

**CONSTRUCTION SERVICES AGREEMENT - LUMP SUM**

**Contractor:** Spear Aquatics, LLC dba Landmark Aquatic

**Contractor's Authorized Representative:** Brian Spear  
12966 N. Co. Rd. 50W  
Roachdale, Indiana 46172  
Telephone: (765) 522-1126  
E-mail: bspear@landmarkaquatic.com

**Owner:** Franklin Community Schools

**Owner's Authorized Representative:** Benji Betts  
Executive Director of Operations  
Franklin Community Schools  
Telephone: 317-346-8741  
E-mail: bettsw@franklinschools.org

**Project and Address:** Competition Pool Relamination and Renovation at  
Franklin Community High School  
998 Grizzly Cub Drive  
Franklin, IN 46131

**Contract Price:** \$1,201,653

**Date of Substantial Completion** Sept. 25, 2026 based upon a no later than August 3,  
2026 start date

**Effective Date** **May 4, 2026, Owner revisions incorporated**


**Exhibits Incorporated In this Agreement:**

- Exhibit A: Terms and Conditions of Construction Services Agreement
- Exhibit B: Scope of Work
- Exhibit C: Labor and Owned Equipment Rates
- Exhibit D: Schedule of Values
- Exhibit E: Construction Schedule
- Exhibit F: Specialty product payment terms

Owner engages Contractor for purposes of construction services as set forth in the Scope of Work in exchange for payment of the Contract Price as set forth in the Terms and Conditions of the Construction Services Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date indicated.

**OWNER: Franklin Community Schools (FCS)**

By: 

Its: Board of School Trustee, President

**CONTRACTOR: Spear Aquatics, LLC dba Landmark Aquatic**

By: Brian Spear  Digitally signed by Brian Spear  
DN: cn=Brian Spear, o=Spear Aquatics, ou=Landmark Aquatic, email=bspear@landmarkaquatic.com, c=US  
Reason: I agree to the terms defined by the placement of  
my signature on this document  
Date: 2024.04.04 12:51:13 -0400

Its: General Manager

## Exhibit A - Terms and Conditions of Construction Services Agreement

### ARTICLE 1 DEFINITIONS.

- 1.1 **"Agreement"** means this Agreement and all amendments and/or modifications hereto executed by the Parties.
- 1.2 **"Application for Payment"** means the document prepared by the Contractor and submitted to the Owner as more fully described herein.
- 1.3 **"Change Order"** shall have the meaning set forth in Article 6 hereof.
- 1.4 **"Construction Documents"** means the plans and specifications supplied by Owner to Contractor for the Project prior to the parties executing this Agreement, and incorporated into this Agreement by reference to be used to construct the Project. The Construction Documents shall set forth in detail all items necessary to complete the construction of the Project in accordance with the Contract Documents. No amendments and modifications to the Construction Documents are effective unless processed pursuant to the changes clause of this Agreement.
- 1.5 **"Contract Documents"** means the following documents which form an entire integrated agreement between the Owner and the Contractor: this Agreement, Construction Documents and Site Surveys supplied by Owner to Contractor.
- 1.6 **"Day" or "Days"** means calendar days. If a Day requiring notice or action falls on a weekend or national or local holiday, the next non-weekend or non-holiday shall be applicable. **"Business Day" or "Business Days"** means Days other than weekend, national or local holidays in which federal government agencies in the District of Columbia are open for business.
- 1.7 **"Final Completion"** means the point at which the Work has been completed in accordance with the terms and conditions of the Contract Documents, including Punch List items.
- 1.8 **"Force Majeure"** means uncontrollable, time-impacting events including but not limited to acts of God, acts of public enemy, acts of the owner or its agents, fires, floods, epidemics, government action or intervention, strikes, supply chain delays, severe weather, unavoidable casualties, and unusual delay in deliveries.
- 1.9 **"Governmental Approvals"** means those governmental (including agency) actions required to be obtained by the Owner and necessary for the completion of the Project, including, but not limited to, modification of existing zoning, vacation of certain streets and/or alleys, and modifications to or variances from applicable building codes.
- 1.10 **"Hazardous Conditions"** are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.
- 1.11 **"Legal Requirements"** are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.
- 1.12 **"Party" or "Parties"** means the Owner and/or the Contractor, their respective permitted successors and/or assigns, and any other future signatories to this Agreement.
- 1.13 **"Project"** shall mean and refer to the construction project identified on page one of this Construction Services Agreement.
- 1.14 **"Punch List"** means those minor items of Work to be completed after Substantial Completion and prior to Final Completion, which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent the issuance of a certificate of Final Completion.
- 1.15 **"Retainage"** means the amount withheld from progress payments from the Owner to the Contractor from time to time, as more fully described below.
- 1.16 **"Site"** is the real property on which the Project will be located.
- 1.17 **"Subcontractor"** means an individual or entity who has entered into an arrangement with the Contractor for the provision of labor, materials or other services required to be performed by the Contractor under the Contract Documents.
- 1.18 **"Substantial Completion"** means the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that it may be used by the Owner for its intended purpose.
- 1.19 **"Work" or "Scope of Work"** means all labor, materials and services required to be performed or provided by the Contractor pursuant to the provisions of the Contract Documents.

### ARTICLE 2 CONTRACTOR'S DUTIES AND RESPONSIBILITIES.

- 2.1 **Performance of Work.** The Contractor shall be responsible for performing and completing the Work. Although it is the responsibility of the Contractor to conform the Work to Legal Requirements at all times, to the extent there is a change in one or more Legal Requirements after the date of execution of this Agreement, and such change has the effect of increasing the cost or time of performance of the Work, such change may be the subject of a Change Order.
- 2.2 **Local Conditions; Environmental Site Conditions.** The Contractor represents that it has visually investigated and satisfied itself as to the general location and local conditions which are applicable to the Work such as (a) conditions bearing on

transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) visually observable physical conditions at the Site; (e) the surface conditions of the ground; and (f) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent the Contractor encounters subsurface or concealed conditions which differ materially from that actually known by the Contractor on the date of this Agreement or from those ordinarily found to exist and generally recognized as inherent in the activities of the character provided in the Contract Documents, then notice by the Contractor shall be given to the Owner promptly before conditions are disturbed and in no event later than ten (10) Business Days after the first observance of the conditions if a Change Order is contemplated by the Contractor due to such condition. Such materially different conditions shall entitle the Contractor to an equitable adjustment in the Contract Price and/or Schedule pursuant to the Change Order provisions of this Agreement. Contractor is not responsible for inspection, discovery, abatement, mitigation or removal of lead, mold, radon, asbestos or other hazardous wastes or materials, toxic substances, or environmental pollutants (collectively "Hazardous Substances"). Owner understands and accepts that Contractor shall have no liability regarding Hazardous Substances, Hazardous Conditions or their effects, including, but not be limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, adverse health effects or any other effects. Owner hereby releases, indemnifies and holds Contractor harmless from any and all claims, damages, costs and liabilities based upon, relating to or arising from Hazardous Substances or Hazardous Conditions.

**2.3 Construction Documents; Reliability.** Owner has provided Construction Documents to Contractor. Contractor shall be entitled to rely on the Construction Documents. If the Owner revokes, modifies or otherwise changes the Work depicted in the Construction Documents, the Contractor shall be entitled to additional compensation and additional time of performance in accordance with this Agreement.

**2.4 Use of Site.** The Contractor shall have full access to the Site for purposes of any construction activities. The Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents. The Owner acknowledges that Contractor develops its progress schedule based on certain representations of the Owner regarding availability of the Site, or relevant portions thereof, at certain times, and to the extent that any or all of the Site is not available for the Contractor's activities on a timely basis, the Contractor shall be entitled to additional compensation and/or an extended time of performance in accordance with the provisions of this Agreement.

**2.5 Rubbish; Debris; Cleanup.** During the performance of all on-site Work, the Contractor shall at all times keep the Site reasonably free from waste materials, debris and/or rubbish, and shall employ adequate dust control measures.

**2.6 Permits, Fees and Notices.** Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for all permits, governmental fees, licenses and inspections necessary for the proper execution and completion of the Work. The Owner shall comply with and give notices required by Legal Requirements.

**2.7 Tests and Inspections.** Tests, inspections and approvals of portions of the Construction Work required by the Contract Documents, Legal Requirements or normal construction practices shall be made at an appropriate time. Unless otherwise provided, the Owner shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and the costs of such tests, inspections and approvals. All costs of tests, inspections or approvals imposed upon the Contractor by Legal Requirements which do not become requirements until after execution of the Agreement shall be an increase to the Contract Price in accordance with the Change Order provisions of this Agreement.

**2.8 Labor and Materials; Liens.** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor shall use its best efforts to prevent Subcontractors or laborers from placing liens on the Project covering any portion of the Work for which the Owner has made payment to the Contractor.

**2.9 Warranty; Correction of Work.**

**2.9.1 Warranty.** Contractor warrants to Owner that all construction services will be performed in a good and workmanlike manner and free of defects in workmanship for a period of one (1) year following the date of Substantial Completion. This warranty obligation excludes defects caused by abuse, alterations, improper operation, insufficient maintenance, normal wear and tear, and normal usage. Equipment and materials incorporated into the Work shall be warranted by the manufacturer of such equipment or materials. Contractor will assign and transfer to Owner all manufacturer warranties regarding all equipment and materials incorporated into the Work and Owner accepts the manufacturer warranties as its sole and exclusive remedy regarding defects or claims arising from or relating to the quality of materials or equipment. This warranty expressly disclaims and waives all implied warranties including but not limited to merchantability and fitness for a particular purpose. Contractor does not warrant modifications or work performed by contractors, sub-contractors or vendors hired by Owner. Nothing in this warranty is intended

to limit any manufacturer's warranty which provides Owner with greater warranty rights than expressly set forth in this Section or the Contract Documents. Contractor will provide Owner with all manufacturers' warranties upon Substantial Completion.

**2.9.2 Correction of Work.** Non-conforming Work shall be corrected as required in Article 7 of this Agreement.

**2.10 Acceptance of Nonconforming Work.** If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction.

**2.11 Qualifications and Exclusions.** In addition to the following specific exclusions, all items of work not expressly included in the Scope of Work (Exhibit B) are hereby excluded:

**2.11.1** The Work does not include removal of any materials, wastes, substances and chemicals deemed to be hazardous under any applicable or governing legal requirements, or the handling, storage, remediation, or disposal of which are regulated by such legal requirements.

**2.11.2** The Work does not include any design services or analysis that requires or calls for a licensed or registered design or other professional.

**2.11.3** The Work includes removal waste and debris only to the extent created by the Work.

**2.11.4** The Work does not include locating or re-locating site utilities.

**2.11.5** The Work does not include any demolition work.

**2.11.6** The Work does not include geotechnical or other subsurface testing.

**2.11.7** The Work does not include any earth work include, but not limited to, excavation, trenching including pipe trenching, and/or backfilling.

**2.11.8** The Work does not include any and all electrical work.

**2.11.9** The Work does not include any and all plumbing work other than pool process.

**2.11.10** The Work does not include any concrete work including concrete replacement and/or grouting.

**2.11.11** The Work does not include seeding or landscaping of any variety.

**2.12.12** The Work does not include maintenance of erosion control measures.

**2.12.13** The Work does not include overtime, after-hours or weekend work.

**2.12.14** The Work does not include Builder's Risk or other "All Hazard" insurance covering Owner's real property.

**2.11.15** The Work does not include utilities or temporary heat.

**2.11.16** The Work does not include performance, payment and/or maintenance bonds unless expressed in writing in this Agreement.

**2.11.17** The Work does not include any labor, materials, supplies and/or equipment for repairing any part of the surface around the Project caused during the course of completing the Work.

**2.12 Contractor's Authorized Representative.** Contractor designates the individual set forth on page one of the Agreement to act on behalf of and to bind the Contractor with respect to the Project.

### **ARTICLE 3 OWNER'S DUTIES AND RESPONSIBILITIES**

#### **3.1 Information and Services Required of the Owner.**

**3.1.1 Owner's Authorized Representative.** Owner designates the individual set forth on page one of the Agreement to act on behalf of and to bind the Owner with respect to the Project.

**3.1.2 Communication.** During the term of this Agreement, the Owner shall communicate with Subcontractors, suppliers and others performing any part of the Work only through the Contractor's Authorized Representative.

**3.2 Financial Information.** Upon Contractor's request, Owner shall promptly furnish reasonable evidence satisfactory to Contractor that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish satisfactory financial information in a timely manner, Contractor may stop Work or exercise any other right permitted under the Contract Documents.

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

**3.4 Owner Information.** Owner shall provide, at its own cost and expense, for Contractor's information and use the following, all of which Contractor is entitled to rely upon in performing the Work:

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

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

**3.4.3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper construction of the Project and enable Contractor to perform the Work;

**3.4.4** A legal description of the Site;

**3.4.5** As-built and record drawings of any existing structures at the Site; and

**3.4.6** Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

**3.5 Adjacent Property.** Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Contractor to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

**3.6 Project Labor Agreement.** Owner stipulates, represents and warrants that no project labor agreement or collective bargaining agreement of any kind governs or controls any part of the Work.

#### **ARTICLE 4 TIME**

**4.1 Progress and Completion.** Time limits stated in the Contract Documents are of the essence of this Agreement.

**4.2 Schedule.** The construction shall be undertaken and substantially completed within the frame established in the schedule identified as an Exhibit E on the cover page of this Agreement ("Schedule") as the same may be adjusted from time to time pursuant to the terms of this Agreement.

**4.3 Extensions of Time.** Actual delays to the Work shall entitle Contractor to additional time within which to complete the Work including, but not limited to the following events beyond Contractor's control:

**4.3.1** Failure or inability of the Owner to make available any or all of the Site in accordance with the requirements of the Schedule.

**4.3.2** Failure or inability of the Owner or the Contractor to obtain necessary zoning changes, variances, code changes, permits or approvals from any governmental authority, or failure to obtain any street or alley vacations required for the performance of the Work, except to the extent due to the fault or neglect of the Contractor.

**4.3.3** Delays resulting from the acts or omissions of Separate Contractors, except to the extent Separate Contractors perform their work properly and in accordance with the Contractor's schedules.

**4.3.4** Delays resulting from Force Majeure.

**4.3.5** Differing, unusual or concealed site conditions that were not reasonably anticipated by the Contractor in preparing the Schedule, including, without limitation, archaeological finds, soil conditions (including rock or other geological conditions), underground foundations, abandoned utility lines and water conditions

**4.3.6** Delays resulting from the existence or discovery of Hazardous Conditions on the Site not brought to the site by the Contractor.

**4.3.7** Delays resulting from changes in Legal Requirements occurring after the date of execution of this Agreement;

**4.3.8** Delays occurring due to the acts or omissions of the Owner and those within the control of the Owner, including, but not limited to, Owner's separate contractors.

**4.3.9** Adverse weather conditions not reasonably anticipated.

#### **ARTICLE 5 CONTRACT PRICE**

**5.1 Contract Price.** Owner shall pay Contractor the sum established on the cover page of the Agreement (hereinafter the "Contract Price".)

**5.2 Markups for Changes.** If the Contract Price requires an adjustment due to changes in the Work, the following markups shall be allowed on such changes: 15%.

**5.3 Escalation.** Pricing is based on the current applicable craft wages and scheduled increases which are known at the time of the Agreement. Contractor's material pricing, if applicable, is based on our suppliers' current pricing and availability at the time of the quotation and is valid through Proposal expiration. Contractor agrees to use its best efforts to obtain the lowest possible prices from available labor, materialmen, suppliers and vendors, but should there be an increase in the prices of labor, materials or equipment not reasonably foreseen or anticipated by Contractor, Owner agrees to pay that cost increase to Contractor as well.

**5.4 Applications for Payment.**

**5.4.1** Where the first page of this Agreement identifies a payment schedule, invoices will be submitted pursuant to the payment schedule and due upon receipt.

**5.4.2** Where the first page of this Agreement does not identify a specific payment schedule, Applications for Payment

will be submitted on a monthly basis and that portion of the Work performed in the month will be invoiced on the 25<sup>th</sup> day of each month and payment shall be made no later than the 15<sup>th</sup> day of the following month. Applications for Payment will subdivide the amount requested utilizing the categories in the parties' agreed Schedule of Values (Exhibit D). The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances. Changes, where performed and agreed upon, may be invoiced in the first invoice following the parties' execution of the change order.

**5.5 Failure of Payment; Interest.** If the Owner does not pay Contractor within seven (7) Days after the date established herein the amount set forth in the Application for Payment (or such lesser amount as the Owner claims in good faith is due in accordance with the provisions hereof), then Contractor may stop the Work with respect to nonpayment of undisputed amounts until payment of such amount owing has been received. The Schedule and Contract Price shall be equitably adjusted on account of such stoppage, including, but not limited to, compensation for shut-down, delay and start-up. In addition, all amounts due and unpaid shall bear interest at 18% per annum from the date payment is due until paid.

## **ARTICLE 6 CHANGES IN THE WORK; CLAIMS**

### **6.1 Change Orders.**

**6.1.1** A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the extent of the adjustment to the Contract Price; and the extent of the adjustment to the Schedule.

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

**6.1.3** If Owner requests a proposal for a change in the Work from Contractor and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Contractor for reasonable costs incurred for estimating services involved in the preparation of proposed revisions to the Contract Amount.

**6.2 Emergencies.** In any emergency affecting the safety of persons and/or property, Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Schedule on account of emergency work shall be determined as provided in this Article.

**6.3 Change Orders on Account of Differing Site Conditions.** If the Contractor encounters conditions, in addition to the increase in the Contract Price on account of delay costs incurred by the Contractor, the Contract Price shall also be increased by the additional costs (including the agreed markup) attributable to such conditions which would not have been incurred but for such conditions.

**6.4 Time Extensions on Account of Change Orders.** The Contractor shall be entitled to a time extension in connection with any Change Order to the extent its time of performance is extended due to such Change Order.

## **ARTICLE 7 CORRECTION OF WORK**

**7.1 Correction of Work Prior to Completion.** Prior to the date of Substantial Completion, the Contractor shall correct Work which (a) the Owner reasonably rejects as being defective or nonconforming to the requirements of the Contract Documents in a written notice delivered to the Contractor or (b) the Contractor recognizes is defective or nonconforming to the Contract Documents. If other portions of the Work are adversely affected by or are damaged by such defective Work, the Contractor shall also correct, repair or replace such affected or damaged Work, as well as any other property of the Owner or others damaged by such defective or nonconforming Work

**7.2 Correction of Work After Completion.** For defects identified by the Owner and for which the Owner has notified the Contractor within a period of twelve (12) months after the date of Substantial Completion, or within such longer period as may be provided by special warranties contained in the Contract Documents, the Contractor shall re-execute, correct, repair or replace all Work found to be defective or nonconforming to the Contract Documents. If other portions of the Work adversely affected by or damaged by such defective Work, the Contractor shall also correct, repair or replace such affected or damaged Work, as well as any other property of the Owner or others damaged by such defective or nonconforming Work.

**7.3 Acceptance of Nonconforming Work.** If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction.

## ARTICLE 8 INSURANCE

**8.1 Contractor's Insurance.** Contractor is responsible for procuring and maintaining from insurance companies authorized to do business in the state in which the Project is located, the following insurance coverages for certain claims which may arise from or out of the performance of the Work and obligations under the Contract Documents:

**8.1.1** Commercial General Liability Insurance in the amount of Two Million and 00/100ths Dollars (\$2,000,000.00) including coverage for blanket broad form contractual liability, broad form property damage and personal injury, and products/completed functions. Contractor shall provide Owner with an Additional Insured Endorsement on ISO form CG2010 1185 or on the combination of ISO Forms CG 20 10 (Ed. 07/04) and CG 20 37 (Ed. 07/04) naming Owner as an Additional Insured thereunder.

**8.1.2** Worker's Compensation Insurance of not less than \$1,000,000 for each occurrence, \$1,000,000 Disease for each occurrence, and \$1,000,000 Policy Limit covering: worker's compensation, disability benefit and other similar employee benefit acts applicable to the Work;

**8.1.3** Comprehensive Automobile Liability (Including coverage for liability arising out of owned, non-owned, and hired autos): Bodily Injury Liability, \$1,000,000 anyone accident/\$1,000,000 anyone occurrence; Property Damage Liability and Loss of use thereof, \$1,000,000 anyone occurrence.

**8.1.4** Umbrella Liability: \$2,000,000 combined single limit anyone occurrence in excess of and concurrent to the above comprehensive General Liability and Auto Liability. Aggregate limit of \$2,000,000.

### **8.2 Owner's Insurance**

**8.2.1** Commercial General Liability Insurance in the amount of Two Million and 00/100ths Dollars (\$2,000,000.00) including coverage for blanket broad form contractual liability, broad form property damage and personal injury, and products/completed functions. Owner shall provide Contractor with an Additional Insured Endorsement on ISO form CG2010 1185 or on the combination of ISO Forms CG 20 10 (Ed. 07/04) and CG 20 37 (Ed. 07/04) naming Contractor as an Additional Insured thereunder.

**8.2.2** Umbrella Liability: \$2,000,000 combined single limit anyone occurrence in excess of and concurrent to the above comprehensive General Liability and Auto Liability. Aggregate limit of \$2,000,000.

**8.2.3 Builder's Risk Insurance.** Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located Builder's Risk "all-risk" insurance written on a completed value basis form in the amount of the full replacement cost of the Project which shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of losses: fire, lightning, extended coverage, theft, vandalism, and malicious mischief, earthquake, collapse, debris removal, mitigating expenses, expediting expenses, mechanical breakdown/boiler explosion/artificially generated electric current, demolition occasioned by enforcement of Legal Requirements, delay/ loss of use/ loss of market, ensuing loss or damages caused by professional services error, and water damage/other liquids/powder/molten material damage (other than that caused by flood). The Policy shall name the Owner, Contractor, and subcontractors and suppliers of every tier as Named Insureds, shall include a waiver of subrogation as to all Named Insureds. The Policy shall permit Owner to occupy the Project while construction is being completed and thereafter until the Contractor is released for up to ninety (90) consecutive days and for more the ninety (90) consecutive days with written consent of insurer. The Policy shall not include "as their interests may lie" terms and no severability or "Multiple Insureds Clause" terms. Any deductible under the Policy shall be paid by the insured that incurred the covered loss.

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

**8.2.5** Any loss covered under Owner's insurance shall be adjusted with Owner and Contractor and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach.

**8.3 Waiver of Subrogation.** Owner and Contractor waive against each other and Owner's separate contractors, design consultants, subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided

herein, except such rights as they may have to the proceeds of such insurance. Contractor and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, design consultants and subcontractors and shall require each of them to include similar waivers in their contracts.

## **ARTICLE 9 PROTECTION OF PERSONS AND PROPERTY**

**9.1 Safety Precautions and Programs.** Contractor shall implement and enforce on site a policy for safety that complies with the statutes, regulations and/or ordinances any Federal, State or local governmental authority having jurisdiction over the Project or the Work. Contractor shall provide reasonable protection to prevent damage or loss to the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site under care, custody or control of the Contractor; and other property at the Real Estate or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Work.

## **ARTICLE 10 DISPUTES**

**10.1 Disputes between Owner and Contractor.** In the event of any dispute arising between the Owner and the Contractor regarding any part of the Agreement or the Contract Documents, or the Parties' obligations or performance thereunder, either Party may institute the dispute resolution procedures set forth herein. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.

**10.2 Dispute Resolution Procedures.** Any Party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. Such meeting shall be held at the **location where the work is to be performed** within three (3) working Days of written **notice** therefore, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by the Owner's Authorized Representative, the Contractor's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. If the dispute has not been resolved **at the meeting, dispute resolution shall occur through litigation in a court of competent jurisdiction located either in Johnson County, Indiana, or the Federal District Courts for the Southern District of Indiana.**

## **ARTICLE 11 EVENTS OF DEFAULT AND REMEDIES; TERMINATION**

**11.1 Contractor Events of Default.** The following shall be considered "Contractor Events of Default":

**11.1.1** if the Contractor persistently (more than once) fails or neglects to carry out the Work in accordance with the provisions of the Contract Documents, and fails, after seven (7) Days' written notice from the Owner, to commence a cure to correct such failure or neglect and thereafter diligently pursue such cure to completion;

**11.1.2** if the Contractor materially breaches this Agreement and fails, after seven (7) Days' written notice from the Owner, to commence a cure to correct such breach and thereafter diligently pursues such cure to completion (such breach to include, but not be limited to, failure to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and Subcontractors or persistent disregard of Legal Requirements)

**11.1.3** if a custodian, trustee or receiver is appointed for the Contractor, or if the Contractor becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Contractor causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Contractor, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Contractor, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

**11.2 Remedies of the Owner upon a Contractor Event of Default.** Upon the occurrence of a Contractor Event of Default, the Owner shall have the right to terminate this Agreement upon an additional seven (7) Days written notice to the Contractor, provided that the Contractor has not commenced a cure within such seven (7) Day period. Without prejudice to any other rights or remedies of the Owner, the Owner may:

**11.2.1** take possession of the Site and of all materials thereon delivered for incorporation into the Work;

**11.2.2** accept assignment of the Subcontracts; and

**11.2.3** finish the Work by whatever reasonable method the Owner may deem expedient.

When the Owner terminates the Agreement as aforesaid, the Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds costs incurred in finishing the Work, such excess shall be paid

to the Contractor, up to the amount due the Contractor to date. If such costs exceed the unpaid balance of the Contract Price, the Contractor shall pay the difference to the Owner.

**11.3 Owner Events of Default.** The following shall be considered "Owner Events of Default":

**11.3.1** if the Work is stopped for a period of sixty (60) Days through no act or fault of the Contractor for any of the following reasons:

**11.3.1.1** issuance of an order of a court or other public authority having jurisdiction;

**11.3.1.2** an act of government, such as a declaration of national emergency, making material unavailable;

**11.3.2** if the Work is stopped for a period of thirty (30) Days through no act or fault of the Contractor because the Owner has not made payment of undisputed amounts set forth in an Application for Payment within the time stated in the Contract Documents;

**11.3.3** the financing arrangements of the Owner are unsatisfactory to the Contractor; or

**11.3.4** if a custodian, trustee or receiver is appointed for the Owner, or if the Owner becomes insolvent or bankrupt, is generally not paying its debts as they become due or makes an assignment for the benefit of creditors, or the Owner causes or suffers an order for relief to be entered with respect to it under applicable Federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for the Owner, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Owner, and in any of the foregoing cases such action is not discharged or terminated within sixty (60) Days of its institution.

**11.4 Remedies of the Contractor upon an Owner Event of Default.** If an Owner Event of Default exists and is continuing, the Contractor may, upon seven (7) Days written notice to the Owner, terminate the Agreement and recover from the Owner payment for Work performed and for proven loss with respect to materials, equipment tools, construction equipment and services rendered, including reasonable overhead and profit.

**11.5 Remedies not Exclusive.** Except as otherwise provided in this Agreement, no remedy under the terms of this Agreement is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing shall impair any such right or power nor shall it be construed to be a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time as often as may be deemed expedient.

## **ARTICLE 12 MISCELLANEOUS PROVISIONS**

**12.1 Governing Law.** This Agreement shall be governed by the laws of the State of Indiana without regard to the conflict of laws provisions of that state.

**12.2 Successors and Assigns.** The Owner and the Contractor respectively bind themselves, their partners, shareholders, successors, assigns and legal representatives to the other Party hereto and to shareholders, successors, assigns and legal representatives of such other Party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither Party shall assign the Agreement as a whole without the written consent of the other Party. If either Party attempts to make such an assignment without such consent, that Party shall nevertheless remain legally responsible for all of its obligations under the Agreement and the Contract Documents.

**12.3 Written Notice.** Written notice shall be deemed to have been duly served on the day after deposit if delivery by overnight courier, or two (2) Days after deposit if delivery by placing in the United States mail, first class and certified, return receipt requested with postage prepaid. All notices shall be addressed to the appropriate Authorized Representative.

**12.4 Modifications.** No modifications or Change Orders shall be valid unless in writing and signed by the Owner and the Contractor or their respective permitted successors and assigns. The Contractor and the Owner agree to make modifications to this Agreement if requested by the Owner's lender(s), provided such modifications do not adversely affect the costs and/or risks and/or time of performance of the Work.

**12.5 Severability.** If any provision of this Agreement is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein contained inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof, and they shall otherwise remain in full force and effect.

**12.6 Waiver of Consequential Damages.** Each party waives and releases the other from and against all claims for consequential or incidental damages arising from or relating to this Agreement or the performance or non-performance thereunder including but

not limited to any damages incurred due to financing, loss of use, loss of income or profits (other than directly related to the performance of the Work), loss of rentals, or loss of reputation.

**12.7 Jointly Drafted.** The parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

**12.8 Whole Agreement.** This Agreement, the Exhibits hereto and the Contract Documents shall constitute the entire agreement between the Parties, and no inducements, considerations, promises or other references shall be implied in this Agreement that are not expressly addressed herein.

[The rest of this page is intentionally blank.]

**Exhibit B: Scope of Work**

See attached Request for Proposal response (RFP) dated March 26, 2026 for scope of work summary

**Exhibit C: Labor and Owned Equipment Rates**

#### **Exhibit D: Schedule of Values**

Schedule of Values to be provided based on Request for Proposal Attachment A: Pricing Worksheet that was provided with RFP at bid time and approved by Owner prior to first pay application.

Due to the specialty nature of the project, the Schedule of Values will include a line item for the Myrtha Pools liner material cost of **(\$326,430)** and well as Myrtha liner certified installer mobilization cost **(\$96,875)**.

**See Exhibit Item "F" for Specialty Product Payment Terms**

## **Exhibit E: Construction Schedule**

Timeline is based on RFP with a tentative start date of August 3, 2026 and completion 8 weeks later, which is September 25, 2026.

### Exhibit "F" Specialty Product Payment Terms

Due to the specialty of the materials being used on the job, Myrtha Pools and a certified Myrtha installer both require special payment terms noted below.

Due to the specialty nature of the materials used on the project, Myrtha Pools requires a full payment of materials **(\$326,430)** prior to shipment as well as the certified Myrtha Pools liner installer requires a mobilization deposit of **(\$96,875)**.