>Other than products/completed operations</i>	
Products / Completed Operations:	\$1,000,000
Personal & Advertising Injury Limit:	\$1,000,000
Each Occurrence Limit:	\$1,000,000
<i>completed operations</i>	
Damage to rented premises:	\$100,000
Medical Expenses (<i>any one person</i>):	\$10,000

Professional Services Liability Insurance (Errors + Omissions)

Per Claim:	\$1,000,000
<i>Minimum 3-year extended reporting or continuation of coverage for 3 years following Date of Final Completion.</i>	

Comprehensive Auto Liability Insurance

Single Limit – each accident:	\$1,000,000
<i>Owner, Hired & Non-Owned</i>	
<i>Bodily Injury & Property Damage</i>	

Pollution Liability Insurance

Single Limit – Each Occurrence:	\$1,000,000
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Umbrella Excess Liability Insurance

Each Occurrence & Aggregate:	\$10,000,000
<i>Must provide umbrella coverage for all forms of insurance listed above.</i>	

- 4.6.4** It is not necessary that the Certificates of Insurance be endorsed for the Owner as additional insured at this time. Endorsements will be required on the Certificates of Insurance provided by the Selected Design-Builder after the Progressive Design-Build Contract is executed.

4.7 Safety Program and Safety Record

4.7.1 All phases of construction are to be governed, at all times, by applicable provisions of Indiana and Federal Law(s), including, but not limited to, the latest Amendments of the following statutes:

- Williams-Steiger Occupational Safety and Health Act of 1970, Public Law 91-596.
- Part 1910 – Occupational Safety and Health Standards, Chapter VIII of Title 29, Code of Federal Regulations.
- Part 1926 – Safety and Health Regulations for Construction, Chapter XIII of Title 29, Code of Federal Regulations.

4.7.2 Design-Builder must document, as a minimum requirement, an on-going active formal safety plan and an established safety record comparable to the U.S. Department of Labor's Bureau of Labor Statistics national averages for Design-Builder's SIC and NAICS codes.

4.7.3 For the purpose of evaluation of the Design-Build Entity's safety record, submit the data requested in Part 4 of the Qualification Questionnaire for Design-Build Services.

SECTION 5: LIST OF ATTACHMENTS

- A. Legal Notice of Request for Qualifications
- B. Verified Statement of Qualifications Questionnaire
- C. Professional Reference Form
- D. Griffith Public Schools Responsible Bidder Policy
- E. Form of Agreement
- F. Form of General Conditions of the Contract



Exhibit A

Legal Notice of Request for Qualifications

This document is published in local newspapers on April 23, 2024 and April 30, 2024

REQUEST FOR QUALIFICATIONS FOR PROGRESSIVE DESIGN-BUILD CONTRACT

Notice is hereby given that Griffith Public Schools, Lake County, Indiana (the "School Corporation"), requests any design-builder (as defined in Indiana Code Section 5-30-1-4, as amended) which is interested in being considered by the School Corporation as a potential design-builder with respect to the design, construction and equipping of the 2024 Griffith Jr./Sr. High School Aquatic Center Renovation/Expansion Project (the "Project"), located at:

Griffith Jr./Sr. High School
600 North Wiggs Street | Griffith IN 46319

all as described in more detail in the Request for Qualifications, dated April 23, 2024 (the "RFQ") to submit Verified Statements of Qualification and Proposals as set forth in Indiana Code Section 5-30-5-1(c), as amended.

All responses to the RFQ, in the form of a Verified Statement of Qualifications (a "VSQ") shall be received until 2:00 PM, Central Daylight Saving Time on Wednesday, May 8, 2024 at the Administrative Office of Griffith Public Schools, Attention: Leah Dumezich, Superintendent, 602 N. Raymond, Griffith, Indiana 46319.

Design-Builders may submit responses electronically via e-mail to ldumezich@griffith.k12.in.us with a copy to dan@therawlinsgroup.com

Each response to the RFQ must be in accordance with the RFQ, all of which is incorporated herein by reference, and all of the provisions of Indiana Code 5-30, as amended and as applicable to the RFQ and the RFQ process, and must be submitted by a person or entity satisfying the definition of a design-builder or team, each as defined in Indiana Code 5-30-1, as amended (each a "Design-Builder")

For a copy of the RFQ, contact the School Corporation's Design Criteria Developer (the "DCD"):

Daniel D. Rawlins, RA, DBIA
The Rawlins Group, LLC
6706 Marmont Circle
Indianapolis, Indiana 46220
e-mail: dan@therawlinsgroup.com
telephone: (317) 441-7905.

As of the date of publication of this notice, all communications between the School Corporation and any prospective Design-Builder is to be through the School Corporation's Design Criteria Developer.

A Pre-Submittal Conference will not be conducted for this project. Any Design-Builder with questions about the project and the RFQ process should contact the School Corporation's Design Criteria Developer.

The RFQ contains, but is not limited to, the following: (a) A description of the Project, including the size and function of the facilities that are the subject of the Project, the approximate budget and the anticipated schedule; (b) A description of the selection process, including the process for communications between the potential Design-Builders and the School Corporation, including, but not limited to the Griffith Public Schools Technical Review Committee (the "TRC") and any agent of either the School Corporation or the TRC, the schedule for the selection process, the TRC procedure and a description of submission requirements; (c) The general qualifications for prospective Design-Builders, including appropriate experience with similar projects, team experience with design-build, organizational resources and depth of the Design-Builder, the prospective Design-Builder's history of contracting with or hiring minority business enterprises and women's business enterprises, the prospective Design-Builder's litigation and disputes history and the prospective Design-Builder's experience in dealing with bonding authorities; (d) The Project specification qualifications for prospective Design-Builder, including: The prospective Design-Builder's experience with the facilities or building types that are the subject of the Project, the prospective Design-Builder's performance record, including quality, schedule and cost of each project, the prospective Design-Builder's proposed team composition, including the team's past experience in working together, the prospective Design-Builder's proposed key project personnel and the prospective Design-Builder's client references; and (e) A description of the qualifications statement evaluation process, which includes: An established rating system that complies with Indiana Code Section 5-30-5-4, as amended and Indiana Code Section 5-30-5-5, as amended.

All of the information set forth in the RFQ as described in the paragraph above are incorporated into this notice by reference. In addition to the foregoing information, the response submitted by prospective Design-Builders must include all the information required by Indiana Code Section 5-30-5-3, as amended.

After reviewing and evaluating all the responses to the RFQ received by the date and time set forth above, the TRC shall identify and recommend to the Board the Design-Builder that is Highly Qualified and provides the Best Value proposal to the taxpayers of the School Corporation. The TRC or the School Corporation reserves the right to reject for any reason and for no reason at all any and all responses received to the RFQ and to be the sole judge of the value and merit of the responses offered. The School Corporation reserves the right to terminate for any reason and for no reason at all this Project prior to awarding the design-build contract,

Dated: April 23, 2024

GRIFFITH PUBLIC SCHOOLS
LAKE COUNTY, INDIANA
By: Leah Dumezich
Superintendent

[TO BE PUBLISHED TWO (2) TIMES, ON April 24, 2024 and APRIL 30, 2024
IN AT LEAST ONE NEWSPAPER PUBLISHED OR OF GENERAL CIRCULATION
IN THE SCHOOL CORPORATION and PUBLISHED ON SCHOOL CORPORATION WEBSITE]



Exhibit B

Qualifications Questionnaire

Griffith Public Schools

2024 Griffith Jr./Sr. High School

Aquatic Center Renovation/Expansion Project

Qualification Questionnaire for Design-Build Services

Please note: Any question that includes a legal citation reference requires a direct response in order to be in compliance with the Indiana Public Works Design-Build Law [IC 5-30].

TAB 1: DESIGN-BUILDER IDENTIFICATION

1.1. Date of Submittal of Verified Statement of Qualifications

1.2. Legal Name of Design-Build Entity

- 1.2.1. d/b/a Name *(if different than legal name)*
- 1.2.2. Street Address
- 1.2.3. City, State, Zip Code
- 1.2.4. Federal ID Number
- 1.2.5. Website URL

1.3. Identification of Primary Contact Person

- 1.3.1. Name
- 1.3.2. Title
- 1.3.3. Office Telephone Number
- 1.3.4. Cellular Telephone Number
- 1.3.5. E-mail address

1.4. Provide a print-out copy of the Indiana Secretary of State's online records, current within thirty (30) days of the date of submittal of Design-Builder's Verified Statement of Qualifications, indicating the Design-Builder is certified as being in good standing and able to do business in the State of Indiana.

- 1.4.1. Provide a listing of all former business names of the Design-Build Entity.

- 1.5. Verification: Provide a Notarized Oath and Affirmation on Design-Builder's Letterhead that reads as follows:

"OATH AND AFFIRMATION

I affirm under the penalties of perjury that the facts and information included in this Verified Statement of Qualifications are true and correct to the best of my knowledge and belief.

Dated at _____ this _____ day _____ of _____

(Name of Design-Build Entity)

By: _____

(Title of Individual Signing)

ACKNOWLEDGEMENT

State of _____)

) SS:

County of: _____)

_____ being duly sworn, deposes and says that he/she is _____ of the above _____
(Name of Individual) (Title) (Name of Organization)

and that the statements contained in this Verified Statement of Qualifications are true and correct.

Subscribed and sworn before me this _____ day of _____

My Commission Expires ____/____/____

County of Residence _____

(Notary Public)

2. EXECUTIVE SUMMARY

Provide a concise statement that summarizes the reasons, in accordance with the stated evaluation criteria, why this team should be considered a highly qualified Design-Build.

3. ORGANIZATION AND LEADERSHIP

- 3.1. What is the business organization of the Design-Build Entity?

☐ **Integrated Team:** Design-Build Entity includes both design and construction services as employees of the Design-Build Entity. Services not performed by the Design-Build Entity are subcontracted to the Design-Build Entity.

☐ **Integrated Team with a Teaming Agreement:** Design-Build Entity includes both design and construction services as employees of the Design-Build Entity. Services not performed by the Design-Build Entity are subcontracted to the Design-Build Entity, with key subcontractors and subconsultants performing under a teaming agreement. If so, provide a copy of the Teaming Agreement behind Tab 1, with other supplementary information.

☐ **Sole Services:** Design-Build Entity holds the Contract with the Owner and all other team members are subcontracted to the Design-Build Entity.

☐ **Sole Services with a Teaming Agreement:** Design-Build Entity holds the Contract with the Owner and all other team members are subcontracted to the Design-Build Entity, with some key members of the team participating under a formal teaming agreement for the pursuit of the project. If so, provide a copy of the Teaming Agreement behind Tab 1, with other supplementary information.

☐ **Joint Venture:** A special business entity has been formed to serve as the Design-Build Entity expressly for this Project. If so, provide full disclosure of the composition of the Joint Venture, including identification of the individuals that will assume the mantle of responsibility and liability for the project.

☐ **Other:** Provide full description.

- 3.2. List all the entities, including prime & trade contractors, architectural and engineering firms, as well as any other sub-consultants, suppliers, etc. that will be a part of the team **at any point in the duration of the project**. Provide the following information for each:
- 3.2.1. Role of the entity in the project
 - 3.2.2. Point of engagement with the team:
 - ☐ Currently a full member of the team
 - ☐ Currently a conditional design-assist member of the team.
Describe the basis upon which this team member will be fully engaged, and the timing for full engagement to occur.
 - ☐ Will become engaged after the draft RFP is issued and prior to the submittal of a Design-Build Proposal
 - ☐ Will become engaged after award of the Design-Build Contract
 - 3.2.3. Name of the entity
If the entity is not currently a full member of the team, list all of the entities under consideration for this position on the team.
- 3.3. Provide the following information about the individuals in key leadership roles for the project:
- 3.3.1. Individual's Name
 - 3.3.2. Company / Title / Role on this Project.
 - 3.3.3. Education and Training.
 - 3.3.4. Professional Registrations and Certifications.
 - 3.3.5. Professional Experience, Representative Projects and Particular Talents.
 - 3.3.6. Responsibilities, other than this project, that will run concurrently with this project.
 - 3.3.7. Tenure this person has with the company, and in the current position.
- 3.4. Provide a responsibility chart and narrative that indicates how the Design-Builder's team will function, and how it will interface with Griffith Public Schools, its vendors and consultants. Note that Leah Dumezich, Superintendent of Schools will serve as primary Owner contact.
- 3.5. Describe your management plan for this project.
- 3.5.1. What processes and procedures will you employ that will ensure success for this project?
 - 3.5.2. Describe how the Design-Builder will maintain project budgets and communicate project cost with the Owner in a design-to-budget Progressive Design-Build process.
 - 3.5.3. Describe how the Design-Builder will guide the Owner through making trade-off decisions that will result in a final design that optimizes the tension between maintaining the initial project budget and selecting systems and components that may have the overall lowest total cost of ownership, but a higher initial cost. Describe how the Design-Builder will identify options for Owner review and consideration.
 - 3.5.4. Describe how the Design-Builder will maintain project schedules.
 - 3.5.5. Describe how the Design-Builder will maintain a healthy and safe optimum project site and learning environment during the execution of the Design-Build project.
 - 3.5.6. Describe how the Design-Builder will drive early integration and cohesion, both within its team and with the Owner's prime stakeholders for the project.
 - 3.5.7. Describe how the Design-Builder will bring the "voice" of the Trade Contractors to a point of positive influence during the design-phases of the project, including Step 1 Services of the Progressive Design-Build Contract.
 - 3.5.8. Describe how the Design-Builder will promote and engage local companies in the project for the economic health of the Griffith Public Schools community.

- 3.5.9. Describe how the Design-Builder will manage quality assurance and quality control in the design-build process, including both design and construction phases of the project.
- 3.6. In accordance with IC 5-30-5-3(b)(3), Provide a statement that the Design-Builder and/or team members have the licenses, registrations and credentials required to design and construct the project.
- 3.6.1. List the names of all professionals who will provide the certifications necessary for this project and provide proof of certification of each.
- 3.6.2. List the names of any individuals or entities that hold trade licenses or certifications that Are needed for this project and provide proof of each.
- 3.6.3. List the names of any individuals or entities on the Design-Builder's team who have ever been involved in debarment, disqualification or removal from a federal, state or local government public works project. Include the names of any individual or company that has had its license suspended or revoked.
- Provide an explanation of the situation and any extenuating circumstances or remediation that otherwise would qualify the individual or entity to serve effectively as part of the Design-Builder's team for this project.
 - If there are no such circumstances, please indicate so.
- 3.6.4. Disclose any association or other circumstance that could be construed as a conflict of interest with the Owner, its consultants and established vendors. If you do not believe there to be any such circumstances, please indicate so.

4. GENERAL QUALIFICATIONS

- 4.1. Provide Financial Statements for the Design-Builder that is specific enough in detail so that the Technical Review Committee can make proper determination of the Design-Builder's capability for completing the project if awarded.
- 4.1.1. Provide Audited Financial Statements for 2023, 2022
- 4.1.2. Provide a Balance Sheet for 2024.
- 4.2. In accordance with IC 5-30-5-3(b)(9), Provide a Statement containing information concerning any bankruptcy or receivership, past or present of the Design-Builder or a member of the Design-Builder's team. Also provide a statement disclosing any federal, state or local tax liens or delinquencies owed to any taxing body in the last five years. If no such condition exists, provide a statement to attesting to that fact.
- 4.3. In accordance with IC 5-30-5-2(2)(G), Provide an account of any history of litigation and disputes between any Public Entity Owner, or any other Owner, and the Design-Builder or any member of the Design-Builder's team.
- 4.3.1. Provide a list of all outstanding or past judgments or lawsuits against the Design-Builder, its team members and/or Owners.
- 4.3.2. Provide a summary of any mediation or arbitration history of the Design-Builder and its team members in the past ten (10) years.
- 4.4. In accordance with IC 5-30-5-3(b)(4), Provide a summary statement that the Design-Builder has the capacity to obtain all required Payment and Performance bonding, liability insurance, and errors and omissions insurance. Provide validation of that fact with the information requested below:
- 4.4.1. Provide a letter from Surety indicating that the Design-Builder has the capacity to Bond a project of at least \$13,000,000 in value.
- 4.4.2. Provide Certificates of Insurance demonstrating compliance with stated minimum coverage for Worker's Compensation & Liability Insurance.
- 4.4.3. Provide Certificates of Insurance demonstrating compliance with stated minimum coverage for Commercial General Liability Insurance.

- 4.4.4. Provide Certificates of Insurance demonstrating compliance with stated minimum coverage for Professional Services (Errors & Omissions) Liability Insurance.
 - Provide verification of a minimum three-year carry-over of Professional Services Liability Insurance coverage or similar length extended reporting period from the date of Substantial Completion.
 - 4.4.5. Provide Certificates of Insurance demonstrating compliance with stated minimum coverage for Comprehensive Auto Liability Insurance.
 - 4.4.6. Provide Certificates of Insurance demonstrating compliance with stated minimum coverage for Pollution Liability Insurance.
 - 4.4.7. Provide Certificates of Insurance demonstrating compliance with stated minimum coverage for Umbrella Excess Liability Insurance.
- 4.5. Provide the following information to allow the Technical Review Committee to evaluate the Design-Builder's safety performance record. Provide this information for the firm that will be providing the umbrella of leadership responsibility and liability for the Design-Builder. Design-Builders must validate their on-going safety program in one of the following ways:
- 4.5.1 Safety Program Documentation Option 1: Document that the Design-Build Entity has established and maintained participating membership status in any one of the following industry construction safety programs:
 - Coalition for Construction Safety (CCS): "Qualified" or "Certified" Status.
 - IDOL Safety Partnership Programs – Provide a letter from the Directors of ICA or ABC attesting to the Design-Builder's Participation in the IDOL Safety Partnership Program.
 - 4.5.2 Safety Program Documentation Option 2: Provide the following information about the Design-Build Entity's Safety Program:
 - Provide one (1) copy of the Design-Builder's Occupational Safety and Health Administration (OSHA) Form 300A, Summary of Work-Related Injuries and Illnesses for each of the three calendar years preceding the current year. Provide an accompanying explanation of the nature of injuries or illnesses reported on OSHA Forms 300A
 - Provide Design-Builder's SIC (Standard Industrial Classification) and/or NAICS (North American Industrial Classification System) Codes as defined by the U.S. Department of Labor's Bureau of Labor Statistics (BLS).
 - Provide documentation and a summary of the Design-Builder's on-going Safety and Training plans that are most pertinent to this project. (Note: A copy of the cover and Table of Contents of the Design-Builder's safety plan will generally suffice for compliance with this requirement.)
- 4.6. In accordance with IC 5-30-5-3-(b)-(5), Provide documentation of Design-Builder's current Experience Modifier Rate (EMR) for each of the past three (3) calendar years [2023, 2022, 2021].
 - 4.7. In accordance with IC 5-30-5-3-(b)-(5), Provide documentation of Design-Builder's illness and injury total recordable case incidence rate (TCIR/TRIR) for each of the past three (3) years [2023, 2022, 2021].
 - 4.8. In accordance with IC 5-30-5-3-(b)-(5), Provide documentation of Design-Builder's illness and injury days away, restricted, or transfer case incident rate (DART) for each of the past three (3) years [2023, 2022, 2021].

- 4.9. In accordance with IC 5-30-5-3-(b)-(8), Provide a statement regarding any prior serious, repeat, willful, or criminal violation of the federal Occupational Safety and Health Act of 1970 and any equivalent violation under a state plan authorized under Section 18 of the federal act that has become a final order for the Design-Builder or any member of the Design-Builder's team. Also include disclosure of any determinations by a court or governmental agency for violations of federal, state or local laws, including, but not limited to violations of contracting or antitrust laws, tax or licensing laws, environmental laws, or federal Davis-Bacon and related Acts. If no such violations exist, provide a statement attesting to that fact.
- 4.10. Please include information required in Paragraph 3.3 for the person primarily responsible for safety on this project.
- 4.11. In accordance with IC 5-30-5-2-(2)-(F), Provide an account of the Design-Builder's and Design-Builder's team's history of contracting with or hiring minority business enterprises (MBE) and women's business enterprises (WBE).
- 4.12. In accordance with Senate Enrolled Act 590 (2011), Indiana Code Section 12-32-1, as amended and Indiana Code Section 22-5-1.7, as amended, the selected Design-Builder will be required to sign an affidavit stating it is enrolled in the Federal E-Verify and that it does not knowingly employ an unauthorized alien. As a precursor to that requirement, provide a statement affirming the Design-Builder's current status of enrollment in the Federal E-Verify program, as well as the Design-Builder's ability to sign the Owner's E-Verify affidavit.
- 4.13. Provide a copy of the Design-Builder's written corporate non-discrimination policy.
- 4.14. Provide a copy of the Design-Builder's written employee drug testing program to verify compliance with IC 4-13-18-5 or IC 4-13-18-6.
- 4.15. Provide a copy of the Design-Builder's policy for performing background checks for all team members working on the Project Site.
- 4.16. In compliance with IC 5-30-5-3(b)(6), provide a statement that the Design-Builder or employees of the firm performing construction services, including employees of all subcontractors, have completed or are enrolled in an apprenticeship program certified by the United States Department of Labor Bureau of Apprenticeship and Training.

5. EXPERIENCE AND PERFORMANCE RECORD

- 5.1. How long has your firm been involved in the Design-Build profession? Please provide an overview of your company's history in providing professional services for Public Owners in Indiana.
- 5.2. What experience do the team members identified for this project have in providing Design-Build services for projects of similar size and scope as the proposed project?
- 5.3. What experience do the team members identified for this project have in working together successfully on other projects of similar size and scope as the proposed project that have used delivery methods other than Design-Build?
- 5.4. Submit a list of up to five similar facilities designed / constructed by the Design-Builder and Design-Builder's team that are most representative of the experience required for this Project. For each project, provide the following information:
 - 5.4.1. Name of the Project
 - 5.4.2. A brief description of the project. Why did you include it as an example?
 - 5.4.3. Representative Illustrations of the Project (Photographs, floor plans, renderings, etc.)
 - 5.4.4. Type of project delivery used
 - 5.4.5. Design-Build Entity's role in the Project
 - 5.4.6. Other Design-Builder's teammates roles in the Project
 - 5.4.7. Legal name of Owner
 - 5.4.8. Owner's Contact Person (Name, title, telephone, e-mail) – Have that individual complete the Professional Reference Form attached to this RFQ as Exhibit C

- 5.5. Provide a matrix citing the involvement those individuals identified in response to questions 3.3 and above had with the projects cited in response to question 5.4 above.
- 5.6. Has your firm ever failed to complete a project? If the answer is “yes”, please explain.
- 5.7. In accordance with IC 5-30-5-3(b)(2), provide a summary statement that the Design-Builder and/or team members have completed or demonstrated the experience, competency, capability to complete projects of similar size, scope or complexity; and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project. Provide specific examples that serve to validate the statement provided.

6. REFERENCES

Please provide at least three additional references from Owners other than those listed in response to question 5.4 above.

Provide a written list of the individuals cited as references in response to this section as the formal response behind Tab 6

Offerors are responsible for ensuring that each individual listed as a reference, either in this Section or in response to Question 5.4.8 above, completes the Professional Reference Form found in Exhibit C of this RFP and submits it via e-mail to the Owner's Design Criteria Developer: Daniel Rawlins dan@therawlinsgroup.com no later than 5:00 PM CDT, May 10, 2024.

Out of respect for the time of individuals asked to submit a reference on behalf of the Design-Builder; in the event the individual providing the reference has previously submitted a similar reference to The Rawlins Group, LLC as Design Criteria Developer in response to another RFQ issued within the six (6) months prior to the date of this RFQ, the prior reference will suffice in lieu of providing a new reference in response to this solicitation. Design-Builder using this option for providing references should list the individual and the name of the project for which a reference was previously submitted.

7. COLLATERAL MATERIAL

Include any other material you feel would help the Technical Review Committee understand and appreciate your capabilities and unique distinction that would make the TRC consider you most highly qualified to serve as Design-Builder for this project.

(Note: There is no requirement to include any collateral material. If any is included, it is at the prerogative of the Design-Builder. Any and all collateral material should be placed behind Tab 7



Exhibit C

Professional Reference Form

Griffith Public Schools

2024 Griffith Jr./Sr. High School Aquatic Center Project

You have been asked to provide a professional reference for a member of a Design-Build Team that is submitting its qualifications for this project.

Please complete this form and e-mail it to dan@therawlinsgroup.com no later than 5:00 PM CDT on May 10, 2024

Your Name: Click or tap here to enter text.

Company / Organization: Click or tap here to enter text.

Telephone: Click or tap here to enter text.

E-Mail: Click or tap here to enter text.

Reference For: Click or tap here to enter text. (the Company)

Project: Click or tap here to enter text.

1. How would you rank the service you received from the Company for this Project?

☐Excellent ☐Very Good ☐Adequate ☐Inadequate

2. The Project was completed:

☐Ahead of Schedule ☐On Time ☐Late ☐Not Completed

3. The Project was completed:

☐Under Budget ☐On Budget ☐Over Budget

4. The Project delivery method used was:

☐Design-Bid-Build ☐Design-Build ☐CM at Risk ☐CM Agency

☐Guaranteed Savings Project ☐Other: Click or tap here to enter text.

5. The best aspect of the Company's services is: Click or tap here to enter text.

6. One thing the Company could do better is: Click or tap here to enter text.

Griffith Public Schools 2024 Natatorium Renovation and Expansion Project
Design-Build Project Delivery
RFQ Attachment D

**Griffith Public Schools
Board of School Trustees Resolution 632 Amended to
Establish Responsible Bidding Practices and
Submission Requirements for Submitting Bids to
Perform Construction Work**

This policy has been adopted by the School Corporation for projects that are using forms of design/bid/build project delivery (Unified Bid, Multi-Prime Contractors / CMa, or At-Risk Construction Management [CMc]). It does not directly address Design-Build Project Delivery under IC 5-30. This Design-Build RFQ attempts to respect the spirit of the Resolution, while adapting it to Design-Build project delivery. The policy is annotated in this typeface and in red to indicate the portions of the policy that are to be addressed in the Design-Builder's response to this RFQ.

Portions of this policy that are to be addressed at a later date by the Design-Builder ultimately selected by the Owner are indicated in this typeface and in green. Requirements for compliance with these provisions will be addressed in the Owner's Request for Proposal, the Design-Builder's Step 1 Progressive Design-Build Report and the Agreement between Owner and Design-Builder, including the General Conditions of the Contract.

WHEREAS, the Griffith Public Schools are required by law to award capital improvement contracts to the "lowest responsive and responsible" bidder;

WHEREAS, the Griffith Public Schools, based upon its experience, has determined that quality workmanship, efficient operation, safety, and timely completion of projects requires all bidders meet certain minimum requirements in order to be a "responsive and responsible" bidder;

WHEREAS, applicable state law also requires that bidders meet certain minimum requirements in order to be a "responsive and responsible" bidder;

WHEREAS, the Griffith Public Schools seeks to enhance its ability to identify "responsive and responsible" bidders on all School construction projects by institution of more comprehensive submission requirements which are in compliance with Indiana State law;

WHEREAS, the "Responsible Bidding Practices and Submission Requirements" Resolution will preserve administrative resources by insuring that only qualified contractors and subcontractors are awarded contracts on public works construction projects; and,

WHEREAS, the 'Responsible Bidding Practices and Submission Requirements' Resolution will assure efficient use of taxpayer dollars, will promote public safety and is in the public interest; and,

WHEREAS, the "Responsible Bidding Practices and Submission Requirements" Resolution will help ensure that no contractor awarded work under this Resolution or any subcontractor at any tier working on a project awarded pursuant to this resolution engages in payroll fraud, including the misclassification of employees as independent contractors to avoid paying state, federal or local payroll taxes, workers compensation insurance, unemployment insurance premiums and failing to pay overtime and wages as required by law.

SECTION 1. This Policy which is entitled "Responsible Bidding Practices and Submission Requirements for Submitting Bids to Perform Construction Work" is hereby adopted and shall read as follows:

I. Bid Submission Requirements

Contractors proposing to submit bids on any Griffith Public Schools ("School") project estimated to be at least one-hundred fifty thousand dollars (\$150,000.00) or more must, prior to the opening of bids, submit a statement made under oath and subject to perjury laws, on a form designated by the School and must include:

In lieu of the form identified above, proposing Design-Builders are to submit Verified Statements of Qualification that are in compliance with IC 5-30-5-3 and this RFQ.

(A) A copy of a print-out of the Indiana Secretary of State's on-line records for the bidder dated within sixty (60) days of the submission of said document showing that the bidder is in existence, current with the Indiana Secretary of State's Business Entity Reports, and eligible for a certificate of good standing. If the bidder is an individual, sole proprietor or partnership, this subsection shall not apply;

Compliance documented by response to RFQ Questionnaire – Question 1.4

(B) A list identifying all former business names;

Compliance documented by response to RFQ Questionnaire – Question 1.4.1

(C) Any determinations by a court or governmental agency for violations of federal, state, or local laws including, but not limited to violations of contracting or antitrust laws, tax or licensing laws, environmental laws, the Occupational Safety and Health Act (OSHA), or federal Davis Bacon and related Acts;

Compliance documented by response to RFQ Questionnaire – Questions 4.3 and 4.9

(D) A statement on staffing capabilities, including labor sources;

Compliance documented by response to RFQ Questionnaire – Tab 3 – Organization and Leadership

(E) Evidence of participation in apprenticeship training programs applicable to the work to be performed on the project, which are approved by and registered with the United States Department of Labor's Office of Apprenticeship, or its successor organization; and evidence that any applicable apprenticeship program has graduated at least five (5) apprentices in each of the past five (5) years for each of the construction crafts the bidder will perform on the project. Evidence of graduation rates are not required for apprenticeable crafts dedicated exclusively to the transportation of material and equipment to and from the public works project. The required

evidence includes but is not limited to a copy of all applicable apprenticeship standards and Apprenticeship Agreement(s) for any apprentice(s) who will perform work on the public works project; and documentation from each applicable apprenticeship program certifying that it has graduated at least five (5) apprentices in each of the past five (5) years for each construction craft the bidder will perform on the project. Additional evidence of participation and graduation requirements may be requested by the School Board and/or Superintendent at its discretion.

Compliance documented by response to RFQ Questionnaire – Question 4.16. Additional information may be provided to comply with this section of the Griffith Public Schools Responsible Bidder Policy

(F) A copy of a written plan for employee drug testing that: (i) covers all employees of the bidder who will perform work on the public work project; and (ii) meets, or exceeds, the requirements set forth in IC 4-13-18-5 or IC 4-13-18-6;

Compliance documented by response to RFQ Questionnaire – Question 4.14

(G) The name and description of the management experience of each of the bidder's project managers and superintendents that bidder intends to assign to work on the project;

Compliance documented by response to RFQ Questionnaire – Tab 3 – Organization and Leadership

Compliance will be further documented in selected Design-Builder's Step 1 Report

(H) Proof of any professional or trade license required by law for any trade or specialty area in which bidder is seeking a contract award; and disclosure of any suspension or revocation within the previous five years of any professional or trade license held by the company, or of any director, office or manager employed by the bidder;

Compliance documented by response to RFQ Questionnaire – Question 3.6 and sub-questions 3.6.1 through 3.6.4

(I) Evidence that the contractor is utilizing a surety company which is on the United States Department of Treasury's Listing of Approved Sureties; and

Compliance documented by response to RFQ Questionnaire – Question 4.4.1

(J) A written statement of any federal, state or local tax liens or tax delinquencies owed to any federal, state or local taxing body in the last five years.

Compliance documented by response to RFQ Questionnaire – Question 4.2

(K) A statement that individuals who will perform work on the public work project on behalf of the bidder will be properly classified as either (i) an employee or (ii) an independent contractor, under all applicable state and federal laws and local ordinances; and

Compliance will be further documented in selected Design-Builder's Step 1 Report and the Agreement between Owner and Design-Builder.

(L) A list of projects of similar size and scope of work that the bidder has performed in the State of Indiana within three (3) years prior to the date on which the bid is due.

Compliance documented by response to RFQ Questionnaire – Tab 5 – Experience

The School reserves the right to demand supplemental information from the bidder, (additional) verification any of the information provided by the bidder, and may also conduct random inquiries of the bidder's current and prior customers.

II. Post-Bid Submissions from Subcontractors

All bidders shall provide a written list that discloses the name, address, and type of work for each first-tier subcontractor from whom the bidder has accepted a bid and/or intends to hire on any part of the public work project, including individuals performing work as independent contractors, within five (5) business days after the date the bids are due.

Compliance documented by response to RFQ Questionnaire – Tab 3 – Organization and Leadership

In addition, each such first-tier subcontractor shall be required to adhere to the requirements of Section I of this Resolution as though it were bidding directly to the School, except that first-tier subcontractors shall submit the required information (including the name, address, and type of work for each of their first-tier subcontractors) to the successful bidder no later than five (5) business days after the subcontractor's first day of work on the public work project and the bidder shall then forward said information to the School. Payment shall be withheld from any first-tier subcontractor who fails to timely submit said information until such information is submitted and approved by the School.

Compliance will be documented in selected Design-Builder's Step 1 Report and the Agreement between Owner and Design-Builder.

Upon request, the School may require any second and lower-tier subcontractors to provide the required information (including name, address, type of work on the project and the name of the higher-tier subcontractor). Payments shall be withheld from any second or lower-tiered contractor who fails to timely submit this information until this information is submitted and approved by the School. Additionally, the School may require the successful bidder and relevant subcontractor to remove the second or lower-tier subcontractor from the project and replace it with a responsive and responsible subcontractor.

Failure of a subcontractor to submit the required information shall not disqualify the successful bidder from performing work on the project and shall not constitute a contractual default and/or breach by the successful bidder. However, the School may withhold all payments otherwise due for work performed by a subcontractor, until the subcontractor submits the required information and the School approves such information. The School may also require that successful bidder to remove the subcontractor from the project and replace it with a responsive and responsible subcontractor.

The disclosure of a subcontractor ("Disclosed Subcontractor") by a bidder or a subcontractor shall not create any rights in the Disclosed Subcontractor. Thus, a bidder and/or subcontractor may substitute another subcontractor ("Substitute Subcontractor") for a Disclosed Subcontractor by giving the School written notice of the name, address, and type of work of the Substitute Subcontractor. The Substitute Subcontractor is subject to all of the obligations of a subcontractor under this Ordinance.

Any change of Design-Build Team members after the submittal of a Verified Statement of Qualifications is subject to the requirements of the RFP, Step 1 Report and Agreement between Owner and Design-Builder. Design-Builder (Contractor) **may not** make changes to the team unilaterally.

III. Validity of Pre-Qualification Classification

Upon designation by the School that a contractor's or subcontractor's submission in anticipation of a bid is complete and timely, and upon any further consideration deemed necessary by the School, the contractor or subcontractor may be pre-qualified for future School public works projects. A contractor's classification as "qualified" shall exempt the contractor or sub-contractor from the comprehensive submission requirements contained herein for a period of twelve (12) months. Thereafter, contractors or subcontractors who are pre-qualified must submit a complete application for continuation of "pre-qualified" standing, on a form provided by the School, (also referred to as the "short form") by December 31st for the upcoming calendar year. Failure by any pre-qualified contractor or subcontractor to timely submit its complete application for continuation of "pre-qualified" standing shall result in automatic removal of the designation, effective January 1 of the upcoming year. However, the "removed" contractor or subcontractor shall still be permitted to bid on School public works projects.

Any material changes to the contractor's status, at any time, must be reported in writing within ten (10) days of its occurrence to the School. The pre-qualification designation is solely within the discretion of the School and the School specifically reserves the right to change or revoke the designation for a stated written reason(s).

Denial of pre-qualification shall be in writing and shall be forwarded to the contractor within seven (7) working days of such decision. Any contractor denied or losing pre-qualification status may request reconsideration of the decision by submitting such request in writing to the School within five (5) business days of receipt of notice of denial.

IV. Incomplete Submissions by Bidders

It is the sole responsibility of the potential bidder to comply with all submission requirements applicable to the bidder in section I above by no later than the public bid opening. Post-bid submissions must be submitted in accordance with section II above. Submissions deemed inadequate, incomplete, or untimely by the School may result in the automatic disqualification of the bid.

V. Responsive and Responsible Bidder Determination

The School, after review of complete and timely submissions, shall, in its sole discretion, after taking into account all information in the submission requirements, determine whether a bidder is responsive and responsible. The School specifically reserves the right to utilize all information provided in the contractor or subcontractor's submission or any information obtained by the School through its own independent verification of the information provided by the contractor.

VI. Certified Payroll

For projects in which the cost is at least \$250,000, the successful bidder and all subcontractors working on a public work project shall submit a certified payroll report utilizing the federal form now known as a WH-347 which must be prepared on a weekly basis and submitted to the School

within ten (10) calendar days after the end of each week in which the bidder or subcontractor performed its work on the public work project. These certified payroll reports shall identify the job title and craft of each employee on the project, e.g. journeyman electrician or apprentice electrician. In the event any contractor or subcontractor uses independent contractors to perform work on the project, such individual must be identified on the WH-347 form with the same information as is required for employees.

The School may withhold payment due for work performed by a bidder if the bidder fails to timely submit its certified payroll reports until such time as such certified payroll reports are submitted. The School may also withhold payment due for work performed by a subcontractor if the subcontractor fails to timely submit its certified payroll reports until such time as such certified payroll reports are submitted. The School shall not withhold payment to a bidder for work performed by the bidder or for work performed by subcontractors who have submitted their certified payroll reports, because one or more other subcontractors failed to timely submit their certified payroll reports.

Compliance with Certified Payroll provisions is not required during Design-Builder's Step 1 Services, when no construction is taking place. In Design-Builder's Step 2 Services, Certified Payroll provisions shall apply to the work of construction contractors and subcontractors, unless specifically modified in the Agreement between Owner and Design-Builder. Certified Payroll provisions shall not apply to Design-Builder's design partners and staff.

VII. Public Records

All information submitted by a bidder or a subcontractor pursuant to this Resolution, including certified payrolls, are public records subject to review pursuant to the Indiana Access to Public Records law (IC 5-14-3).

VIII. Penalties for False, Deceptive, or Fraudulent Statements / information

Any bidder that willfully makes, or willfully causes to be made, a false, deceptive or fraudulent statement, or willfully submits false, deceptive or fraudulent information in connection with any submission made to the School shall be disqualified from bidding on all School projects for a period of three years.

IX. Conflicting Policies

Any Policy or provision of any Policy in conflict with the provisions of this Policy is hereby repealed.

X. Severability

If any provision of this Policy is found to be invalid, the remaining provisions of this Policy shall not be affected by such a determination. These other provisions of this Policy shall remain in full force and effect without the invalid provision.

Progressive Design- Build Agreement

Sample Form of Agreement | Amended for IC 5-30



Document No. 544

Second Edition, 2022

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Washington, D.C.





Progressive Design-Build Agreement

This document has important legal consequences. Consultation with an attorney is recommended with respect to its completion or modification.

This **AGREEMENT** is made as of the _____ day of _____, in the year of 20____, by and between the following parties, for services in connection with the Project identified below:

OWNER:

(Name and address)

Griffith Public Schools
602 North Raymond
Griffith, Indiana 46319

DESIGN-BUILDER:

(Name and address)

Design-Builder's Legal Name
Street Address
City, State Zip Code

PROJECT:

(Include Project name and location as it will appear in the Contract Documents)

Griffith Jr. / Sr. High School Natatorium Renovation & Expansion Project
600 North Wiggs Street
Griffith, Indiana 46319

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

Article 1

General

- 1.1 **Duty to Cooperate.** Owner and Design-Builder commit at all times to cooperate fully with each other and enter into this Agreement on the basis of trust, respect, and good faith to permit each party to realize the benefits afforded under this Agreement.
- 1.2 **Definitions.** Terms, words, and phrases used in this Agreement shall have the meanings given them in DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2022 Edition, as amended). ("General Conditions of the Contract")
- 1.3 **Design Services.** Design-Builder shall, consistent with applicable State of Indiana licensing laws, provide design services, including architectural, engineering, and other design professional services required by this Agreement. Such design services shall be provided through qualified, licensed design professionals who are either (i) directly employed by the Design-Builder, or (ii) procured by Design-Builder as subconsultants from independent sources. Nothing in this Agreement is intended to create any legal or contractual relationship between Owner and any independent design professional.
- 1.4 **Design-Build Services** shall be delivered consistent with Indiana Code Section 5-30, as amended, and all other Federal, State and Local guidelines, standards, ordinances, rules, regulations, and laws.

Article 2

Design-Builder's Services and Responsibilities

- 2.1 **General Services.**
 - 2.1.1 Owner shall provide Design-Builder with Owner's preliminary Project Criteria describing Owner's program requirements and objectives for the Project as set forth in the RFP. Owner's preliminary Project Criteria may include Owner's use, space, price, time, site, performance, and expandability requirements. Owner's Project Criteria may include conceptual documents, design specifications, design performance specifications, and other technical materials and requirements prepared by or for Owner.
 - 2.1.2 Design-Builder will assist Owner in developing detailed Owner's Project Criteria as part of Design-Builder's Step 1 Progressive Design-Build Services. Design-Builder shall document Project Criteria as part of the Step 1 Report, including recommendations to Owner for different and innovative approaches to the design and construction of the Project. The parties shall meet to discuss Design-Builder's draft Step 1 Report and agree upon what revisions, if any, should be made to the Design-Builder's Step 1 Report prior to presenting the final report to the Owner for formal action.
- 2.2 **Two-Step Progressive Design-Build Services.**
 - 2.2.1 **Step 1 Services.** Design-Builder shall perform the services of programming, site & existing conditions due diligence, design, pricing, and other services for the Project based on Owner's preliminary Project Criteria. Design-Builder shall perform such services to the level of completion required for Design-Builder and Owner to approve the Design-Builder's Step 1 Report and establish the Contract Price for Step 2, as set forth in Section 2.3 below. The Contract Price for Step 2 shall be developed during Step 1 on an "open-book" basis. Design-Builder's Compensation for Step 1 Services is set forth in Section 7.1.1 herein. The

minimum level of completion required for Step 1 Services is defined in Exhibit B1a, "Scope of Services", attached to this document.

2.2.2 **Step 2 Services.** Design-Builder's Step 2 services shall consist of the completion of design services for the Project, the procurement of all materials and equipment for the Project, assistance with Owner's procurement of all necessary permits and approvals from authorities having jurisdiction over the Project, the performance of construction services for the Project, the start-up, testing, and commissioning of the Project, and the provision of warranty services, all as further described in the Contract Price Amendment. Upon receipt of Design-Builder's Step 1 Report and proposed Contract Price for Step 2, Owner may proceed as set forth in Section 2.3.

2.3 **Step 1 Report.** Upon completion of the Step 1 Services and any other Basis of Design Documents upon which the parties may agree, Design-Builder shall submit to Owner a Step 1 Report (the "Report") that outlines the design, scope, and quality of the entire Project. The Report also defines the Work required for the completion of the design, permitting and construction of the Project for the Contract Price, which may be based on either (i) a Lump Sum or (ii) Design-Builder's Fee plus Cost of the Work, with a Guaranteed Maximum Price (GMP).

2.3.1 Should the Design-Builder propose to complete the project in Phases, the Design-Builder shall submit a Step 1 Report to the Owner for each Phase of the Project prior to commencing Step 2 Services for that Phase. In such cases, the first Phase Step 1 Report shall include, at a minimum, the information identified in Section 2.3.2 hereof. The Step 1 Report for each subsequent Phase shall include, at a minimum, the information identified in Section 2.3.3 hereof.

2.3.2 The initial Step 1 Report shall include, at a minimum, the following information:

2.3.2.1 Basis of Design Documents, which are set forth in detail in Section 1.2.2 of the General Conditions of the Contract, and are attached to the Step 1 Report;

2.3.2.2 A list of assumptions and clarifications made by Design-Builder in the preparation of the Step 1 Report, which list is intended to supplement the information contained in the drawings, system narrative and specifications and is specifically included as part of the Basis of Design Documents.

2.3.2.3 The Contract Price for the Work proposed in the initial Step 1 Report, that may be based on either, (i) a Lump Sum, or (ii) Design-Builder's Fee plus Cost of the Work, with a GMP, which shall be the sum of:

1. Design-Builder's Fee as defined in Section 7.4.1 hereof, including the Design-Builder's Step 1 Fee defined in Section 7.1.1 hereof;
2. The estimated Cost of the Work as defined in Section 7.5 hereof, inclusive of any Design-Builder's Contingency as defined in Section 7.6.2 hereof; and
3. If applicable, any prices established under Section 7.1.3 hereof;

2.3.2.4 The Total Project Budget, including:

1. The Design-Builder's Contract Price defined in Section 2.3.2.3 hereof;
2. The estimated Design-Builder's Contract Price (by Phase) for any future Phases and Step 1 Reports as defined in Section 2.3.1 hereof;
3. Owner's Hard Construction Costs for any Work performed by others on behalf of Owner;
4. Owner's Soft Costs
5. Owner's Financing Costs

6. Identification of all contingencies and allowances, the purpose of each, the value of each and the party that controls the expenditure of each;
 7. Permitting and approval fees from authorities having jurisdiction over the Project; and
 8. Any other Project costs
- 2.3.2.5 A site-specific safety and mobilization plan, including any construction sequencing and phasing. Where applicable, include all provisions for maintaining Owner's ongoing operations during construction;
- 2.3.2.6 A detailed Step 2 Project Schedule, including key milestones for:
1. Date by which Step 1 Report must be accepted and Step 2 Notice to Proceed issued to maintain Project Schedule;
 2. Completion of Design, for each proposed Project Phase, as applicable;
 3. Step 1 Reports for any proposed future Project Phases;
 4. Permitting;
 5. Construction, arranged by key systems and elements;
 6. Testing for substantiation of performance requirements, commissioning, and other such turnover activities;
 7. Substantial Completion of each proposed Project Phase; and
 8. Final Completion of the Project
- 2.3.2.7 A Permit list indicating all permits and approvals required for the Work, the agency having jurisdiction over each permit or approval, the scheduled filing date for each, the anticipated release date for each, filing fees for each, and the responsibilities of the Owner and Design-Builder for obtaining each;
- 2.3.2.8 Meeting minutes of all proposal phase meetings and Step 1 meetings between the Owner and Design-Builder (can be by reference to a Project website. Does not need to be bound in the report);
- 2.3.2.9 The final proposed Form of Agreement and General Conditions of the Contract, negotiated between Owner and Design-Builder during the execution of Step 1 Progressive Design-Build Services; and
- 2.3.2.10 The Contract Price Exhibit for Scope of Work that is specifically subject of the Step 1 Report.
- 2.3.3 Any Step 1 Report for a subsequent Phase of the Work shall include, as a minimum, the following information:
- 2.3.3.1 Basis of Design Documents (Per Section 1.2.2 of the General Conditions of the Contract) for the Phase of Work upon which the Step 1 Report is based;
 - 2.3.3.2 A list of the assumptions and clarifications made by Design-Builder in the preparation of the Phased Step 1 Report, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;
 - 2.3.3.3 The Scheduled Substantial Completion Date upon which the Phased Step 1 Report is based, to the extent said date has not already been established under

Section 6.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based and a Project Schedule for the Work;

- 2.3.3.4 An updated Total Project Budget, as identified in Section 2.3.2.4 hereof;
- 2.3.3.5 Summary of any changes from the initial (or prior phase) Step 1 Report, including, but not limited to: Site-specific safety and mobilization plan, Project Schedule, and permitting;
- 2.3.3.6 Meeting minutes since the initial (or prior phase) Step 1 Report; and
- 2.3.3.7 Contract Price Exhibit for this Phase.

2.3.4 **Review and Adjustment to Step 1 Report(s)**

- 2.3.4.1 After submission of the Draft Step 1 Report for each Phase, where applicable, Design-Builder and Owner shall meet to review and discuss the Step 1 Report. If Owner has any comments regarding the Report or finds any inconsistencies, inaccuracies or inadequacies in the information presented, it shall promptly give written notice to Design-Builder of any such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the Step 1 Report.
- 2.3.4.2 **Acceptance of Initial Step 1 Report.** If Owner accepts the initial Step 1 Report, as may be amended by Design-Builder, the Contract Price and its basis shall be set forth in this Agreement, and when mutually agreed between the parties, this Agreement will be executed. Once parties have agreed upon the Contract Price and this Agreement, and Owner has issued a Notice to Proceed with Step 2 Services, Design-Builder shall perform the Step 2 Services in accordance with this Agreement.
- 2.3.4.3 **Failure to Accept the Initial Step 1 Report.** If Owner rejects the initial Step 1 Report, or fails to notify Design-Builder in writing on or before the date specified in the initial Step 1 Report that it accepts the Step 1 Report, the initial Step 1 Report shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with the parties having the following options:
 - 1. Owner or Design-Builder may suggest modifications to the initial Step 1 Report, whereupon if such modifications are accepted in writing by the other party, the Step 1 Report shall be deemed accepted and the parties shall proceed in accordance with Section 2.3.4.2 hereof;
 - 2. Owner may terminate negotiations with Design-Builder, provided, however in this event, Design-Builder shall be entitled to the payment provided for in the Letter of Intent for Step 1 Progressive Design-Build Services.
 - 3. Design-Builder may terminate negotiations with Owner, provided however in this event, Design-Builder shall be entitled to the payment provided for in the Letter of Intent for Step 1 Progressive Design-Build Services.
- 2.3.4.4 **Acceptance of Subsequent Phased Step 1 Report(s).** If, after acceptance of the initial Step 1 Report and execution of this Agreement, Owner accepts a subsequent phased Step 1 Report, as may be amended by Design-Builder, the Amended Contract Price and its basis shall be set as an Amendment to this Agreement by means of a Contract Price Amendment. Upon execution of the Contract Price Amendment, Design-Builder shall perform the Step 2 Services for

the Phase in accordance with this Agreement. No further Notice to Proceed is required.

2.3.4.5 Failure to Accept Subsequent Phased Step 1 Report. If Owner rejects a subsequent phased Step 1 Report, or fails to notify Design-Builder in writing on or before the date specified in the phased Step 1 Report that it accepts the Step 1 Report and Contract Price Amendment, the Step 1 Report and Contract Price Amendment shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with the Owner having the following options:

1. Owner may suggest modification to the Step 1 Report and Contract Price Amendment, whereupon if such modifications are accepted in writing by Design-Builder, the Step 1 Report and Contract Price Amendment shall be deemed accepted as modified, and all parties shall proceed in accordance with Section 2.3.4.4 hereof;
2. Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 7.1.2 hereof without a Contract Price, in which case all references in this Agreement to the Contract Price shall not be applicable; or
3. Owner may terminate this Agreement for convenience in accordance with Article 8 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 9.2 hereof.

If Owner fails to exercise any of the above options within thirty (30) calendar days of the date specified for acceptance of the Step 1 Report, Design-Builder shall have the right to (a) continue with the Work as if Owner had elected to proceed in accordance with Section 2.3.4.4 above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work; (b) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event Design-Builder shall not be entitled to the payment provided for in Section 9.2 hereof; or (c) may give written notice to Owner that it considers this Agreement completed. If Owner fails to exercise any of the options under Section 2.3.4.5 within ten (10) days of receipt of Design-Builder's notice, then this Agreement shall be deemed completed. If Owner terminates the relationship with Design-Builder under Section 2.3.4.5.3, or if this Agreement is deemed completed under this paragraph, then Design-Builder shall have no further liability or obligations to Owner under this Agreement.

Article 3

Contract Documents

3.1 The Contract Documents are comprised of the following:

- 3.1.1** All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Agreement Between Owner and Design-Builder* (2022 Edition) ("General Conditions of Contract");
- 3.1.2** The initial Step 1 Report, and all attachments, as accepted by the Owner in accordance with Section 2.3.4.2 hereof;

- 3.1.3 Basis of Design Documents;
- 3.1.4 The Contract Price Amendment(s) referenced in Section 2.3.4 herein;
- 3.1.5 This Agreement, including all exhibits, but excluding, if applicable, the Contract Price Amendment(s);
- 3.1.6 The General Conditions of Contract;
- 3.1.7 Construction Documents prepared and approved in accordance with Section 1.4 of the General Conditions of Contract;
- 3.1.8 Exhibit B1a, Scope of Services; and
- 3.1.9 The following other documents, if any:
 - 3.1.9.1 **List any other documents**

Article 4

Interpretation and Intent

- 4.1 Design-Builder and Owner, at the time of acceptance of the initial Step 1 Report by Owner in accordance with Section 2.3 hereof, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of this Agreement, or if applicable, prior to Owner's acceptance of the initial Step 1 Report.
- 4.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.
 - 4.2.1 In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after Owner's acceptance of the Initial Step 1 Report, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict, or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 3.1 hereof.
- 4.3 Terms, words, and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.
- 4.4 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 5

Ownership of Work Product

- 5.1 **Work Product.** All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights, and/or patents, subject to the provisions set forth in Sections 5.2 through 5.5 below.
- 5.2 **Owner's Limited License upon Project Completion and Payment in Full to Design-Builder.** Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 5.5 herein.
- 5.3 **Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate.** If Owner terminates this Agreement for its convenience as set forth in Article 9 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 5.2 above, conditioned on the following:
- 5.3.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party, and on the Owner's obligation to provide the indemnity set forth in Section 5.5 herein, and
- 5.3.2 Owner agrees to pay Design-Builder the additional sum of **One Dollar (\$1.00)** as compensation for the right to use the Work Product to complete the Project and subsequently use the Work Product in accordance with Section 5.2 if Owner resumes the Project through its employees, agents, or third parties.
- 5.4 **Owner's Limited License upon Design-Builder's Default.** If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 5.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 5.3 above.
- 5.5 **Owner's Indemnification for Use of Work Product.** Owner recognizes that in the event of an early termination of the Work, whether for convenience or for cause, Design-Builder will not have the opportunity to finish or to finalize its Work Product. Therefore, if Owner uses the Work Product, in whole or in part, or if Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 5, Owner shall defend, indemnify, and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses, and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product, to the fullest extent permitted by applicable law.

Article 6

Contract Time

- 6.1 **Date of Commencement.** The Step 1 Services shall commence within five (5) days of Design-Builder's receipt of Owner's Letter of Intent and Notice to Proceed unless the parties mutually agree otherwise in writing. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed for Step 2 Services ("Date of Commencement") if the Proposal is accepted and the Contract Price Amendment is amended to this Agreement unless the parties mutually agree otherwise in writing.
- 6.2 **Substantial Completion and Final Completion.**
- 6.2.1 Substantial Completion of the entire Work shall be achieved no later than _____ (_____) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date"). The parties agree that the definition for Substantial Completion set forth in Section 1.2.19 of the General Conditions of Contract is hereby modified to read as follows:
- "Substantial Completion is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes, provided, however, that Substantial Completion shall be deemed to have been achieved no later than the date of issuance of a Temporary Certificate of Occupancy issued by the local building official."*
- 6.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows:
- (Insert any interim milestones ("Scheduled Interim Milestone Dates") for portions of the Work with different scheduled dates for Substantial Completion.)
- 6.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.8 of the General Conditions of Contract.
- 6.2.4 All of the dates set forth in this Article 6 ("Contract Time(s)") shall be subject to adjustment in accordance with any approved Contract Price Amendment and the General Conditions of Contract.
- 6.3 **Time is of the Essence.** Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.
- 6.4 **Liquidated Damages.** Design-Builder and Owner have agreed not to provide for liquidated damages in this Agreement for failure of Design-Builder to achieve the Contract Time(s) set forth in this Article 6. Design-Builder understands, however, that Owner may suffer actual damages in the event the Contract Time(s) set forth herein are not achieved. Owner shall be able to recover damages from Design-Builder to the extent it can demonstrate that said actual damages have been incurred, are directly related and caused by Design-Builder's failure to meet the Contract Time(s) set forth herein, and are not waived by Section 10.5.1 of the General Conditions of Contract. Notwithstanding the foregoing in no event shall Design-Builder's liability for actual damages for delays exceed _____ Dollars (\$_____).
- 6.5 **Early Completion Bonus.** If Substantial Completion is attained on or before _____ (_____) days before the Scheduled Substantial Completion Date (the "Bonus Date"), Owner shall pay Design-Builder at the time of Final Payment under Section 8.4 hereof an early completion bonus of _____ Dollars (\$_____) for each day that Substantial Completion is

attained earlier than the Bonus Date. Owner and Design-Builder agree that the maximum aggregate amount that Design-Builder shall receive as the early Completion Bonus is _____ Dollars (\$_____).

- 6.6 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 of the General Conditions of Contract, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price for those events set forth in Section 8.2.1 of the General Conditions of Contract, provided, however, for Force Majeure Events, Design-Builder shall be entitled to an increase in the Contract Price providing that:
- 6.6.1 Said events must exceed sixty (60) cumulative days before Design-Builder is entitled to additional compensation; and
- 6.6.2 Said additional compensation shall be limited to the direct costs and expenses Design-Builder can demonstrate it has reasonably actually incurred as a result of such event.
- 6.7 Owner's Review Time. The parties have established the following maximum and minimum amount of time for Owner to review Design Submissions and the Project Schedule or any updates thereto unless the parties agree in writing otherwise.
- 6.7.1 Owner shall have a minimum of seven (7) days of receipt by Owner to review all Design Submissions, the Project Schedule, and any updates thereto.
- 6.7.2 Owner shall review and (if applicable) provide a response to Design-Builder on all Design Submissions, the Project Schedule, and any updates thereto within fourteen (14) days of receipt by Owner.

Article 7

Contract Price

- 7.1 **Contract Price.**
- 7.1.1 **Step 1 Services.** Owner shall pay Design-Builder in accordance with the Letter of Intent for Step 1 Progressive Design-Build Services. Unless otherwise provided in the Letter of Intent, the Phase 1 Services compensation is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.
- 7.1.2 **Step 2 Services.** For Step 2 Services, Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") equal to the Lump Sum amount set forth in Section 7.2 hereof or in the Contract Price Amendment, or equal to the Design-Builder's Fee (as defined in Section 7.4 hereof) plus the Cost of the Work (as defined in Section 7.5 hereof), subject to the GMP established in Section 7.6 hereof or as set forth in the Contract Price Amendment and any adjustments made in accordance with the General Conditions of Contract.
- 7.1.3 For the specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis: *(This is an optional section intended to provide the parties with flexibility to identify and price limited services.)*

- 7.2 **Lump Sum.** Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of _____ Dollars (\$ _____) ("Contract Price") for the Work for Step 1 and Step 2 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.
- 7.3 **Markups for Changes.** If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 8.4.1.3 or 8.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes:
- 7.3.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of _____ percent (_____ %) of the additional costs incurred for that Change Order, plus any other markups set forth at Exhibit X hereto.
- 7.3.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include no additional reduction to account for Design-Builder's Fee or any other markup
- 7.4 **Design-Builder's Fee.**
- 7.4.1 Design-Builder's Fee shall be: _____ Dollars (\$ _____), as adjusted in accordance with Section 7.4.2 below.
- 7.4.2 Design-Builder's Fee will be adjusted as follows for any changes in the Work:
- 7.4.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of _____ percent (_____ %) of the additional Costs of the Work incurred for that Change Order, plus any other markups set forth at Exhibit X hereto.
- 7.4.2.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include no additional reduction to account for Design-Builder's Fee or any other markup.
- 7.5 **Cost of the Work.**
- 7.5.1 The term Cost of the Work shall mean costs reasonably incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the following:
- 7.5.1.1 Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site, provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement.
- 7.5.1.2 Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.
- 7.5.1.3 Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such

costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 7.5.1.1 through 7.5.1.3 hereof.

- 7.5.1.4 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.
- 7.5.1.5 Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.
- 7.5.1.6 Costs, including transportation, inspection, testing, storage, and handling of materials, equipment, and supplies incorporated or reasonably used in completing the Work.
- 7.5.1.7 Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling, and removing such items.
- 7.5.1.8 Costs of removal of debris and waste from the Site.
- 7.5.1.9 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying, and reasonable petty cash expenses.
- 7.5.1.10 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.
- 7.5.1.11 Premiums for insurance in excess of that normally carried by the Design-Builder, and bonds required by this Agreement or the performance of the Work.
- 7.5.1.12 All fuel and utility costs incurred in the performance of the Work.
- 7.5.1.13 Sales, use, or similar taxes, tariffs, or duties incurred in the performance of the Work.
- 7.5.1.14 Legal costs, court costs, and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder.
- 7.5.1.15 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.
- 7.5.1.16 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying

legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

- 7.5.1.17 Deposits which are lost, except to the extent caused by Design-Builder's negligence.
- 7.5.1.18 Costs incurred in preventing damage, injury, or loss in case of an emergency affecting the safety of persons and property.
- 7.5.1.19 Accounting and data processing costs related to the Work.
- 7.5.1.20 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.
- 7.5.1.21 Owner and Design-Builder agree that an escrow account in the amount of _____ Dollars (\$) shall be established prior to Final Completion, which escrow shall be used to reimburse Design-Builder for the Costs of the Work incurred after Final Completion to perform warranty Work. The escrow agreement will provide that any sums not used at the expiration of the warranty period shall be returned to Owner, subject to any savings Design-Builder may be entitled to under this Agreement. In the event the warranty escrow account is exhausted, but funds remain under the GMP, Owner shall be obligated to pay Design-Builder the Costs of the Work incurred after Final Completion to perform warranty Work up to the GMP.

7.5.2 Non-Reimbursable Costs. The following shall be excluded from the Cost of the Work:

- 7.5.2.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 7.5.1.1, 7.5.1.2, and 7.5.1.3 hereof.
- 7.5.2.2 Overhead and general expenses, except as provided for in Section 7.5.1 hereof, or which may be recoverable for changes to the Work.
- 7.5.2.3 The cost of Design-Builder's capital used in the performance of the Work.
- 7.5.2.4 If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

7.6 The Guaranteed Maximum Price.

- 7.6.1 Design-Builder guarantees that it shall not exceed the GMP of _____ Dollars (\$ _____). Documents used as a basis for the GMP shall be identified in the most current Contract Price Amendment to this Agreement. Design-Builder does not guarantee any specific line item provided as part of the GMP and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents. *(While the Contract Price Amendment will be developed in advance or concurrently with the execution of this Agreement, it is recommended that such exhibit include the items set forth in Section 2 above, to ensure that the basis for the GMP is well understood).*
- 7.6.2 The GMP includes a Contingency in the amount of _____ Dollars (\$) which is available for Design-Builder's exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d)

correction of defective, damaged or nonconforming Work, design errors or omissions, however caused; (e) Subcontractor defaults; or (f) those events under Section 8.2.2 of the General Conditions of Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price.

7.6.2.1 The Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents.

7.6.2.2 Design-Builder shall provide Owner notice of all anticipated charges against the Contingency, and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months.

7.6.2.3 Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

7.6.3 Savings.

7.6.3.1 If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Section 7.1.3 hereof) is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows:

[Choose one of the following.]

☐ _____ percent (____%) to Design-Builder and
_____ percent (____%) to Owner.

or

☐ The first _____ Dollars (\$ _____) of Savings shall be provided to (choose either Design-Builder or Owner) _____, with the balance of Savings, if any, shared _____ percent (____%) to Design-Builder and _____ percent (____%) to Owner.

7.6.3.2 Savings shall be calculated and paid as part of Final Payment under Section 7.4 hereof, with the understanding that to the extent Design-Builder incurs costs after Final Completion which would have been payable to Design-Builder as a Cost of the Work, the parties shall recalculate the Savings in light of the costs so incurred, and Design-Builder shall be paid by Owner accordingly.

7.7 Allowance Items and Allowance Values.

7.7.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the most current Contract Price Amendment.

7.7.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to

develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

- 7.7.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.
- 7.7.4 The Allowance Value includes the direct cost of labor, materials, equipment, transportation, taxes, and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and Fee, are deemed to be included in the original Contract Price, and are not subject to adjustment notwithstanding the actual amount of the Allowance Item.
- 7.7.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 7.7.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

7.8 Performance Incentives.

- 7.8.1 Owner and Design-Builder have agreed to the performance incentive arrangements set forth in Exhibit _____.

(The parties are encouraged to discuss and agree upon performance incentives that will influence project success. These incentives may consist of Award Fees, incentives for safety, personnel retention, client satisfaction, and similar items.)

Article 8

Procedure for Payment

- 8.1 **Payment for Step 1 Services.** Design-Builder and Owner agree upon the following method for partial and final payment to Design-Builder for the services hereunder:

- 8.1.1 Design-Builder shall submit to Owner on the 25th day of each month, beginning with the first month after date of Notice to Proceed with Step 1 Services, Design-Builder's Application for Payment in accordance with the percentage of completion of Step 1 Services.
- 8.1.2 After Owner's receipt of each properly submitted and accurate Application for Payment, Owner shall make payment in accordance with Owner's standard monthly claims cycle and payment procedures.
- 8.1.3 Payment of Design-Builder's final Application for Payment for Step 1 Services shall not be paid until:
 - 8.1.3.1 Owner accepts Design-Builder's Step 1 Report in accordance with Section 2.3.2.2 above; or
 - 8.1.3.2 Owner rejects Design-Builder's Step 1 Report and terminates negotiations in accordance with Section 2.3.2.3 above, or Design-Builder terminates negotiations in accordance with Section 2.3.2.4 above.

8.2 Step 2: Contract Price Progress Payments.

8.2.1 Design-Builder shall submit to Owner on the 25th day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

8.2.1.1 The Step 2 Application for Payment shall include a single line item on the Schedule of Values for Step 1 Services, and indicate any previous payments made or earned amounts outstanding to be paid.

8.2.2 After Owner's receipt of each properly submitted and accurate Application for Payment, Owner shall make payment in accordance with Owner's standard monthly claims payment procedures, and in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

8.2.3 If Design-Builder's Fee under Section 7.4 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

8.3 Retainage on Progress Payments.

8.3.1 Owner will retain ten percent (10%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment.

8.3.1.1 Owner will also reasonably consider reducing retainage for Work completed early in the Project.

8.3.1.2 There is no retainage on Step 1 Services or Design Services

8.3.2 Within thirty (30) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) 200% of the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

8.3.3 If a warranty reserve has been established pursuant to Section 7.5.1.21 above, Owner shall at the time of Substantial Completion retain the agreed-upon amounts and establish an escrow account as contemplated by Section 7.5.1.21 above.

8.4 **Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

8.5 **Interest.** Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing sixty (60) days after payment is due at the annual rate two points over local prime rate until paid.

8.6 **Record Keeping and Finance Controls.** Design-Builder acknowledges that this Agreement is to be administered on an “open book” arrangement relative to Costs of the Work, regardless of how Contract Price is determined.

8.6.1 Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents.

8.6.2 During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner’s accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Builder’s records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment.

8.6.3 Such inspection shall take place at Design-Builder’s offices during normal business hours unless another location and time is agreed to by the parties.

8.6.4 Any multipliers or markups agreed to by Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, but the composition of such multiplier or markup is not subject to audit.

8.6.5 Any lump sum agreed to by Owner and Design-Builder as part of this Agreement is not subject to audit once the last Contract Price Amendment has been executed.

Article 9

Termination for Convenience

9.1 If Design-Builder is terminated for convenience pursuant to Section 11.6 of the General Conditions, and the parties have agreed to a payment to Design-Builder in the case of such termination of convenience, Owner shall pay Design-Builder for the following in addition to the amount set forth in Section 11.6.1 of the General Conditions:

9.1.1 Overhead and profit in the amount of _____ percent (_____ %) on the sum of items set forth in Section 11.6.1 of the General Conditions.

9.2 In addition to the amounts set forth in Section 9.1 above and Section 11.6.1 of the General Conditions, Design-Builder shall be entitled to receive one of the following if the parties agree to an additional payment:

9.2.1 If Owner terminates this Agreement prior to the submittal of the Step 1 Report, Design-Builder shall be paid the amount earned per Section 8.1.1 as of the Date of Notice of Termination.

9.2.2 If Owner terminates this Agreement after submittal of Step 1 Report, and prior to Owner’s approval of Step 1 Report, the provisions of Section 2.3.2 apply.

9.2.3 If Owner terminates this Agreement prior to commencement of construction, and after approval of the Step 1 Report, Design-Builder shall be paid _____ percent (_____ %) of the remaining balance of the Contract Price or, if a GMP has not been established, the remaining balance of the most recent estimated Contract Price.

- 9.2.4 If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid **percent (%)** of the remaining balance of the Contract Price or, if a GMP has not been established, the remaining balance of the most recent estimated Contract Price.

Article 10

Representatives of the Parties

10.1 Owner's Representatives.

- 10.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: (Identify individual's name, title, address, and telephone numbers.)

Insert Name
Insert Position

- 10.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: (Identify individual's name, title, address, and telephone numbers.)

Insert Name
Insert Position

10.2 Design-Builder's Representatives.

- 10.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: (Identify individual's name, title, address, and telephone numbers.)

- 10.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: (Identify individual's name, title, address, and telephone numbers.)

Article 11

Bonds and Insurance

- 11.1 **Insurance.** Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.
- 11.2 **Bonds and Other Performance Security.** Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

Performance Bond.

(Check one box only. If no box is checked, then no bond is required.)

☒ Required

☐ Not Required

Payment Bond.

[Check one box only. If no box is checked, then no bond is required.]

☒ Required

☐ Not Required

Other Performance Security.

[Check one box only. If no box is checked, then no other performance security is required. If the "Required" box is checked, identify below the specific performance security that is being required and all salient commercial terms associated with that security.]

☐ Required

☒ Not Required

Article 12

Other Provisions

12.1 **Other Provisions.** Other provisions, if any, are as follows:

12.1.1 **Antidiscrimination Provisions:** As required by Indiana Code Section 5-16-6, as amended; Design-Builder agrees;

12.1.1.1 That in the hiring of employees for the performance of Work under this Contract, or any consultant or subcontractor hereunder, no contractor or consultant or subcontractor, nor any person acting on behalf of such contractor, consultant or subcontractor, shall, by reason of race, religion, color, sex, veteran status, national origin or ancestry, discriminate against any citizen of the State of Indiana who is qualified to, and available to perform the Work to which the employment relates;

12.1.1.2 That no contractor, consultant, subcontractor, or any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of the Work under this Contract on account of race, religion, color, sex, veteran status, national origin or ancestry;

12.1.1.3 That the Design-Builder and all of its consultants and subcontractors shall adhere to the Owner's non-discrimination policies;

12.1.1.4 That there may be deducted from the amount payable to the Design-Builder by Owner a penalty of five (\$5.00) dollars for each individual for each calendar day during which such individual was discriminated against or intimidated in violation of the provisions of this Contract; and

12.1.1.5 That this Contract may be cancelled or terminated by Owner for cause, and all money due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms and conditions of this Section of the Contract.

12.1.2 **E-Verify Provisions**

12.1.2.1 As required by Indiana Code Section 22-5-1.7, as amended; Design-Builder will enroll in and verify the work eligibility status of all newly hired employees through the federal E-Verify program for as long as the program remains in existence.

12.1.2.2 Design-Builder will sign the Owner's E-Verify affidavit to this effect, as well as certify that the Design-Builder does not knowingly employ an unauthorized alien.

- 12.1.3 **Investment Activity:** Pursuant to Indiana Code Section 5-22-16.5, Design-Builder certifies that Design-Builder is not engaged in investment activities in Iran.
- 12.1.4 **Standard of Care**
- 12.1.4.1 Notwithstanding Section 2.3.1 of the General Conditions of Contract, if the parties agree upon specific performance standards in the Basis of Design Documents, the design professional services shall be performed to achieve such standards.
- 12.1.5 **Final Resolution of Claims**
- 12.1.5.1 Any claims, disputes, or controversies between the parties arising out of or related to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 of the General Conditions of Contract shall be resolved in a court of competent jurisdiction in LaPorte County, Indiana.
- 12.2 Listing of Exhibits and documents incorporated herein:
- Exhibit A – Basis of Design Documents (at the time of authorization for Step 2 Services)
 - Exhibit B1b – Scope of Services
 - Exhibit B1c – Insurance Exhibit
 - Exhibit C – Design-Builder's approved Step 1 Report (at the time of authorization for Step 2 Services)
 - Permits Exhibit (at the time of authorization for Step 2 Services)
 - DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (2022 Edition) ("General Conditions of Contract")
 - Contract Price Amendment, if any.

Article 13

Limitation of Liability

- 13.1 **Limitation.** To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Design-Builder, its Design Consultants, and Subcontractors, surety (if any) and their respective officers, directors, employees, and agents, and any of them, to Owner and anyone claiming by, through, or under Owner, for any and all claims, losses, liabilities, costs, or damages whatsoever arising out of, resulting from, or in any way related to, the Project or this Agreement from any cause, including but not limited to the negligence, indemnity, professional errors or omissions, strict liability, breach of contract, or warranty (express or implied) shall not exceed _____percent (____%) of the Contract Price. The parties agree that specific consideration has been given by Design-Builder for this limitation and that it is deemed adequate.

In executing this Agreement, Owner and Design-BUILDER each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

OWNER:

Griffith Public Schools

(Name of Owner)

(Signature)

(Printed Name)

School Board President

(Title)

(Signature)

(Printed Name)

School Board Secretary

(Title)

Date: _____

DESIGN-BUILDER:

(Name of Design-BUILDER)

(Signature)

(Printed Name)

(Title)

Date: _____

Caution: An original DBIA document has this caution printed in blue. This is a printable copy and an original assures that changes will not be obscured as may occur when documents are reproduced.

Standard Form of General Conditions of Contract Between Owner and Design-Builder

Document No. 535

Third Edition, 2022

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Washington, D.C.



SAMPLE

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Article 1

General

1.1 Mutual Obligations.

1.1.1 *Owner and Design-Builder* commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions.

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 544, *Standard Form of Progressive Design-Build Agreement* (2022 Edition) as amended for Indiana Public Works Projects per Indiana Code Section 5-30.

1.2.2 *Basis of Design Documents* are as follows:

1.2.2.1 Owner's written acceptance of Design-Builder's Step 1 Report and Notice to Proceed with Step 2 Progressive Design-Build Services, dated [insert date];

1.2.2.2 Design-Builder's Step 1 Report, dated [insert date], including all attachments;

1.2.2.3 Owner's Letter of Intent and Notice to Proceed with Step 1 Progressive Design-Build Services, dated [insert date];

1.2.2.4 Design-Builder's Proposal dated [insert date];

1.2.2.5 Owner's Request for Proposal (RFP) dated [insert date], including all attachments and any addenda;

1.2.2.6 Design-Builder's Verified Statement of Qualifications dated October 10, 2023; and

1.2.2.7 Owner's Request for Qualifications (RFQ) dated September 25, 2023.

1.2.3 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

1.2.4 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.5 *Design-Build Team* is comprised of Design-Builder, Design Consultant, and key Subcontractors identified by Design-Builder.

1.2.6 *Design Consultant* is a qualified design professional, licensed to provide professional services in the State of Indiana, who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of Design Consultant but is retained by Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

1.2.7 *Design Submission* means any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models, and other information developed, prepared, furnished, delivered or required to be delivered by, or for, Design-Builder.

1.2.8 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

1.2.9 *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

1.2.10 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2022 Edition).

1.2.11 *GMP Exhibit* means that exhibit attached to DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price*, which exhibit will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.

1.2.12 *GMP Proposal or Proposal* means that proposal developed by Design-Builder in accordance with Section 3.3 of DBIA Document No. 544, *Progressive Design-Build Agreement*.

1.2.13 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.14 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.15 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

1.2.16 *Site* is the land or premises on which the Project is located.

1.2.17 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

1.2.18 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

1.2.19 *Substantial Completion or Substantially Complete* means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

1.2.20 *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Unless the parties agree on a different time period for submission of a status report, Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule; (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution; (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the *Standard Form of Agreement Between Owner and Design-Builder*; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s). Status reports shall be submitted with Design-Builder's draft Payment Applications as a pre-requisite to payment.

2.1.3 Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences, and techniques for executing the Work.

2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.1.5 Design-Builder represents and warrants the following to Owner, in addition to the other representations and warranties contained in the Contract Documents, as an inducement to Owner to execute the Agreement, which representations and warranties shall survive Final Completion of the Work:

2.1.5.1 That Design-Builder is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents

2.1.5.2 That Design-Builder is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations hereunder, and has sufficient experience and competence to do so.

2.1.5.3 That Design-Builder is authorized to do business in the state of Indiana and is

properly licensed by all necessary governmental, public, and quasi-public authorities having jurisdiction over the Work and the Site of the Project.

- 2.1.5.4** That Design-Builder's execution of the Agreement and its performance thereof is within its duly authorized powers.
- 2.1.5.5** That Design-Builder's duly authorized representative has visited the Site of the Project, familiarized himself with local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents.
- 2.1.5.6** That there is no pending or threatened litigation against Design-Builder except as previously disclosed in writing Owner.
- 2.1.6** Within ten (10) days after Design-Builder executes the Agreement, but not later than the start of Construction Work on the Project, Design-Builder shall deliver to Owner certified as true and accurate with no material changes as of the time of delivery, the following:
 - 2.1.6.1** A copy of the Design-Builder's license and the Designer(s) of Record's license(s);
 - 2.1.6.2** All required Performance Bond and Labor and Material Payment Bonds;
 - 2.1.6.3** A copy of all applicable certifications or qualifications required by the Contract Documents or applicable law and regulation;
 - 2.1.6.4** List of Design-Builder's project staff;
 - 2.1.6.5** All required certificates of insurance, including endorsement of Owner as "additional insured", waivers of subrogation and other required supplemental insurance information;
 - 2.1.6.6** Owner's affidavit for the Federal E-Verify employment program; and
 - 2.1.6.7** All other information required by the Contract Documents.

2.2 Design Professional Services.

2.2.1 Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.2.2 Design-Builder shall employ only Design Consultants and/or Design Subconsultants who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Design Consultants and/or Design Subconsultants perform Work on the Project, Design-Builder shall identify in writing to Owner all Design Consultants and Design Subconsultants. To the extent that Design-Builder has not selected a Design Consultant or Design Subconsultant prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Design Consultants and/or Design Subconsultants and their scope of Work prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Design Consultant or Design Subconsultant, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder shall not substitute a listed Design

Consultant or Subconsultant without obtaining Owner's prior written consent; such consent shall not be unreasonably withheld. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant or Design Subconsultant, including but not limited to any third-party beneficiary rights.

2.3 Standard of Care for Design Professional Services.

2.3.1 The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the applicable profession practicing under similar conditions at the same time and locality of the Project.

2.4 Step 1 Progressive Design-Build Services

2.4.1 Design-Builder shall provide Step 1 Progressive Design-Build Services as enumerated in Exhibit B attached to the Agreement between Owner and Design-Builder identified in Section 1.2.1 herein.

2.5 Step 2 Progressive Design-Build Services – Design Development Services after Owner's approval of Step 1 Report.

2.5.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim Design Submissions that Owner may wish to review, which interim Design Submissions may include design criteria, drawings, diagrams, and specifications setting forth the Project requirements.

2.5.1.1 Design Submissions shall be consistent with the Owner's Project Criteria as well as the Basis of Design Documents, as the Basis of Design Documents may have been changed or supplemented through the design process set forth in Section 2.4.1. By submitting Design Submissions, Design-Builder represents to the Owner that the Work depicted and otherwise shown, contained, or reflected in Design Submissions may be constructed in compliance with the then current Contract Price and Contract Time. Notwithstanding the above, Design-Builder may propose Design Submissions that may alter the Basis of Design Documents, the Contract Price and/or Contract Time; however, Design-Builder must provide notice thereof in accordance with Article 10 of the General Conditions and obtain a Change Order before such proposed Design Submissions are incorporated into the Construction Documents.

2.5.1.2 On or about the time of the Design Submissions, Design-Builder and Owner shall meet and confer about the Design Submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted Design Submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim Design Submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

2.5.1.3 Owner shall review and respond to Design Submissions, providing any comments and/or concerns about the Design Submissions. Owner shall provide all comments on the Design Submissions within the time provided by the Contract Documents. Design-Builder shall revise the Design Submissions (and any other deliverables) in response to Owner's comments and incorporate said responses into the next submission of Design Submissions.

2.5.1.4 If incorporation of Owner's comments results in a design that is inconsistent with

or otherwise gives rise to a change in Owner's Project Criteria, the Basis of Design Documents, the Contract Price and/or the Contract Time, Design-Builder shall provide notice thereof in accordance with Articles 9 and 10 of the General Conditions. Changes to the Basis of Design Documents, the Contract Price and/or the Contract Time, including those that are deemed minor changes, shall be processed in accordance with Article 9 of the General Conditions.

2.5.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim Design Submissions, as such submissions may have been modified in a design review meeting and recorded in the meeting minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.5.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.5.3 Owner's review and approval of interim Design Submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim Design Submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner, nor shall it relieve the Design-Builder from compliance with Basis of Design Documents and the approved Step 1 Report. Design-Builder shall provide Owner with sufficient time in the Project Schedule to review and approve the Design Submissions.

2.5.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim Design Submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.6 Legal Requirements.

2.6.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.2.2 The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.7 Government Approvals and Permits.

2.7.1 Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.7.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.8 Design-Builder's Construction Phase Services.

2.8.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or

a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.8.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill, and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences, and techniques of construction.

2.8.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Subcontractors perform Work on the Project, Design-Builder shall identify in writing to Owner all Subcontractors. To the extent that Design-Builder has not selected a Subcontractor prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Subcontractors prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder may not substitute listed Subcontractors without Owner's prior written consent; such consent shall not be unreasonably withheld.

2.8.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.8.5 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.8.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery, and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.8.7 As required by Indiana Code Section 5-16-8-2, as amended, Design-Builder shall use only steel and foundry products made in the United States in the performance of the Work unless Owner has determined, in writing, that the cost of domestic steel or foundry products is considered to be unreasonable.

2.8.7.1 For the purposes of this Section, the price of steel or foundry products of domestic origin will not be considered unreasonable if the price does not exceed the sum of the offered price of like steel or foundry products of foreign origin (including all applicable duty) plus a differential of 15% more than the offered price of steel or foundry products of foreign origin.

2.8.8 No asbestos containing material may be used as a building material for the Work. For all materials used for the Work which were marked on the material or packaging with the following or similar wording; "*May contain mineral fibers*," Design-Builder shall provide to Owner either the manufacturer's certification that the material does not contain asbestos, or a laboratory report from an EPA accredited laboratory indicating that the material does not contain asbestos in accordance

with EPA and OSHA requirements.

2.8.9 Pumping, draining and control of surface and groundwater shall be carried out so as to avoid endangering any adjacent facility or property, or interrupting, restricting or otherwise infringing, or interfering with the use thereof. All such work shall be performed in compliance with state and federal regulations and any other authority applicable to the site with respect to surface and groundwater and shall be at no additional cost to Owner. The discharge of any substance other than storm water into any storm drain, inlet, creek, or ditch, including street gutters and curb inlets is strictly prohibited. Design-Builder shall pay Owner for all costs Owner incurs based upon Design-Builder's noncompliance with this provision, including, but not limited to repair or remediation costs, fines or penalties imposed on Owner by any regulating authority and attorneys' fees arising out of a prohibited discharge.

2.8.10 Neither Design-Builder nor any entity for whom Design-Builder is responsible shall erect any sign on the Site without Owner's prior written consent. Such consent may be withheld in Owner's sole discretion.

2.8.11 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public authority. Design-Builder shall bear all related costs of tests, inspections, and approvals. If such procedures for testing, inspections or approval reveal failure of portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures shall be at Design-Builder's expense. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by Design-Builder, and promptly delivered to Owner. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

2.9 Design-Builder's Responsibility for Project Safety.

2.9.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting; (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site; and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work, for the benefit of the Owner. In addition, Design-Builder agrees solely for the benefit of Owner to monitor safety precautions and safety programs established by Subcontractors. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Design-Builder may utilize its own staff and/or subcontract all or a portion of this responsibility to monitor and coordinate safety precautions on the Project.

2.9.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage, or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.9.3 Any duty or obligation of safety by Design-Builder is owed solely to Owner and governmental authorities, and any safety programs, policies, or measures provided by Design-Builder are solely for the benefit of Owner and governmental authorities. Design-Builder does not owe any additional safety duty or obligation to any of its Subcontractors or their employees, sub-

subcontractors, suppliers, or any other individual at the Project Site. Design-Builder's responsibility for safety under this Section 2.9 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters; and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.9.4 The provisions of Indiana Code Section 36-1-12-20 and IOSHA regulations 29CFR 1926, Subpart P, relating to trench safety systems are incorporated herein by this reference.

2.10 Design-Builder's Warranty.

2.10.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.10 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.11 Correction of Defective Work.

2.11.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.10 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

2.11.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

2.11.3 The one-year period referenced in Section 2.11.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations, and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with

Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim Design Submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

3.2 Furnishing of Services and Information.

3.2.1 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

3.2.1.1 Surveys describing the property, boundaries, topography, and reference points for use during construction, including existing service and utility lines;

3.2.1.2 Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

3.2.1.3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

3.2.1.4 A legal description of the Site;

3.2.1.5 To the extent available, record drawings of any existing structures at the Site; and

3.2.1.6 To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

3.2.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information.

3.3.1 At Design-Builder's written request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.4 Owner's Representative.

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and

approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions, or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

3.5 Government Approvals and Permits.

3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in Owner's Permit List attached as an exhibit to the Agreement.

3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.6 Owner's Separate Contractors.

3.6.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with and coordinate their activities so as not to interfere with Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless; and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any

of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Build, Subcontractors, or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Build shall indemnify, defend, and hold harmless Owner and Owner's officers, directors, employees, and agents from and against all claims, losses, damages, liabilities, and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Build, Subcontractors or anyone for whose acts they may be liable.

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work, are collectively referred to herein as "Differing Site Conditions." If Design-Build encounters a Differing Site Condition, Design-Build will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Build's cost and/or time of performance are adversely impacted by the Differing Site Condition.

4.2.2 Upon encountering a Differing Site Condition, Design-Build shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Build shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

Article 5

Insurance and Bonds

5.1 Design-Build's Insurance Requirements.

5.1.1 Design-Build is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state of Indiana, and with a minimum rating set forth in the Agreement.

5.1.2 Design-Build's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.3 Any professional liability insurance coverage shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project. Such policies shall be provided to Owner prior to the commencement of any design services hereunder.

5.1.4 Prior to commencing any construction services hereunder, Design-Build shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents; and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days' prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment is reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not

furnished by the insurer, it shall be furnished by Design-Builder with reasonable promptness according to Design-Builder's information and belief.

5.2 Owner's Liability Insurance.

5.2.1 Owner shall procure and maintain from insurance companies authorized to do business in Indiana such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project. Owner shall be entitled to elect to utilize an owner-controlled insurance program ("OCIP") with respect to Owner and Design-Builder's insurance requirements contained herein. The parties shall work in good faith to accomplish implementation of such an OCIP, if the program is so elected by Owner.

5.3 Owner's Property Insurance.

5.3.1 Unless otherwise provided in the Contract Documents, Owner shall procure and maintain from insurance companies authorized to do business in Indiana property insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Owner shall be the broadest coverage commercially available and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. Design-Builder is responsible for the payment of deductibles under the insurance required by this Section 5.3.1, should Design-Builder request a claim be made, otherwise, Owner is responsible for payment of any other deductibles under the insurance required by this Section 5.3.1.

5.3.2 Prior to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner; and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days' prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

5.3.3 Any loss covered under Owner's property insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

5.3.5 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents, and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

5.4 Bonds and Other Performance Security.

5.4.1 Owner requires Design-Builder to obtain performance and labor and material payment bonds, as set forth in the Agreement.

5.4.2 All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the state of Indiana.

5.5 Notwithstanding anything to the contrary in the Agreement, no agreement or provision contained herein to procure or provide insurance shall be deemed or construed to constitute a waiver of liability, an agreement to exculpate a party from the consequences of its own negligence, or limit Owner's recourse to the proceeds of such insurance, and the operation of Morsches Lumber v. Probst, 388 N.E. 2nd 284 (Ind. Ct. App.1979) is hereby not applicable to the Agreement.

Article 6

Payment

6.1 Schedule of Values.

6.1.1 As provided in the Agreement, as part of Step 1 Progressive Design- Build Services, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts; (ii) include values for all items comprising the Work; (iii) identify line items for Step 1 Services, Fees, Subconsultants, General Conditions, Allowances, and Contingencies, and (iv) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

6.1.2 As required by Indiana Code Section 36-1-12-20(c), as amended, the requirements of which are incorporated by reference under Section 2.9.4 hereof, the cost for trench safety systems, if any, shall be paid for as a separate pay item in the Schedule of Values of the principal Work with which safety systems are associated.

6.1.3 Owner will timely review and approve the schedule of values so as not to delay the submission of Design-Builder's first application for payment. Owner and Design-Builder shall timely resolve any differences so as not to delay Design-Builder's submission of its first application for payment.

6.2 Monthly Progress Payments.

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents.

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location; (ii) the equipment and materials are protected by suitable insurance; and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

6.2.3 All discounts offered by Subcontractors, Sub-Subcontractors, and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

6.2.4 The Application for Payment shall constitute Design-Builder's representation that the Work described therein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.2.5 Funds retained by Owner, as specified in the Agreement, shall be placed in an escrow account with a bank, savings and loan institution or the State of Indiana, as the escrow agent. The escrow agent shall be selected by mutual agreement between Owner and Design-Builder under a written agreement. The escrow agent shall invest all escrowed principal in obligations selected by the escrow agent. The escrow agent shall hold the escrowed principal and income until receipt of notice from Owner and Design-Builder, specifying the part of the escrowed principal to be released from the escrow and the person to whom that portion is to be released. After receipt of the notice, the escrow agent shall remit the designated part of escrowed principal and the same proportion of then escrowed income to the person specified in the notice. The escrow agent shall be compensated for the agent's services. Owner and Design-Builder shall agree on a reasonable fee comparable with fees being charged for the handling of escrow accounts of similar size and duration. The fee shall be paid from the escrowed income.

6.2.6 Owner shall have no obligation to pay or see to the payment of money to any Subcontractor except as may otherwise be required by law. Notwithstanding anything in the Contract Documents to the contrary, Owner, in its sole discretion, may elect to make any payment requested by Design-Builder on behalf of a Subcontractor or Supplier of any tier jointly payable to Design-Builder and such person or entity. Design-Builder and such Subcontractor or Supplier shall be responsible for the allocation and disbursement of any such joint payment. In no event shall any joint payment be construed to create (i) any contractual relationship between Owner and such Subcontractor or Supplier of any tier, (ii) any obligations from Owner to such Subcontractor or Supplier, or (iii) any rights in such Subcontractor or Supplier against Owner.

6.3 Withholding of Payments.

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

6.3.2 Owner may withhold payment in whole or in part, or because of subsequently discovered evidence or subsequent observations, may nullify the whole or part of a payment previously issued, to such extent as may be necessary in Owner's opinion to protect Owner from loss for which Design-Builder is responsible, because of:

6.3.2.1 Defective Work not remedied;

6.3.2.2 Third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to Owner is provided by Design-Builder;

6.3.2.3 Failure of Design-Builder to make payments properly to Subcontractors or for labor, materials, or equipment;

6.3.2.4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;

6.3.2.5 Damage to Owner or a separate contractor;

6.3.2.6 Reasonable evidence that the Work will not be completed within the Contract Time(s), and that the unpaid balance would not be adequate to cover actual damages for the anticipated delay; or

6.3.2.7 Failure to carry out the Work in accordance with the Contract Documents or Legal Requirements.

6.3.3 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement. Owner shall not be deemed to be in default of the Agreement by reason of withholding payment while any of the grounds set forth in this Section 6.3 remain uncured.

6.4 Right to Stop Work and Interest.

6.4.1 If Owner fails to pay timely Design-Builder any undisputed amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

6.5 Design-Builder's Payment Obligations.

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.5.2 Design-Builder and each of its Design Consultants, Subcontractors, employees, agents and assigns acknowledge that all properties at which the Work will occur are public properties not subject to mechanics liens under Indiana law.

6.6 Substantial Completion.

6.6.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof; (ii) the remaining items of Work that have to be completed before final payment; (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities, and insurance pending final payment; and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.6.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to 200% of the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

6.6.3 Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been

issued for the portion of Work addressing the items set forth in Section 6.6.1 above; (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project; and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not unreasonably interfere with Design-Builder's completion of the remaining Work.

6.7 Final Payment.

6.7.1 After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Completion.

6.7.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

6.7.2.1 An affidavit that there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, material, equipment, taxes, or other items performed, furnished, or incurred for or in connection with the Work which will in any way affect Owner's interests;

6.7.2.2 A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

6.7.2.3 Consent of Design-Builder's surety, if any, to final payment;

6.7.2.4 All operating manuals, warranties and other deliverables required by the Contract Documents; and

6.7.2.5 Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.7.2.6 Record Documents, including a record copy of the Project Website.

6.7.3 Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests; (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion; and (iii) the terms of any special warranties required by the Contract Documents.

6.7.4 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the punch list if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.10 and 2.11 herein and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

6.7.5 Final Payment is further subject to the provisions of Indiana Code Section 36-1-12-14(f), which are incorporated herein by reference, regarding final payment, payment by the escrow agent, and withholding for uncompleted minor items.

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information, and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright; or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner; or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

7.2 Taxes.

7.2.1 Owner shall furnish Design-Builder with any applicable tax exemption certificates necessary to obtain such exemption, upon which Design-Builder may rely.

7.2.2 Materials and equipment purchased as part of the Work that become a permanent part of the structure or facility being constructed are not subject to state gross retail or use tax, and the Contract Price and the amount of any Change Orders shall not include such tax. The amount of any tax paid by Design-Builder, other than the foregoing, shall be separately itemized on Design-Builder's Applications for Payment, and Owner will have the right to contest such amounts. An exemption certificate will be furnished by Owner upon request and must be filed with vendors by Design-Builder for exemption from payment of the tax on exempt material and equipment purchased.

7.2.3 Owner is required by statute to withhold certain taxes, including the Indiana Gross Income Tax, from all payments made to non-resident contractors who are corporations and to remit such tax quarterly to the Indiana Department of Revenue. A "non-resident contractor" or foreign corporation which is registered with the Indiana Secretary of State to do business in the State of Indiana shall be exempt from this withholding.

7.3 Payment Claim Indemnification.

7.3.1 Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend, and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.3.2 Pursuant to Indiana law, no mechanic's lien(s) may be recorded against any project or property owned by Owner.

7.4 Design-Builder's General Indemnification.

7.4.1 Except as set forth in Section 7.4.2 below, Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for non-party bodily injury, sickness or death and non-party property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.2 For indemnity obligations that arise from professional errors and omissions, Design-Builder, to the fullest extent permitted by law, shall indemnify Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for non-party bodily injury, sickness, or death and non-party property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.3 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligations set forth in Sections 7.4.1 and 7.4.2 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

7.4.4 Design-Builder's indemnity obligations under this Section 7.4 specifically include, without limitation, all fines, penalties, damages, liability, cost, expenses (including without limitation attorneys' fees and expenses), and punitive damages, if any, rising out of, or in connection with any (i) violation or failure to comply with any law statute, ordinance, rule, regulation, code or requirement of a public authority that bears upon the performance of the Work by the Design-Builder, its Subcontractors, Consultants or any person or entity for whom the Design-Builder is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work by Design-Builder, its Subcontractors, Consultants or any person or entity for whom the Design-Builder is responsible.

7.4.5 The provision of Section 7.4 shall survive the completion or termination of the Agreement.

7.5 Owner's General Indemnification.

7.5.1 Owner, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Design-Builder and any of Design-Builder's officers, directors, and employees, from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Owner, Owner's separate contractors or anyone for whose acts any of them may be liable.

7.6 Limited Recourse.

7.6.1 None of the obligations set forth in this Agreement (on behalf of any party) constitute personal obligations of any natural persons who are the officers, shareholders, members, partners, employees, or agents of any party unless the natural person is expressly identified as a contracting party. All Parties to this Agreement shall not seek recourse against any natural person described herein. This provision, however, shall not protect such natural persons from liability for willful misconduct, illegal acts, or intentional violation of any duty of corporate loyalty.

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 6 of the Agreement.

8.2 Delays to the Work.

8.2.1 If Design-Builder is delayed on the critical path in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events. In the event of a claim by Design-Builder for extension of time, Design-Builder shall present evidence reasonably necessary to substantiate the delay incurred by Design-Builder.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

9.1.1.1 The scope of the change in the Work;

9.1.1.2 The amount of the adjustment to the Contract Price; and

9.1.1.3 The extent of the adjustment to the Contract Time(s).

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

9.1.4 No course of conduct or dealing between the parties, no expressed or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by an alteration or addition to the Work, whether or not there is any unjust enrichment to the Work, shall be the basis of any claim for an increase in the Contract Price or for a change in the Contract Time(s) in the absence of a Change Order or Work Change Directive.

9.1.5 Execution of a Change Order or Work Change Directive constitutes a final settlement of all matters included in the scope of the proposed change, including, but not limited to, all costs of any kind whatsoever associated with such change and all adjustments to the Contract Price, the Contract Time(s) and the construction schedule.

9.2 Work Change Directives.

9.2.1 A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance, and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments.

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

9.4.1.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

9.4.1.2 A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

9.4.1.3 Costs, fees and any other markups set forth in the Agreement; or

9.4.1.4 If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed; and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services; and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies.

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury, or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed ten (10) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. The claimant shall provide more complete information with respect to the claim within fourteen (14) days of the initial notice. The more complete information shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

10.2 Dispute Avoidance and Resolution.

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional, and expeditious manner so as to avoid unnecessary losses, delays, and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless Owner and Design-Builder mutually agree otherwise.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation. Representatives of the parties with authority to resolve the dispute shall be present at any mediation.

10.2.5 Any mediation or litigation relating to the Agreement shall be held in LaPorte County, Indiana and subject to the jurisdiction of state courts located in LaPorte County, Indiana.

10.3 Attorney's Fees.

10.3.1 Each party shall bear its own expenses for legal counsel consulted in connection with or utilized in any dispute resolution proceeding other than litigation in court. The prevailing party in any litigation that results in a judgment shall be entitled to recover from the other party reasonable attorney's fees and expenses incurred by the prevailing party for the work required to file suit and work performed thereafter in connection with the litigation, but not for expenses incurred in the unsuccessful dispute resolution proceedings preceding the initiation of litigation. For the purposes of this paragraph, "prevailing party" shall mean the party that receives all or substantially all of the relief sought by the party in the dispute.

10.3.2 Wherever the Contract Documents entitle Owner to recover its attorneys' fees the term "attorneys' fees" shall include, without limitation, the following related expenses paid or incurred by Owner: (1) attorneys' fees; (ii) paralegal fees; (iii) documentary evidence and expert witness costs; (iv) court reporter charges; (v) filing fees, recording fees, copying charges and the like; and (vi) travel, lodging and meal expense.

10.4 Duty to Continue Performance.

10.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations for undisputed amounts to Design-Builder as well as any further amounts pursuant to Section 9.4.3, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 CONSEQUENTIAL DAMAGES.

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

Article 11

Stop Work and Termination

11.1 Owner's Right to Stop Work.

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner not due to the fault of Design-Builder or its employees, agents or subcontractors.

11.2 Owner's Right to Perform and Terminate for Cause.

11.2.1 If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs, and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 11.6 hereof and Section 9 of the Agreement.

11.3 Design-Builder's Right to Stop Work.

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

11.3.1.1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

11.3.1.2 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. Design-Builder shall not stop work unless it provides such written notice and Owner has failed to cure the reason

for default within the seven (7) day cure period. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been materially and adversely impacted by such stoppage.

11.4 Design-Builder's Right to Terminate for Cause.

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

11.4.1.1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

11.4.1.2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

11.4.1.3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 9 of the Agreement.

11.5 Bankruptcy of Design-Builder.

11.5.1 If Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code, such event may impair or frustrate the Design-Builder's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

11.5.1.1 Design-Builder, its trustee or other successor, shall furnish, upon request of Owner, adequate assurance of the ability of the Design-Builder to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

11.5.1.2 Design-Builder shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If Design-Builder fails to comply with its foregoing obligations, Owner shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to Owner under this Article 11.

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of Owner to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code.

11.6 Termination for Convenience.

11.6.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

11.6.1.1 All Work executed and for proven loss, cost or expense in connection with the Work;

11.6.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

11.6.1.3 The amount set forth in Article 9 of the Agreement.

11.6.2 If Owner terminates this Agreement pursuant to Section 11.6.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 5.3 of the Agreement. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 5 of the Agreement.

Article 12

Electronic Data

12.1 Electronic Data.

12.1.1 The parties recognize that Contract Documents, including drawings, specifications, and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

12.2 Transmission of Electronic Data.

12.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

12.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

12.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be

deemed to be a sale by the transmitting party of tangible goods.

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

12.3.2 Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

12.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

12.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 13

Miscellaneous

13.1 Confidential Information.

13.1.1 Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project, subject, however, to the limitations provided in the Indiana Access to Public Records Act at I.C. 5-14-3

13.2 Assignment.

13.2.1 Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

13.3 Successorship.

13.3.1 Design-Builder and Owner intend that the provisions of the Contract Documents are

binding upon the parties, their employees, agents, heirs, successors and assigns.

13.4 Governing Law.

13.4.1 The Agreement and all Contract Documents shall be governed by the laws of the state of Indiana, without giving effect to its conflict of law principles.

13.5 Severability.

13.5.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

13.6 No Waiver.

13.6.1 The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

13.7 Headings.

13.7.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

13.8 Notice.

13.8.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice; (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement; (iii) if transmitted by facsimile, by the time stated in a machine-generated confirmation that notice was received at the facsimile number of the intended recipient; or (iv) by electronic mail, by the time frame stated in the email-generated confirmation that notice was received by the email of the intended recipient.

13.9 Amendments.

13.9.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.