



CITY OF WESTFIELD, IN
Board of Public Works_Meeting_Agenda_10_12_2021

Tuesday, October 12, 2021 at 03:30 PM

BOARD OR COMMISSION: Board of Public Works and Safety

MEETING DATE: Tuesday, October 12, 2021 at 03:30 PM

MEETING PLACE: Westfield City Hall- Assembly Room

THE FOLLOWING AGENDA IS SUBJECT TO CHANGE AT THE DISCRETION OF THE BOARD OF PUBLIC WORKS AND SAFETY

AGENDA ITEMS

Meeting Minutes Consideration for Approval
NONE

Bid Approval
NONE

Construction Standards & Specifications Changes
NONE

Change Orders
NONE

Contracts/Agreements

Action Item #1:
Station #381 – Approval of Phase 1 Report

Documents: [WFD Phase 1 Report](#)

Agreements and/or Memorandum of Understanding (MOU)
NONE

Consent Agenda

NONE

Department Reports

Fire

Police

Public Works



Westfield Fire Station #81

Phase 1 Report
September 2021



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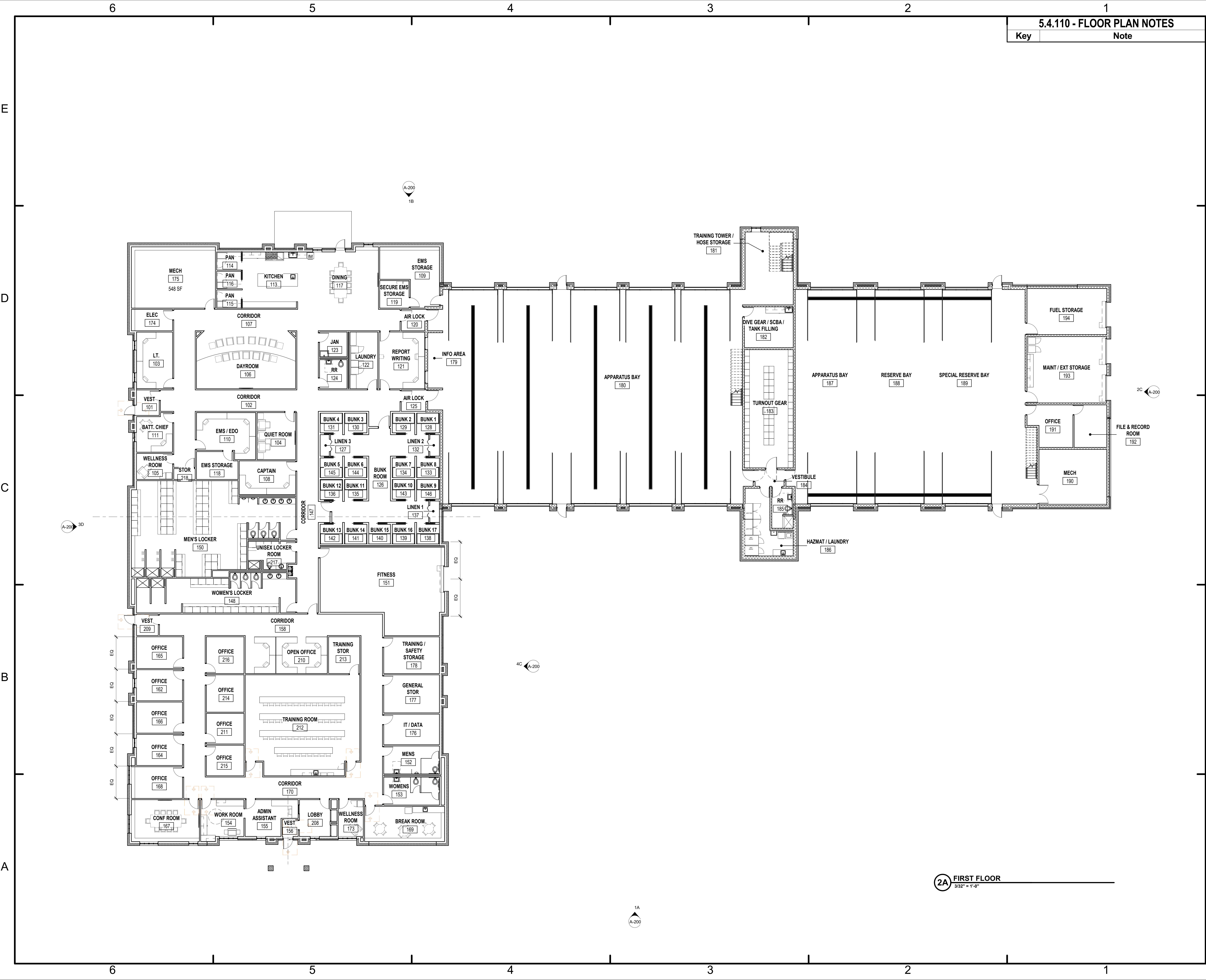
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Westfield Fire Department
Fire Station #81 Project
Phase 1 Report

TAB 1 – DRAWINGS



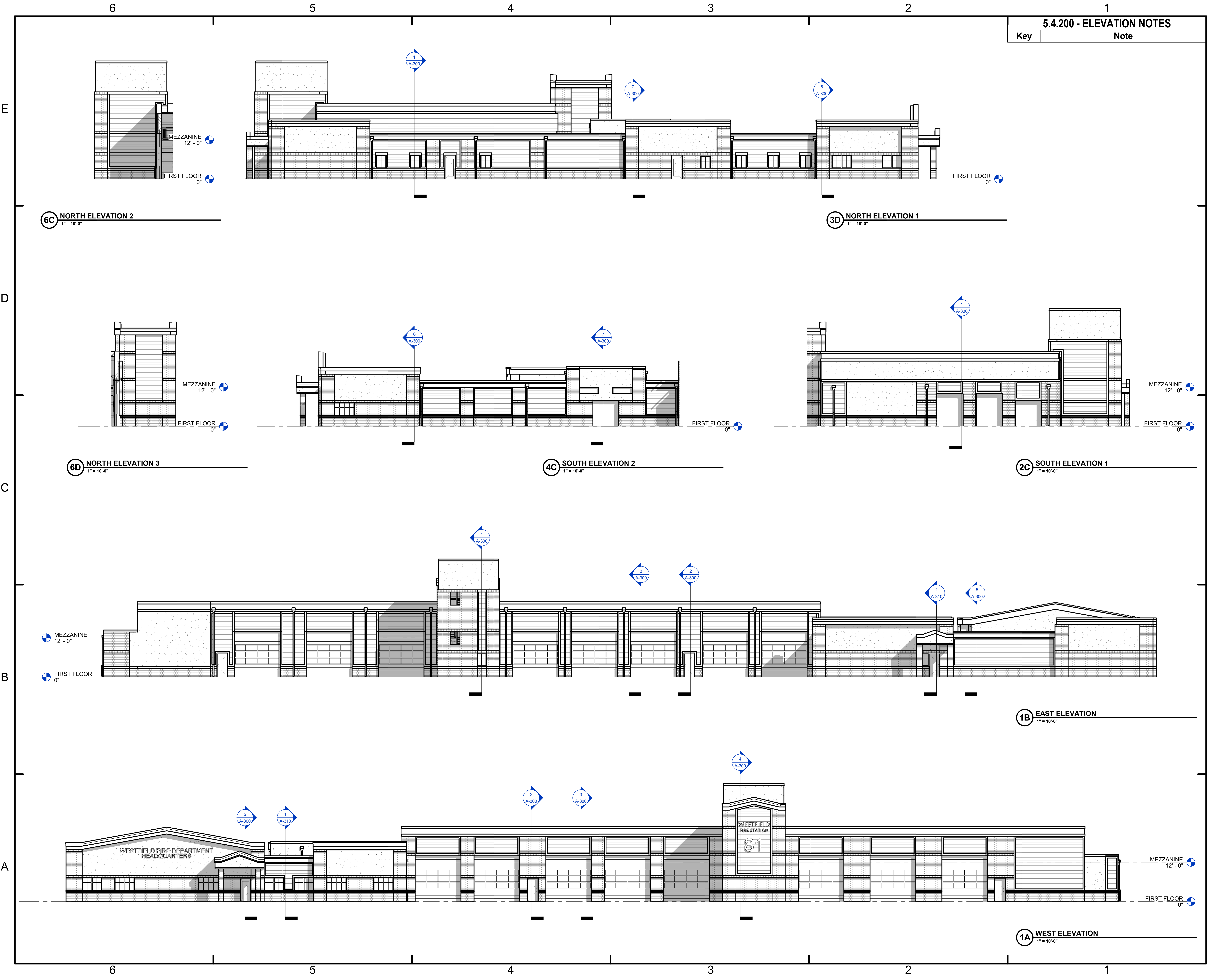
5.4.110 - FLOOR PLAN NOTES	
Key	Note

50% DD Set Not For Construction
City of Westfield
WESTFIELD FIRE STATION
Address

#	Revision	Date
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Project #: 21-700-271-1
Designed By: VAW
Drawn By: VAW
Checked By: EW
Date: 09/22/21

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5.4.200 - ELEVATION NOTES	
Key	Note

#	Revision	Date
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Project #:	21-700-271-1
Designed By:	VAW
Drawn By:	VAW
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Date:	09/28/21

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OVERALL BUILDING ELEVATIONS

50% DD Set Not For Construction
City of Westfield
WESTFIELD FIRE STATION
Address

#	Revision	Date
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Project #: 21-700-271-1
Designed By: VAW
Drawn By: VAW
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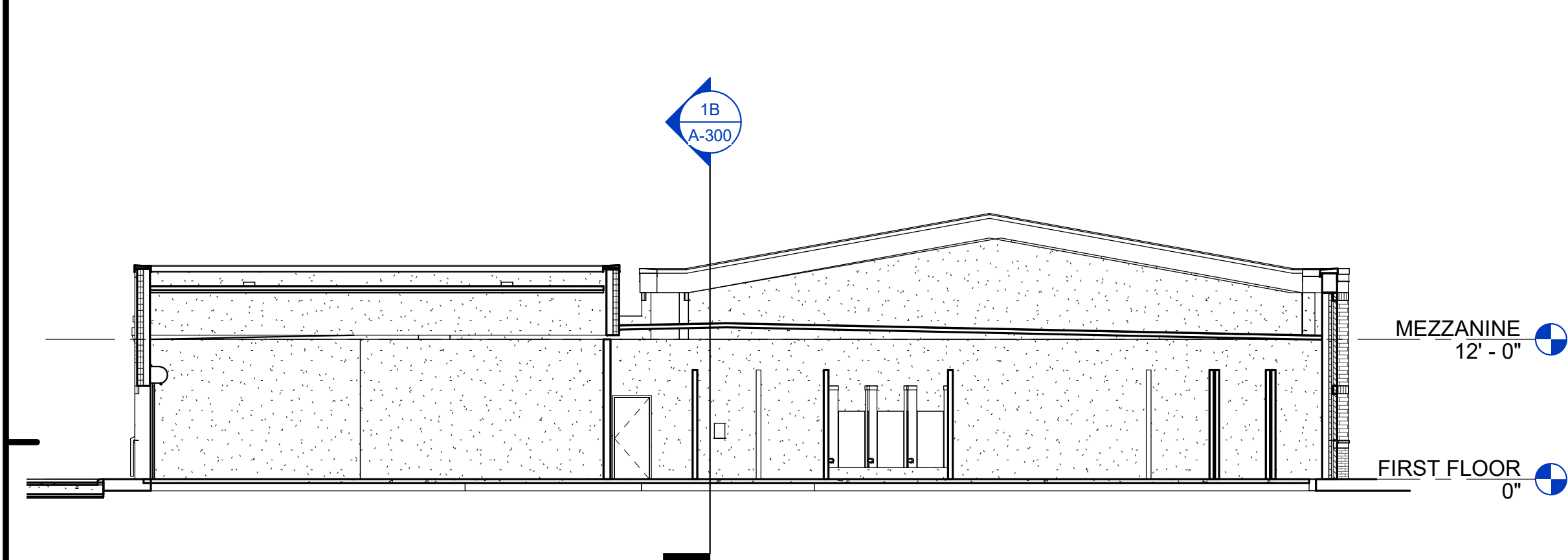
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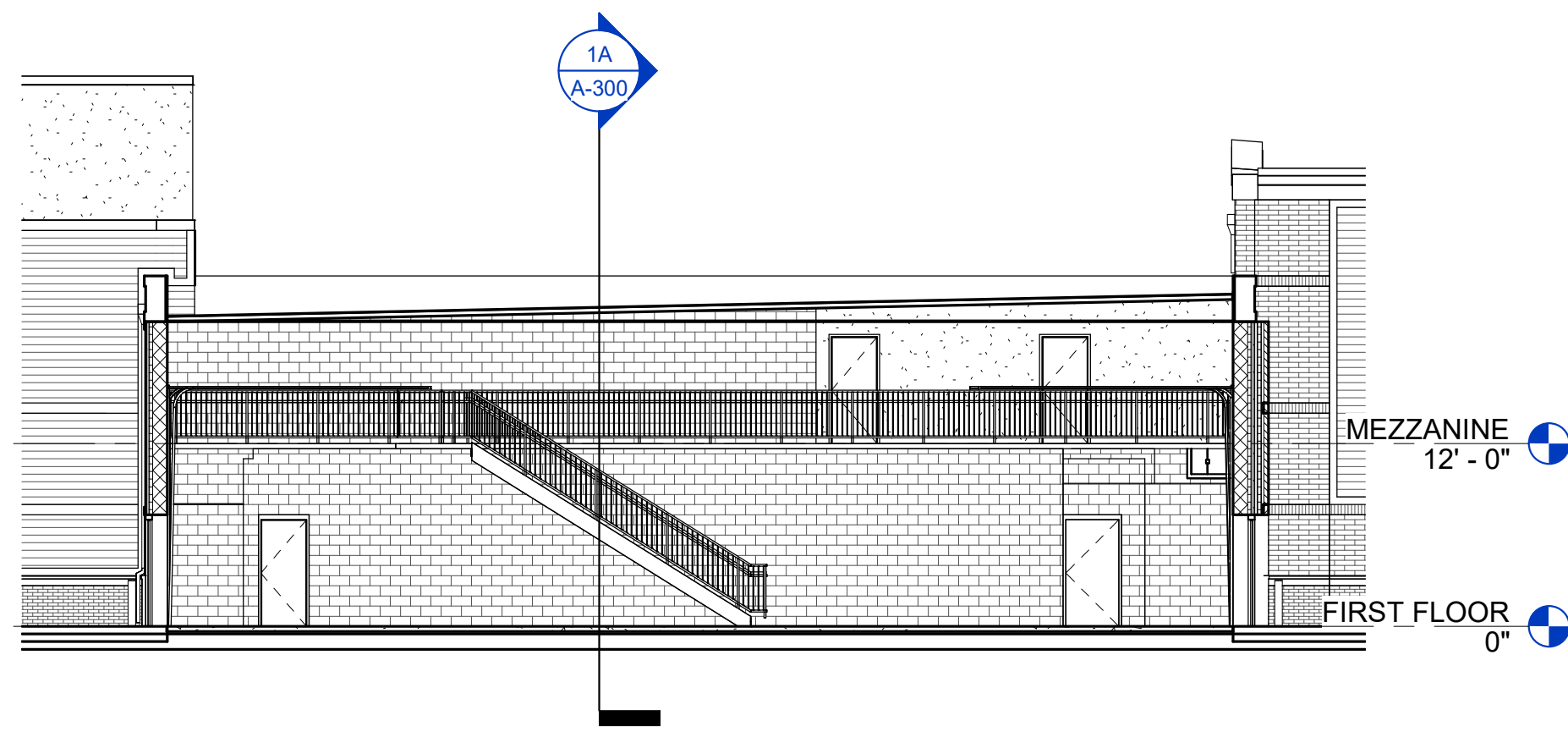


BUILDING SECTIONS

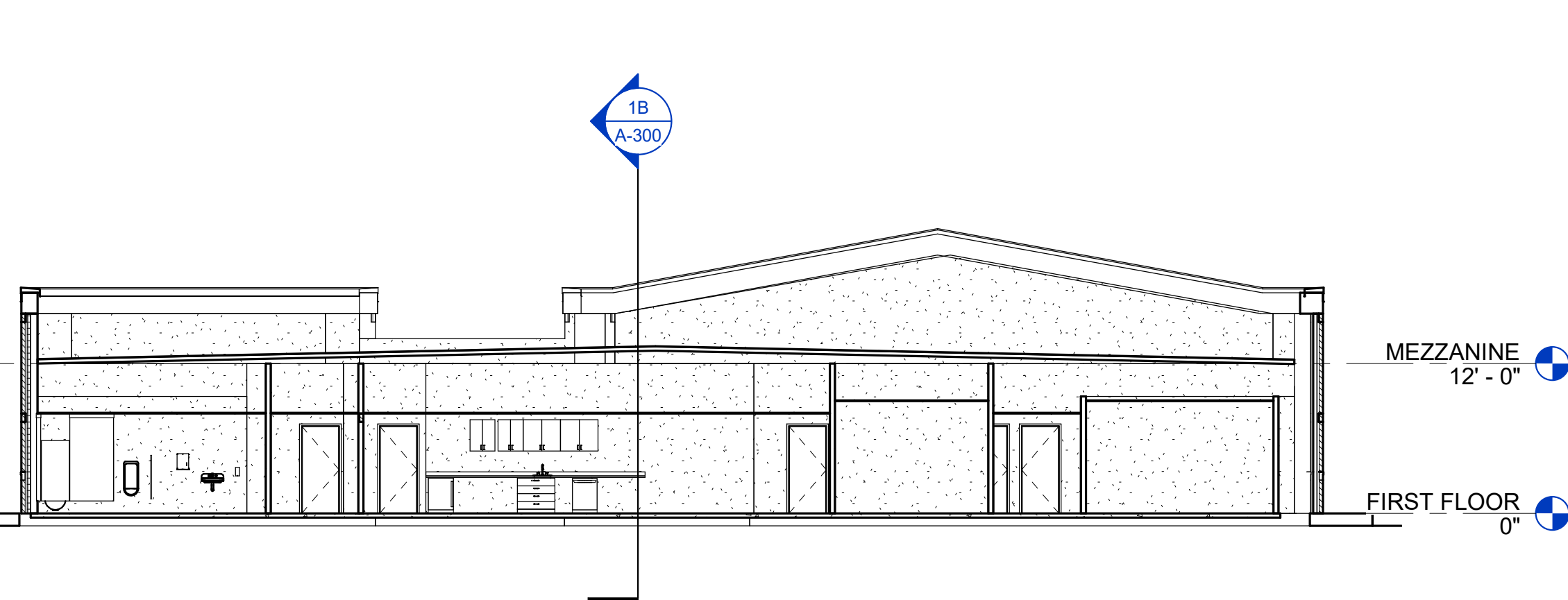
A-300



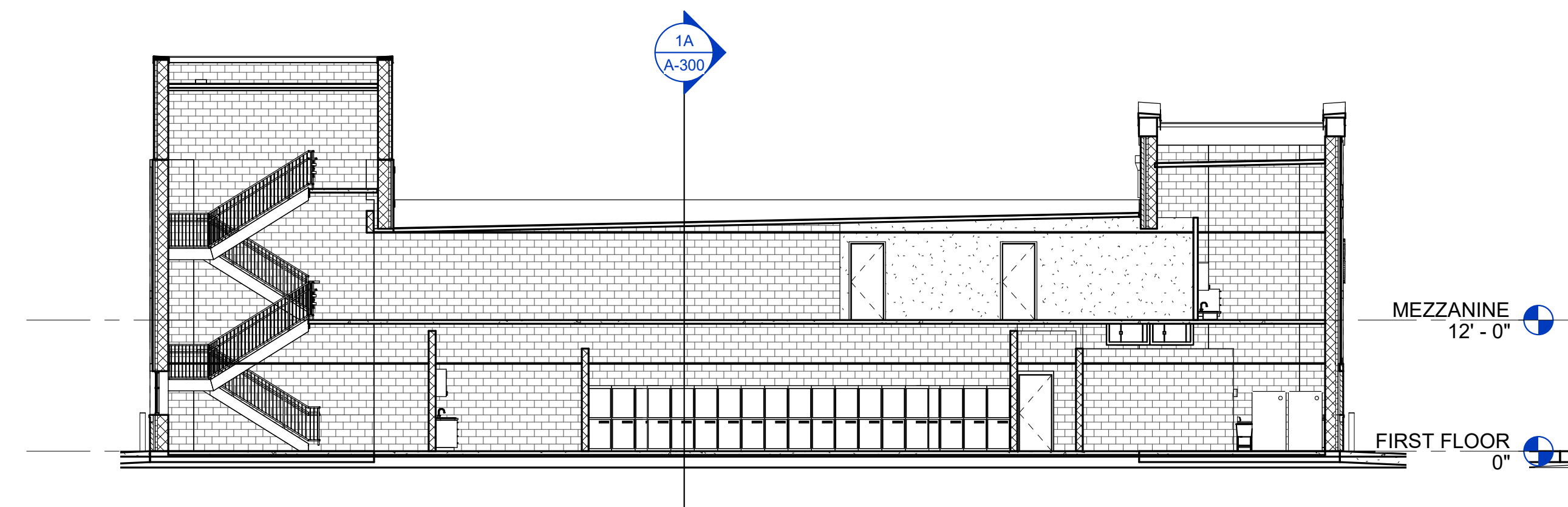
5C BUILDING SECTION
3/32" = 1'-0"



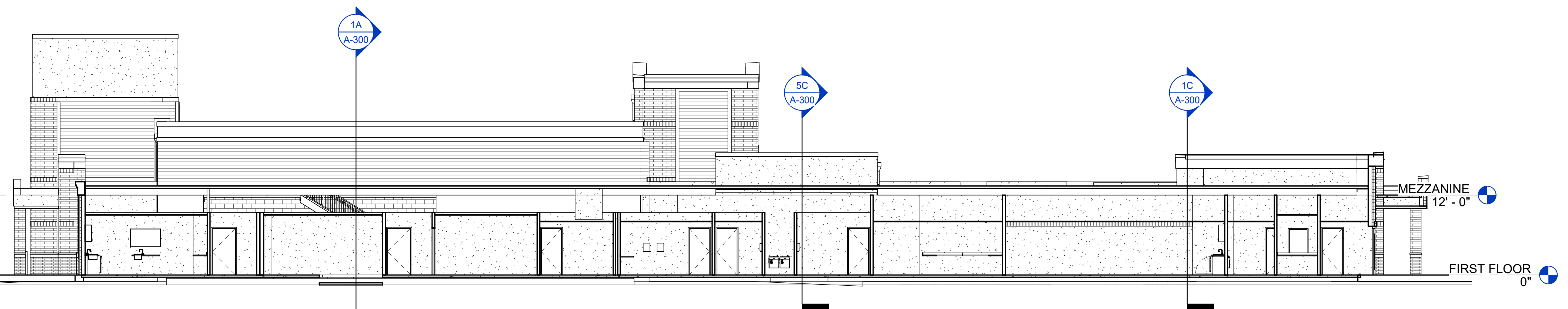
3C BUILDING SECTION
3/32" = 1'-0"



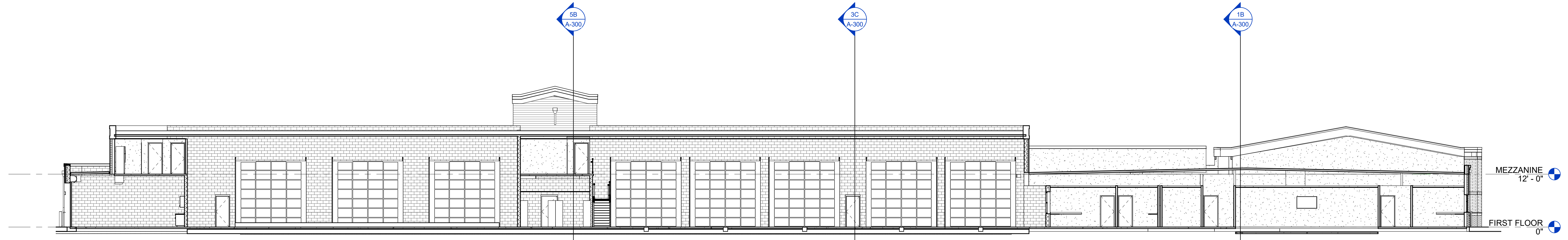
1C BUILDING SECTION
3/32" = 1'-0"



5B BUILDING SECTION
3/32" = 1'-0"



1B BUILDING SECTION
3/32" = 1'-0"



1A BUILDING SECTION
3/32" = 1'-0"



WESTFIELD FIRE STATION 81
EXTERIOR PERSPECTIVE
10/7/2021



WESTFIELD FIRE STATION 81
EXTERIOR PERSPECTIVE
10/7/2021



WESTFIELD FIRE STATION 81
EXTERIOR PERSPECTIVE
10/7/2021

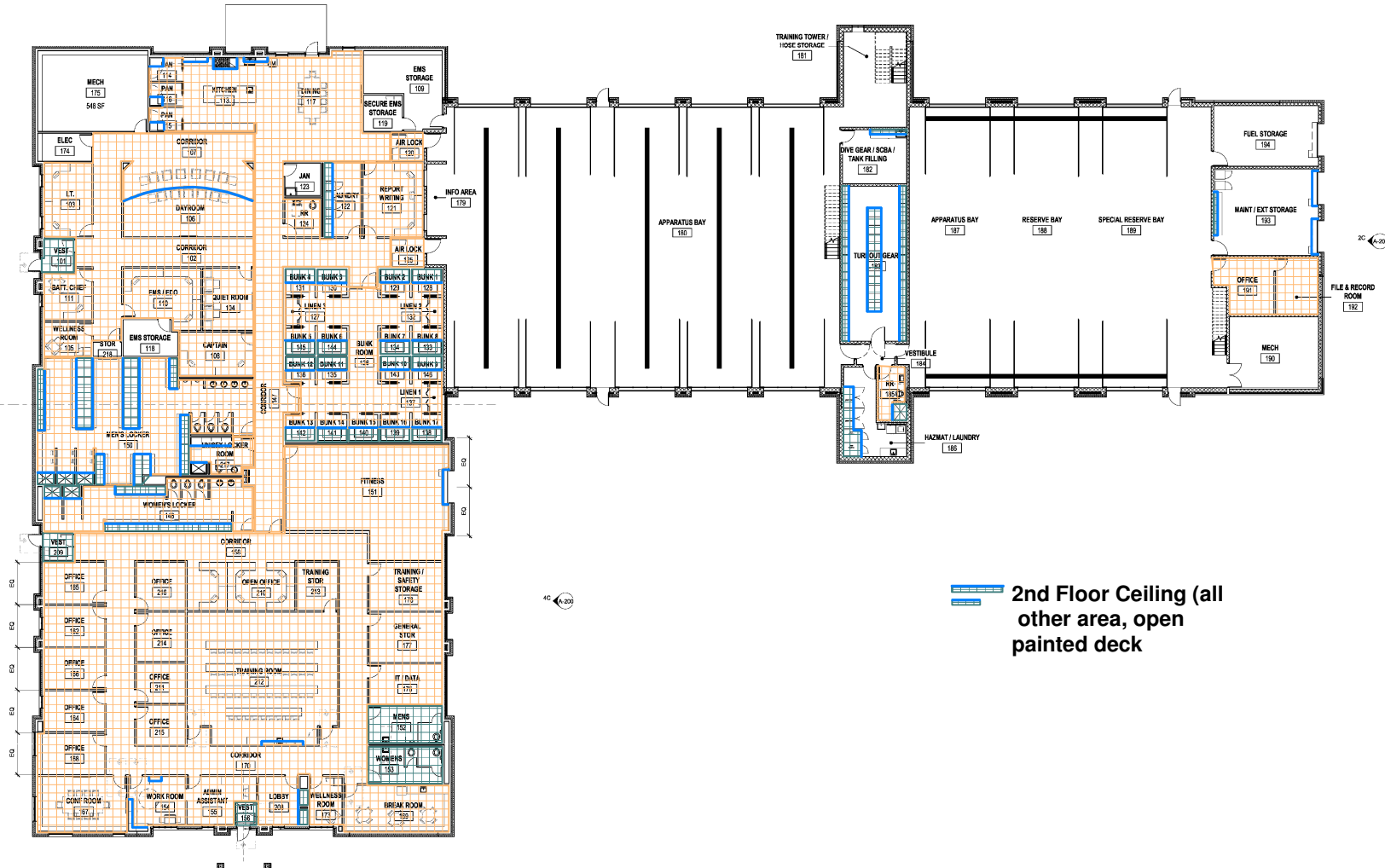
PHASE 1 - Ceiling Finishes

5.4.110 - FLOOR PLAN NOTES

Key Note

RQAW
ARCHITECTURE

- Acoustical ceilings
- Drywall ceilings
- Bulkheads
- Open ceiling (painted deck)



2nd Floor Ceiling (all other area, open painted deck)

2A FIRST FLOOR
3/32" = 1'-0"

50% DD Set Not For Construction

City of Westfield

WESTFIELD FIRE STATION

Address

Revision Date

Project #: 21-700-271-1

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FIRST FLOOR PLAN

AF101

PHASE 1 - Flooring Finishes

- Carpet tile
- LVT
- Walk-off mat tile
- Fitness flooring
- VCT-static resistant
- Sealed concrete

5.4.110 - FLOOR PLAN NOTES	
Key	Note

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City of Westfield

WESTFIELD FIRE STATION

Address

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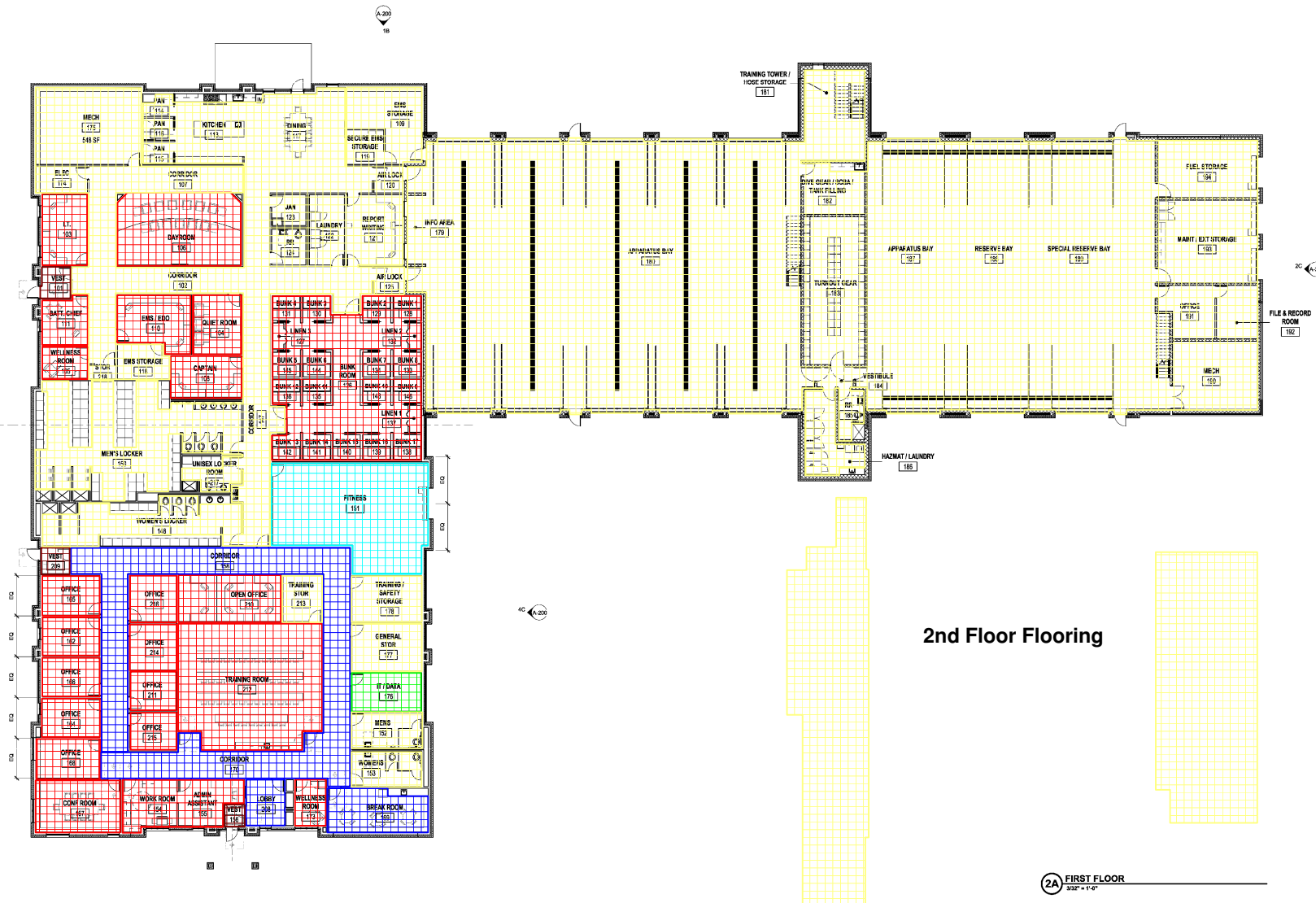
Date: 09/22/21

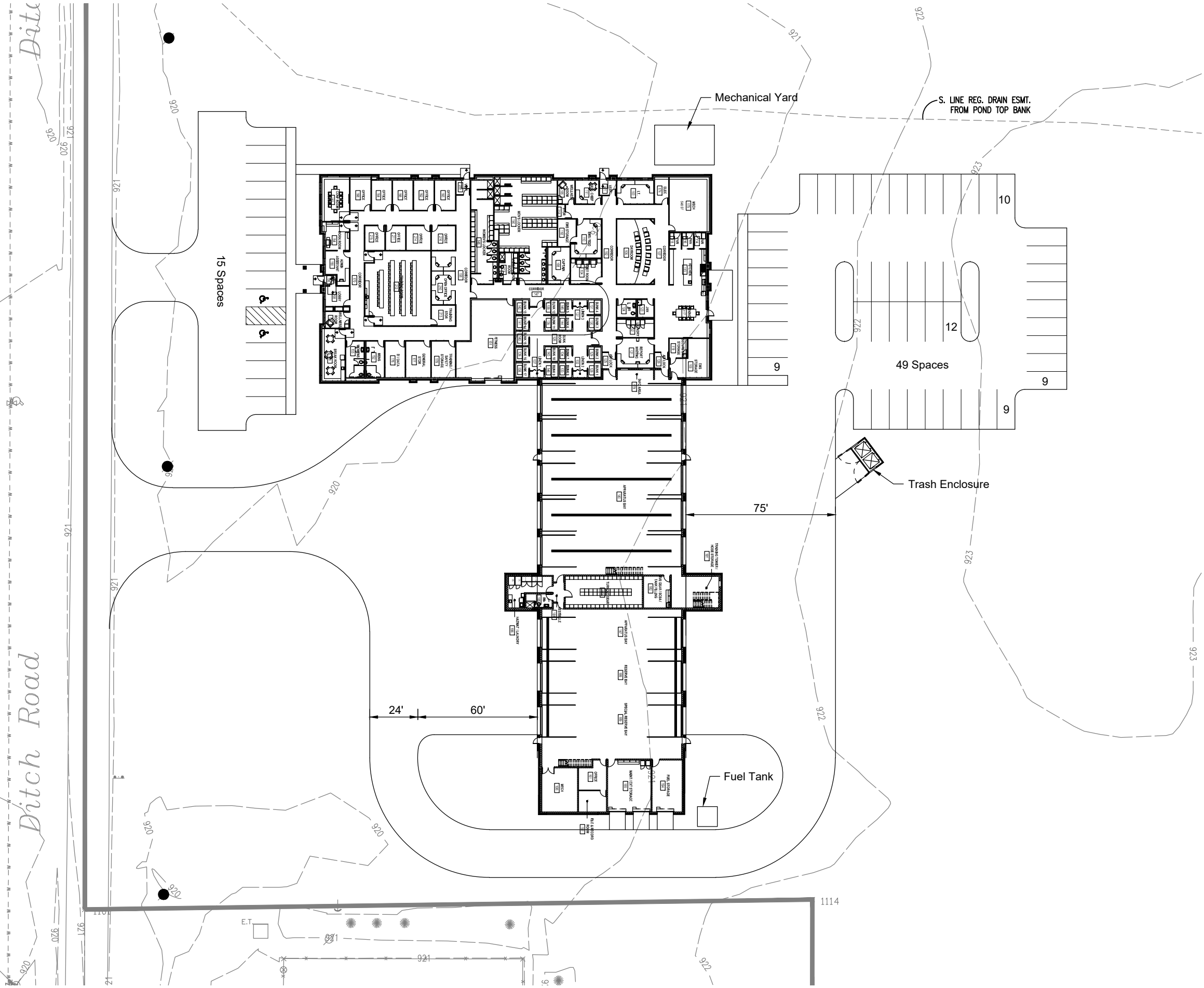
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FIRST FLOOR PLAN

AF101





TAB 2 – SCOPE NARRATIVE

Hagerman, Inc.
Westfield Fire Station #81 Phase 1 Proposal 10/11/2021

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Executive Summary

Due to the nature of the Design Build format and the specificity in the RFP, it shall be noted that the Hagerman/RQAW Design Build Team has prepared the Phase 1 Report to represent the latest and most recent collaborations between Design Builder and Owner. The Phase 1 report and the RFP are both included as Basis of Design Documents in the Agreement. Both documents are complementary to one another, and the Phase I report will take precedence when specifically changes to the Owner's Criteria set forth in the RFP. If the Phase 1 report is silent on a topic addressed in the RFP, the RFP will still govern. If the RFP includes more detail than the Phase 1 Report, the detail of the RFP will govern.

Project Summary

The Hagerman/RQAW Design Build Team has included in the Phase I Report the MasterFormat breakdown of the scope of a newly constructed Fire Station. The DB Team is anticipating a 1-story 38,625 SF facility with continuous and pad footing foundations throughout. The floor construction will be made up of concrete slab on grade with drainage layer and vapor barrier. We plan to have load-bearing CMU block for the apparatus bay with metal joist and decking for the roof. We plan to use load bearing masonry with steel beams and decking for the mezzanines. The office side will include structural steel with metal joist and decking for the roof. The exterior system will be made up with metal studs and dense glass. Façade will have combination of masonry, EFIS & Hardiboard Siding. The roof system will either be an EPDM or TPO membrane with insulation. The structure will slope with scuppers and downspouts on both areas of the building. The downspouts will be tied into a perimeter drain system that will outlet to local storm system. The interior will be construction with standard metal studs and drywall throughout the office side with painted CMU walls in the apparatus bays.

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Westfield Fire Station #81 Phase 1 Proposal 10/11/2021

01 00 00 General Conditions

1. Mobilize site
2. Full time on-site construction supervision
3. Project manager
4. Temporary signs
5. Temporary toilets
6. Temporary fencing
7. Dumpsters for removal of general construction debris
8. Site safety audits
9. Weekly clean-up of the building and site
10. Punch list
11. Final cleaning
12. Soil borings
13. Material testing
14. Temporary heat as required
15. General liability insurance
16. Design fees including civil, structural, architectural, mechanical, plumbing and electrical
17. Contractor Construction Contingency

03 30 00 Cast in place concrete

1. Column and wall footings
2. Foundation walls with brick ledge where required
3. 4" slab on grade with welded wire mesh for office area
4. 8" slab on grade with welded wire mesh for apparatus bay
5. 6 Mil under slab vapor barrier
6. 4" sidewalks with broom finish and sawn control joints
7. 6" curb face sidewalks adjacent to the asphalt parking lot with broom finish and sawn control joints. (only at employee/public parking)
8. 18" (6" exposed) straight curbs at all parking lot islands and ROW entrance drives
9. 8" concrete paving at entrance drives and apparatus parking and drive areas
10. Anticipate standard foundations. No special foundations anticipated (i.e. deep foundations, auger cast piles, geo piers, etc)
11. Anticipate no concrete pit foundations.
12. 6" trench drain assemblies will be provided and cast in concrete slab on grade.

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04 20 00 Unit Masonry

1. 8" cmu split face at dumpster enclosure
2. 12" cmu block, reinforced and grouted per specifications, for the exterior apparatus bay walls
3. 8" cmu block for interior walls of the apparatus bay
4. Modular brick veneer on 30% of the building exterior

05 10 00 Structural Steel

1. Anchor bolts
2. Conventional steel columns, beams and bar joists
3. Metal Roof Decking
4. Painted Steel pipe railings at mezzanine
5. Metal Pan Stairs
6. Excludes Pan Stair for Training Tower

06 10 00 Rough Carpentry

1. Roof blocking at flat roof perimeter edges
2. Misc Wood Blocking in Walls
3. Fiber Cement Siding (35% of building) Pre-Finished.

06 41 00 Casework

1. Plastic Laminate Cabinets
2. Solid Surface Tops in locker rooms, restrooms & kitchen
3. Plastic Laminate countertop in office and admin areas
4. Wire Shelf Units in Linens Closets

07 21 00 Insulation

1. Wall insulation with R-Value of 16.8
2. Roof insulation with R-Value of 16.8
3. 2" rigid foundation insulation

07 27 36 Air Barrier

1. Spray applied air barrier behind exterior veneer.

07 41 13 Metal Soffits

1. Metal soffit
2. Metal fascia
3. Canopies

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07 54 23 Membrane Roofing

1. 60 mil roofing membrane (TPO or EPDM)
2. 4" polyiso insulation with R-Value of 16.8
3. We will not have any interior storm drains. Roof will be sloped to gutters and downspouts.

07 92 00 Joint Sealants

1. Caulk hollow metal door frames.
2. Caulk all new plumbing fixtures.
3. Caulk sidewalk joints
4. Firestopping as required

08 10 00 Doors/Frames/Hardware

1. Welded hollow metal frames for all interior/exterior openings
2. 1 3/4" solid core oak veneer doors (prefinished)
3. Heavy duty commercial grade finish hardware

08 33 16 Overhead Coiling Doors

1. (3) steel insulated coiling door in fitness, maintenance and fuel storage
2. Manual chain hoist operation for (3) steel insulated doors
3. (16) powered operated apparatus bay doors

08 43 00 Storefronts

1. Aluminum entry doors
2. Clear anodized aluminum finish
3. Medium style
4. Panic devices on exterior leafs with push/pull hardware on interior leafs at main entry
5. Aluminum windows
6. Aluminum storefront

09 21 16 Light Gauge Framing & Drywall

1. 3 5/8" 20 ga. steel studs with 5/8" type "x" gypsum wallboard finished and ready to receive paint
2. Exterior EIFS (35% of building)
3. Exterior 5/8" dense glass sheathing.
4. 4' vinyl corner guards in common spaces

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09 51 13 Acoustical Panel Ceilings

1. 2x2 flat panel lay in acoustical ceilings per the attached exhibit.

09 68 00 Flooring

1. Sealed Concrete (Non-Polished)
2. LVT
3. Walk-Off Carpet Tiles
4. Carpet Tiles
5. Rubber Fitness Floor
6. Non-Static VCT
7. Refer to attached Exhibit for locations.
8. No raised floor construction.
9. No data floors for the MDF or IDF rooms.

09 91 13 Painting

1. Prime and two finish coats of eggshell latex paint on all gyp walls
2. Paint hollow metal door frames
3. Paint hollow metal doors
4. Paint guard railings
5. Paint mezzanine access ladder
6. Paint Open Ceilings.

10 11 00 Display Boards

1. Pre-Fabricated Display cases at Lobby only.

10 14 00 Signage

1. Currently carrying an allowance in the budget.

10 28 13 Toilet Accessories

1. Paper towel dispenser
2. Toilet tissue dispenser
3. Grab bars
4. Framed mirrors
5. Phenolic Toilet Compartments & Urinal Screens
6. Shower Rods (Shower Curtain by Owner)

10 44 13 Fire Protection Specialties

1. Semi-recessed fire extinguisher cabinets
2. 5lb Class ABC fire extinguishers

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Westfield Fire Station #81 Phase 1 Proposal 10/11/2021

10 75 00 Flagpole

1. (1) Illuminated Flagpole 30' (2 flags by owner)

11 00 00 Equipment

1. No loading dock foundations included
2. No dock leveler equipment included

14 00 00 Conveying Systems

1. No Elevator Included
2. No lifts included

21 10 00 Fire Protection

1. General Fire Protection: All work will comply with the 2014 Indiana Fire Code and all related NFPA standards. The building is to be fully sprinkled and protected by a wet/dry sprinkler system. The 4" fire protection service will enter the Water/Mech. Room of the building with an approved 4" backflow prevention device. The wet sprinkler system shall serve the Administrative and Living Quarter areas. Concealed pendant (ceiling type) sprinklers shall be used in finished ceiling areas throughout the station. Upright type sprinkler shall be used in areas with exposed ceilings. Provide additional sprinkler coverage at roll-up doors in Apparatus / Service Bays. A fire department connection (FDC) and post indicator valve to be located at the exterior of the building and located per local fire department recommendations. Fire Alarm Equipment that is furnished by the Fire Protection contractor but connected to the building fire alarm system and includes: sprinkler flow switches, sprinkler tamper switches for control valves, exterior sprinkler alarm bell and a PIV tamper switch.
 - a. Dry Sprinkler System: A dry pipe alarm valve will be located at the riser servicing the Apparatus and Service Bay areas. The air compressor for the dry sprinkler system shall be located in the mechanical room.
 - b. Ansul System: Local code does not require kitchen hood to have a Ansul System.

22 00 00 Plumbing

1. General Plumbing: All plumbing work will comply with the 2012 Indiana Plumbing Code. A new domestic water service will be extended from the existing city water/fire line. The exterior of the new construction will be provided at strategic locations with freeze-proof wall hydrants, box mounted type (with lose-key). The kitchen sink will be a large double compartment type with a gooseneck faucet and garbage disposal and the cooking range shall be gas-fired. Storm water drainage piping shall consist of gutters and downspouts.
2. Fixtures:
 - Water Closets: White vitreous china, wall mounted, battery operated 1.28 gpf flush-valve type.
 - Urinals: White vitreous china, wall mounted, with 0.125 gpf battery operated flush valve.
 - Countertop Lavatories: Vitreous china, oval design with 0.5 gpm battery

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Westfield Fire Station #81 Phase 1 Proposal 10/11/2021

operated faucet. Sinks: Stainless steel, 18 gage, (single or double) bowl with 8" center and swinging spout. Showers: All Showers shall be one-piece, open-top, acrylic unit or owner approved type, with adjustable shower head.

Drinking Fountains: Electric water coolers with bottle filler, bi/level to meet ADA requirements. Mop Service Basin: 24"x24" One piece molded stone.

3. Domestic Water: A new incoming domestic water service shall be extended from the city water main to enter the first floor Mechanical room. A new backflow preventer shall be installed to meet current code requirements. The domestic hot water heating system shall consist of a gas fired water heater to provide adequate hot water throughout the Administrative / Headquarter areas and living quarters. Another domestic hot water heating system shall consist of a water heater to provide adequate hot water throughout the Apparatus Bay and Service Bay areas. A hot water in-line circulating pump will be installed to provide hot water to fixtures in a timely manner. A thermostatic mixing valve will be used to temper all hand washing and public areas to a maximum of 120 degrees. Piping above grade shall be type "L" copper. All exterior wall mounted wall hydrants will be piped with cold water. Hot and cold water piping shall be provided to the washing stations. A 2 1/2" cold water tap shall be provided for the Tanker fill lines.
4. Sanitary Sewer System: The new sanitary drainage system will be gravity flow and will connect to the site sanitary system outside of the building. Typically, the new sanitary line will be 4" in size when connected to a toilet fixture, otherwise a 3 inch pipe to be installed. Cleanouts installed in the floor will provide access and maintenance. Cleanouts will be full size as the piping it is connected to, cleanouts to be installed at each 50 lineal feet of horizontal run and at every change of direction greater than 45 degrees. Schedule 40 PVC piping shall be used for all above and below ground piping. Plumbing vents shall be 4" in size and extended thru roof, typical of multiple locations. All floor drains shall have a cast iron bottom outlet body. Trench drains will be located in Apparatus and Service Bay areas and will be connected to a new exterior underground oil water separator. A trench drain shall be located in the Gear Laundry room.
5. Natural Gas Supply: All work will comply with the 2014 Indiana Fuel Gas Code. A new gas service shall be extended from the city gas main to enter the building per local utility company requirements. The gas supply will be provided to new gas water heaters, kitchen cooking equipment, and gas-fired HVAC equipment. All gas piping shall be schedule 40 black iron pipe.
6. Compressed Air: A compressed air piping system (100 psi) will be installed to serve two ceiling mounted air-hose reels in the Garage Area. Compressed air piping and air outlets will also be routed to the workbench of the Maintenance Work Area. The air compressor shall be a vertical tank type with an associated air dryer and filters.

23 00 00 HVAC

General Systems Overview: This narrative describes the design criteria for the mechanical systems serving the facility. The mechanical systems shall be designed to maintain the indoor environmental quality in an energy efficient manner while meeting the requirements for building occupancy. Systems and equipment will be designed for serviceability, and energy efficiency.

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Westfield Fire Station #81 Phase 1 Proposal 10/11/2021

- **Codes and Standards: Building Code Information:** The HVAC systems shall comply with all local and state building codes, NFPA, and ADA requirements. The following codes and standards shall be applied:
 - 2014 Indiana Building Code (IBC)
 - 2014 Indiana Fire Code (IFC)
 - 2014 International Mechanical Code (IMC)
 - 2010 Indiana Energy Conservation Code (IECC)
 - ASHRAE 55 Thermal Environmental Conditions for Human Occupancy
 - ASHRAE 62.1 Ventilation for Acceptable Indoor Air Quality (2010)
 - ASHRAE 90.1 – Energy Standards for Buildings Except Low-Rise Residential Buildings (2007)
 - SMACNA “HVAC DUCT DESIGN”
- **Assumptions and Open Issues:** The following assumptions have been made to establish the basic design needs.
 - The Air Handling Units will be sized for the current program and will not include additional capacity for future additions.
 - The Chillers and Boilers will be sized for the current program and will not include spare capacity for future additions
 - Emergency power requirements will be designed to feed Temperature Controls, Air Handling Units, Heating System, and Equipment serving critical infrastructure (DX Splits for Electrical/IT Rooms). Emergency power for cooling will not be required.
- **General Mechanical Systems:** The HVAC design will incorporate serviceability, safety, occupant comfort, and energy efficiency. The design will facilitate access for maintenance and adjustment.

HVAC Systems

- **Heating Hot Water System:**
 - Hot water will be distributed to AHUs, reheat coils, fan coils, and any supplemental unit heaters. The system will include an air separator, expansion tank, and chemical feed. Backflow prevention will be included as part of the plumbing work for make-up water. At the heart of the heating system will be 90%+ high efficiency condensing boilers. The heating system will be designed for redundancy to allow for the maintenance or failure of any one boiler with remaining boiler(s) to meet heating load. The design will include (2) 1000 MBH boilers and associated primary pumps. The boilers and pumps will be designed to switch between lead and lag boiler/pump to balance operation and allow for redundancy in the heating system. The heating system will be located in the mechanical room of the occupied building.
- **Chilled Water-Cooling System:**
 - The cooling system will center around (2) air-cooled split chillers. Both Chillers will be sized at 30 Tons each. The Condensers shall be located outside behind

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Westfield Fire Station #81 Phase 1 Proposal 10/11/2021

the building and the evaporator shall be wall mounted inside the mechanical room. The chilled water system will not have any glycol. Two base-mounted chilled water VFD controlled pumps will be sized for 100% redundancy. The pumps will be designed to switch between lead and lag pump to balance operation. The chilled water will be distributed to two AHU's and one Fan Coil Unit. The system will include an air separator, expansion tank, and chemical feed. Backflow prevention will be included as part of the plumbing work for make-up water.

- Air Handling Units
 - The Building shall be served by (2) Variable Air Volume Air Handling Units sized for the cooling, heating, and ventilation load of occupancy zones. and one Energy Recovery Ventilator to pre-treat the outside air.
 - Cooling shall be provided by the central two air cooled chillers serving the air handlers.
 - Heating shall be provided by the central two condensing boiler units.
 - Summer Dehumidification: each AHU will control to a max relative humidity of 50% during cooling months.
 - During the winter, Direct Humidification will not be provided. The ERV will allow some latent transfer, improving upon typical low winter humidity.
 - AHU-1
 - Located on the roof and shall serve the admin portion of the fire station
 - 5000 CFM with 20% OA.
 - Economizer Mode
 - AHU-2
 - Located on the roof and shall serve the admin portion of the fire station.
 - 9500 CFM with 55% OA.
 - Economizer Mode
 - ERV-1
 - Located on the roof and shall directly duct to the outside air intakes of AHU-1 and AHU-2
 - Exhaust Fan in ERV will serve as central exhaust system for the occupied portion of the Fire Station.
 - ERV shall have Enthalpic Cores that effectively Transfer both Sensible and Latent Energy.
 - 6000 CFM Outside Air
 - 4125 CFM Exhaust Air
 - Total Summer Effectiveness: 67.4%
 - Total Winter Effectiveness: 72.7%
 - VAV Boxes
 - Variable Air Volume Boxes with minimum 2-row Hot Water Reheat Coils
 - AHU-1: 12 VAV Boxes
 - AHU-2: 13 VAV Boxes
 - Total: 25 VAV Boxes
 - Apparatus Bays:
 - Apparatus Bays shall have Radiant Floor Heating Served by a dedicated boiler located in the mechanical room at the end of the apparatus bays.

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Westfield Fire Station #81 Phase 1 Proposal 10/11/2021

- A Direct Exhaust System shall be designed and installed in both Apparatus bays to allow connection directly to exhaust pipes of fire trucks and other service vehicles
 - Additional Exhaust Fans shall be placed on the roof of the Apparatus bays, connected to gas monitoring systems. Exhaust fans shall draw in unconditioned air from Louvers directly into the apparatus bays.
 - The middle-occupied area between the apparatus bays shall be served via two VAV boxes from AHU-2. Occupied areas requiring exhaust shall have a dedicated exhaust fan to that area that is not connected to the ERV.
 - Fleet Services and Office at the end of the building shall be served by a DX Mini-Split
- Additional Items:
 - A minimum of three (3) 3-Ton ductless min-splits will be required to serve Electrical and IT rooms throughout the building
 - Two Wall-mounted or Wall-Recessed Hot Water Cabinet unit heaters will be placed in Main entry Vestibules.
 - The facility will be designed for a slightly positive pressurization. This coupled with a tight building envelope will minimize infiltration and increase energy efficiency.
 - This building type does not require a Ansul System for the kitchen hood. Kitchen will be designed around a exhaust hood and no Ansul system will be provided.
 - System Design Criteria: The table below summarizes the climate data and indoor environmental quality data that shall be used for developing the system designs:

HVAC DESIGN CONDITIONS				
	OUTSIDE DESIGN CONDITIONS:		SUMMER (F)	91.1 F DB
			WINTER (F)	-0.5 F DB
	DESIGN ALTITUDE		331 FT	Westfield, IN
	SUMMER DESIGN CONDITIONS		WINTER DESIGN CONDITIONS	
INTERIOR DESIGN AREA	TEMP (F)	HUMIDITY (%)	TEMP (F)	HUMIDITY (%)
EQUIPMENT ROOMS	95	NOT CONTROLLED	60	NOT CONTROLLED
GARAGE / SALLY PORT	95	NOT APPLICABLE	60	NOT APPLICABLE
OFFICES / CONFERENCE ROOMS / CONTROL ROOMS	72-75	50% MAX	68-74	NOT APPLICABLE
Bunk Rooms	68	50% MAX	68-74	NOT APPLICABLE
KITCHEN	74-78	60% MAX	68-74	NOT APPLICABLE

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- Ductwork: Effort shall be made to conceal all ductwork in the ceiling and walls. All exposed ductwork shall be painted to match surroundings. Ductwork shall follow the schedule below:

DUCTWORK TYPE		CONSTRUCTION	INSULATION	MAX VELOCITY (FPM)	MAX FRICTION LOSS (" PER 100')
SUPPLY DUCT	EXPOSED	DOUBLE WALL	1.5" INTERNAL RIGID MINERAL FIBER	MAIN 1500 BRANCH 1000	0.25 0.15
	CONCEALED	SINGLE WALL	2" EXTERNAL MINERAL FIBER WRAP	MAIN 2000 BRANCH 1250	0.50 0.25
RETURN DUCT	EXPOSED	SINGLE WALL	NONE	MAIN 1000	0.15
	CONCEALED	SINGLE WALL	NONE	BRANCH 750	0.10
OUTSIDE AIR INTAKE DUCT	EXPOSED	DOUBLE WALL	1.5" INTERNAL RIGID MINERAL FIBER	750	0.15
	CONCEALED	SINGLE WALL	2" EXTERNAL MINERAL FIBER WRAP		
EXHAUST DUCT	EXPOSED	SINGLE WALL	NONE	750	0.15
	CONCEALED	SINGLE WALL	NONE	1500	0.25

- Piping: Effort shall be made to conceal all piping in the ceiling and walls. All exposed piping shall be painted to match surroundings. HVAC piping systems shall follow the schedule below:

Piping Service	Pressure Class	Design Temp or Pressure	Pipe MOC
Heating Hot Water	ANSI 150	100-200	ASTM-40 Carbon Steel or Type L Copper
Chilled Water		40-60	
Refrigerant - Liquid	Per Manufacturer		Type L Copper Tubing
Refrigerant - Suction			

- HVAC Building Automation System: The HVAC systems shall utilize a central control system for monitoring, scheduling, trending, and optimization purposes. This control system shall have primary control of the heating and cooling equipment, air distribution equipment, and zone temperature control equipment. A workstation shall be provided in the mechanical room, with remote access for alarming in the security office.
- Testing, Adjusting, and Balancing: Provisions shall be incorporated to facilitate testing, adjusting, and balancing of the HVAC systems. At minimum, these provisions shall include:
 - Airflow Systems
 - Variable Frequency Drives for all fans larger than 5 HP
 - Hand Balance Dampers in all major runs
 - Hand Balance Dampers for all Diffusers
 - Clear expectations of design air flow rates expected
 - Access to straight duct runs for branch and main air flow readings

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- Pumping Systems
 - Variable Frequency Drives for all pumps larger than 5 HP or requiring variable flow
 - Circuit Setters for large loads
 - Testing Ports at coil connections
 - Thermometers and Pressure gauges at large coil connections
- Sustainability: The mechanical systems shall be engineered to balance construction costs with operating costs, ongoing energy consumption, and emissions. Several attributes of the mechanical systems that promote sustainability will be considered:
 - Systems selected with energy recovery capabilities to minimize energy consumption to condition the space.
 - Systems shall have economizer mode where possible
 - Selection of environmentally acceptable refrigerants.
- Maintainability: Each system shall be designed for ease of maintenance including:
 - Appropriate clear space for removal of components.
 - Easily changed filter media.
 - Isolation valves in piping systems for each floor and major branch.
 - Access ports in ductwork for service of specialties.

26 00 00 Electrical

1. General Information: The electrical systems in this facility will comply with all local and state codes, NFPA and ADA requirements. The following code and standards will be used:
 - i. 2014 Indiana Building Code (IBC)
 - ii. 2014 Indiana Fire Code (IFC)
 - iii. 2009 Indiana Electric Code (IEC)/ 2008 NFPA 70
 - iv. 2010 Indiana Energy Conservation Code (IECC)
 - v. ASHRAE 90.1 - 2007
2. The Electrical Service: A new service will be extended to a main distribution panel from a pad mounted transformer by the local utility company. Conduits will extend from a pad mounted utility transformer and stub into the new main electrical room. The main service is estimated to be 1,000 amp, 120/208V, 3-phase, 4wire. It will be equipped with transient surge suppression and digital metering.
3. Low Voltage Services: Conduits will be routed into the building's services area for low voltage services. Ground boxes with appropriate labels will placed within the site as required. These conduits will be provided with innerducts and pull strings.
4. Power Distribution: The building will have branch panelboards to minimize cost and to add safety and convenience. The main distribution panel and panels serving exterior equipment will have transient surge suppression.
5. All branch circuits will be in conduit. EMT conduit will be used for all above ground, interior feeders and branch circuits. MC cable will be permitted where enclosed in walls or ceilings. PVC conduit will be used for underground raceways. Vibrating equipment will be fed with

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flexible conduit for the last 3'-to-6' prior to the final connection.

- Aluminum feeder will be acceptable as long as they are sized to match copper equivalent.
 - Provide floor boxes in conference rooms room areas.
6. **Emergency Power:** Emergency power will be provided via a generator (estimated to be 300kw). (diesel) The generator will be located on grade and will provide full back up to the building with little or no-load shedding. The service entrance will require two automatic transfer switches, one for optional standby power and emergency. The transfer switches shall be provided with a maintenance bypass to transfer power between normal and generator power.
 7. **Lighting:** LED standard office-type lighting fixtures will provide even and efficient illumination for the majority of the building and LED downlight-type fixtures will be used in the administrative areas. Equipment rooms, storage rooms, and apparatus bays will receive LED industrial style light fixtures. Decorative fixtures and accent lighting are yet to be determined and will be coordinated with the interiors architectural department.
 8. **Lighting Control:** Vacancy control will be implemented in conference rooms and individual offices; occupancy control will be implemented in restrooms and public traffic areas. Areas of the building that will not require to be in use 24/7 will have occupancy control or timeclock control with override. Building mounted exterior lighting will be controlled via time clock and photocell.
 9. **Sustainability:** LED fixtures will minimize the energy consumption by using an inherently efficient illumination source. LED fixtures also have a longer lifetime than traditional fluorescent and HID sources, which will lower the maintenance cost. The advanced lighting controls described above will provide energy savings by modulating the lighting intensity which will add little cost and have a positive savings to investment ratio. The control methods selected require little to no maintenance and require modest commissioning / setup.
 10. Use surface mounted puck lights where possible (dayroom, kitchen, and sleeping areas)
 11. Juno SlimForm™ LED Round Surface Mount Downlights or equivalent where needed.
 12. Mech VAV boxes could possibly increase the electrical demand.
 13. Provide dome light outside of hazmat room/restroom.
 14. Provide combo USB duplex outlet above countertop in sleeping room, it will be used for reading lamps and phone charging.
 15. Flag poles located on site shall be illuminated.

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DIV 27 00 00 TELECOMMUNICATIONS

- 16. Telecommunications:** Provisions will be provided for voice and data outlets. Provisions will include a 2-gang back box with 1-gang reducer and a 1" conduit with pull wire to cable tray raceway system. Power, grounding, and data racks will be provided as coordinated with the owner's preferred vender. Devices, cables, and equipment are not part of the contract.
 - i. Direct phone line to 911 communication in the lobby
- 17. A UPS system** will be provided within the IT/Data room. Sizing to be determined.
- 18. Audio / Visual:** A/V outlet rough-in provisions will be provided in meeting spaces and day room. We anticipate each meeting space, dayroom and fitness to have wall mounted Flat panel TV(s) connected to a floor or wall mounted box for input cables. Power and grounding will be provided for all equipment as coordinated with the owner's preferred vender.
- 19. Electronic equipment** (switches, servers, head-end equipment, cameras, wireless access points) will be provided by the owner and installed by the contractor.

DIV 28 00 00 FIRE ALARM & SECURITY

- 20. Fire Alarm:** A fully addressable fire alarm system will be provided. The system will include pull stations at all exits from each level and exits from the building. Full annunciation will be provided throughout the facility with horn strobes and strobes to effectively provide fire alarm alerts and voice evacuation. The Fire Alarm system will monitor the emergency generator, the sprinkler system, and will have an interface to the access control system (if applicable).
- 21. Access Control and Security:** Rough-in provisions will be in place for access control. Provisions for access control and security will consist of power and communication conduit and back boxes. Power and grounding for all equipment will be provided as coordinated with the owner's preferred vender. The systems are anticipated to include the following:
 - i. Card readers at main entrances, and IT rooms.
 - ii. Security cameras around building perimeter and main entrances (optional)
- 22. Alerting System:** Design will include a contactor system to activate red, rotating notification lights.
- 23. Public Announcement (PA) and Intercom System:** Design will include a PA system throughout the building and Intercom communication system at the main entry vestibule.

31 00 00 Earthwork

1. Mobilize site
2. Erosion control measures
3. Construction entrance

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4. Strip top soil
5. Common excavation for parking lot, walks and building pad
6. Foundation excavation and backfill
7. Sidewalk prep and stone
8. Curb excavation and backfill
9. Under slab drainage fill
10. Sanitary sewer with a direct route from east side of property across development (shortest distance) to new building location. Excludes all "off-site" sanitary line and connections.
11. Excludes sanitary lift station.
12. On-Site Storm sewer
13. Water Line from edge of property to building
14. Rough grading
15. Excludes excavation and install of gas line. (Assume gas company will install too the meter location. We will install from meter location to inside the building)
16. Anticipate no Soil Treatment or Soil Stabilization.
17. Anticipate no extensive dewatering of site (i.e dewatering wells, groundwater, etc). Minor dewatering is included (i.e. rainfall)

32 12 16 Asphalt Paving

1. Light duty paving in public/admin and fire parking lots.
2. 8" concrete paving around the apparatus bays.
3. Striping/ADA signage
4. No Wayfinding signage included.

32 93 13 Landscaping

1. Total landscaping/Seeding allowance of \$50,000
2. Standard seeding for local area and plantings.
3. Excluded any athletic field areas or playground areas

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Phase I October 11, 2021 Proposal

1. Base Price **\$ 12,800,000**

Allowances Summary

1. Landscape/Seeding	\$	50,000
2. Vehicle Exhaust System	\$	100,000
3. Interior Signage	\$	3,500
4. Exterior Building Signage	\$	25,000
5. Design Contingency	\$	0.00

Alternates Summary

1. 8'-0 Pathway Along Ditch Road ADD \$ 30,000

Scope Exclusions

1. Unsuitable soils
2. Soil Stabilization
3. Metal Roof System
4. Environmental Study
5. Hazardous waste abatement or removal
6. Deep foundations
7. Wall coverings
8. Acoustical wall panels for sound control
9. Audio/visual systems including projection screens and projectors
10. Window treatment
11. Sales Tax
12. Phone/computer systems hardware
13. Baby Box provided by Owner (Installed by Contractor)
14. Overtime/premium time work
15. Headend equipment
16. Security/Access Control (rough-in included)
17. Road Impact Fees
18. Fueling Station Tank & Pump (Concrete pad only)
19. Site Furnishings
20. Operable Partitions
21. Refer Tab 3 FFE By Owner

Phase 1 - Budget Detail
Conceptual Model
September 28, 2021

Project name	Budget 6a - Conceptual Model
Labor rate table	Indianapolis 21-22
Job size	38625 SF
Report format	Sorted by 'Group phase/Phase' 'Detail' summary

Group	Phase	Description	Takeoff Quantity	Grand Total Amount
01----		GENERAL REQUIREMENTS		
	010010	GENERAL CONDITIONS		
		General Conditions	12.00 MO	180,000
		Project Staff	12.00 MO	375,000
		Phase 1 Preconstruction	1.00 LS	135,000
		Design and Engineering Cost	1.00 LS	620,000
		Contractor Contingency	1.00 LS	300,000
		Insurance	1.00 LS	131,500
		Contractor Fee	1.00 LS	500,000
		GENERAL CONDITIONS		2,241,500
		GENERAL REQUIREMENTS		2,241,500
031---		CIP CONCRETE (BLDG)		
	031500	BLDG CONCRETE - HCC		
		Footings	1,430.00 LF	135,850
		Pad Footings	42.00 EA	23,100
		Slab On Grade - 4"	19,437.00 SF	121,093
		Slab On Deck	3,672.00 SF	18,360
		Stair Pans	1.00 LS	13,500
		Grade Beam	548.00 LF	98,640
		Slab On Grade - 8"	16,496.00 SF	131,968
		Trench Drains	421.00 LF	25,260
		Bollards	65.00 EA	22,750
		BLDG CONCRETE - HCC		590,521
		CIP CONCRETE (BLDG)		590,521
04----		MASONRY		
	042000	UNIT MASONRY		
		Exterior CMU Walls	1.00 INCL	0
		Brick Veneer	1.00 INCL	0
		Cast Stone Veneer	1.00 INCL	0
		Interior CMU Walls	1.00 INCL	0
		Stone Coping	1.00 INCL	0
		Masonry	1.00 LS	1,331,743
		UNIT MASONRY		1,331,743
		MASONRY		1,331,743
05----		METALS		
	051000	STRUCTURAL METAL FRAMING		
		Joist, Deck, and Angle (app bay)	16,485.00 SF	280,245
		Exterior Columns	4.00 EA	3,000
		Columns, Joist, and Deck (office area)	19,437.00 SF	485,925
		Mezzanine Steel	3,672.00 SF	69,768
		Canopy Steel	280.00 SF	5,320
		STRUCTURAL METAL FRAMING		844,258
	055100	METAL STAIRS		
		Metal Stairs and Railings	3.00 EA	49,500
		Mezzanine Railings	90.00 LF	13,500
		METAL STAIRS		63,000

Group	Phase	Description	Takeoff Quantity	Grand Total Amount
		METALS		907,258
06----		WOOD & PLASTICS		
	061000	ROUGH CARPENTRY		
		Miscellaneous Blocking	1.00 LS	35,000
		ROUGH CARPENTRY		35,000
	064100	CUSTOM CASEWORK		
		Base Cabinets	154.00 LF	36,190
		Wall Cabinets	89.00 LF	17,800
		Counters and Brackets	246.00 LF	61,500
		Vanities/Counters	178.00 LF	48,060
		Pantry Units	7.00 EA	3,325
		Linen Shelving	3.00 EA	1,050
		CUSTOM CASEWORK		167,925
	064200	ARCHITECTURAL PANELWORK		
		Cement Board Siding	4,505.00 SF	112,625
		ARCHITECTURAL PANELWORK		112,625
		WOOD & PLASTICS		315,550
07----		THERMAL & MOISTURE PROTECTION		
	072400	E.I.F.S.		
		E.I.F.S.	5,090.00 SF	76,350
		E.I.F.S.		76,350
	072700	AIR BARRIERS		
		Air Barriers	23,680.00 SF	165,760
		AIR BARRIERS		165,760
	074200	WALL PANELS		
		Aluminum Wall Panels	3,590.00 SF	179,500
		Soffit Panels	280.00 SF	12,600
		WALL PANELS		192,100
	075000	MEMBRANE ROOFING		
		Membrane Roofing, Flashing & Sheet Metal	38,655.00 SF	502,515
		Roof Screens	1.00 LS	48,500
		MEMBRANE ROOFING		551,015
	078400	FIRESTOPPING		
		Firestopping	1.00 LS	20,000
		FIRESTOPPING		20,000
	079200	JOINT SEALERS		
		Interior and Exterior Joint Sealants	1.00 LS	50,000
		JOINT SEALERS		50,000
		THERMAL & MOISTURE PROTECTION		1,055,225
08----		DOORS & WINDOWS		
	081100	METAL DOORS & FRAMES		
		Single Doors, Frames, and Hardware	72.00 EA	205,200
		Double Doors, Frames, and Hardware	1.00 EA	3,150
		Aluminum Door Hardware	4.00 EA	3,000
		Pocket Doors	20.00 EA	15,000
		Closet Double Doors	3.00 EA	2,250

Group	Phase	Description	Takeoff Quantity	Grand Total Amount
		METAL DOORS & FRAMES		228,600
	083613	OVERHEAD SECTIONAL DOORS		
		Exterior Roll Doors	4.00 EA	38,000
		Apparatus Bay Doors	16.00 EA	336,000
		OVERHEAD SECTIONAL DOORS		374,000
	084113	ALUM ENTRANCE & STOREFRONT		
		Storefront Windows	31.00 EA	36,270
		Aluminum Doors and Storefront	4.00 EA	14,000
		Interior Windows	1.00 EA	1,550
		ALUM ENTRANCE & STOREFRONT		51,820
	089100	LOUVERS		
		Louvers	2.00 LS	10,000
		LOUVERS		10,000
		DOORS & WINDOWS		664,420
09----		FINISHES		
	092100	GYPSUM BOARD ASSEMBLIES		
		Exterior Wall Framing System	12,918.00 SF	174,393
		Interior Wall Framing - 2 Sided	30,518.00 SF	274,662
		Drywall Ceilings	1,618.00 SF	12,135
		Bulkheads	730.00 LF	23,360
		Interior Wall Framing - 1 Sided	5,508.00 SF	35,802
		GYPSUM BOARD ASSEMBLIES		520,352
	095100	ACOUSTICAL CEILINGS		
		Acoustical Ceilings	16,102.00 SF	96,612
		ACOUSTICAL CEILINGS		96,612
	096100	FLOOR TREATMENT		
		Sealed Concrete	26,878.00 SF	80,634
		FLOOR TREATMENT		80,634
	096500	RESILIENT FLOORING		
		LVT Flooring	2,052.00 SF	20,520
		Fitness Floor	1,004.00 SF	15,060
		VCT	182.00 SF	1,092
		RESILIENT FLOORING		36,672
	096723	RESINOUS FLOORING		
		Resinous Flooring	0.00 NIC	0
		RESINOUS FLOORING		0
	096800	CARPETING		
		Carpet	6,880.00 SF	41,280
		Walk Off Mat	144.00 SF	1,152
		CARPETING		42,432
	099100	PAINTING		
		Painting	38,625.00 SF	94,631
		PAINTING		94,631
		FINISHES		871,333
10----		SPECIALTIES		
	101100	VISUAL DISPLAY BOARDS		
		Display Boards	14.00 EA	25,200
		VISUAL DISPLAY BOARDS		25,200
	101200	DISPLAY CASES		

Group	Phase	Description	Takeoff Quantity	Grand Total Amount
	101200	DISPLAY CASES		
		Display Case	3.00 EA	15,000
		DISPLAY CASES		15,000
	101400	SIGNAGE		
		Interior Signage	1.00 LS	3,500
		Exterior Building Sign	1.00 LS	25,000
		Monumental Sign	0.00 NIC	0
		SIGNAGE		28,500
	102113	TOILET COMPARTMENTS		
		Toilet Compartments	9.00 EA	9,000
		Urinal Screen	2.00 EA	1,000
		TOILET COMPARTMENTS		10,000
	102116	SHOWER & DRESSING COMPART		
		Shower Curtains and Accessories	6.00 EA	1,050
		SHOWER & DRESSING COMPART		1,050
	102226	OPERABLE PARTITIONS		
		Operable Partitions	0.00 NIC	0
		OPERABLE PARTITIONS		0
	102600	WALL AND DOOR PROTECTION		
		Corner Guards and FRP Wall Panels	1.00 LS	10,000
		WALL AND DOOR PROTECTION		10,000
	102800	TOILET & BATH ACCESSORIES		
		Toilet Accessories	115.00 EA	11,500
		TOILET & BATH ACCESSORIES		11,500
	104400	FIRE PROTECTION SPECIALTIES		
		Fire Ext. Cabinets/Accsry Supply	10.00 EA	5,000
		FIRE PROTECTION SPECIALTIES		5,000
	105100	LOCKERS		
		Lockers	70.00 EA	31,500
		Turnout Units	60.00 EA	48,000
		Locker Benches	158.00 LF	15,800
		LOCKERS		95,300
	107316	CANOPIES		
		Exterior Canopies (with steel and roof)	1.00 INCL	0
		CANOPIES		0
	107500	FLAGPOLES		
		Flagpole	1.00 EA	5,000
		FLAGPOLES		5,000
		SPECIALTIES		206,550
11----		EQUIPMENT		
	112326	COMMERCIAL LAUNDRY EQUIPMENT		
		Laundry Equipment	0.00 NIC	0
		COMMERCIAL LAUNDRY EQUIPMENT		0
	113100	RESIDENTIAL APPLIANCES		
		Kitchen Equipment	0.00 NIC	0
		RESIDENTIAL APPLIANCES		0
	114000	FOOD SERVICE EQUIPMENT		
		Range Hood	0.00 NIC	0
		FOOD SERVICE EQUIPMENT		0

Group	Phase	Description	Takeoff Quantity	Grand Total Amount
		EQUIPMENT		0
12----		FURNISHINGS		
	122000	WINDOW TREATMENTS		
		Window Blinds	0.00 NIC	0
		WINDOW TREATMENTS		0
	125000	FURNITURE		
		Furniture, Fixtures, and Equipment	0.00 NIC	0
		FURNITURE		0
	129300	SITE FURNISHINGS		
		Bike Rack, Picnic Table, Trash Can	0.00 NIC	0
		SITE FURNISHINGS		0
		FURNISHINGS		0
21----		FIRE SUPPRESSION		
	210000	FIRE SUPPRESSION		
		Fire Sprinkler	38,625.00 SF	125,531
		FIRE SUPPRESSION		125,531
		FIRE SUPPRESSION		125,531
22----		PLUMBING		
	220000	PLUMBING		
		Plumbing (with HVAC)	1.00 INCL	0
		PLUMBING		0
		PLUMBING		0
23----		HVAC		
	230000	MECHANICAL		
		HVAC System (includes plumbing)	38,625.00 SF	1,738,125
		Vehicle Exhaust System Allowance	1.00 AL	100,000
		Geothermal Well Field	0.00 NIC	0
		MECHANICAL		1,838,125
		HVAC		1,838,125
26----		ELECTRICAL		
	260000	ELECTRICAL		
		Complete Electrical	38,625.00 LS	1,004,250
		ELECTRICAL		1,004,250
		ELECTRICAL		1,004,250
31----		EARTHWORK		
	310000	EARTHWORK		
		Site Prep and Grading	5.25 AC	315,000
		Building Pad Prep	1,288.00 CY	70,840
		Erosion Control/Construction Drive	1.00 LS	45,000
		Foundation Excavation and Backfill	1.00 LS	27,900
		EARTHWORK		458,740

Group	Phase	Description	Takeoff Quantity	Grand Total Amount
		EARTHWORK		458,740
32----		EXTERIOR IMPROVEMENTS		
	321216	ASPHALT PAVING		
		LD Paving	25,100.00 SF	131,775
		HD Paving (existing road patch)	1,000.00 SF	6,000
		Walking Path	0.00 NIC	0
		ASPHALT PAVING		137,775
	321313	CONCRETE PAVING		
		Paving	41,440.00 SF	393,680
		Sidewalks	2,695.00 SF	16,574
		Base Bid Curbs	685.00 LF	44,525
		Equipment Pads	735.00 SF	5,880
		CONCRETE PAVING		460,659
	323100	FENCES AND GATES		
		Dumpster Enclosure Gate	1.00 EA	9,500
		Masonry Dumpster Enclosure w/Footer	1.00 LS	10,720
		Mechanical Yard Enclosure w/Gate	1.00 LS	5,100
		FENCES AND GATES		25,320
	329300	PLANTS		
		Landscaping and Seeding Allowance	1.00 AL	50,000
		PLANTS		50,000
		EXTERIOR IMPROVEMENTS		673,754
33----		UTILITIES		
	331100	WATER DISTRIBUTION PIPING		
		Water Piping Allowance	415.00 LF	62,250
		Water Pit	1.00 EA	5,000
		Offsite Water Piping Allowance (by owner)	0.00 NIC	0
		WATER DISTRIBUTION PIPING		67,250
	333000	SANITARY SEWERAGE SYSTEMS		
		Sanitary Sewer Allowance	1,300.00 LF	162,500
		Offsite Sanitary Sewer Allowance (by owner)	0.00 NIC	0
		SANITARY SEWERAGE SYSTEMS		162,500
	334000	STORM SEWERAGE SYSTEMS		
		Storm Sewer Allowance	1,100.00 LF	121,000
		Storm Inlet Allowance	6.00 EA	21,000
		Roof Drain Allowance	575.00 LF	28,750
		Grease/Oil Interceptor	1.00 EA	15,000
		STORM SEWERAGE SYSTEMS		185,750
		UTILITIES		415,500

Estimate Totals

Description	Amount	Totals	Cost per Unit
Sub Total		12,700,000	
Design Contingency (NIC)			
Performance and Payment Bond	100,000		
Total		12,800,000	331.39 /SF

Westfield Fire Department
Fire Station #81 Project
Phase 1 Report

TAB 3 – FFE BY OWNER

Owner Matrix

Item Description	Design-Builder's Budget	Owner's Budget
Third-Party Systems Commissioning		X
Fees for filing plans with Indiana Department of Homeland Security		X
Fees for filing plans with the City of Westfield and Hamilton County for approvals and Construction Design Release		X
Fees of quality control field or laboratory testing, where test results indicate the Work meets requirements of the Design- Build Documents		X
Builder's Risk Insurance		X
Development of Design Criteria		X
Data network servers		X
Office computers		X
Audio-Visual System input equipment, including: Computers, DVD players, Cameras, Smart Boards, etc.		X
Security and Access Control Equipment & Programming		X
Initial Enrollment of Access Credentials for all of Owner's staff		X
Loose Apparatus Equipment (Freestanding storage rack/shelving, freestanding storage cabinets, etc.)		X
Loose Kitchen/Living Quarters/Admin. Offices Equipment (Coffee makers, tables and chairs, desks and chairs, freestanding storage rack/shelving, etc.)		X
All Furnishings and Loose Equipment (i.e. furniture, appliances, blinds)		X
Purchase of Gantry Crane		X
Turnout Gear Racks (Purchase)		X
HaxMat Laundry, Refridgerator, Washer, Dryer, Dryer Cabinets, Utility Sink (Provide and Install)		X
Mini Refridgerator (EMS)		X
Decontamination Room Lockers & Linen Cabinets (Provide & Install). Sauna & Benches (Provide)		X
Dive Gear & SCBA Testing Room, Storage racks and shelving & Test Fit & Filling Equipment (Provide & Install)		X
Hose Storage Room all rack storage & Carts (Provide & Install)		X
Maintaence Room Commercial Washer & Dryer (Provide & Install)		X
Fleet Service Workstation w/chairs, Office Cabinets, Refridgerator, Coffee Maker (Provide & Install)		X

Owner Matrix

Item Description	Design-Builder's Budget	Owner's Budget
Information Area, Monitors		X
All Loose Storage racks/shelving (Provide & Install)		X
All small appliances (Provide & Install)		X
All office Workstations w/chairs (Provide & Install)		X
Monitors & Television in Watch Room (Provide & Install)		X
Day Room Television & Lounge Chairs (Provide & Install)		X
Kitchen freezers, refrigerator, dishwasher, ice maker, & microwaves (Provide & Install)		X
Staff Dining, wall monitors/TVs, tables & chairs (Provide & Install)		X
Bunk Rooms twin size beds, bedside tables, & lamps (Provide & Install)		X
Staff Laundry washer & dryer (Provide & Install)		X
All fitness equipment for Fitness Room (Provide & Install)		X
Locker Room Benches (Provide only)		X
Administrative Break Room Convection Oven (Provide & Install)		X
Administrative Conference Room Large Monitor/TV (Provide & Install)		X
Training Room monitors/TVs (Provide & Install)		X
Off Site Utilities cost provided by utility companies. There is no off-site utility cost anticipated not being provided by utility companies. Utility companies would include but not limited to gas, power, sanitary, water, fiber, internet, phone & etc.		X
Opticom system at intersection of SR 32 and Ditch.		X
Impact fees (Local Permits only by DB)		X
All Window Blinds as needed (Provide and Install)		X

Westfield Fire Department
Fire Station #81 Project
Phase 1 Report

TAB 4 – PERMITTING

Westfield Fire Department
Fire Station #81 Project
Phase 1 Report

TAB 5 – SCHEDULE

29	4981	Completion of Design	95d	10/19/21	02/28/22	Completion of Design
30	4990	100% Design Development Documents	30d	10/19/21	11/29/21	100% Design Development Documents
31	5000	75% Construction Documents	30d	11/30/21	01/10/22	75% Construction Documents
32	5010	100% Constructon Documents	20d	01/11/22	02/07/22	100% Constructon Documents
33	5020	Subcontract Bidding/Procurement	35d	01/11/22	02/28/22	Subcontract Bidding/Procurement
34	0011	Construction	251d	02/14/22	01/30/23	Construction
35	0020	On-Site Mobilization	5d	02/14/22	02/18/22	On-Site Mobilization
36	0030	Erosion Control	5d	02/18/22	02/24/22	Erosion Control
37	0041	Strip Topsoil	5d	02/25/22	03/03/22	Strip Topsoil
38	0042	Construct Building Pad	5d	03/04/22	03/10/22	Construct Building Pad
39	0043	Install Storm Piping	10d	03/11/22	03/24/22	Install Storm Piping
40	0044	Install Sanitary Line	15d	03/21/22	04/08/22	Install Sanitary Line
41	0045	Cut Pavement to Subgrade	10d	04/06/22	04/19/22	Cut Pavement to Subgrade
42	0046	Install Site Lighting Conduits	5d	04/20/22	04/26/22	Install Site Lighting Conduits
43	0047	Install Stone for Pavement	3d	04/27/22	04/29/22	Install Stone for Pavement
44	0048	Binder Asphalt	1d	05/02/22	05/02/22	Binder Asphalt
45	0049	Concrete Pavement	10d	05/03/22	05/16/22	Concrete Pavement
46	0059	Surface Asphalt	1d	05/03/22	05/03/22	Surface Asphalt
47	0069	Install Site Lighting Poles	3d	05/17/22	05/19/22	Install Site Lighting Poles
48	0079	Spreading of Topsoil	2d	05/02/22	05/03/22	Spreading of Topsoil
49	0089	Seeding	2d	05/20/22	05/23/22	Seeding
50	0099	Plantings	2d	05/23/22	05/24/22	Plantings
51	0109	Striping/Signage	1d	05/25/22	05/25/22	Striping/Signage
52	0051	Building Foundations	15d	03/18/22	04/07/22	Building Foundations
53	0052	Apparatus Foundations	10d	04/08/22	04/21/22	Apparatus Foundations
54	0053	Underground Plumbing	15d	04/08/22	04/28/22	Underground Plumbing
55	0054	Underground Electrical	10d	04/15/22	04/28/22	Underground Electrical
56	0055	Building Slab on Grade	5d	05/20/22	05/26/22	Building Slab on Grade
57	0056	Apparatus Slab on Grade	5d	05/27/22	06/02/22	Apparatus Slab on Grade
58	0061	Set Structural Steel Columns & Beams	6d	05/12/22	05/19/22	Set Structural Steel Columns & Beams

Summary Task

Hammock Task

Expanded Task

Task

Progressed Task

Critical Task

Buffer Task

Milestone



Westfield Fire Station #81

59	0062	Install CMU Walls	15d	04/29/22	05/19/22		Install CMU Walls
60	0063	Set Metal Joists & Decking	10d	05/17/22	05/30/22		Set Metal Joists & Decking
61	0064	Exterior Stud Framing	12d	05/27/22	06/13/22		Exterior Stud Framing
62	0065	Exterior Sheathing	10d	06/08/22	06/21/22		Exterior Sheathing
63	0075,0066	Exterior Vapor Barrier	4d	05/20/22	06/23/22		Exterior Vapor Barrier
64	0067	Install Apparatus Bay Brick	15d	06/01/22	06/21/22		Install Apparatus Bay Brick
65	0068	Install Building Brick	15d	06/22/22	07/12/22		Install Building Brick
66	5030	Install Windows	15d	07/12/22	08/01/22		Install Windows
67	0078	Install Exterior Hardiboard	15d	07/01/22	07/21/22		Install Exterior Hardiboard
68	0088	Paint Exterior Hardiboard	5d	07/22/22	07/28/22		Paint Exterior Hardiboard
69	0098	Install Building Roof	15d	06/17/22	07/07/22		Install Building Roof
70	0108	Install Apparatus Roof	15d	07/08/22	07/28/22		Install Apparatus Roof
71	0118	Install Metal Copings	10d	07/29/22	08/11/22		Install Metal Copings
72	0128	Set Plumbing Carriers	7d	06/21/22	06/29/22		Set Plumbing Carriers
73	0138	Interior Framing	15d	06/27/22	07/15/22		Interior Framing
74	0148	Ductwork RIs	10d	07/07/22	07/20/22		Ductwork RIs
75	0149	Overhead Piping RIs	15d	07/19/22	08/08/22		Overhead Piping RIs
76	0158	Overhead Electrical RIs	15d	08/03/22	08/23/22		Overhead Electrical RIs
77	0168	Overhead Fire Protection RIs	10d	08/18/22	08/31/22		Overhead Fire Protection RIs
78	0178	Wall Electrical RIs	15d	07/13/22	08/02/22		Wall Electrical RIs
79	0188	Wall A/V RIs	15d	07/25/22	08/12/22		Wall A/V RIs
80	0198	Wall Plumbing RIs	15d	08/12/22	09/01/22		Wall Plumbing RIs
81	0208	In Wall Inspection	2d	09/02/22	09/05/22		In Wall Inspection
82	0218	Hang Drywall Admin	10d	09/05/22	09/16/22		Hang Drywall Admin
83	0228	Hang Drywall Fire	12d	09/15/22	09/30/22		Hang Drywall Fire
84	0238	Finish Drywall Admin	10d	09/19/22	09/30/22		Finish Drywall Admin
85	0248	Finish Drywall Fire	10d	09/30/22	10/13/22		Finish Drywall Fire
86	0258	Install Apparatus Bay Overhead Doors	10d	08/05/22	08/18/22		Install Apparatus Bay Overhead Doors
87	0268	Prime Paint Drywall Admin	8d	10/03/22	10/12/22		Prime Paint Drywall Admin
88	0278	Prime Paint Drywall Fire	8d	10/13/22	10/24/22		Prime Paint Drywall Fire

Summary Task

Hammock Task

Expanded Task

Task

Progressed Task

Critical Task

Buffer Task

Milestone



Westfield Fire Station #81

89	0288	Prime Paint Apparatus	8d	10/18/22	10/27/22	Prime Paint Apparatus
90	0298	Set Mechanical Equipment	10d	09/06/22	09/19/22	Set Mechanical Equipment
91	0308	Set Electrical Equipment	10d	09/15/22	09/28/22	Set Electrical Equipment
92	0318	Set Plumbing Equipment	10d	09/20/22	10/03/22	Set Plumbing Equipment
93	0328	Install Casework	15d	10/31/22	11/18/22	Install Casework
94	0338	Install Ceiling Grid	10d	10/25/22	11/07/22	Install Ceiling Grid
95	0348	Install Lights	15d	11/14/22	12/02/22	Install Lights
96	0358	Install Diffusers	10d	11/21/22	12/02/22	Install Diffusers
97	0359	Install Fire Protection Heads	10d	11/14/22	11/25/22	Install Fire Protection Heads
98	0368	Above Ceiling Inspection	2d	12/05/22	12/06/22	Above Ceiling Inspection
99	0378	Install Acoustical Border Tiles Only	5d	12/07/22	12/13/22	Install Acoustical Border Tiles Only
100	0388	Final Paint Admin	8d	11/21/22	11/30/22	Final Paint Admin
101	0398	Final Paint Fire	8d	12/01/22	12/12/22	Final Paint Fire
102	0408	Final Paint Apparatus	8d	12/07/22	12/16/22	Final Paint Apparatus
103	0418	Install Hard tile	15d	10/25/22	11/14/22	Install Hard tile
104	0428	Install Flooring Admin	10d	12/07/22	12/20/22	Install Flooring Admin
105	0438	Install Flooring Fire	10d	12/16/22	12/29/22	Install Flooring Fire
106	0448	Install Doors Admin	10d	11/21/22	12/02/22	Install Doors Admin
107	0458	Install Doors Fire	10d	12/05/22	12/16/22	Install Doors Fire
108	0468	Set Plumbing Fixtures	10d	11/15/22	11/28/22	Set Plumbing Fixtures
109	0478	Install Electrical Devices	10d	12/13/22	12/26/22	Install Electrical Devices
110	0488	Install Acoustical Ceiling Tile	8d	12/22/22	01/02/23	Install Acoustical Ceiling Tile
111	0498	Fire Alarm Inspection	5d	01/03/23	01/09/23	Fire Alarm Inspection
112	0508	Fire Suppression Inspection	5d	01/03/23	01/09/23	Fire Suppression Inspection
113	0518	Life Safety Inspection	5d	01/03/23	01/09/23	Life Safety Inspection
114	0090	Starting of Systems and Commissioning	22d	12/01/22	12/30/22	Starting of Systems and Commissioning
115	0100	Substantial Completion/Punchlist	5d	01/10/23	01/16/23	Substantial Completion/Punchlist
116	0110	Punchlist/Closeout	15d	01/10/23	01/30/23	Punchlist/Closeout

Summary Task

Hammock Task

Expanded Task

Task

Progressed Task

Critical Task

Buffer Task

Milestone



Westfield Fire Station #81

Westfield Fire Department
Fire Station #81 Project
Phase 1 Report

TAB 6 – AGREEMENT



Progressive Design-Build Agreement for Indiana Public Works Projects per IC 5-30

Preliminary Sample Document: Attached to RFP as Exhibit B-1

Subject to final negotiation of terms and conditions in accordance with IC 5-30-7-8

This **AGREEMENT** is made as of the 21st day of September in the year of 2021, by and between the following parties, for services in connection with the Project identified below:

OWNER:

City of Westfield, Indiana
2728 East 171st Street
Westfield, IN. 46074

DESIGN-BUILDER:

Hagerman, Inc.
510 W. Washington Blvd.
Fort Wayne, IN 46802

PROJECT:

New Fire Station No. 81
17001 Ditch Road
Westfield IN 46074

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 proceed on the basis of trust 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* (2010 Edition) ("General Conditions of 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) employed by Design-Builder, or (ii) procured by Design-Builder 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 general program requirements and objectives for the Project as set forth in Exhibit A (RFP and all attachments and Addenda). Owner's preliminary Project Criteria shall include Owner's understanding of 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 Project Criteria as part of the Phase 1 Services. Design-Builder shall document Project Criteria as part of the Phase 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 Phase 1 Report and agree upon what revisions, if any, should be made to the Design-Builder's Phase 1 Report prior to the Owner's acceptance of the Design-Builder's Phase 1 Report.

2.2 Phased Services.

- 2.2.1 **Phase 1 Services.** Design-Builder shall perform the services of programming, 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 Phase 1 Report and establish the Contract Price for Phase 2, as set forth in Section 2.3 below. The Contract Price for Phase 2 shall be developed during Phase 1 on an "open-book" basis. Design-Builder's Compensation for Phase 1 Services is set forth in Section 7.0 herein. The level of completion required for Phase 1 Services is defined in Exhibit B, Scope of Services.
- 2.2.2 **Phase 2 Services.** Design-Builder's Phase 2 services shall consist of the completion of design services for the Project, the procurement of all materials and equipment for 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 Phase 1 Report and proposed Contract Price for Phase 2, Owner may proceed as set forth in Article 2.3.

2.3 **Phase 1 Report.** Upon completion of the Phase 1 Services and any other Basis of Design Documents upon which the parties may agree, Design-Builder shall submit a Phase 1 Report to Owner (the "Phase 1 Report") that outlines the design scope and quality of the Project. The report also defines the Work required for the completion of the design and construction of the Project for the Contract Price, which will be based on a Price.

2.3.1 The Phase 1 Report shall include the following unless the parties mutually agree otherwise:

- 2.3.1.1 The Contract Price that will be based on a Lump Sum Price, which shall be the sum of:
- 2.3.1.2 Design-Builder's Fee as defined in Section 7.4.1 hereof;
- 2.3.1.3 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
- 2.3.1.4 If applicable, any prices established under Section 7.1.3 hereof;
- 2.3.1.5 A total project budget, including the Design-Build Contract Price and all other Owner's Hard, Soft and Financing Costs. Identify all contingencies and allowances; indicating the party that controls expenditure of each.
- 2.3.1.6 The Basis of Design Documents, which are set forth in detail in Section 1.2.2 of the General Conditions and are attached to the Phase 1 Report;
- 2.3.1.7 A list of the assumptions and clarifications made by Design-Builder in the preparation of the Phase 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;
- 2.3.1.8 The Scheduled Substantial Completion Date upon which the Phase 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;
- 2.3.1.9 If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis;
- 2.3.1.10 If applicable, a schedule of alternate prices;
- 2.3.1.11 If applicable, a schedule of unit prices;
- 2.3.1.12 If applicable, a statement of Additional Services which may be performed but which are not included in the Phase 1 Report, and which, if performed, shall be the basis for an increase in the Contract Price and/or Contract Time(s);
- 2.3.1.13 If applicable, a Savings provision; Section Deleted.
- 2.3.1.14 If applicable, Performance Incentives; and Section Deleted.
- 2.3.1.15 A Project permit list, a list detailing the permits, governmental approvals and other reviews & approvals that are required for the Project. The Project permit list must identify the Design-Builder's role and the Owner's role in obtaining each permit, review or approval

2.3.2 **Review and Adjustment to Phase 1 Report.**

- 2.3.2.1 After submission of the Phase 1 Report, Design-Builder and Owner shall meet to discuss and review the Phase 1 Report. If Owner has any comments regarding the Phase 1 Report, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the Phase 1 Report.
- 2.3.2.2 **Acceptance of Phase 1 Report.** If Owner accepts the Phase 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 the parties have agreed upon the Contract Price and this Agreement and Owner has issued a Notice to Proceed with Phase 2, Design-Builder shall perform the Phase 2 Services in accordance with this Agreement.
- 2.3.2.3 **Failure to Accept the Phase 1 Report.** If Owner rejects the Phase 1 Report, or fails to notify Design-Builder in writing on or before the date specified in the Phase 1 Report that it accepts the Phase 1 Report, the Phase 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 Owner having the following options:
 - 2.3.2.3.1 Owner may suggest modifications to the Phase 1 Report, whereupon, if such modifications are accepted in writing by Design-Builder, the Phase 1 Report shall be deemed accepted, and the parties shall proceed in accordance with Section 2.3.2.2 above;
 - 2.3.2.3.2 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 Phase I Services.
- 2.3.2.4 If Owner fails to exercise any of the above options, Design-Builder shall have the right to:
 - 2.4.2.4.1 Design-Builder may suggest modifications to the Phase 1 Report, whereupon, if such modifications are accepted in writing by Owner, the Phase 1 Report shall be deemed accepted and the parties shall proceed in accordance with Section 2.3.2.2 above;
 - 2.3.2.4.2 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 Phase I Services.

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 (2010 Edition) ("General Conditions of Contract");
 - 3.1.2 The Phase 1 Report, and all attachments, as accepted by Owner in accordance with Section 2.3 herein.

- 3.1.3 Basis of Design Documents
- 3.1.4 This Agreement, including all exhibits;
- 3.1.5 The General Conditions of Contract;
- 3.1.6 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract; and
- 3.1.7 Exhibit B2-B, Scope of Services.

Article 4

Interpretation and Intent

- 4.1 Design-Builder and Owner, at the time of acceptance of the Phase 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 Phase 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 Phase 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 zero dollars (\$ 0.00) 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 Work shall commence within five (5) days of Design-Builder’s receipt of Owner’s Notice to Proceed for Phase 2 Services (“Date of Commencement”) 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 four hundred eighty-eight (488) calendar days after the Date of Commencement (“Scheduled Substantial Completion Date”). The parties agree that the definition for Substantial Completion set forth in Section 1.2.18 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.”*

- 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 All of the dates set forth in this Article 6 ("Contract Time(s)") shall be subject to adjustment in accordance with 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.** - Deleted
- 6.5 **Early Completion Bonus.** – Deleted
- 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: (i) said events must exceed twenty (20) cumulative days before Design-Builder is entitled to additional compensation; and (ii) said additional compensation shall be limited to:

[Check one box only]

☐ \$ _____ dollars a day for each day work is delayed beyond the Scheduled Substantial Completion Date.

or

☒ the direct costs and expenses Design-Builder can demonstrate it has reasonably actually incurred as a result of such event.

Article 7

Contract Price

- 7.1 **Contract Price.**
- 7.1.1 **Phase 1 Services:** Owner shall pay Design-Builder in accordance with the Letter of Intent for the Phase 1 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 **Phase 2 Services:** For Phase 2 Services, Owner shall pay Design-Builder in accordance with Article 7 of the General Conditions of Contract a contract price ("Contract Price") equal to the Lump Sum amount set forth in Section 7.2 hereof.
- 7.1.2.1 Contract Price shall include the entire amount to be paid by the Owner to the Design-Builder for Phase 1 Services.
- 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 twelve million eight hundred thousand dollars and no cents (\$12,800,000.00) ("Contract Price") for the Work for Phase 1 and Phase 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 9.4.1.3 or 9.4.1.4 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 ten percent (10%) 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:

[Check one box only]

☒ No additional reduction to account for Design-Builder's Fee or any other markup.

or

☐ An amount equal to the sum of: (a) _____ percent (_____%) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); plus (b) any other markups set forth at Exhibit _____ hereto applied to the direct costs of the net reduction.

7.4 **Design-Builder's Fee.**

~~7.4.1 Design-Builder's Fee shall be:~~

~~**(Choose one of the following:)**~~

~~☐ _____ Dollars (\$ _____), as adjusted in accordance with Section 7.4.2 below.~~

~~or~~

~~☐ _____ percent (_____%) of the Cost of the Work, 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 _____ 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:~~

~~**[Check one box only]**~~

~~☐ No additional reduction to account for Design-Builder's Fee or any other markup.~~

~~or~~

~~☐ An amount equal to the sum of: (a) _____ percent (_____%) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); plus (b) any other markups set forth at Exhibit _____ hereto applied to the direct costs of the net reduction.~~

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 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 basis for the GMP shall be identified as part of the Contract Price Amendment to this Agreement. Design-Builder does not guarantee any specific line item provided as part of the GMP, provided, however, that it does guarantee the line item for its general project management and general conditions costs, in the amount of — Dollars (\$), and as set forth in the Contract Price Amendment ("General Conditions Cap"). Design-Builder agrees that it will be responsible for paying the applicable general conditions costs in excess of the General Conditions Cap, as well as be responsible for all costs of completing the Work which exceed the GMP, as said general conditions line item and the GMP may be adjusted in accordance with the Contract Documents, including but not limited to the markups for Change Orders set forth in Section 7.3 herein. *(While the Contract Price Amendment will be developed in advance or concurrently with the execution of Phase 2 of this Agreement, it is recommended that such exhibit include the items set forth in Section 2.3 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 8.4 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 Contract Price Amendment or the Phase 1 Report.

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.
 - 7.7.4.1 In the event the actual direct cost of labor, materials, equipment, transportation, taxes, and insurance associated with the applicable Allowance Item is percent (%) greater than or less than the Allowance Value, Design-Builder and Owner agree that Design-Builder's right to Fee and markup shall be determined in accordance with Section 7.4.
- 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.** - Deleted

Article 8

Procedure for Payment

- 8.1 **Payment for Phase 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 the 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 the percentage of completion of Phase 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 Phase 1 Services shall not be paid until:
 - 8.1.3.1 Owner accepts Design-Builder's Phase 1 Report in accordance with Section 2.3.2.2 above,
 - or
 - 8.1.3.2 Owner rejects and terminates negotiations or Design-Builder terminates negotiations on Design-Builder's Phase 1 Report in accordance with Section 2.3.2.3 or 2.3.2.4 above.

8.2 Phase 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 Application for Payment shall include a single line item for the value of Phase 1 Services, and indicate any previous payments made or earned amounts outstanding to be paid.
- 8.2.2 Owner shall make payment in accordance with Owner's standard monthly claims cycle and payment procedures after Owner's receipt of each properly submitted and accurate Application for Payment 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 five percent (5%) of each Application for Payment.
 - 8.3.1.1 Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.
 - 8.3.1.2 There is no retainage on:
 - 8.3.1.2.1 Phase 1 Services
 - 8.3.1.2.2 Design Services
 - 8.3.1.2.3 Design Builders General Conditions
 - 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: (a) Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.
- 8.5 **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.
- 8.5.1 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.

- 8.5.2 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.
- 8.5.3 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.
- 8.5.4 Any multipliers or markups agreed to by the 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.
- 8.5.5 Any lump sum agreed to by the Owner and Design-Builder as part of this Agreement is not subject to audit.

Article 9

Termination for Convenience

- 9.1 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:
 - 9.1.1 All services performed and Work executed and for proven loss, cost, or expense in connection with the services and Work;
 - 9.1.2 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
 - 9.1.3 Overhead and profit in the amount of percent (%) on the sum of items 9.1.1 and 9.1.2 above.
- 9.2 In addition to the amounts set forth in Section 9.1 above, Design-Builder shall be entitled to receive one of the following as applicable:
 - 9.2.1 If Owner terminates this Agreement prior to submittal of the Phase 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 the Phase 1 Report, and prior to Owner's Approval of the Phase 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 the Approval of the Phase 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.
- 9.3 If Owner terminates this Agreement pursuant to Section 9.1 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 hereof. 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.

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 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.)

Board of Public Works and Safety

City of Westfield

(Contact through Chief of Staff)

- 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.)

Todd Burtron

Chief of Staff

City of Westfield, Indiana

2828 East 171st Street

Westfield, IN 46074

(317) 804-3003

tburtron@westfield.in.gov

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.)

Bradley M. Smith, President

Hagerman, Inc.

510 W. Washington Blvd.

Fort Wayne, IN 46802

(260)-424-1470

bsmith@hagermangc.com

- 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.)

Greg Delagrance, Project Manager

Hagerman, Inc.

10315 Allisonville Road

Fishers, IN 46038

(317)-577-6836

gdelagrance@hagermangc.com

Article 11

Bonds and Insurance

Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Design Builders Certificate of Insurance as attached in the Phase 1 Report.

- 11.1 **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 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 **Anti-Nepotism:** Design-Builder is aware of the provisions under Indiana Code §36-1-21 et seq. with respect to anti-nepotism in contractual relationships with governmental entities. Design-Builder certifies that none of the owners of Design-Builder is a relative of any elected official of Warsaw Community Schools.

12.1.4 **Investment Activity:** Pursuant to Indiana Code §5-22-16.5, Design-Builder certifies that Design-Builder is not engaged in investment activities in Iran.

12.1.5 **Standard of Care**

12.1.5.1 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.

12.1.6 **Final Resolution of Claims**

12.1.6.1 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 Hamilton County, Indiana.

12.2 Listing of Exhibits and documents incorporated herein:

Exhibit A – Basis of Design Documents (at the time of authorization for Phase 2 Services)

Exhibit B – Scope of Services

Exhibit C – Design-Builder's Approved Phase 1 Report (at the time of authorization for Phase 2 Services)

DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (2010 Edition) ("General Conditions of Contract"), as amended.

Insurance Exhibit (With Phase 1 Report)

Permits Exhibit (at the time of authorization for Phase 2 Services) (With Phase 1 Report)

Contract Price Amendment, (at the time of authorization for Phase 2 Services).

Signature Page

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:

(Name of Owner)

(Signature)

(Printed Name)

(Title)

Date: _____

DESIGN-BUILDER:

Hagerman, Inc. _____
(Name of Design-Builder)

(Signature)

Bradley M. Smith
(Printed Name)

President _____
(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

Attachment B-3 to RFP for City of Westfield New Fire Station No. 81 Project
Subject to Final Negotiations of Terms and Conditions of Contract
per IC 5-30-7-8

Document No. 535

Second Edition, 2010
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Washington, DC

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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. 545, *Progressive Design-Build Agreement (Amended for Indiana Public Works Projects per IC 5-30)*.

1.2.2 *Basis of Design Documents* are as follows:

1.2.2.1 Owner's Request for Qualifications dated March 10, 2021.

1.2.2.2 Design-Builder's Verified Statement of Qualifications dated March 25, 2021.

1.2.2.3 Owner's Request for Proposal dated May 27, 2021, including all attachments and any addenda.

1.2.2.4 Design-Builder's Proposal dated June 7, 2021.

1.2.2.5 Owner's Letter of Intent and Notice to Proceed with Phase 1 Progressive Design-Build Services dated June 23, 2021.

1.2.2.5 Design-Builder's Phase 1 Report, dated ____, including all attachments.

1.2.2.6 Owner's Acceptance of Phase 1 Report and Notice to Proceed with Phase 2 Services, dated ____.

1.2.3 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the 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 the 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 the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder.

1.2.6 *Design Consultant* is a qualified, licensed design professional 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 the Design Consultant, but is retained by the 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 *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.

1.2.8 *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.

1.2.9 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition), as revised.

1.2.10 *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.

1.2.11 *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.

1.2.12 *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. Owner's Project Criteria are documented in Owner's RFP dated December 18, 2020, including all addenda.

1.2.13 *Review and Approve* as it relates to responsibilities of the Owner after Owner's approval of Phase 1 Progressive Design-Build Report, means that Owner will review Documents provided by Design-Builder to determine, in general, that the Documents are in alignment with Basis of Design Documents and the Approved Phase 1 Report. Design-Builder remains responsible for compliance with all Project Criteria per Section 2.5.3 herein.

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

1.2.15 *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.

1.2.16 *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.

1.2.17 *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.

1.2.18 *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 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 - Cost Plus Fee with an Option for a Guaranteed Maximum Price; 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).

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 to Owner.

2.1.6 Within ten (10) days after Design-Builder executes the Agreement, but not later than the start of Work on the Project, Design-Builder shall deliver to the Owner certified as true and accurate with no material changes as of the time of delivery:

2.1.6.1 A copy of Design-Builder's license and the Designer(s) of Record's license.

2.1.6.2 A copy of Design-Builder's sales tax registration certificate.

2.1.6.3 All required Performance Bonds and Labor and Material Payment Bonds.

2.1.6.4 A copy of all applicable certifications or qualifications required by the Contract Documents or applicable law and regulation.

2.1.6.5 A list of Design-Builder's project staff.

2.1.6.6 All required certificates of insurance, including endorsement of Owner as "additional insured".

2.1.6.7 Owner's affidavit for the Federal E-Verify employment program.

2.1.6.8 All other information required by the Contract Documents.

2.1.7 The relationship between Owner and Design-Builder is that of independent contractor. The Contract Documents shall not be construed to make Design-Builder the agent, servant or employee of Owner or to create any joint venture, partnership or any other association between Owner and Design-Builder other than that of independent contractor.

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.

2.3 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 design profession practicing under similar conditions at the same time and locality of the Project.

2.4 Phase 1 Progressive Design-Build Services

2.4.1 Design-Builder shall provide Phase 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 Phase 2 Progressive Design-Build Services: Design Development Services after approval of Phase 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. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.5.1. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the 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.

2.5.2 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 meetings 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 Phase 1 Report.

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.

2.6.2 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. 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.

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 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 and applicable duty) plus a differential of 15% of the offered price of the 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. 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. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

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 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 and applicable, 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 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 the 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 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-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder 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-Builder, 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."

4.2.2 Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than two (2) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

4.2.3 Owner will promptly investigate such condition and, if Owner determines that it differs materially and causes an increase or decrease in Design-Builder's cost of, or time required for, performance of the Work, will approve an equitable adjustment in the Contract Time, Contract Price or both, but only to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder 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-Builder'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 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 prior to the commencement of any design services hereunder.

5.1.4 Prior to commencing any construction services hereunder, Design-Builder 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 are 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 the 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.

5.3 Owner's Property Insurance [Builder's Risk 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. The Design-Builder is responsible for the payment of any deductibles under claims made on behalf of the Design-Builder on 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.

5.3.4 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 If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be 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 in which the Project is located.

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 Unless required by the Owner upon execution of this Agreement, within ten (10) days of execution of the Agreement, 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 and (iii) 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 or in the pay of the principal Work with which safety systems are associated.

6.1.2 The 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. The Owner and Design-Builder shall timely resolve any differences so as not to delay the 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 and/or established at the meeting required by Section 2.1.4 hereof.

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 Subcontractor, 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 herein 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 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. 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 or liquidated 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 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, Subcontractors and suppliers, 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 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. 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 in Owner's opinion, 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 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 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 latent defects 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 corrected by Design-Builder under Sections 2.9 and 2.10 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 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement of 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 Providing 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 thirty (30) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall 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 and expenses.

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 Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its elected and appointed officials, officers, directors, trustees, consultants 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) 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 regardless of whether or not caused in part by a party indemnified hereunder, unless due to the sole negligence of Owner.

7.4.2 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 elected and appointed officials, officers, directors, trustees, consultants, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.4.1 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.

7.4.3 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.

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

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 5 of the Agreement.

8.1.2 If Owner determines that the Work has failed to progress or reach the level of completion required by the Contract Documents, and such failure is the fault of Design-Builder, Owner may, but is not obligated to, order Design-Builder to take necessary corrective measures to expedite the progress of the Work, including, without limitation; (1) additional shifts or overtime; (2) additional manpower, equipment and facilities; and (3) similar measures (referred to collectively as "extraordinary measures"). If so ordered by Owner, such extraordinary measures shall continue until the Work achieves the level of completion required by the Contract Documents. Owner's right to require extraordinary measures is primarily for the purposes of ensuring Design-

Builder's compliance with the construction schedule and shall not entitle Design-Builder to an increase in the Contract Price.

8.2 Delays to the Work.

8.2.1 If Design-Builder is delayed 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.

8.2.2 Notwithstanding anything to the contrary in the Contract Documents, Design-Builder's sole and exclusive remedy for any (i) delay in the commencement, prosecution or completion of the Work, (ii) hinderance, interference or obstruction in the performance of the Work, (iii) loss of productivity, or (iv) other similar claims (collectively referred to in this Section 8.2.2 as "Delays") whether or not such Delays are foreseeable, shall be an extension of the Contract Time(s) in which to complete the Work if an extension is permitted under Section 8.2.1. In no event shall Design-Builder be entitled to any other compensation or damages in connection with any Delay, including, without limitation, consequential damages. Design-Builder expressly acknowledges and understands that it shall assume all monetary risk which may be occasioned by such Delay and that it shall not be entitled to claim or recover any increase in the Contract Price or damages or any additional compensation of any type whatsoever as a consequence of any such Delays whether or not contemplated by the parties and regardless of the severity or duration thereof.

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 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.

9.1.4 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. Such notice 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.

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

10.3 Attorneys 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 to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

Article 11

Stop Work and Termination for Cause

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 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 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. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall promptly 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 Article 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. 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 Time(s) to the extent it has been 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:

.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.

- .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.
- .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 8 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.

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 resort to conflicts of law provisions.

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, or (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement.

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.