

**BOARD OF PUBLIC WORKS AND SAFETY
Agenda Request Form**

(Form B-01-2012)

Organizations and individuals are asked to submit a request form and supporting documents to be placed on the agenda. You will be contacted by the City confirming the date of the meeting in which your request will be heard. Please make sure that your contact information is accurate in case we need to get in touch with you. The Board of Works meets on the 1st and 3rd Monday of each month at 5:00 p.m. in City Hall located at 70 E. Monroe Street.

Date Submitted:	04.17.2023	Meeting Date:	05.01.2023
Contact Information:			
Requested by:	Lynnette Gray		
On Behalf of Organization or Individual: City of Franklin			
Telephone:	317-738-3365		
Email address:	lynng@igmlawfirm.com		
Mailing Address:	63 E. Court St., P.O. Box 160, Franklin, IN 46131		
Describe Request:			
Request Approval of Envoy Public Private Agreement for design and construction of Fire Station.			
List Supporting Documentation Provided:			
Envoy Public Private Agreement and Exhibits			
Who will present the request?			
Name:	Lynnette Gray, City Attorney Mark Richards, City Engineer	Telephone:	317-738-3365

In order for an individual and/or agency to be considered for new business on the Board of Works agenda, this reservation form and supporting documents must be received in the Mayor's office no later than 4:00 p.m. on the Wednesday before the meeting.

**PUBLIC PRIVATE AGREEMENT
(City of Franklin Fire Station #21 Remodel/Expansion Project)**

This Public Private Agreement (City of Franklin Fire Station #21 Remodel/Expansion Project) (the "Agreement") is executed this ____ day of _____, 2023 (the "Effective Date"), by and between Envoy Construction Services, LLC, an Indiana limited liability company (the "Developer"), and the City of Franklin, Indiana (the "City").

Recitals

WHEREAS, pursuant to Indiana Code 5-23 *et seq.*, the City issued a request for proposals for the design, construction, and financing of the Project (as defined herein);

WHEREAS, the City selected the Developer as the preferred bidder to deliver the Project pursuant to that process; and

WHEREAS, the City and the Developer desire to enter into this Agreement to formalize the terms and conditions upon which the Project shall be delivered.

Agreement

1. Defined Terms.

Ancillary Agreements shall mean the: (a) executed Disbursement Agreement; (b) Escrow Agreement; (c) Architect Assignment Agreement; and (d) Non-Collusion Affidavit.

Architect Assignment Agreement shall mean the assignment of a design contract with the architect previously engaged by City to design the Project; provided that, Developer may, in its sole discretion, negotiate changes in provisions that impact Developer's ability to complete the Project.

Assessments shall mean all general and special governmental and utility assessments levied on, against, or with respect to the Project Site.

Bonds shall mean surety bonds provided by or on behalf of Developer for the construction of the Project, specifically: (a) a performance bond in the amount of 50% of the portion of the Project Budget for the design and construction of the Project; and (b) payment bond for 100% of the Project Budget; less any contingency, consulting, legal, construction management, and/or developer fees and other soft costs. The Bonds shall be effective as of the Construction Commencement Notice.

Books and Records shall mean all of the books and records pertaining to: (a) the acquisition of materials to construct, and the construction of, the Project in accordance with this Agreement and the Construction Contract; and (b) the operating of the completed Project during the Operating Period.

Change Order shall mean a change order executed by Developer and City finalizing the inclusion into the Final Plans of a change proposed in a Change Order Request, which change has been approved; provided that, in the case of a Permitted Change, such change order shall be effective if executed only by Developer.

Change Order Request shall mean a written request for a change to the Final Plans.

City Approvals shall mean the approvals required by the City of Franklin, Indiana, its agencies, or its departments related to the design and construction of the Project, including but not limited to zoning and/or permitting approvals.

Claims shall mean claims, judgments, damages, liabilities, injuries, losses, costs, and expenses (including, without limitation, reasonable attorneys' fees).

Closing shall mean the date on which: (a) Developer and City execute the Ancillary Documents; and (b) the Project Funds are available for disbursement pursuant to this Agreement and the Disbursement Agreement, as the case may be. At the Closing, the Developer and City execute the Closing Documents.

Closing Date shall mean the date of the Closing.

Closing Documents shall mean the documents required to proceed to Closing as further described in Section 4.

Construction Commencement shall mean the date construction commences on the Project.

Construction Commencement Notice shall mean the written notice of Construction Commencement provided by Developer to City.

Construction Contract shall mean the contract executed by and between Developer (or Developer's assignee under Section 15 of this Agreement) and its contractor for construction of the Project in accordance with the Final Plans, the approved Project Budget, and the terms and conditions of this Agreement.

Construction Drawings shall mean construction drawings consistent with the Design Development Documents and the Laws.

Construction Schedule shall mean a reasonably detailed schedule for construction of the Project.

Construction Trade shall mean any trade or other discrete aspect of construction of the Project.

Conveyance Documents shall mean the documents reasonably necessary to transfer the Project to the City upon the expiration of the Operating Period.

Cure Period shall mean a period of 30 days after a party failing to perform or observe any term or condition of this Agreement to be performed or observed by it receives notice specifying the nature of the failure; provided that, if the failure is of such a nature that it cannot be remedied within 30 days, despite the exercise of reasonably diligent efforts, then the 30-day period shall be extended as reasonably may be necessary for the defaulting party to remedy the failure, so long as the defaulting party: (a) commences to remedy the failure within the 30-day period; and (b) diligently pursues such remedy to completion.

Design Development Documents shall mean reasonably detailed design development drawings that are consistent with the Schematic Design Drawings and the Laws.

Developer Preconstruction Fee shall mean a fee charged by Developer for preconstruction services in advance of providing the City with the GMP Report. For the purposes of this Project, the Developer Preconstruction Fee is being waived by Developer and shall only be paid as part of a Final Project Budget if the GMP Report is accepted by the City.

Disbursement Agreement shall mean a "Disbursement Agreement" to be executed at Closing by Developer, City, and Disbursing Agent pursuant to which Disbursing Agent shall: (a) hold the Project Funds necessary to pay the Incurred Costs to Developer prior to Closing in the Escrow Account for the benefit of Developer; (b) hold the remainder of the Project Funds upon Closing in the Escrow Account for the benefit of Developer and (c) disburse the Project Funds to or for the account of, Developer. In the event that the Project Funds are acquired by the issuance of municipal bonds, the trust indenture for such bond issuance may operate as the Disbursement Agreement.

Disbursement Request shall mean a written request by Developer for a disbursement of Project Funds, which request shall: (a) specify the total amount of Project Funds, being requested; (b) include invoices to be paid (or amounts to be reimbursed to Developer) with the disbursed funds; and (c) include such supporting documentation as would be required for Developer to obtain a disbursement of construction loan proceeds.

Disbursing Agent shall mean the entity or agent responsible for the disbursement of Project Funds, which may be a bond trustee (if municipal bonds are issued to provide the Project Funds) or another entity or agent expressly agreed to by Developer and City.

Documentation Costs shall mean all fees, costs, and expenses incurred by Developer in connection with drafting and negotiating: (a) this Agreement; and (b) any other documents contemplated by this Agreement to be executed in connection with the Project.

Escrow Account shall mean an escrow account maintained with Disbursing Agent: (a) into which the Project Funds (less the amount thereof to be disbursed at Closing) shall be deposited at Closing; and (b) from which the Financing Project Funds shall be disbursed by the Disbursing Agent pursuant to the Disbursement Agreement.

Event of Default shall have the meaning set forth in Subsection 13(a).

E-Verify Program shall mean: (a) the program currently operated by the U.S. Department of Homeland Security that electronically confirms an individual's eligibility to work in the United States, authority for which is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, P.L. 104-208, 110 Stat. 3009 (USC §1324a), as amended; or (b) any successor work authorization program designated by the U.S. Department of Homeland Security or such other federal agency as may be authorized to verify the work authorization status of newly-hired employees. The E-Verify Program is the "E-Verify Program" defined in Indiana Code § 22-5-1.7-3.

Final Documents and Drawings shall mean final Schematic Design Drawings, final Design Development Documents, final Construction Drawings, and the final Construction Schedule, as each is finalized and approved or reviewed by City pursuant to Section 7.

Final Inspection shall mean an inspection of the Project by City after substantial completion thereof.

Final Plans shall mean the aggregated Final Documents and Drawings.

Final Project Budget shall mean the final Project Budget established in accordance with the terms and conditions of Section 7(e) and included within the GMP Report.

Final Project Budget Date shall mean the date on which the GMP Report is presented to the City or July 7th 2023, whichever shall occur first.

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Force Majeure shall mean, with respect to a party: (a) an act or omission of the other party; or (b) any other cause that is not within the reasonable control of such party (including, without limitation: (i) unusually inclement weather; (ii) the unusual unavailability of materials, equipment, services or labor; (iii) utility or energy shortages or acts or omissions of public utility providers; and (iv) regional, national, or international emergencies, including health epidemics and/or pandemics).

GMP Report shall mean a report provided by Developer to City for the purposes of identifying the Final Project Budget, including but not limited to the: (a) inclusions, exclusions, and qualifications not otherwise addressed in this Agreement; (b) the Final Project Budget; (c) allowances and contingencies, if any; and (d) list of plans and specifications; related to the Project.

Incurred Costs shall mean the costs and expenses incurred by Developer in connection with complying with the terms and conditions of this Agreement, including but not limited to: (a) the cost to develop and prepare the Final Plans; and (b) a reasonable and customary amount of a developer fee, which fee shall accrue upon the Effective Date; in the amount of \$44,000.00. The Incurred Costs shall not include the Developer Preconstruction Fee, which shall only be paid as part of the Final Project Budget if the City accepts the GMP.

Inspection shall mean a Permitted Inspection or the Final Inspection, as applicable.

Latent Defect shall mean those material defects in the construction of the Project that: (a) are not discovered; and (b) reasonably are not discoverable; by City during a Permitted Inspection or the Final Inspection.

Laws shall mean all applicable: (a) laws, statutes, and/or ordinances; (b) governmental rules, regulations, and/or guidelines; and (c) judicial orders, consents, and/or decrees.

Material Defect shall mean any item or component of the Project that: (a) contains a material defect in workmanship or materials; (b) deviates materially from the Final Plans; or (c) has not been constructed materially in accordance with the terms and conditions of this Agreement.

Non-Collusion Affidavit shall mean a Non-Collusion Affidavit on a form as provided by the Indiana State Board of Accounts.

Non-Compliance Notice shall mean a written notice from City that identifies Material Defects with respect to the Project discovered by City during a Permitted Inspection or the Final Inspection.

Operating Period shall mean the period: (a) commencing on the Substantial Completion Date; and (b) ending on the earlier of the date: (i) that is 30 days after the Substantial Completion Date; or (ii) that is specified in a written notice delivered by City to Developer; unless the City and Developer agree to a longer operating period by executing a separate operating agreement.

Permitted Change shall mean any change proposed by Developer to the Final Plans of the Project, so long as such change: (a) is not materially inconsistent with the Schematic Design Drawings or Design Development Documents approved by City for the Project; (b) does not result in the Final Plans containing structurally flawed elements; (c) is in conformity with the Laws; (d) does not materially reduce the quality or the finish level of the Project; (e) does not make it unlikely, impracticable, or impossible for Developer to complete the Project, or any component thereof, by the applicable date set forth in the approved Construction Schedule for the Project; and (f) does not cause an increase in the Final Project Budget to be paid by City (for the sake of clarification, the Final Project Budget may be increased pursuant to a Permitted Change so long as Developer pays the cost of such Permitted Change).

Permitted Inspection shall mean an inspection by City of any item or component of the Project when reasonably deemed to be necessary or appropriate by City.

Plan Refinement Process shall mean the process set forth in Section 7 for completion of the Final Plans and the Project Budget.

Plan Schedule shall mean the schedule in accordance with which Developer shall prepare and provide to City the Schematic Design Drawings, the Design Development Documents, the Construction Drawings, and the Construction Schedule, which schedule is attached hereto as Exhibit B.

Project shall mean the renovation and expansion or addition to the existing fire station 21 located within the City.

Project Approvals shall mean the approvals required by City, its agencies, or its departments related to the design and construction of the Project, including but not limited to plan commission and/or permitting approvals.

Project Budget shall mean the budget for the Project Costs.

Project Costs shall mean the fees, costs, and expenses to be incurred in connection with the Project, including but not limited to: (a) the Documentation Costs; (b) the costs incurred in connection with determining that all of the conditions set forth in Section 5 have been satisfied and/or will be waived by Developer and/or City; (c) the costs incurred in connection with the Closing (to the extent that such costs are not included in the Documentation Costs); (d) the cost to develop, design, and construct the Project in accordance with the terms and conditions of this Agreement; (e) a reasonable and customary amount for contingencies; (f) the developer fee to be paid by City to Developer; and (g) a construction management fee to be paid to Developer or its contractor.

Project Funds shall mean the funds deposited into the Escrow Account in the amount of the Project Costs.

Project Site shall mean that certain real estate located in the City and commonly known as 1701 North Main Street, Franklin, Indiana, as generally shown on Exhibit A as the "Project Site".

Real Estate Taxes shall mean all real estate taxes that may be attached to a property tax bill in the same manner as real estate taxes, levied on, against, or with respect to the Project Site and/or the Project.

Required Permits shall mean all permits, licenses, approvals, and consents required by the Laws for the construction of the Project.

Sales Tax Exemption Form shall mean Indiana Department of Revenue Form ST-105 (General Sales Tax Exemption Certificate) or its functional equivalent if such form is no longer used, pursuant to which City shall represent that the acquisition of the materials to construct the Project is exempt from Indiana sales and use tax.

Schematic Design Drawings shall mean detailed schematic design drawings that are consistent with the Laws.

Scope of Services shall mean the scope of services to be provided by Developer, which services shall be reimbursed by a payment of the Incurred Costs.

Site Conditions shall mean the: (a) physical and other conditions at the Project Site, including but not limited to surface, subsurface, geotechnical, geological, and environmental conditions, and all other local and other conditions may be material to Developer's performance under this Agreement; and (b) location of underground utilities, obstructions, or other conditions that would cause an increase to Developer's Project Costs or the time necessary to complete the Project.

Substantial Completion Date shall mean the date on which: (a) Developer delivers to City a copy of the certificate of substantial completion of the Project architect which indicates that the Project has been completed substantially in accordance with the Final Plans, subject to "punch-list" items to be identified in connection with the Final Inspection, which "punch-list" items do not materially affect the use of the Project for its intended use; or (b) Developer delivers to City a copy of the certificate of occupancy issued by the City of Franklin, if such certificate is issued.

Survey shall mean an ALTA/NSPS land title survey of the Project Site.

Transfer shall mean the conveyance of the Project by Developer to City at: (a) the expiration of the Operating Period; or (b) upon termination of this Agreement in accordance with the terms and conditions of Section 17.

Unauthorized Alien shall have the meaning set forth in 8 U.S.C § 1324a(h)(3).

Utility Services shall mean gas, electricity, telephone, water, storm and sanitary sewer, fiber and/or internet access, and other utility services.

2. General Obligations.

(a) Developer. Subject to the terms and conditions of this Agreement, Developer shall: (i) perform the Scope of Services as described on Exhibit D; (ii) enter into the Ancillary Documents; (iii) design the Project; (iv) construct the Project on the Project Site; (v) operate the Project until the expiration of the Operating Period; and (vi) upon the expiration of the Operating Period, execute the Transfer.

(b) City. Subject to the terms and conditions of this Agreement, City shall: (i) enter into the Ancillary Agreements; (ii) take such action as necessary or reasonably appropriate to provide for the City Approvals; and (iii) upon the end of the Operating Period, execute the Transfer.

(c) **Utility Availability.** City, at its cost and expense, shall ensure that there are Utility Services in adjoining public rights-of-way or properly granted and recorded utility easements that serve the Project Site at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Project in accordance with the terms and conditions of this Agreement, including, without limitation, that City, at its cost and expense, shall make any improvements outside the Project Site that are necessary for City to satisfy the foregoing obligation with respect to Utility Services.

(d) **Required Permit and Project Approvals Fees.** City shall: (i) waive its application and other fees assessed for the Required Permits and/or Project Approvals, unless such fees are assessed due to a re-inspection by City for work that was not completed by the initial scheduled inspection; or (ii) where possible to reduce the potential fee assessed, complete an application as the "Owner" of the Project for the Required Permits, the City Approvals, and/or Project Approvals. The parties acknowledge that the Project Site is located in the permitting jurisdiction of the City.

3. Closing. Subject to the terms and conditions of this Agreement, the Closing shall occur on or before July 14~~re-9~~^{re-9}, 2023. The Closing Date shall be established mutually by Developer and City, and the Closing shall take place at such location as Developer and City mutually agree. At Closing, the Project funds (less any amount thereof to be disbursed at Closing) shall be deposited into the Escrow Account for disbursement in accordance with the terms and conditions of the Disbursement Agreement.

4. Closing Documents. At the Closing, the documents and instruments set forth in this Section shall be executed and/or delivered, including:

- (a) the Ancillary Agreements;
- (b) a confirmation by each of Developer and City of the applicable representations and warranties set forth in Section 6;
- (c) an affidavit affirming that Developer: (i) is enrolled in the E-Verify Program; (ii) is participating in the E-Verify Program; and (iii) does not knowingly employ, or contract with, any Unauthorized Aliens;
- (d) copies of such resolutions, consents, authorizations, and other evidence as either party reasonably may request to establish that: (i) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action of Developer or City, as the case may be; and (ii) the execution and delivery of such documents, and the performance by Developer or City of its obligations hereunder and under the foregoing documents, have been authorized by Developer or City, as the case may be; and
- (f) such other customary documents and instruments as either party reasonably may request in connection with the Closing.

5. Conditions.

(a) Mutual. Except to the extent waived by proceeding to the Closing, the obligation of each of Developer and City to proceed to the Closing is subject to the satisfaction, as of the Closing Date, of the conditions set forth in this Subsection.

(i) City and Developer have agreed on the form and substance of the Closing Documents.

(ii) Developer has obtained, or Developer and City are satisfied that Developer will be able to obtain, all Required Permits, Project Approvals, and City Approvals.

(iii) Developer shall have submitted to City, and City shall have approved, the Plan Schedule.

(iv) Developer, City, and Disbursing Agent have agreed on the form and substance of the Disbursement Agreement.

(v) Developer is enrolled in the E-Verify Program.

(vi) City has available to it funds necessary to cover the City's obligations under this Agreement and prior to Closing funds shall be appropriated.

(b) Developer. In addition to the conditions set forth in Subsection 5(a), the obligation of Developer to proceed to the Closing is subject to the satisfaction, as of the Closing Date, of the conditions set forth in this Subsection.

(i) Developer has determined that no test, inspection, examination, study, investigation, Survey, or title search of or with respect to the Project Site establishes that there are conditions that would interfere with, or prohibit, the construction of the Project, including but not limited to environmental or geotechnical conditions, in accordance with the terms and conditions of this Agreement.

(ii) There is no continuing breach by City of this Agreement, and all of the representations and warranties of City set forth in Section 6 are true and accurate in all respects.

(c) Condition Failure. If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, the applicable party either may elect to: (a) waive satisfaction of the conditions and proceed to Closing; or (b) terminate this Agreement by a written notice to the other party; provided that, with respect to breaches of this Agreement by a party, the other party shall have the rights and remedies set forth in Section 13. Notwithstanding anything to the contrary set forth herein, Developer and City shall work diligently and in good faith to satisfy the conditions set forth in this Section.

6. Representations and Warranties. Each of Developer and City represents and warrants to the other that: (a) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (b) it has the power to enter into this Agreement and to perform its obligations hereunder; (c) it has been authorized by proper action to execute

and deliver this Agreement, and to perform its obligations hereunder; and (d) this Agreement, once executed, is its legal, valid, and binding obligation. In addition to the foregoing: (a) Developer represents and warrants to City that it is a domestic corporation organized and existing under the laws of the State of Indiana; and (b) City represents and warrants to Developer that it is a public body organized and existing under the laws of the State of Indiana.

7. Plan Refinement Process.

(a) **Approvals.** In accordance with the Plan Schedule and general description of the Project, Developer, at its cost and expense, shall submit to City for its approval the Schematic Design Drawings, the Design Development Documents, and the Construction Schedule. Within ten days after City receives the Schematic Design Drawings, Design Development Documents, or Construction Schedule, City shall deliver to Developer written notice of approval or rejection of the submitted drawings, documents, or schedule; provided that, in the case of a rejection, such notice shall: (i) specify the part or parts that City is rejecting; and (ii) include the specific basis for such rejection. Upon approval of the Schematic Design Drawings, the Design Development Documents, or the Construction Schedule, such Schematic Design Drawings, Design Development Documents, or Construction Schedule, respectively, shall be final, subject to modifications by Change Orders.

(b) **Construction Drawings.** In accordance with the Plan Schedule, Developer, at its cost and expense, shall submit to City for its review and approval the Construction Drawings with respect to each Construction Trade. Thereafter, such Construction Drawings shall be final construction drawings with respect to the applicable Construction Trade, subject to modifications by Change Orders.

(c) **Re-submissions.** If, at any stage of the Plan Refinement Process, City rejects any drawings, documents, or schedules, then, within ten days after Developer receives notice from City of such rejection, Developer shall revise, and submit to City, the applicable drawings, documents, or schedules. Within ten days after City receives the resubmitted drawings, documents, or schedules, City shall deliver to Developer written notice of approval or rejection; provided that, in the case of a rejection, such notice shall: (i) specify the part or party that City is rejecting; and (ii) include the specific basis for such rejection. Upon approval of the resubmitted drawings, documents, or schedules, the resubmitted drawings, documents, or schedules shall become part of the Final Plans subject to modifications by Change Orders.

(d) **Final Plans.** Upon completion of the Final Documents and Drawings through the Plan Refinement Process, the aggregated Final Documents and Drawings shall constitute the complete Final Plans, subject to modification by Change Orders. All references herein to the Final Plans shall be deemed to be references to the Final Documents and Drawings, until such time as all of the Final Documents and Drawings are completed; provided that, when all of the Final Documents and Drawings are completed, all references herein to the Final Plans shall be deemed to be references to the Final Plans, as modified by Change Orders.

(e) **Budget/Costs.**

(i) At the appropriate points during the Plan Refinement Process, as determined by Developer and City, Developer shall: (A) deliver the Project

Budget to City for its review and approval; and (B) make such adjustments to the Project Budget as are determined by Developer and City to be necessary or appropriate in connection with the finalization of the drawings, documents, and schedules pursuant to the Plan Refinement Process;

(ii) Upon approval of the Project Budget: (A) the Project Budget shall be the Final Budget, subject to modifications by Change Orders. The approval of the Final Project Budget shall be completed on or before the Final Project Budget Date, which Final Project Budget Date may be extended by the written mutual consent of Developer and City. In the event that the final Project Budget is not established by the Final Project Budget Date, this Agreement shall terminate pursuant to the provisions of Section 17.

(iii) Notwithstanding any other provision of this Agreement, the Project Budget shall not include any costs related to the mitigation or remediation of Site Conditions. In the event that Developer identifies any potential Site Conditions at the Project Site, Developer shall: (A) immediately cease construction activity; and (B) provide written notice to City of such site condition, which notice may include, in Developer's sole discretion, a Change Order Request that would be approved by the City pursuant to the terms of Section 8(b). City shall, within 30 days of such written notice, either: (A) commence remediation of such Site Conditions; (B) approve the Change Order Request, including any associated extension of the Substantial Completion Date; or (C) terminate this Agreement, upon which City shall pay Developer its costs and expenses incurred to complete the Project as of the date of termination, which shall include, but not be limited to, its: (1) Incurred Costs; (2) Developer Preconstruction Fee; (3) material, labor, and other costs of the Project; and (4) a reasonable amount of Developer overhead and profit. The cost of the remediation, whether performed via an approved Change Order Request or by City directly, shall be at the sole expense of the City. In addition to the costs of such remediation, the City shall be responsible for the increased costs under the GMP that are reasonably related to such delay, which increased costs shall be provided by Developer to City in writing within 10 days of its receipt of the City's written notice, unless City's written notice includes a Change Order Request that has such costs included therein. The Substantial Completion Date shall be extended on a day for day basis for every day construction is delayed by City remediation activity.

(f) Sales Tax.

(i) As soon as reasonably is practicable, Developer shall submit the Construction Contract to City to ensure that the Sales Tax Exemption Form is able to be provided to Developer.

(ii) Promptly after receipt of the Construction Contract, City shall deliver the Sales Tax Exemption Form to Developer at the notice address set forth in the Construction Contract.

(iii) Upon any assessment, or threatened assessment, of Indiana sales and/or use tax in connection with the purchase of any materials to construct, install, and/or complete the Project, Developer promptly shall notify City in writing. From and after receipt of the foregoing notice, City shall provide such cooperation, information, and assistance as Developer and/or its contractor reasonably shall request.

(iv) City shall indemnify and hold harmless Developer and the members, directors, officers, and employees of Developer, from and against any and all Claims arising from, or connected with: (A) the charging of Indiana sales and/or use tax in connection with the purchase of all or any portion of the materials incorporated into the Project; and/or (B) any interest and penalties assessed by the Indiana Department of Revenue with respect to the non-payment or late payment of Indiana sales and/or use tax in connection with the purchase of all or any portion of the materials to construct, install, and/or complete the Project; including, without limitation, reasonable attorneys' fees and court costs. City shall not be responsible for the charging of any tax related to Developer's failure to: (A) apply for an exemption from Indiana sales and/or use tax; (B) comply with the obligations of a party claiming the exemption; or (C) cooperate with any audit or investigation of the Indiana Department of Revenue regarding the sales tax exemption used as part of this Project. The obligations of City under this clause shall survive the termination of this Agreement.

8. Change Orders.

(a) **Developer Changes.** If Developer desires to make any changes to the Final Plans, then Developer shall submit a Change Order Request to City for review and approval, together with an estimate of any increases or decreases to the approved Project Budget that would result from the change proposed in the Change Order Request. Within ten days after City receives the Change Order Request, City shall deliver to Developer written notice that it approves or rejects the Change Order Request; provided that: (i) City shall not withhold its approval unreasonably; (ii) it shall not be unreasonable for City to reject a Change Order Request if the change proposed in the Change Order Request would result in an increase in the Project Budget; and (iii) if City approves a Change Order Request for a change that would result in an increase in the Project Budget, then, notwithstanding anything to the contrary set forth herein, the amount of such increase shall be paid by City: (A) as such costs are incurred; or (B) in such a manner that the payment does not cause Developer or the Project Budget to incur any additional cost; provided that, in no event shall Developer have any obligations with respect to the payment of the amount of such increase. If City rejects all or any part of the Change Order Request, then such notice shall: (i) specify the part or parts that City is rejecting; and (ii) include the specific basis for such rejection. If City approves a Change Order Request, then Developer and City shall execute a Change Order.

(b) **City Changes.**

(i) If City desires to make any changes to the Final Plans, then City shall submit a Change Order Request to Developer for review and approval. Within ten business days after Developer receives the Change Order Request, Developer shall deliver to City written notice stating

whether the change proposed in the Change Order Request would result in an increase in the Project Budget; provided that, if the proposed change would result in an increase, then such notice also shall include an estimate of the amount of the increase.

(i) If the foregoing notice states that the change proposed in the Change Order Request would not result in an increase in the Project Budget, then, within ten business days after delivery of such notice, Developer shall deliver to City written notice that it approves or rejects the Change Order Request; provided that Developer shall not withhold its approval unreasonably.

(iii) If the foregoing notice states that the change proposed in the Change Order Request would result in an increase in the Project Budget, then: (A) such notice also shall include an estimate of the amount of the increase; (B) within five business days after receipt of such notice, City shall provide written notice to Developer as to whether City would like to withdraw the Change Order Request. If City does not elect to withdraw the Change Order Request, then, within five additional business days, Developer shall deliver to City written notice that it approves or rejects the Change Order Request; provided that Developer shall not withhold its approval unreasonably.

(iv) If Developer approves a Change Order Request, then Developer and City shall execute a Change Order. If the approved Change Order Request is for a change that will result in an increase in the Project Budget, then, notwithstanding anything to the contrary set forth herein, the increase in the Project Budget shall be paid by City in accordance with Section 8(a); provided that, in no event shall Developer have any obligations with respect to the payment of the amount of such increase.

(v) If Developer rejects all or any part of the Change Order Request, then such notice shall: (A) specify the part or parts that Developer is rejecting; and (B) include the specific basis for such rejection.

(c) Permitted Change. Notwithstanding anything to the contrary set forth herein: (i) Developer shall not be required to obtain the approval of City with respect to a Permitted Change; and (ii) a Change Order with respect to a Permitted Change shall be effective if executed only by Developer.

9. Construction.

(a) Permits. Prior to commencing construction of the Project, Developer shall obtain and submit to City for its review the Required Permits.

(b) Construction. Developer shall construct the Project: (i) in a good and workmanlike manner; (ii) in accordance with the Final Plans (as modified by any Change Orders) and the terms and conditions of this Agreement; (iii) in compliance with the Laws and the Required Permits; (iv) and provide the City with a warranty that: (A) the materials and equipment furnished will be of good quality and new unless the Final Plans require or permit otherwise; and (B) the Project has been constructed in compliance with the Final

Plans; (v) provide the City with an assurance that the Developer will, for a period of one (1) year from the date of Substantial Completion, correct any work, materials, or equipment not conforming to the requirements of this Agreement and the Final Plans for which the City provides written notice thereof; provided that damage or defect caused by abuse, alterations to the Project not performed by Developer, improper or insufficient maintenance, improper operation, or normal wear and tear or normal usage shall be excluded from such warranty; and (vi) provide the City with as-built Plans and to the extent granted to Developer, grant to the City a license to use such plans in the use, occupancy, operation, maintenance, repair, alteration and additions to the Project.

(c) Operation. Developer shall operate the completed Project during the Operating Period; provided that City shall be responsible for the direct payment of all costs and expenses incurred in connection with such operation and Developer shall have no obligation to make any payment related to the operation of the Project during the Operating Period.

(d) Records. Developer shall keep and maintain true, correct, accurate, and complete Books and Records. All Books and Records shall be kept and maintained in accordance with generally accepted accounting principles consistently applied. City and its attorneys, accountants, representatives, architects, engineers, and consultants at all reasonable times shall have: (i) free access to, and rights of inspection of, the Books and Records; and (ii) the right to audit, make extracts from, and receive from Developer originals or accurate copies of, the Books and Records. Nothing contained in this Section 9(d) shall be construed as making the Books and Records public records under the applicable Laws.

(e) Bonds. Upon the issuance of the Construction Commencement Notice and until the Project has: (i) received its Substantial Completion; and (ii) Developer has demonstrated that all outstanding payments have been made to subcontractors performing work and those persons or entities providing labor, materials and services for the Project, subject to amounts withheld in dispute or in retainage; the Bonds shall be in effect. Notwithstanding the obligation of the Developer to provide bonds as provided for in this Agreement, the Developer also has an affirmative obligation to timely pay any and all subcontractors, suppliers, laborers, and service and to take all other action necessary to prevent the filing of mechanics or other liens on the Project Site.

(f) Unauthorized Aliens. Developer: (i) shall verify the work eligibility status of all newly-hired employees through the E-Verify Program; and (ii) shall not: (A) knowingly employ, or contract with, an Unauthorized Alien; or (B) retain an employee, or contract with a person, that Developer learns is an Unauthorized Alien. To the extent required by IC §§22-5-1.7, Developer shall require its contractor and each subcontractor to certify to Developer that, at the time of certification, the contractor or such subcontractor: (i) does not knowingly employ, or contract with, any Unauthorized Aliens; and (ii) has enrolled, and is participating, in the E-Verify Program. Developer shall maintain such certifications on file until the construction contract or the applicable subcontract expires or is terminated.

(g) No Discrimination. Developer shall not discriminate against any employee or applicant for employment because of race, sexual orientation, gender or gender identity, religion, color, national origin, ancestry, age, disability, or United States Military service veteran status. Developer agrees to, or cause its contractor or its subcontractors to: (i) post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this Subsection; and (ii) state, in all solicitations or

advertisements for employees placed or published by or on behalf of Developer, that all qualified applicants will receive consideration for employment without regard to race, sexual orientation, gender or gender identity, religion, color, national origin, ancestry, age, disability, or United States Military service veteran status.

10. Inspection.

(a) Inspection. Upon reasonable written notice delivered to Developer, which notice shall specify the portion of the construction to be inspected, City may perform a Permitted Inspection. If applicable after a Permitted Inspection, City shall deliver a Non-Compliance Notice to Developer.

(b) Final Inspection. Developer shall deliver to City a written request for the Final Inspection of the Project at least five business days prior to the Substantial Completion Date. On or before the later of the date that is five business days after: (i) receipt by City of such request; or (ii) the Substantial Completion Date; City shall: (i) conduct the Final Inspection; and (ii) deliver to Developer, if applicable, a Non-Compliance Notice. Upon: (i) correction of all Material Defects identified in the Non-Compliance Notice; or (ii) deemed acceptance pursuant to Subsection 10(c); City shall have no further inspection rights pursuant to this Agreement with respect to the Project. Within five business days after City conducts the Final Inspection, Developer and City shall identify the "punch-list" items. Developer shall complete all "punch-list" items within 60 days after the "punch-list" items are identified.

(c) Non-Compliance. If City delivers to Developer a Non-Compliance Notice following an Inspection in accordance with this Section or after deemed acceptance as provided for in Section 9(b), then Developer shall correct, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice. All items or components of the Project with respect to which: (i) an Inspection is conducted; and (ii) no Material Defects are identified in a timely Non-Compliance Notice; shall be deemed to be accepted by City.

(d) Latent Defects. Notwithstanding anything to the contrary set forth herein, no acceptance, or deemed acceptance, by City pursuant to this Section shall be applicable with respect to any Latent Defects.

(e) General.

(i) In connection with any Inspection pursuant to this Section, City shall: (A) comply with all health and safety rules of which City has been informed that have been established for personnel present on the construction site; and (B) coordinate the inspections so that the inspections do not interfere with the performance of construction. Developer shall have the right to accompany, and/or have its construction manager accompany, City during any Inspection.

(ii) An acceptance, or deemed acceptance, by City pursuant to this Section shall not mean that City has accepted, or Developer has been relieved of, responsibility for: (A) compliance with the Laws; (B) the proper application of construction means or methods; or (C) correcting any portion of the Project if it later is determined that such portion is inconsistent with

the as-built plans as described in Section 9(b) or proper completion of a subsequent portion of the Project.

11. Insurance.

(a) Insurance Policies. During construction of the Project and terminating upon the Substantial Completion Date, Developer shall maintain the policies of insurance, including but not limited to Builder's Risk, General Commercial Liability, and Workers Compensation, reflected on the certificate attached hereto as Exhibit C. Each such policy shall be written by a company reasonably acceptable to City, and Developer shall provide notice of any intended modification to, or cancellation of, such policy to City at least 30 days in advance. The policies of insurance required by this Section to be maintained by Developer shall name City as an additional insured. Developer shall deliver to City certificates of the insurance policies required by this Section, executed by the insurance company or the general agency writing such policies.

(b) Risk of Loss. If the Project Site, the Project, or any part thereof, is: (a) damaged or destroyed by fire or other casualty; or (b) taken by condemnation; then City may apply the proceeds or any insurance policy or condemnation award to the Final Project Budget.

12. Transfer. Upon the: (a) expiration of the Operating Period; or (b) a termination of this Agreement pursuant to Section 17; Developer and City shall execute the Transfer. At the Transfer, the following documents and instruments shall be executed and delivered:

(a) the Conveyance Documents;

(b) a confirmation by each of Developer and City of the applicable representations and warranties set forth in Section 6;

(c) copies of such resolutions, consents, authorizations, and other evidence as either party reasonably may request to establish that: (i) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action of Developer or City, as the case may be; and (ii) the execution and delivery of such documents, and the performance by Developer or City of its obligations hereunder and under the foregoing documents, have been authorized by Developer or City, as the case may be; and

(d) such other customary documents and instruments as either party reasonably may request in connection with the Transfer.

13. Default.

(a) Events of Default. It shall be an "Event of Default" if either party fails to perform or observe any term or condition of this Agreement to be performed or observed by it: (i) with respect to the obligation to pay money, if such failure is not cured within ten days after such payment is due; and (ii) with respect to any other obligation, if such failure is not cured within the Cure Period.

(b) Remedies. Whenever an Event of Default occurs, the non-defaulting party may take such actions at law or in equity as are necessary or appropriate to: (i) collect any payments due under this Agreement; (ii) protect the rights granted to the non-defaulting

party under this Agreement; (iii) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition); or (iv) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it. If the non-defaulting party incurs any costs or expenses in connection with exercising its rights and remedies under, or enforcing, this Agreement (including, without limitation, attorneys' fees and court costs), then the defaulting party shall reimburse the non-defaulting party for all such costs and expenses (including, without limitation, attorneys' fees and court costs), together with interest at the rate of 8% per annum.

(c) **No Remedy Exclusive.** No right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission by a non-defaulting party to exercise any right or remedy upon any Event of Default shall impair any such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from time to time, and as often as may be deemed to be expedient. To entitle a non-defaulting party to exercise any of its rights or remedies, it shall not be necessary for the non-defaulting party to give notice to the defaulting party, other than such notice as may be required by this Section or by the Laws.

14. Mutual Indemnification.

(a) **Developer.** Developer shall indemnify and hold harmless City from and against any and all Claims arising from or connected with: (i) mechanics' liens filed against the Project or the Project Site for work performed by Developer or any party acting by, under, through, or on behalf of Developer; (ii) breaches by Developer under contracts to which Developer is a party, to the extent that such contracts relate to the performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (iii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (iv) the negligence or willful misconduct of Developer or any party acting by, under, through, or on behalf of Developer; or (v) the breach by Developer of any term or condition of this Agreement, including but not limited to the failure of Developer to timely pay subcontractors, suppliers, laborers and service providers.

(b) **City.** City shall indemnify and hold harmless Developer from and against any and all Claims arising from or connected with: (i) the negligence or willful misconduct of City or any party acting by, under, through, or on behalf of City; or (ii) the breach by City of any term or condition of this Agreement.

Notwithstanding anything to the contrary set forth herein, the obligations of the parties under this Section shall survive the termination of this Agreement.

15. Assignment. Neither City nor Developer shall assign this Agreement without the prior written consent of the other party, provided that: (a) without the prior written approval of Developer, City may assign this Agreement to another agency or instrumentality of the City that is legally able to perform the obligations of the City hereunder; and (b) without the prior written

approval of City, Developer may assign this Agreement to any entity in which the principals of the Developer hold a controlling interest. Notwithstanding any assignment permitted under this Section, each of Developer and City shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by the other party of any assignment shall not release the non-assigning party from such performance.

16. Notice. Any notice required or permitted to be given by either party to this Agreement shall be in writing, and shall be deemed to have been given when: (a) delivered in person to the other party; or (b) sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Developer at Envoy Construction Services, LLC, 8890 East 116th Street, Suite 250, Fishers, IN 46038, Attn: Rich Taylor, with a copy to: Adam W. Collins, Wallack Somers & Haas, PC, One Indiana Square, Suite 2300, Indianapolis, Indiana 46204; and to City at _____, with a copy to _____. Either party may change its address for notice from time to time by delivering notice to the other party as provided above.

17. Termination and Incurred Expenses. If this Agreement terminates pursuant to Section 7(e)(ii) for any reason other than a continuing Event of Default by Developer that has continued past the applicable Cure Period, then: (a) City shall reimburse Developer for the Incurred Costs the Developer has incurred by the date of such termination; provided that the Developer Preconstruction Fee shall not be included within the Incurred Costs; (b) City and Developer shall execute the Transfer; and (c) Developer shall assign to City its right, title, and interest in and to the Final Plans and the materials obtained by it in connection with the due diligence undertaken by Developer, if any, which rights, title, and interest shall not prohibit City from using the Final Plans and materials in connection with the construction of the Project. To receive reimbursement for the Incurred Costs as permitted by this Section, Developer shall submit to City an invoice therefor and City shall reimburse Developer for the amount set forth on such invoice in the ordinary course of its business, but in all events within 30 days after receipt of such invoice. The assignment of Developer's rights, as set forth above, shall only be executed upon payment of the Incurred Costs by City.

18. Authority. Each undersigned person executing this Agreement on behalf of Developer and City represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of Developer and City, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) the execution, delivery, and performance of this Agreement have been authorized by Developer and City, respectively.

19. Force Majeure. Notwithstanding anything to the contrary set forth herein, if either party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this Agreement as a result of Force Majeure; then: (a) the party asserting Force Majeure shall deliver written notice to the other party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

20. Taxes. City shall be solely responsible for, and shall pay and discharge when due all taxes, assessments, and other governmental charges that are lawfully imposed upon the Project Site, the Project, or any party thereof, including but not limited to real estate taxes, but shall not be responsible for taxes imposed against the Developer's corporate entity. For the sake of clarification, City shall not be responsible for income or other taxes related to Developer's

compensation under this Agreement, including but not limited to the Incurred Costs or Developer Preconstruction Fee.

21. Dealings with Iran. In accordance with Indiana Code § 5-22-16.5, by executing this Agreement, Developer certifies that Developer is not engaged in investment activities with Iran.

22. Debarment and Suspension.

(a) Developer certifies, by entering into this Agreement, that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency, or political subdivision of the State. The term "principal" for the purposes of this Section means an officer, director, owner, partner, key employee, or other person with primary or supervisory responsibility, or a person who has a critical influence or substantive control over the operations of the Developer.

(b) Developer certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Agreement and shall be solely responsible for any recoupment, penalties, or costs that might arise from the use of a suspended or debarred subcontractor. Developer shall immediately notify the City if any subcontractor becomes debarred or suspended, and shall, at the City's request, take all steps required by the City to terminate Developer's contractual relationship with the subcontractor for work to be performed under this Agreement.

23. Relationship of the Parties. Developer is an independent contractor of the City and the relationship between the parties shall be limited to performance of this Agreement in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this Agreement shall be deemed to constitute either party a partner, agent, or legal representative of the other party. No liability or benefits, such as worker compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract employee as a result of this Agreement or the performance thereof.

24. Wages. Nothing in this Agreement shall require Davis Bacon or prevailing wages.

25. Tariffs/Impositions/Trade Restrictions. Any tariffs, impositions, or trade restrictions on materials or equipment that result in a material price escalation and that are not in place at the time of the Final Project Budget being approved shall cause a Permitted Change Order, which Permitted Change Order shall apply while such tariff, imposition, or trade restriction causes a material price escalation on such materials or equipment.

26. Non-Discrimination. Developer shall not discriminate against any employee, contractor, or vendor to be employed in the performance of work required by this Agreement on the basis of sex, sexual orientation, gender, religion, race, national origin, ancestry, age, disability, or military status. Developer shall comply with and be bound by all regulations regarding Non-Discrimination as required by the City's Title VI Plan and Non-Discrimination Agreement.

27. Drug Free Certification. As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, Developer hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Developer will give written notice to the

State of Indiana within ten (10) days after receiving actual notice that a contractor performing work on the Project, or an employee of such contractor, has been convicted of a criminal drug violation occurring in the workplace.

28. Federal Funds Compliance. Developer agrees on behalf of itself and its contractors to comply with the provisions of the Build America Buy America Act (BABA) enacted on November 15, 2021 for projects receiving Federal Aid after May 14, 2022 and the provisions of IC 5-16-8-1 et seq "H.R.2810-117th Congress Build America, Buy America Act", to the extent such provisions are relevant to the work performed under this Agreement.

29. Miscellaneous. Subject to Section 15, this Agreement shall inure to the benefit of, and be binding upon, Developer and City, and their respective successors and assigns. This Agreement constitutes the entire agreement between Developer and City with respect to the subject matter hereof, and may be modified only by a written agreement signed by both Developer and City. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. Whenever in this Agreement a singular word is used, it also shall include the plural wherever required by the context and vice versa. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All Exhibits to this Agreement are attached hereto and incorporated herein by reference.

[Remainder of page left intentionally blank.]

IN WITNESS WHEREOF, Developer and City have executed this Build Operate Transfer Agreement as of the date set forth above.

DEVELOPER:

Envoy Construction Services, LLC, an Indiana limited liability company

By: _____

Printed: _____

Title: _____

CITY:

City of Franklin, Indiana

By: _____

Printed: _____

Title: _____

INDEX TO EXHIBITS

Exhibit A	Depiction of Project Site
Exhibit B	Plan Schedule
Exhibit C	Required Insurance Policies (Developer)
Exhibit D	Scope of Services

EXHIBIT A

Depiction of Project Site



1701 N Main St, Franklin, IN 46131

EXHIBIT B

Plan Schedule

<u>Plan Type:</u>	<u>Completion Date:</u>
Validation of Construction Documents	Within 45 days of PPA execution.
Acceptance of Plan Amendments by Owner	Within 10 days of presentation, if necessary
Guaranteed Maximum Price (GMP)	Within 30 days of Acceptance of Plan Documents
Acceptance of GMP by Owner	Within 10 days of Presentation of GMP dependent on Client meeting schedule
Construction	Duration to be determined by selected contractors and subcontractors

EXHIBIT C

Required Insurance Policies (Developer)

Insurance shall be not less than the amounts set forth below:

A. Commercial General Liability (Occurrence Basis)

Covering bodily injury, personal injury, property damage, contractual liability, and product/completed operations.

Each Occurrence Limit:	\$1,000,000
Damage to Rented Premises:	\$100,000 (each occurrence)
Medical Expense Limit:	\$5,000
Personal and Advertising Injury Limit:	\$500,000
General Aggregate Limit:	\$2,000,000 (other than products / completed operations)
Products/Completed Operations:	\$1,000,000

B. Auto Liability \$1,000,000 (combined single limit) (owned, hired, & non-owned)

Bodily Injury & Property Damage: \$1,000,000 (each accident)

C. Excess/Umbrella Liability: \$2,000,000 (each occurrence and aggregate)

D. Worker's Compensation & Disability: Statutory

E. Employer's Liability:

Bodily Injury by Accident/Disease:	\$100,000 each employee
Bodily Injury by Accident/Disease:	\$250,000 each accident
Bodily Injury by Accident/Disease:	\$500,000 policy limit

F. Professional Liability Insurance. Developer shall carry and maintain during the continuance of this Agreement, professional liability insurance in the amount of \$1,000,000 for single limit claims and \$2,000,000 in the aggregate. Developer's policy of insurance shall contain prior acts coverage sufficient to cover all work performed by Developer for this Project. Upon City's request, Developer shall give prompt notice to City of any and all claims made against this policy during the period in which this policy is required to be maintained pursuant to this Agreement. If the insurance is written on a claims-made basis and coverage is canceled at any time, Developer will obtain, at its cost, an extended reporting endorsement which provides continuing coverage for claims based upon alleged acts or omissions during the term of the Agreement until all applicable statute of limitation periods have expired.

G. Builder's Risk. In the amount of the design and construction cost for the respective Project.

Developer shall provide City with a certificate of insurance, naming City as an "additional insured", showing such coverage then in force (but not less than the amount shown above), shall be filed with City prior to commencement of any work. These certificates shall contain a provision that the policies and the coverage afforded will not be canceled until at least 30 days after written notice has been given to the City.

Developer may, with the prior approval of City, substitute different types of coverage for those specified if the total amount of protection is not reduced. Developer shall be responsible for all deductibles.

Nothing in the above provision shall be operate as or be construed as limiting the amount of liability of Developer in the above enumerated amounts.

EXHIBIT D
Scope of Services

Project Description:

The Project is for the renovation and expansion of Franklin Fire Station #21 per Cripe plans dated October 20, 2022.

Envoy will perform the following services:

- Evaluate existing plans for conceptual conformance with project budget.
- Propose design solutions and alternatives for any estimated budget overruns, if applicable.
- Work with Designers/Engineers to revise plans, if applicable.
- Competitively bid plans and engage in private negotiations with contractors, subcontractors, vendors and suppliers.
- Manage construction activities and provide project oversight.

PUBLIC PRIVATE AGREEMENT
(City of Franklin Fire Station #21 Remodel/Expansion Project)

This Public Private Agreement (City of Franklin Fire Station #21 Remodel/Expansion Project) (the "Agreement") is executed this ____ day of _____, 2023 (the "Effective Date"), by and between Envoy Construction Services, LLC, an Indiana limited liability company (the "Developer"), and the City of Franklin, Indiana (the "City").

Recitals

WHEREAS, pursuant to Indiana Code 5-23 *et seq.*, the City issued a request for proposals for the design, construction, and financing of the Project (as defined herein);

WHEREAS, the City selected the Developer as the preferred bidder to deliver the Project pursuant to that process; and

WHEREAS, the City and the Developer desire to enter into this Agreement to formalize the terms and conditions upon which the Project shall be delivered.

Agreement

1. Defined Terms.

Ancillary Agreements shall mean the: (a) executed Disbursement Agreement; (b) Escrow Agreement; (c) Architect Assignment Agreement; and (d) Non-Collusion Affidavit.

Architect Assignment Agreement shall mean the assignment of a design contract with the architect previously engaged by City to design the Project; provided that, Developer may, in its sole discretion, negotiate changes in provisions that impact Developer's ability to complete the Project.

Assessments shall mean all general and special governmental and utility assessments levied on, against, or with respect to the Project Site.

Bonds shall mean surety bonds provided by or on behalf of Developer for the construction of the Project, specifically: (a) a performance bond in the amount of 50% of the portion of the Project Budget for the design and construction of the Project; and (b) payment bond for 100% of the Project Budget; less any contingency, consulting, legal, construction management, and/or developer fees and other soft costs. The Bonds shall be effective as of the Construction Commencement Notice.

Books and Records shall mean all of the books and records pertaining to: (a) the acquisition of materials to construct, and the construction of, the Project in accordance with this Agreement and the Construction Contract; and (b) the operating of the completed Project during the Operating Period.

Change Order shall mean a change order executed by Developer and City finalizing the inclusion into the Final Plans of a change proposed in a Change Order Request, which change has been approved; provided that, in the case of a Permitted Change, such change order shall be effective if executed only by Developer.

Change Order Request shall mean a written request for a change to the Final Plans.

City Approvals shall mean the approvals required by the City of Franklin, Indiana, its agencies, or its departments related to the design and construction of the Project, including but not limited to zoning and/or permitting approvals.

Claims shall mean claims, judgments, damages, liabilities, injuries, losses, costs, and expenses (including, without limitation, reasonable attorneys' fees).

Closing shall mean the date on which: (a) Developer and City execute the Ancillary Documents; and (b) the Project Funds are available for disbursement pursuant to this Agreement and the Disbursement Agreement, as the case may be. At the Closing, the Developer and City execute the Closing Documents.

Closing Date shall mean the date of the Closing.

Closing Documents shall mean the documents required to proceed to Closing as further described in Section 4.

Construction Commencement shall mean the date construction commences on the Project.

Construction Commencement Notice shall mean the written notice of Construction Commencement provided by Developer to City.

Construction Contract shall mean the contract executed by and between Developer (or Developer's assignee under Section 15 of this Agreement) and its contractor for construction of the Project in accordance with the Final Plans, the approved Project Budget, and the terms and conditions of this Agreement.

Construction Drawings shall mean construction drawings consistent with the Design Development Documents and the Laws.

Construction Schedule shall mean a reasonably detailed schedule for construction of the Project.

Construction Trade shall mean any trade or other discrete aspect of construction of the Project.

Conveyance Documents shall mean the documents reasonably necessary to transfer the Project to the City upon the expiration of the Operating Period.

Cure Period shall mean a period of 30 days after a party failing to perform or observe any term or condition of this Agreement to be performed or observed by it receives notice specifying the nature of the failure; provided that, if the failure is of such a nature that it cannot be remedied within 30 days, despite the exercise of reasonably diligent efforts, then the 30-day period shall be extended as reasonably may be necessary for the defaulting party to remedy the failure, so long as the defaulting party: (a) commences to remedy the failure within the 30-day period; and (b) diligently pursues such remedy to completion.

Design Development Documents shall mean reasonably detailed design development drawings that are consistent with the Schematic Design Drawings and the Laws.

Developer Preconstruction Fee shall mean a fee charged by Developer for preconstruction services in advance of providing the City with the GMP Report. For the purposes of this Project, the Developer Preconstruction Fee is being waived by Developer and shall only be paid as part of a Final Project Budget if the GMP Report is accepted by the City.

Disbursement Agreement shall mean a "Disbursement Agreement" to be executed at Closing by Developer, City, and Disbursing Agent pursuant to which Disbursing Agent shall: (a) hold the Project Funds necessary to pay the Incurred Costs to Developer prior to Closing in the Escrow Account for the benefit of Developer; (b) hold the remainder of the Project Funds upon Closing in the Escrow Account for the benefit of Developer and (c) disburse the Project Funds to or for the account of, Developer. In the event that the Project Funds are acquired by the issuance of municipal bonds, the trust indenture for such bond issuance may operate as the Disbursement Agreement.

Disbursement Request shall mean a written request by Developer for a disbursement of Project Funds, which request shall: (a) specify the total amount of Project Funds, being requested; (b) include invoices to be paid (or amounts to be reimbursed to Developer) with the disbursed funds; and (c) include such supporting documentation as would be required for Developer to obtain a disbursement of construction loan proceeds.

Disbursing Agent shall mean the entity or agent responsible for the disbursement of Project Funds, which may be a bond trustee (if municipal bonds are issued to provide the Project Funds) or another entity or agent expressly agreed to by Developer and City.

Documentation Costs shall mean all fees, costs, and expenses incurred by Developer in connection with drafting and negotiating: (a) this Agreement; and (b) any other documents contemplated by this Agreement to be executed in connection with the Project.

Escrow Account shall mean an escrow account maintained with Disbursing Agent: (a) into which the Project Funds (less the amount thereof to be disbursed at Closing) shall be deposited at Closing; and (b) from which the Financing Project Funds shall be disbursed by the Disbursing Agent pursuant to the Disbursement Agreement.

Event of Default shall have the meaning set forth in Subsection 13(a).

E-Verify Program shall mean: (a) the program currently operated by the U.S. Department of Homeland Security that electronically confirms an individual's eligibility to work in the United States, authority for which is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, P.L. 104-208, 110 Stat. 3009 (USC §1324a), as amended; or (b) any successor work authorization program designated by the U.S. Department of Homeland Security or such other federal agency as may be authorized to verify the work authorization status of newly-hired employees. The E-Verify Program is the "E-Verify Program" defined in Indiana Code § 22-5-1.7-3.

Final Documents and Drawings shall mean final Schematic Design Drawings, final Design Development Documents, final Construction Drawings, and the final Construction Schedule, as each is finalized and approved or reviewed by City pursuant to Section 7.

Final Inspection shall mean an inspection of the Project by City after substantial completion thereof.

Final Plans shall mean the aggregated Final Documents and Drawings.

Final Project Budget shall mean the final Project Budget established in accordance with the terms and conditions of Section 7(e) and included within the GMP Report.

Final Project Budget Date shall mean the date on which the GMP Report is presented to the City or July 7, 2023, whichever shall occur first.

Force Majeure shall mean, with respect to a party: (a) an act or omission of the other party; or (b) any other cause that is not within the reasonable control of such party (including, without limitation: (i) unusually inclement weather; (ii) the unusual unavailability of materials, equipment, services or labor; (iii) utility or energy shortages or acts or omissions of public utility providers; and (iv) regional, national, or international emergencies, including health epidemics and/or pandemics).

GMP Report shall mean a report provided by Developer to City for the purposes of identifying the Final Project Budget, including but not limited to the: (a) inclusions, exclusions, and qualifications not otherwise addressed in this Agreement; (b) the Final Project Budget; (c) allowances and contingencies, if any; and (d) list of plans and specifications; related to the Project.

Incurred Costs shall mean the costs and expenses incurred by Developer in connection with complying with the terms and conditions of this Agreement, including but not limited to: (a) the cost to develop and prepare the Final Plans; and (b) a reasonable and customary amount of a developer fee, which fee shall accrue upon the Effective Date; in the amount of \$44,000.00. The Incurred Costs shall not include the Developer Preconstruction Fee, which shall only be paid as part of the Final Project Budget if the City accepts the GMP.

Inspection shall mean a Permitted Inspection or the Final Inspection, as applicable.

Latent Defect shall mean those material defects in the construction of the Project that: (a) are not discovered; and (b) reasonably are not discoverable; by City during a Permitted Inspection or the Final Inspection.

Laws shall mean all applicable: (a) laws, statutes, and/or ordinances; (b) governmental rules, regulations, and/or guidelines; and (c) judicial orders, consents, and/or decrees.

Material Defect shall mean any item or component of the Project that: (a) contains a material defect in workmanship or materials; (b) deviates materially from the Final Plans; or (c) has not been constructed materially in accordance with the terms and conditions of this Agreement.

Non-Collusion Affidavit shall mean a Non-Collusion Affidavit on a form as provided by the Indiana State Board of Accounts.

Non-Compliance Notice shall mean a written notice from City that identifies Material Defects with respect to the Project discovered by City during a Permitted Inspection or the Final Inspection.

Operating Period shall mean the period: (a) commencing on the Substantial Completion Date; and (b) ending on the earlier of the date: (i) that is 30 days after the Substantial Completion Date; or (ii) that is specified in a written notice delivered by City to Developer; unless the City and Developer agree to a longer operating period by executing a separate operating agreement.

Permitted Change shall mean any change proposed by Developer to the Final Plans of the Project, so long as such change: (a) is not materially inconsistent with the Schematic Design Drawings or Design Development Documents approved by City for the Project; (b) does not result in the Final Plans containing structurally flawed elements; (c) is in conformity with the Laws; (d) does not materially reduce the quality or the finish level of the Project; (e) does not make it unlikely, impracticable, or impossible for Developer to complete the Project, or any component thereof, by the applicable date set forth in the approved Construction Schedule for the Project; and (f) does not cause an increase in the Final Project Budget to be paid by City (for the sake of clarification, the Final Project Budget may be increased pursuant to a Permitted Change so long as Developer pays the cost of such Permitted Change).

Permitted Inspection shall mean an inspection by City of any item or component of the Project when reasonably deemed to be necessary or appropriate by City.

Plan Refinement Process shall mean the process set forth in Section 7 for completion of the Final Plans and the Project Budget.

Plan Schedule shall mean the schedule in accordance with which Developer shall prepare and provide to City the Schematic Design Drawings, the Design Development Documents, the Construction Drawings, and the Construction Schedule, which schedule is attached hereto as Exhibit B.

Project shall mean the renovation and expansion or addition to the existing fire station 21 located within the City.

Project Approvals shall mean the approvals required by City, its agencies, or its departments related to the design and construction of the Project, including but not limited to plan commission and/or permitting approvals.

Project Budget shall mean the budget for the Project Costs.

Project Costs shall mean the fees, costs, and expenses to be incurred in connection with the Project, including but not limited to: (a) the Documentation Costs; (b) the costs incurred in connection with determining that all of the conditions set forth in Section 5 have been satisfied and/or will be waived by Developer and/or City; (c) the costs incurred in connection with the Closing (to the extent that such costs are not included in the Documentation Costs); (d) the cost to develop, design, and construct the Project in accordance with the terms and conditions of this Agreement; (e) a reasonable and customary amount for contingencies; (f) the developer fee to be paid by City to Developer; and (g) a construction management fee to be paid to Developer or its contractor.

Project Funds shall mean the funds deposited into the Escrow Account in the amount of the Project Costs.

Project Site shall mean that certain real estate located in the City and commonly known as 1701 North Main Street, Franklin, Indiana, as generally shown on Exhibit A as the "Project Site".

Real Estate Taxes shall mean all real estate taxes that may be attached to a property tax bill in the same manner as real estate taxes, levied on, against, or with respect to the Project Site and/or the Project.

Required Permits shall mean all permits, licenses, approvals, and consents required by the Laws for the construction of the Project.

Sales Tax Exemption Form shall mean Indiana Department of Revenue Form ST-105 (General Sales Tax Exemption Certificate) or its functional equivalent if such form is no longer used, pursuant to which City shall represent that the acquisition of the materials to construct the Project is exempt from Indiana sales and use tax.

Schematic Design Drawings shall mean detailed schematic design drawings that are consistent with the Laws.

Scope of Services shall mean the scope of services to be provided by Developer, which services shall be reimbursed by a payment of the Incurred Costs.

Site Conditions shall mean the: (a) physical and other conditions at the Project Site, including but not limited to surface, subsurface, geotechnical, geological, and environmental conditions, and all other local and other conditions may be material to Developer's performance under this Agreement; and (b) location of underground utilities, obstructions, or other conditions that would cause an increase to Developer's Project Costs or the time necessary to complete the Project.

Substantial Completion Date shall mean the date on which: (a) Developer delivers to City a copy of the certificate of substantial completion of the Project architect which indicates that the Project has been completed substantially in accordance with the Final Plans, subject to "punch-list" items to be identified in connection with the Final Inspection, which "punch-list" items do not materially affect the use of the Project for its intended use; or (b) Developer delivers to City a copy of the certificate of occupancy issued by the City of Franklin, if such certificate is issued.

Survey shall mean an ALTA/NSPS land title survey of the Project Site.

Transfer shall mean the conveyance of the Project by Developer to City at: (a) the expiration of the Operating Period; or (b) upon termination of this Agreement in accordance with the terms and conditions of Section 17.

Unauthorized Alien shall have the meaning set forth in 8 U.S.C § 1324a(h)(3).

Utility Services shall mean gas, electricity, telephone, water, storm and sanitary sewer, fiber and/or internet access, and other utility services.

2. General Obligations.

(a) Developer. Subject to the terms and conditions of this Agreement, Developer shall: (i) perform the Scope of Services as described on Exhibit D; (ii) enter into the Ancillary Documents; (ii) design the Project; (iv) construct the Project on the Project Site; (v) operate the Project until the expiration of the Operating Period; and (vi) upon the expiration of the Operating Period, execute the Transfer.

(b) City. Subject to the terms and conditions of this Agreement, City shall: (i) enter into the Ancillary Agreements; (ii) take such action as necessary or reasonably appropriate to provide for the City Approvals; and (iii) upon the end of the Operating Period, execute the Transfer.

(c) **Utility Availability.** City, at its cost and expense, shall ensure that there are Utility Services in adjoining public rights-of-way or properly granted and recorded utility easements that serve the Project Site at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Project in accordance with the terms and conditions of this Agreement, including, without limitation, that City, at its cost and expense, shall make any improvements outside the Project Site that are necessary for City to satisfy the foregoing obligation with respect to Utility Services.

(d) **Required Permit and Project Approvals Fees.** City shall: (i) waive its application and other fees assessed for the Required Permits and/or Project Approvals, unless such fees are assessed due to a re-inspection by City for work that was not completed by the initial scheduled inspection; or (ii) where possible to reduce the potential fee assessed, complete an application as the "Owner" of the Project for the Required Permits, the City Approvals, and/or Project Approvals. The parties acknowledge that the Project Site is located in the permitting jurisdiction of the City.

3. Closing. Subject to the terms and conditions of this Agreement, the Closing shall occur on or before July 14, 2023. The Closing Date shall be established mutually by Developer and City, and the Closing shall take place at such location as Developer and City mutually agree. At Closing, the Project funds (less any amount thereof to be disbursed at Closing) shall be deposited into the Escrow Account for disbursement in accordance with the terms and conditions of the Disbursement Agreement.

4. Closing Documents. At the Closing, the documents and instruments set forth in this Section shall be executed and/or delivered, including:

(a) the Ancillary Agreements;

(b) a confirmation by each of Developer and City of the applicable representations and warranties set forth in Section 6;

(c) an affidavit affirming that Developer: (i) is enrolled in the E-Verify Program; (ii) is participating in the E-Verify Program; and (iii) does not knowingly employ, or contract with, any Unauthorized Aliens;

(d) copies of such resolutions, consents, authorizations, and other evidence as either party reasonably may request to establish that: (i) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action of Developer or City, as the case may be; and (ii) the execution and delivery of such documents, and the performance by Developer or City of its obligations hereunder and under the foregoing documents, have been authorized by Developer or City, as the case may be; and

(f) such other customary documents and instruments as either party reasonably may request in connection with the Closing.

5. Conditions.

(a) Mutual. Except to the extent waived by proceeding to the Closing, the obligation of each of Developer and City to proceed to the Closing is subject to the satisfaction, as of the Closing Date, of the conditions set forth in this Subsection.

(i) City and Developer have agreed on the form and substance of the Closing Documents.

(ii) Developer has obtained, or Developer and City are satisfied that Developer will be able to obtain, all Required Permits, Project Approvals, and City Approvals.

(iii) Developer shall have submitted to City, and City shall have approved, the Plan Schedule.

(iv) Developer, City, and Disbursing Agent have agreed on the form and substance of the Disbursement Agreement.

(v) Developer is enrolled in the E-Verify Program.

(vi) City has available to it funds necessary to cover the City's obligations under this Agreement and prior to Closing funds shall be appropriated.

(b) Developer. In addition to the conditions set forth in Subsection 5(a), the obligation of Developer to proceed to the Closing is subject to the satisfaction, as of the Closing Date, of the conditions set forth in this Subsection.

(i) Developer has determined that no test, inspection, examination, study, investigation, Survey, or title search of or with respect to the Project Site establishes that there are conditions that would interfere with, or prohibit, the construction of the Project, including but not limited to environmental or geotechnical conditions, in accordance with the terms and conditions of this Agreement.

(ii) There is no continuing breach by City of this Agreement, and all of the representations and warranties of City set forth in Section 6 are true and accurate in all respects.

(c) Condition Failure. If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, the applicable party either may elect to: (a) waive satisfaction of the conditions and proceed to Closing; or (b) terminate this Agreement by a written notice to the other party; provided that, with respect to breaches of this Agreement by a party, the other party shall have the rights and remedies set forth in Section 13. Notwithstanding anything to the contrary set forth herein, Developer and City shall work diligently and in good faith to satisfy the conditions set forth in this Section.

6. Representations and Warranties. Each of Developer and City represents and warrants to the other that: (a) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (b) it has the power to enter into this Agreement and to perform its obligations hereunder; (c) it has been authorized by proper action to execute

and deliver this Agreement, and to perform its obligations hereunder; and (d) this Agreement, once executed, is its legal, valid, and binding obligation. In addition to the foregoing: (a) Developer represents and warrants to City that it is a domestic corporation organized and existing under the laws of the State of Indiana; and (b) City represents and warrants to Developer that it is a public body organized and existing under the laws of the State of Indiana.

7. Plan Refinement Process.

(a) Approvals. In accordance with the Plan Schedule and general description of the Project, Developer, at its cost and expense, shall submit to City for its approval the Schematic Design Drawings, the Design Development Documents, and the Construction Schedule. Within ten days after City receives the Schematic Design Drawings, Design Development Documents, or Construction Schedule, City shall deliver to Developer written notice of approval or rejection of the submitted drawings, documents, or schedule; provided that, in the case of a rejection, such notice shall: (i) specify the part or parts that City is rejecting; and (ii) include the specific basis for such rejection. Upon approval of the Schematic Design Drawings, the Design Development Documents, or the Construction Schedule, such Schematic Design Drawings, Design Development Documents, or Construction Schedule, respectively, shall be final, subject to modifications by Change Orders.

(b) Construction Drawings. In accordance with the Plan Schedule, Developer, at its cost and expense, shall submit to City for its review and approval the Construction Drawings with respect to each Construction Trade. Thereafter, such Construction Drawings shall be final construction drawings with respect to the applicable Construction Trade, subject to modifications by Change Orders.

(c) Re-submissions. If, at any stage of the Plan Refinement Process, City rejects any drawings, documents, or schedules, then, within ten days after Developer receives notice from City of such rejection, Developer shall revise, and submit to City, the applicable drawings, documents, or schedules. Within ten days after City receives the resubmitted drawings, documents, or schedules, City shall deliver to Developer written notice of approval or rejection; provided that, in the case of a rejection, such notice shall: (i) specify the part or party that City is rejecting; and (ii) include the specific basis for such rejection. Upon approval of the resubmitted drawings, documents, or schedules, the resubmitted drawings, documents, or schedules shall become part of the Final Plans subject to modifications by Change Orders.

(d) Final Plans. Upon completion of the Final Documents and Drawings through the Plan Refinement Process, the aggregated Final Documents and Drawings shall constitute the complete Final Plans, subject to modification by Change Orders. All references herein to the Final Plans shall be deemed to be references to the Final Documents and Drawings, until such time as all of the Final Documents and Drawings are completed; provided that, when all of the Final Documents and Drawings are completed, all references herein to the Final Plans shall be deemed to be references to the Final Plans, as modified by Change Orders.

(e) Budget/Costs.

(i) At the appropriate points during the Plan Refinement Process, as determined by Developer and City, Developer shall: (A) deliver the Project

Budget to City for its review and approval; and (B) make such adjustments to the Project Budget as are determined by Developer and City to be necessary or appropriate in connection with the finalization of the drawings, documents, and schedules pursuant to the Plan Refinement Process;

(ii) Upon approval of the Project Budget: (A) the Project Budget shall be the Final Budget, subject to modifications by Change Orders. The approval of the Final Project Budget shall be completed on or before the Final Project Budget Date, which Final Project Budget Date may be extended by the written mutual consent of Developer and City. In the event that the final Project Budget is not established by the Final Project Budget Date, this Agreement shall terminate pursuant to the provisions of Section 17.

(iii) Notwithstanding any other provision of this Agreement, the Project Budget shall not include any costs related to the mitigation or remediation of Site Conditions. In the event that Developer identifies any potential Site Conditions at the Project Site, Developer shall: (A) immediately cease construction activity; and (B) provide written notice to City of such site condition, which notice may include, in Developer's sole discretion, a Change Order Request that would be approved by the City pursuant to the terms of Section 8(b). City shall, within 30 days of such written notice, either: (A) commence remediation of such Site Conditions; (B) approve the Change Order Request, including any associated extension of the Substantial Completion Date; or (C) terminate this Agreement, upon which City shall pay Developer its costs and expenses incurred to complete the Project as of the date of termination, which shall include, but not be limited to, its: (1) Incurred Costs; (2) Developer Preconstruction Fee; (3) material, labor, and other costs of the Project; and (4) a reasonable amount of Developer overhead and profit. The cost of the remediation, whether performed via an approved Change Order Request or by City directly, shall be at the sole expense of the City. In addition to the costs of such remediation, the City shall be responsible for the increased costs under the GMP that are reasonably related to such delay, which increased costs shall be provided by Developer to City in writing within 10 days of its receipt of the City's written notice, unless City's written notice includes a Change Order Request that has such costs included therein. The Substantial Completion Date shall be extended on a day for day basis for every day construction is delayed by City remediation activity.

(f) Sales Tax.

(i) As soon as reasonably is practicable, Developer shall submit the Construction Contract to City to ensure that the Sales Tax Exemption Form is able to be provided to Developer.

(ii) Promptly after receipt of the Construction Contract, City shall deliver the Sales Tax Exemption Form to Developer at the notice address set forth in the Construction Contract.

(iii) Upon any assessment, or threatened assessment, of Indiana sales and/or use tax in connection with the purchase of any materials to construct, install, and/or complete the Project, Developer promptly shall notify City in writing. From and after receipt of the foregoing notice, City shall provide such cooperation, information, and assistance as Developer and/or its contractor reasonably shall request.

(iv) City shall indemnify and hold harmless Developer and the members, directors, officers, and employees of Developer, from and against any and all Claims arising from, or connected with: (A) the charging of Indiana sales and/or use tax in connection with the purchase of all or any portion of the materials incorporated into the Project; and/or (B) any interest and penalties assessed by the Indiana Department of Revenue with respect to the non-payment or late payment of Indiana sales and/or use tax in connection with the purchase of all or any portion of the materials to construct, install, and/or complete the Project; including, without limitation, reasonable attorneys' fees and court costs. City shall not be responsible for the charging of any tax related to Developer's failure to: (A) apply for an exemption from Indiana sales and/or use tax; (B) comply with the obligations of a party claiming the exemption; or (C) cooperate with any audit or investigation of the Indiana Department of Revenue regarding the sales tax exemption used as part of this Project. The obligations of City under this clause shall survive the termination of this Agreement.

8. Change Orders.

(a) **Developer Changes.** If Developer desires to make any changes to the Final Plans, then Developer shall submit a Change Order Request to City for review and approval, together with an estimate of any increases or decreases to the approved Project Budget that would result from the change proposed in the Change Order Request. Within ten days after City receives the Change Order Request, City shall deliver to Developer written notice that it approves or rejects the Change Order Request; provided that: (i) City shall not withhold its approval unreasonably; (ii) it shall not be unreasonable for City to reject a Change Order Request if the change proposed in the Change Order Request would result in an increase in the Project Budget; and (iii) if City approves a Change Order Request for a change that would result in an increase in the Project Budget, then, notwithstanding anything to the contrary set forth herein, the amount of such increase shall be paid by City: (A) as such costs are incurred; or (B) in such a manner that the payment does not cause Developer or the Project Budget to incur any additional cost; provided that, in no event shall Developer have any obligations with respect to the payment of the amount of such increase. If City rejects all or any part of the Change Order Request, then such notice shall: (i) specify the part or parts that City is rejecting; and (ii) include the specific basis for such rejection. If City approves a Change Order Request, then Developer and City shall execute a Change Order.

(b) **City Changes.**

(i) If City desires to make any changes to the Final Plans, then City shall submit a Change Order Request to Developer for review and approval. Within ten business days after Developer receives the Change Order Request, Developer shall deliver to City written notice stating

whether the change proposed in the Change Order Request would result in an increase in the Project Budget; provided that, if the proposed change would result in an increase, then such notice also shall include an estimate of the amount of the increase.

(i) If the foregoing notice states that the change proposed in the Change Order Request would not result in an increase in the Project Budget, then, within ten business days after delivery of such notice, Developer shall deliver to City written notice that it approves or rejects the Change Order Request; provided that Developer shall not withhold its approval unreasonably.

(iii) If the foregoing notice states that the change proposed in the Change Order Request would result in an increase in the Project Budget, then: (A) such notice also shall include an estimate of the amount of the increase; (B) within five business days after receipt of such notice, City shall provide written notice to Developer as to whether City would like to withdraw the Change Order Request. If City does not elect to withdraw the Change Order Request, then, within five additional business days, Developer shall deliver to City written notice that it approves or rejects the Change Order Request; provided that Developer shall not withhold its approval unreasonably.

(iv) If Developer approves a Change Order Request, then Developer and City shall execute a Change Order. If the approved Change Order Request is for a change that will result in an increase in the Project Budget, then, notwithstanding anything to the contrary set forth herein, the increase in the Project Budget shall be paid by City in accordance with Section 8(a); provided that, in no event shall Developer have any obligations with respect to the payment of the amount of such increase.

(v) If Developer rejects all or any part of the Change Order Request, then such notice shall: (A) specify the part or parts that Developer is rejecting; and (B) include the specific basis for such rejection.

(c) Permitted Change. Notwithstanding anything to the contrary set forth herein: (i) Developer shall not be required to obtain the approval of City with respect to a Permitted Change; and (ii) a Change Order with respect to a Permitted Change shall be effective if executed only by Developer.

9. Construction.

(a) Permits. Prior to commencing construction of the Project, Developer shall obtain and submit to City for its review the Required Permits.

(b) Construction. Developer shall construct the Project: (i) in a good and workmanlike manner; (ii) in accordance with the Final Plans (as modified by any Change Orders) and the terms and conditions of this Agreement; (iii) in compliance with the Laws and the Required Permits; (iv) and provide the City with a warranty that: (A) the materials and equipment furnished will be of good quality and new unless the Final Plans require or permit otherwise; and (B) the Project has been constructed in compliance with the Final

Plans; (v) provide the City with an assurance that the Developer will, for a period of one (1) year from the date of Substantial Completion, correct any work, materials, or equipment not conforming to the requirements of this Agreement and the Final Plans for which the City provides written notice thereof; provided that damage or defect caused by abuse, alterations to the Project not performed by Developer, improper or insufficient maintenance, improper operation, or normal wear and tear or normal usage shall be excluded from such warranty; and (vi) provide the City with as-built Plans and to the extent granted to Developer, grant to the City a license to use such plans in the use, occupancy, operation, maintenance, repair, alteration and additions to the Project.

(c) Operation. Developer shall operate the completed Project during the Operating Period; provided that City shall be responsible for the direct payment of all costs and expenses incurred in connection with such operation and Developer shall have no obligation to make any payment related to the operation of the Project during the Operating Period.

(d) Records. Developer shall keep and maintain true, correct, accurate, and complete Books and Records. All Books and Records shall be kept and maintained in accordance with generally accepted accounting principles consistently applied. City and its attorneys, accountants, representatives, architects, engineers, and consultants at all reasonable times shall have: (i) free access to, and rights of inspection of, the Books and Records; and (ii) the right to audit, make extracts from, and receive from Developer originals or accurate copies of, the Books and Records. Nothing contained in this Section 9(d) shall be construed as making the Books and Records public records under the applicable Laws.

(e) Bonds. Upon the issuance of the Construction Commencement Notice and until the Project has: (i) received its Substantial Completion; and (ii) Developer has demonstrated that all outstanding payments have been made to subcontractors performing work and those persons or entities providing labor, materials and services for the Project, subject to amounts withheld in dispute or in retainage; the Bonds shall be in effect. Notwithstanding the obligation of the Developer to provide bonds as provided for in this Agreement, the Developer also has an affirmative obligation to timely pay any and all subcontractors, suppliers, laborers, and service and to take all other action necessary to prevent the filing of mechanics or other liens on the Project Site.

(f) Unauthorized Aliens. Developer: (i) shall verify the work eligibility status of all newly-hired employees through the E-Verify Program; and (ii) shall not: (A) knowingly employ, or contract with, an Unauthorized Alien; or (B) retain an employee, or contract with a person, that Developer learns is an Unauthorized Alien. To the extent required by IC §§22-5-1.7, Developer shall require its contractor and each subcontractor to certify to Developer that, at the time of certification, the contractor or such subcontractor: (i) does not knowingly employ, or contract with, any Unauthorized Aliens; and (ii) has enrolled, and is participating, in the E-Verify Program. Developer shall maintain such certifications on file until the construction contract or the applicable subcontract expires or is terminated.

(g) No Discrimination. Developer shall not discriminate against any employee or applicant for employment because of race, sexual orientation, gender or gender identity, religion, color, national origin, ancestry, age, disability, or United States Military service veteran status. Developer agrees to, or cause its contractor or its subcontractors to: (i) post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this Subsection; and (ii) state, in all solicitations or

advertisements for employees placed or published by or on behalf of Developer, that all qualified applicants will receive consideration for employment without regard to race, sexual orientation, gender or gender identity, religion, color, national origin, ancestry, age, disability, or United States Military service veteran status.

10. Inspection.

(a) Inspection. Upon reasonable written notice delivered to Developer, which notice shall specify the portion of the construction to be inspected, City may perform a Permitted Inspection. If applicable after a Permitted Inspection, City shall deliver a Non-Compliance Notice to Developer.

(b) Final Inspection. Developer shall deliver to City a written request for the Final Inspection of the Project at least five business days prior to the Substantial Completion Date. On or before the later of the date that is five business days after: (i) receipt by City of such request; or (ii) the Substantial Completion Date; City shall: (i) conduct the Final Inspection; and (ii) deliver to Developer, if applicable, a Non-Compliance Notice. Upon: (i) correction of all Material Defects identified in the Non-Compliance Notice; or (ii) deemed acceptance pursuant to Subsection 10(c); City shall have no further inspection rights pursuant to this Agreement with respect to the Project. Within five business days after City conducts the Final Inspection, Developer and City shall identify the "punch-list" items. Developer shall complete all "punch-list" items within 60 days after the "punch-list" items are identified.

(c) Non-Compliance. If City delivers to Developer a Non-Compliance Notice following an Inspection in accordance with this Section or after deemed acceptance as provided for in Section 9(b), then Developer shall correct, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice. All items or components of the Project with respect to which: (i) an Inspection is conducted; and (ii) no Material Defects are identified in a timely Non-Compliance Notice; shall be deemed to be accepted by City.

(d) Latent Defects. Notwithstanding anything to the contrary set forth herein, no acceptance, or deemed acceptance, by City pursuant to this Section shall be applicable with respect to any Latent Defects.

(e) General.

(i) In connection with any Inspection pursuant to this Section, City shall: (A) comply with all health and safety rules of which City has been informed that have been established for personnel present on the construction site; and (B) coordinate the inspections so that the inspections do not interfere with the performance of construction. Developer shall have the right to accompany, and/or have its construction manager accompany, City during any Inspection.

(ii) An acceptance, or deemed acceptance, by City pursuant to this Section shall not mean that City has accepted, or Developer has been relieved of, responsibility for: (A) compliance with the Laws; (B) the proper application of construction means or methods; or (C) correcting any portion of the Project if it later is determined that such portion is inconsistent with

the as-built plans as described in Section 9(b) or proper completion of a subsequent portion of the Project.

11. Insurance.

(a) Insurance Policies. During construction of the Project and terminating upon the Substantial Completion Date, Developer shall maintain the policies of insurance, including but not limited to Builder's Risk, General Commercial Liability, and Workers Compensation, reflected on the certificate attached hereto as Exhibit C. Each such policy shall be written by a company reasonably acceptable to City, and Developer shall provide notice of any intended modification to, or cancellation of, such policy to City at least 30 days in advance. The policies of insurance required by this Section to be maintained by Developer shall name City as an additional insured. Developer shall deliver to City certificates of the insurance policies required by this Section, executed by the insurance company or the general agency writing such policies.

(b) Risk of Loss. If the Project Site, the Project, or any part thereof, is: (a) damaged or destroyed by fire or other casualty; or (b) taken by condemnation; then City may apply the proceeds or any insurance policy or condemnation award to the Final Project Budget.

12. Transfer. Upon the: (a) expiration of the Operating Period; or (b) a termination of this Agreement pursuant to Section 17; Developer and City shall execute the Transfer. At the Transfer, the following documents and instruments shall be executed and delivered:

(a) the Conveyance Documents;

(b) a confirmation by each of Developer and City of the applicable representations and warranties set forth in Section 6;

(c) copies of such resolutions, consents, authorizations, and other evidence as either party reasonably may request to establish that: (i) the persons executing and delivering the foregoing documents have been empowered and authorized by all necessary action of Developer or City, as the case may be; and (ii) the execution and delivery of such documents, and the performance by Developer or City of its obligations hereunder and under the foregoing documents, have been authorized by Developer or City, as the case may be; and

(d) such other customary documents and instruments as either party reasonably may request in connection with the Transfer.

13. Default.

(a) Events of Default. It shall be an "Event of Default" if either party fails to perform or observe any term or condition of this Agreement to be performed or observed by it: (i) with respect to the obligation to pay money, if such failure is not cured within ten days after such payment is due; and (ii) with respect to any other obligation, if such failure is not cured within the Cure Period.

(b) Remedies. Whenever an Event of Default occurs, the non-defaulting party may take such actions at law or in equity as are necessary or appropriate to: (i) collect any payments due under this Agreement; (ii) protect the rights granted to the non-defaulting

party under this Agreement; (iii) enforce the performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition); or (iv) cure, for the account of the defaulting party, any failure of the defaulting party to perform or observe a material term or condition of this Agreement to be performed or observed by it. If the non-defaulting party incurs any costs or expenses in connection with exercising its rights and remedies under, or enforcing, this Agreement (including, without limitation, attorneys' fees and court costs), then the defaulting party shall reimburse the non-defaulting party for all such costs and expenses (including, without limitation, attorneys' fees and court costs), together with interest at the rate of 8% per annum.

(c) **No Remedy Exclusive.** No right or remedy herein conferred upon, or reserved to, a non-defaulting party is intended to be exclusive of any other available right or remedy, unless otherwise expressly stated; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission by a non-defaulting party to exercise any right or remedy upon any Event of Default shall impair any such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from time to time, and as often as may be deemed to be expedient. To entitle a non-defaulting party to exercise any of its rights or remedies, it shall not be necessary for the non-defaulting party to give notice to the defaulting party, other than such notice as may be required by this Section or by the Laws.

14. Mutual Indemnification.

(a) **Developer.** Developer shall indemnify and hold harmless City from and against any and all Claims arising from or connected with: (i) mechanics' liens filed against the Project or the Project Site for work performed by Developer or any party acting by, under, through, or on behalf of Developer; (ii) breaches by Developer under contracts to which Developer is a party, to the extent that such contracts relate to the performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (iii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (iv) the negligence or willful misconduct of Developer or any party acting by, under, through, or on behalf of Developer; or (v) the breach by Developer of any term or condition of this Agreement, including but not limited to the failure of Developer to timely pay subcontractors, suppliers, laborers and service providers.

(b) **City.** City shall indemnify and hold harmless Developer from and against any and all Claims arising from or connected with: (i) the negligence or willful misconduct of City or any party acting by, under, through, or on behalf of City; or (ii) the breach by City of any term or condition of this Agreement.

Notwithstanding anything to the contrary set forth herein, the obligations of the parties under this Section shall survive the termination of this Agreement.

15. Assignment. Neither City nor Developer shall assign this Agreement without the prior written consent of the other party, provided that: (a) without the prior written approval of Developer, City may assign this Agreement to another agency or instrumentality of the City that is legally able to perform the obligations of the City hereunder; and (b) without the prior written

approval of City, Developer may assign this Agreement to any entity in which the principals of the Developer hold a controlling interest. Notwithstanding any assignment permitted under this Section, each of Developer and City shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by the other party of any assignment shall not release the non-assigning party from such performance.

16. Notice. Any notice required or permitted to be given by either party to this Agreement shall be in writing, and shall be deemed to have been given when: (a) delivered in person to the other party; or (b) sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Developer at Envoy Construction Services, LLC, 8890 East 116th Street, Suite 250, Fishers, IN 46038, Attn: Rich Taylor, with a copy to: Adam W. Collins, Wallack Somers & Haas, PC, One Indiana Square, Suite 2300, Indianapolis, Indiana 46204; and to City at _____, with a copy to _____. Either party may change its address for notice from time to time by delivering notice to the other party as provided above.

17. Termination and Incurred Expenses. If this Agreement terminates pursuant to Section 7(e)(ii) for any reason other than a continuing Event of Default by Developer that has continued past the applicable Cure Period, then: (a) City shall reimburse Developer for the Incurred Costs the Developer has incurred by the date of such termination; provided that the Developer Preconstruction Fee shall not be included within the Incurred Costs; (b) City and Developer shall execute the Transfer; and (c) Developer shall assign to City its right, title, and interest in and to the Final Plans and the materials obtained by it in connection with the due diligence undertaken by Developer, if any, which rights, title, and interest shall not prohibit City from using the Final Plans and materials in connection with the construction of the Project. To receive reimbursement for the Incurred Costs as permitted by this Section, Developer shall submit to City an invoice therefor and City shall reimburse Developer for the amount set forth on such invoice in the ordinary course of its business, but in all events within 30 days after receipt of such invoice. The assignment of Developer's rights, as set forth above, shall only be executed upon payment of the Incurred Costs by City.

18. Authority. Each undersigned person executing this Agreement on behalf of Developer and City represents and certifies that: (a) he or she has been empowered and authorized by all necessary action of Developer and City, respectively, to execute and deliver this Agreement; (b) he or she has full capacity, power, and authority to enter into and carry out this Agreement; and (c) the execution, delivery, and performance of this Agreement have been authorized by Developer and City, respectively.

19. Force Majeure. Notwithstanding anything to the contrary set forth herein, if either party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this Agreement as a result of Force Majeure; then: (a) the party asserting Force Majeure shall deliver written notice to the other party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period.

20. Taxes. City shall be solely responsible for, and shall pay and discharge when due all taxes, assessments, and other governmental charges that are lawfully imposed upon the Project Site, the Project, or any party thereof, including but not limited to real estate taxes, but shall not be responsible for taxes imposed against the Developer's corporate entity. For the sake of clarification, City shall not be responsible for income or other taxes related to Developer's

compensation under this Agreement, including but not limited to the Incurred Costs or Developer Preconstruction Fee.

21. Dealings with Iran. In accordance with Indiana Code § 5-22-16.5, by executing this Agreement, Developer certifies that Developer is not engaged in investment activities with Iran.

22. Debarment and Suspension.

(a) Developer certifies, by entering into this Agreement, that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency, or political subdivision of the State. The term "principal" for the purposes of this Section means an officer, director, owner, partner, key employee, or other person with primary or supervisory responsibility, or a person who has a critical influence or substantive control over the operations of the Developer.

(b) Developer certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Agreement and shall be solely responsible for any recoupment, penalties, or costs that might arise from the use of a suspended or debarred subcontractor. Developer shall immediately notify the City if any subcontractor becomes debarred or suspended, and shall, at the City's request, take all steps required by the City to terminate Developer's contractual relationship with the subcontractor for work to be performed under this Agreement.

23. Relationship of the Parties. Developer is an independent contractor of the City and the relationship between the parties shall be limited to performance of this Agreement in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this Agreement shall be deemed to constitute either party a partner, agent, or legal representative of the other party. No liability or benefits, such as worker compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract employee as a result of this Agreement or the performance thereof.

24. Wages. Nothing in this Agreement shall require Davis Bacon or prevailing wages.

25. Tariffs/Impositions/Trade Restrictions. Any tariffs, impositions, or trade restrictions on materials or equipment that result in a material price escalation and that are not in place at the time of the Final Project Budget being approved shall cause a Permitted Change Order, which Permitted Change Order shall apply while such tariff, imposition, or trade restriction causes a material price escalation on such materials or equipment.

26. Non-Discrimination. Developer shall not discriminate against any employee, contractor, or vendor to be employed in the performance of work required by this Agreement on the basis of sex, sexual orientation, gender, religion, race, national origin, ancestry, age, disability, or military status. Developer shall comply with and be bound by all regulations regarding Non-Discrimination as required by the City's Title VI Plan and Non-Discrimination Agreement.

27. Drug Free Certification. As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, Developer hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Developer will give written notice to the

State of Indiana within ten (10) days after receiving actual notice that a contractor performing work on the Project, or an employee of such contractor, has been convicted of a criminal drug violation occurring in the workplace.

28. Federal Funds Compliance. Developer agrees on behalf of itself and its contractors to comply with the provisions of the Build America Buy America Act (BABA) enacted on November 15, 2021 for projects receiving Federal Aid after May 14, 2022 and the provisions of IC 5-16-8-1 et seq “H.R.2810-117th Congress Build America, Buy America Act”, to the extent such provisions are relevant to the work performed under this Agreement.

29. Miscellaneous. Subject to Section 15, this Agreement shall inure to the benefit of, and be binding upon, Developer and City, and their respective successors and assigns. This Agreement constitutes the entire agreement between Developer and City with respect to the subject matter hereof, and may be modified only by a written agreement signed by both Developer and City. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. Whenever in this Agreement a singular word is used, it also shall include the plural wherever required by the context and vice versa. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All Exhibits to this Agreement are attached hereto and incorporated herein by reference.

[Remainder of page left intentionally blank.]

IN WITNESS WHEREOF, Developer and City have executed this Build Operate Transfer Agreement as of the date set forth above.

DEVELOPER:

Envoy Construction Services, LLC, an Indiana limited liability company

By: _____

Printed: _____

Title: _____

CITY:

City of Franklin, Indiana

By: _____

Printed: _____

Title: _____

INDEX TO EXHIBITS

Exhibit A	Depiction of Project Site
Exhibit B	Plan Schedule
Exhibit C	Required Insurance Policies (Developer)
Exhibit D	Scope of Services

EXHIBIT A

Depiction of Project Site



1701 N Main St, Franklin, IN 46131

EXHIBIT B

Plan Schedule

Plan Type:

Completion Date:

Validation of Construction Documents

Within 45 days of PPA execution.

Acceptance of Plan Amendments by Owner

Within 10 days of presentation, if necessary

Guaranteed Maximum Price (GMP)

Within 30 days of Acceptance of Plan Documents

Acceptance of GMP by Owner

Within 10 days of Presentation of GMP dependent on Client meeting schedule

Construction

Duration to be determined by selected contractors and subcontractors

EXHIBIT C

Required Insurance Policies (Developer)

Insurance shall be not less than the amounts set forth below:

A. Commercial General Liability (Occurrence Basis)

Covering bodily injury, personal injury, property damage, contractual liability, and product/completed operations.

Each Occurrence Limit:	\$1,000,000
Damage to Rented Premises:	\$100,000 (each occurrence)
Medical Expense Limit:	\$5,000
Personal and Advertising Injury Limit:	\$500,000
General Aggregate Limit:	\$2,000,000 (other than products / completed operations)
Products/Completed Operations:	\$1,000,000

B. Auto Liability \$1,000,000 (combined single limit) (owned, hired, & non-owned)

Bodily Injury & Property Damage:	\$1,000,000 (each accident)
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C. Excess/Umbrella Liability: \$2,000,000 (each occurrence and aggregate)

D. Worker's Compensation & Disability: Statutory

E. Employer's Liability:

Bodily Injury by Accident/Disease:	\$100,000 each employee
Bodily Injury by Accident/Disease:	\$250,000 each accident
Bodily Injury by Accident/Disease:	\$500,000 policy limit

F. Professional Liability Insurance. Developer shall carry and maintain during the continuance of this Agreement, professional liability insurance in the amount of \$1,000,000 for single limit claims and \$2,000,000 in the aggregate. Developer's policy of insurance shall contain prior acts coverage sufficient to cover all work performed by Developer for this Project. Upon City's request, Developer shall give prompt notice to City of any and all claims made against this policy during the period in which this policy is required to be maintained pursuant to this Agreement. If the insurance is written on a claims-made basis and coverage is canceled at any time, Developer will obtain, at its cost, an extended reporting endorsement which provides continuing coverage for claims based upon alleged acts or omissions during the term of the Agreement until all applicable statute of limitation periods have expired.

G. Builder's Risk. In the amount of the design and construction cost for the respective Project.

Developer shall provide City with a certificate of insurance, naming City as an "additional insured", showing such coverage then in force (but not less than the amount shown above), shall be filed with City prior to commencement of any work. These certificates shall contain a provision that the policies and the coverage afforded will not be canceled until at least 30 days after written notice has been given to the City.

Developer may, with the prior approval of City, substitute different types of coverage for those specified if the total amount of protection is not reduced. Developer shall be responsible for all deductibles.

Nothing in the above provision shall be operate as or be construed as limiting the amount of liability of Developer in the above enumerated amounts.

EXHIBIT D
Scope of Services

Project Description:

The Project is for the renovation and expansion of Franklin Fire Station #21 per Cripe plans dated October 20, 2022.

Envoy will perform the following services:

- Evaluate existing plans for conceptual conformance with project budget.
- Propose design solutions and alternatives for any estimated budget overruns, if applicable.
- Work with Designers/Engineers to revise plans, if applicable.
- Competitively bid plans and engage in private negotiations with contractors, subcontractors, vendors and suppliers.
- Manage construction activities and provide project oversight.