

INTERNAL COPY

TECHNICAL PROPOSAL FOR I-65 / I-70 NORTH SPLIT PROJECT

March 10, 2020 • Submitted by:
Superior Construction Co., Inc.

**VOLUME 1 APPENDIX:
EXECUTED CONTRACTS OR
TERM SHEETS / HEADS OF TERMS**

SUPERIOR
CONSTRUCTION



EXHIBIT E

East Dayton
100' x 40' sign

EXHIBIT E

SUMMARY AND ORDER OF PROPOSAL CONTENTS

Technical Proposal – Volumes 1 and 2		
Technical Proposal Component	Form (if any)	ITP Section Cross-Reference
Volume 1		
A. Executive Summary		
Executive Summary (Exclude price information)	No forms are provided	<u>Exhibit B, Section 3.1</u>
B. Proposer Information, Certifications and Documents		
Proposal Letter	<u>Form A</u>	<u>Exhibit B, Section 3.2.1</u>
Authorization Documents	No forms are provided	<u>Exhibit B, Section 3.2.1</u>
Identification of Proposer and Equity Members	<u>Form B-1</u>	<u>Exhibit B, Section 3.2.2</u>
Information About Proposer Organization	<u>Form B-2</u>	<u>Exhibit B, Section 3.2.2</u>
Information About Major Participants and Identified Subcontractors	<u>Form B-3</u>	<u>Exhibit B, Section 3.2.2</u>
Letter accepting joint and several liability, if applicable	<u>No forms are provided</u>	<u>Exhibit B, Section 3.2.2</u>
Responsible Proposer and Major Participant Questionnaire	<u>Form C</u>	<u>Exhibit B, Section 3.2.3</u>
Industrial Safety Record for Proposer, Equity Members and Major Participants	<u>Form D (as applicable)</u>	<u>Exhibit B, Section 3.2.4</u>
Personnel Work Assignment Form and Commitment of Availability	<u>Form E</u>	<u>Exhibit B, Section 3.2.5</u>
Letter(s) Regarding Pre-Proposal Submittals	No forms are provided	<u>Exhibit B, Section 3.2.6</u>
Non-Collusion Affidavit	<u>Form F</u>	<u>Exhibit B, Section 3.2.7</u>
DBE Certification	<u>Form G</u> No forms are provided for the DBE Project Plan or Job Training Plan	<u>Exhibit B, Section 3.2.8</u>

Technical Proposal – Volumes 1 and 2		
Technical Proposal Component	Form (if any)	ITP Section Cross-Reference
Conflict of Interest Disclosure	<u>Form H</u>	<u>Exhibit B, Section 3.2.9</u>
Certification regarding Buy America	<u>Form Q</u>	<u>Exhibit B, Section 3.2.10</u>
Certification regarding Equal Employment Opportunity	<u>Form R</u>	<u>Exhibit B, Section 3.2.11</u>
Use of Contract Funds for Lobbying Certification	<u>Form S</u>	<u>Exhibit B, Section 3.2.12</u>
Debarment and Suspension Certification	<u>Form K</u>	<u>Exhibit B, Section 3.2.13</u>
Guarantor Commitment Letter	<u>Form P</u>	<u>Exhibit B, Section 3.2.14</u>
Insurance	No forms are provided	<u>Exhibit B, Section 3.2.15</u>
Confidential Contents Index	No forms are provided	<u>Exhibit B, Section 3.2.16</u>
Preliminary DBE Project Plan	No forms are provided	<u>Exhibit B, Section 3.2.17</u>
Prequalification Identification	<u>Form U</u>	<u>Exhibit B, Section 3.2.19</u>
C. Proposal		
Stipend Agreement	<u>Form N</u>	<u>Exhibit B, Section 3.2.18</u>
Volume 2		
F. Preliminary Performance Plans		
Preliminary Project Management Plan	No forms are provided	<u>Exhibit B, Section 4.1</u>
Project Management Approach	No forms are provided	<u>Exhibit B, Section 4.1.1</u>
Preliminary Project Baseline Schedule Narrative	No forms are provided	<u>Exhibit B, Section 4.1.2(a)</u>
NTP + 180 Schedule Narrative	No forms are provided	<u>Exhibit B, Section 4.1.2(b)</u>

Technical Proposal – Volumes 1 and 2		
Technical Proposal Component	Form (if any)	ITP Section Cross-Reference
Preliminary Quality Management Plan	No forms are provided	<u>Exhibit B, Section 4.1.3</u>
Safety and Environmental Management	No forms are provided	<u>Exhibit B, Section 4.1.4</u>
Public Information Plan	No forms are provided	<u>Exhibit B, Section 4.1.5</u>
Preliminary Design-Build Plan	No forms are provided	<u>Exhibit B, Section 4.2</u>
Preliminary Transportation Management Plan	No forms are provided	<u>Exhibit B, Section 4.2.1</u>
Bridge Structures, Retaining Walls, Sound Barriers and Other Structures	No forms are provided	<u>Exhibit B, Section 4.2.2</u>
Roadway Elements	No forms are provided	<u>Exhibit B, Section 4.2.3</u>
Utility Adjustment Work Elements	No forms are provided	<u>Exhibit B, Section 4.2.4</u>
Drainage Design and Culvert Replacement	No forms are provided	<u>Exhibit B, Section 4.2.5</u>
Total Project Duration	<u>Form L</u>	<u>Exhibit B, Section 4.3</u>
Maximum Closure Durations	<u>Form T</u>	<u>Exhibit B, Section 4.3</u>
G. Volume 1 Appendices		
Copies of Organizational Documents	No forms are provided	<u>Exhibit B, Section 3.2.2</u>
Proposer Teaming Agreement or Key Terms	No forms are provided	<u>Exhibit B, Section 3.2.2</u>
Executed Contracts or Term Sheets/Heads of Terms	No forms are provided	<u>Exhibit B, Section 3.2.2</u>
H. Volume 2 Appendices		
Technical/Design Drawings, Graphs and Data	No forms are provided	<u>Exhibit B, Section 2</u>
Key Personnel Resumes	No forms are provided	<u>Exhibit B, Section 3.2.5</u>

Technical Proposal – Volumes 1 and 2		
Technical Proposal Component	Form (if any)	ITP Section Cross-Reference
Landscape Architecture Firm Description	No forms are provided	<u>Exhibit B, Section 3.2.18</u>
Preliminary Project Baseline Schedule	No forms are provided	<u>Exhibit B, Section 4.1.2(a)</u>
I. NTP + 180 Schedule		
NTP + 180 Schedule (Narrative plus Schedule)	No forms are provided	<u>Exhibit B, Section 4.1.2(b)</u>
J. Railroad Coordination Bridge Plans		
Railroad Coordination Bridge Plans	No forms are provided	<u>Exhibit B, Section 4.2.2(d)</u>

Price Proposal – Volume 3		
Price Proposal Component	Form (if any)	ITP Section Cross-Reference
Volume 3		
A. Financial Capacity Information		
Material Changes in Financial Condition	No form provided	<u>Exhibit C, Section 2.1</u>
B. Proposal Security and Surety Information		
Proposal Security	<u>Form J</u> (if in the form of a bond); no forms provided for certified check	<u>Exhibit C, Section 3.1</u>
Surety Information	No forms are provided	<u>Exhibit C, Section 3.2</u>
C. Confidential Contents Index		
Confidential Contents Index	No forms are provided	<u>Exhibit C, Section 4</u>
D. Price Proposal Information		
Price Proposal Form	<u>Form I</u>	<u>Exhibit C, Section 5</u>
Summary Cost Table Form	<u>Form I-1</u>	<u>Exhibit C, Section 5</u>

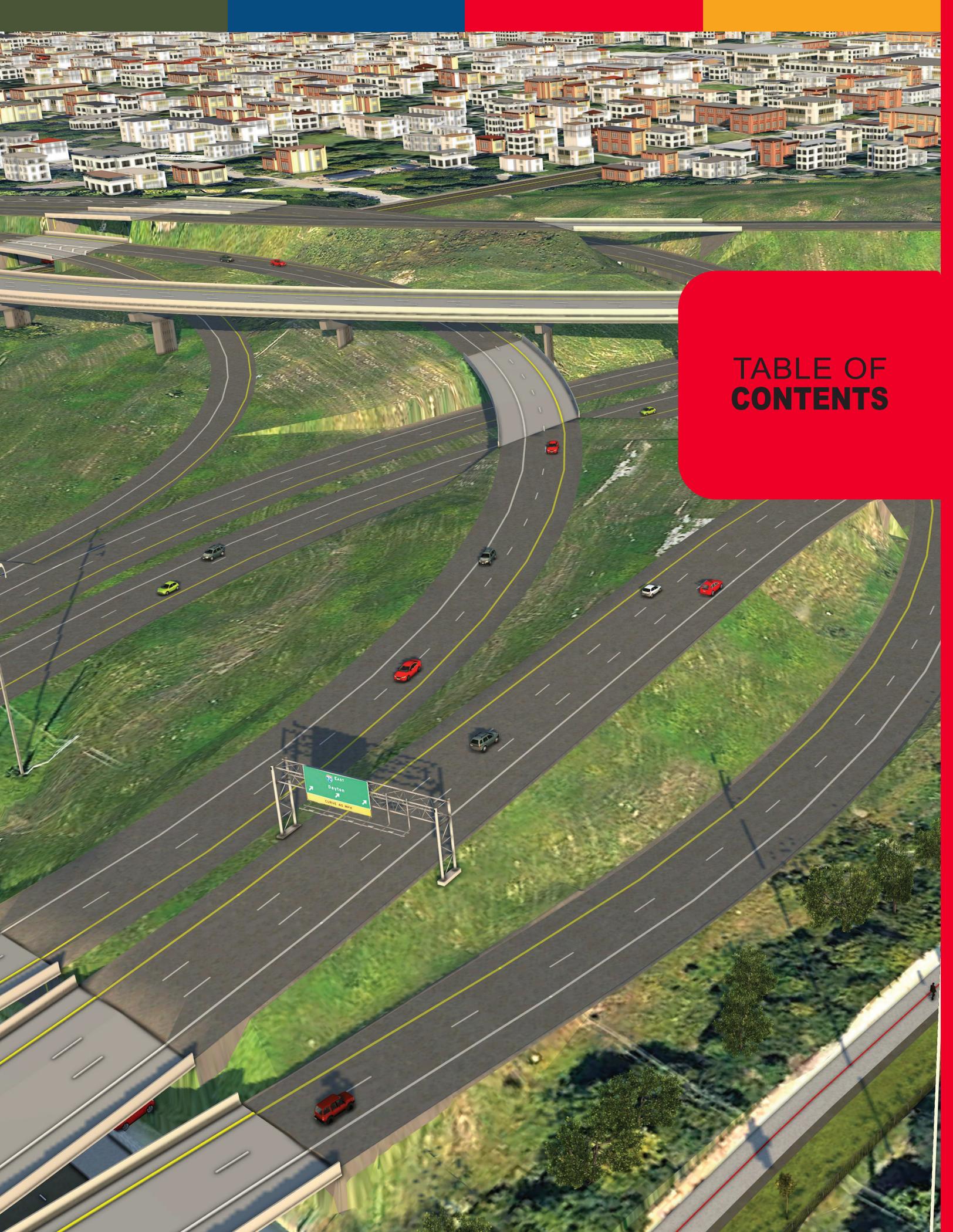


TABLE OF CONTENTS



TABLE OF CONTENTS

Exhibit E

Table of Contents.....

Executed Contracts or Term Sheets / Heads of Terms.....



**EXECUTED CONTRACTS OR
TERM SHEETS / HEADS OF TERMS**



DESIGN-BUILD TEAMING AGREEMENT BETWEEN

Superior Construction Co., Inc. and Janssen & Spaans Engineering, Inc.

This Design-Build Teaming Agreement (“Agreement”), effective 9 March 2020 is by and between Superior Construction Co., Inc. (“Superior”), with its principal place of business at 1455 Louis Sullivan Drive, Portage, Indiana 46368 and Janssen & Spaans Engineering, Inc. (“Designer”) with its principal place of business at 9120 Harrison Park Ct. Indianapolis, IN 46216 . Collectively, all signatories to this Agreement shall hereinafter be referred to as the “Parties” or the “Team” and singularly as a “Party” or a “Team Member.”

RECITALS

WHEREAS, Superior, with Designer’s assistance, cooperation and input, intends to develop and submit a proposal (“Proposal”) to Indiana Department of Transportation (“Owner”) for the I-65/I-70 North Split Project (“Project”);

WHEREAS, Superior does not, in the normal course of its business, design heavy civil projects and must rely on such work being performed by entities that possess the skill and experience necessary to design the type of work anticipated for the Project;

WHEREAS, Designer does, in the normal course of its business, design heavy civil projects and represents that it has the requisite skill, expertise and licensing to provide assistance, cooperation and input for the Proposal and to perform the design services anticipated for the Project;

WHEREAS, Superior and Designer desire to enter into a teaming agreement for the sole and limited purpose of (1) preparing and submitting the Proposal, (2) clarifying the relationship of the Parties in the event Superior is awarded the design-build agreement by Owner for the Project, and (3) defining the rights and obligations among the Parties in connection with the foregoing purposes.

Now, therefore, Superior and Designer in consideration of the mutual covenants and promises set forth herein and other good and valuable consideration, the Parties agree as follows:

I. RELATIONSHIP OF PARTIES

The rights and obligations of the Parties shall be limited to those expressly set forth herein. No Party has the right or authority to act on behalf of the other Party or to take any action that may bind the other Party, without the prior written consent of the other Party. No Party shall have any fiduciary responsibility to the other Party in the performance of its obligations hereunder. No Party shall have any liability or obligation to the other except as expressly provided herein.

The Parties are and shall act as independent contractors. Nothing in this Agreement shall be deemed to constitute, create, give effect to or otherwise recognize a joint venture, partnership, employment relationship or formal business entity of any kind, nor as creating or requiring any ongoing or continuing relationship or commitment among the Parties beyond that specifically created by this Agreement.



Nothing in this Agreement shall be construed as providing for the sharing of profit or losses arising out of the efforts of either Party.

II. QUALIFICATIONS

Designer represents that Designer, its consultants and subconsultants are duly qualified, licensed, registered and authorized by law to perform Designer's services under this Agreement. Each Party is responsible for obtaining and maintaining appropriate licenses to perform the obligations related to this Agreement and the work or services identified in **Exhibit A**.

III. PROPOSAL SERVICES

Each Party agrees to use its professional efforts in the preparation of the Proposal and participation in the Owner's evaluation process associated therewith. Each Party will provide Proposal information and details as required and in sufficient time to submit the bid by the Owner's deadline as stated in Owner's request for quote, as such may be amended by Owner from time to time. Detailed Proposal responsibilities are attached hereto and incorporated herein as **Exhibit A**.

The Parties acknowledge and agree that the Proposal shall be submitted by Superior solely in Superior's name. Superior shall provide overall direction and leadership and shall be the conduit for all communications with the Owner. Superior will have lead responsibility for submission of the Proposal to the Owner in a timely manner and for negotiation of any agreement with Owner for the Project; however, Superior shall not, by this Agreement, be obligated to submit a Proposal.

Each Party is responsible for all costs and expenses incurred by it in connection with (i) preparing the Proposal, (ii) any discussions, interviews or negotiations with the Owner or any third party pertaining to the Proposal, (iii) and any work or services provided by it pursuant to this Agreement or in furtherance of the submission of the Proposal.

No Party shall participate in the bidding process for the Project except as a member of the Team, or participate in the submission of a competing proposal, except as otherwise mutually agreed by all Parties in writing. Notwithstanding the foregoing, in the event the Owner determines that Designer is not an acceptable member of the Team, Superior may participate in the bidding process for the Project with another entity.

IV. COMPENSATION & EXPENSES

In the event Superior submits a Proposal and receives a bid stipend as determined by Owner ("Stipend"), Designer will receive the Stipend to the extent Superior receives payment for the Stipend from the Owner. Receipt of payment from the Owner for the Stipend is a condition precedent to any payment obligation of Superior to Designer under this Agreement. In addition to the Stipend, Designer shall receive a lump sum fee of _____ for performance of pre-bid geotechnical, architecture and environmental engineering services ("Additional Fee") provided Designer completes all of its obligations under this Agreement. Such Stipend and Additional Fee shall be Designer's sole and exclusive compensation for any services or work performed, or costs incurred, in performing its obligations under this Agreement. In the event an agreement is required to be executed with the Owner in order to receive such Stipend ("Stipend

Agreement”), to the extent permitted, Designer shall execute such Stipend Agreement directly and bear all liability and responsibility for the obligations and liabilities contained therein. If the Owner does not permit the Designer to execute the Stipend Agreement directly, and Superior is required to execute the Stipend Agreement in order to receive such Stipend for Designer, Designer shall nonetheless remain responsible for all liability thereunder and assume toward Superior and Owner all obligations and liabilities that Superior is required to assume toward Owner pursuant to such Stipend Agreement.

Superior shall have the right to terminate this Agreement for its convenience before the submission of a Proposal. In the event Superior exercises its right, Superior will compensate Designer for direct out-of-pocket labor costs incurred in performing its obligations under this Agreement, provided such costs are reasonable, necessary and supported by written documentation. However, this compensation shall not exceed the sum of the original Stipend amount, as defined in the Contract Information Book (CIB) or Owner’s Request for Quote and the Additional Fee. Designer shall be responsible for all non-labor expenses and costs incurred in performance of this Agreement.

V. DESIGN SERVICES AGREEMENT TERMS & LIABILITIES

If the Owner accepts Superior’s Proposal and enters into a contract with Superior for the Project (“Prime Contract”), and such Prime Contract includes the work proposed by Designer, Superior shall, in good faith, negotiate a design services agreement for the Project with Designer for Designer to perform such work for the Project (“Design Services Agreement”), in a form substantially similar to Superior’s current standard agreement, a copy of which was previously provided to Designer. Superior agrees to provide Designer with a copy of the Prime Contract within 10 days of its execution. Designer agrees to accept the terms and conditions of the Prime Contract, and the terms and conditions of the Prime Contract shall be incorporated, without amendment, into the Design Services Agreement between Superior and Designer.

Designer further agrees that, if it enters into a Design Services Agreement with Superior, its compensation for all services performed under the Design Services Agreement will be a lump sum fee of Designer agrees that a material term of the Design Services Agreement is that payment by the Owner to Superior for any services performed by the Designer thereunder shall be a condition precedent to any payment obligation of Superior to the Designer, and Designer agrees to accept the risk of the Owner’s non-payment.

VI. INDEMNIFICATION

To the maximum extent permitted by applicable law, the Parties agree to indemnify and hold each other harmless from any liabilities, and damages (including reasonable attorney’s fees) to the extent caused by the negligence of the indemnifying Party in performance of services under this Agreement.

VII. CONSULTANTS & ASSIGNMENT

Designer shall not secure the services of a third party consultant or subconsultant without the prior written consent of Superior. In the event Superior consents to Designer’s use of a third party consultant or subconsultant to perform work within the base scope of this Agreement or included within the services performed for the Additional Fee, Designer shall be solely liable for the third party consultant’s or subconsultant’s fees and expenses. For any other third party consultants or subconsultants that Superior directs

Designer to hire, or that may be necessitated by changes or information issued by the Owner, Designer shall be compensated by Superior for such consultant's fees and expenses, provided Designer obtains advance written consent from Superior as to the identification of such consultant, the scope of its services, and maximum amount to be paid to such consultant.

No Party may assign this Agreement or any interest herein, in whole or in part, without the prior written consent of the other Party.

VIII. CONFIDENTIALITY

Designer acknowledges and agrees that, during the course of performance of this Agreement, Designer may possess or have access to Superior's confidential information, including but not limited to any information (including any technical information, experience or data) regarding Superior's plans, processes, products, costs, equipment, operations or customers (hereinafter referred to as "Superior Confidential Information"). Designer acknowledges and agrees that it shall not disclose any Superior Confidential Information to any person or entity, except to the extent necessary to perform the services or fulfill Designer's obligation under this Agreement. In such event, Superior Confidential Information shall only be used for purposes of completing the services or fulfilling Designer's obligations under this Agreement, and any person or entity to whom such Superior Confidential Information is provided shall be bound by the provisions of this subparagraph. Notwithstanding the foregoing, Designer shall not be prevented from disclosing or using any information that Designer can show has become a part of the public domain (other than by acts or omissions of Designer), has been lawfully furnished or made known to Designer by third parties (other than those acting directly or indirectly for Superior) without restriction as to its use, or was in Designer's possession at the time Designer entered into this Agreement and was not acquired directly or indirectly from Superior. Designer understands and agrees that, because of the unique and sensitive nature of the Superior Confidential Information, Superior shall suffer immediate, irreparable harm in the event Designer fails to comply with the obligations stated in this Section, and that monetary damages shall be inadequate to compensate Superior for such breach. Accordingly, Designer agrees that Superior shall be entitled, in addition to any other remedies available to it at law or in equity, to seek injunctive relief and to enforce the terms hereof. In addition to all other damages and remedies, Designer shall be responsible for the reasonable attorneys' fees and expenses incurred by Superior in enforcing the terms of this Section against Designer.

IX. OWNERSHIP OF WORK

Designer acknowledges that it has read the Owner's Request for Proposals, including but not limited to Sections 21.7 and 21.8 of the proposed Public-Private Agreement ("PPA"), and any addenda thereto, and Designer agrees to be bound by the provisions of the PPA with respect to any documents prepared, created, generated, or used by Designer, and any of Designer's intellectual property or instruments of service. Designer acknowledges and agrees that, subject to Section 21.8 of the PPA, all documents, including but not limited to all data, sketches, charts, calculations, plans, specifications, electronic files, correspondence, reports, analyses, studies, Design Documents, Construction Documents, and other documents and materials created or collected under the terms of the PPA Documents shall be owned by the Owner. In accordance with Section 21.8 of the PPA, Designer also agrees to provide to Owner a nonexclusive, transferable, irrevocable, royalty-free, fully paid up right and license to use, reproduce, modify, adapt, and disclose, and sublicense others to use, reproduce, modify, adapt, and disclose, the Proprietary Intellectual Property (as defined in the PPA) of Designer. To the

extent Owner subsequently requires additional or different rights, licenses or ownership interests in Proprietary Intellectual Property, Designer agrees to be bound thereby.

Designer also grants to Superior the same nonexclusive, transferable, irrevocable, royalty-free, fully paid up right and license to use, reproduce, modify, adapt, and disclose, and sublicense others to use, reproduce, modify, adapt, and disclose, the Proprietary Intellectual Property of Designer that Designer grants to Owner pursuant to the PPA.

X. TERMINATION

This Agreement shall terminate upon the occurrence of any of the following events:

1. If, prior to submittal of the Proposal, Superior terminates this Agreement; or
2. If Superior decides not to submit a proposal or bid for the Project; or
3. The Proposal expires by its own terms as of a given date unless such term is extended by agreement of the Parties; or
4. Cancellation of the request for proposal by Owner; or
5. The Owner advises that no award to any bidder will be made or the Owner abandons the Project; or
6. Rejection by Owner of the proposal submitted by Superior; or
7. The Owner advises Superior that Designer is not an acceptable member of the Team; or
8. Award of the Project by Owner to another bidder; or
9. Either Party filing or failing to discharge an involuntary petition in bankruptcy or reorganization, making a general assignment to creditors, or becoming insolvent; or
10. Either Party being acquired by or merged with an entity having a conflict of interest in connection with the pursuit of the Project; or
11. The execution of Design Services Agreement between Superior and Designer for the Project; or
12. Twenty-four months after formal issuance of the Owner's request for quote for the Project, unless extended by written agreement of the Parties; or
13. Mutual agreement of the Parties.

Notwithstanding any termination of this Agreement, the rights and obligations of each Team Member with respect to Indemnity and Superior Confidential Information shall survive termination of this Agreement.

XI. REMEDY FOR BREACH AND LIMITATIONS OF LIABILITY

In the event of breach of this Agreement by Superior, it is agreed that the remedy of Designer shall be limited to the recovery of its direct costs and applicable overhead expended in performing its obligations under this Agreement, and there shall be no liability for loss of present or prospective profits or any other incidental, consequential, or special damages. Notwithstanding the foregoing, in no event shall Superior's total liability to Designer arising out of or in any way related to this Agreement, or any breach of this Agreement, exceed the original Stipend amount, as defined in the Contract Information Book (CIB) or Owner's Request for Quote. Designer agrees to waive all claims for any consequential, incidental, special or punitive damages that may arise out of or relate to this Agreement, including but not limited to loss of business, loss of financing, loss of profits, loss of reputation, or insolvency, regardless of whether arising out of contract, tort, strict liability or otherwise. The provisions of this section shall also apply to the termination of this Agreement and shall survive such



termination. The foregoing waiver of consequential damages does not apply to any subsequent Design Services Agreement the Parties may negotiate with respect to the Project, or any work performed under such agreement.

XII. CORRESPONDENCE & NOTICE

Any notice required or permitted to be given under this Agreement shall be deemed served upon receipt if sent by registered mail, courier or email to the following addresses or such other addresses as the Parties may designate in writing. Any notice by Designer sent via email must be sent to Superior's Representative in order for such notice to be valid:

For Superior Construction Company, Inc.:
1455 Louis Sullivan Drive
Portage, Indiana 46368
Attn: Daniel J. Sopczak, President
Telephone: (219) 787-0850
Fax: (219) 763-9998
Email:

For Designer:
[Insert Address]

XIII. EXTENT OF AGREEMENT, AMENDMENT & WAIVER

This Agreement is exclusively for the benefit of the Team and shall not be interpreted or construed as conferring any rights or causes of action upon any person or entity not a Party. This Agreement represents the entire agreement between the Parties. It supersedes all prior or contemporaneous oral or written communications, proposals, representations and warranties and prevails over any conflicting or additional terms of any acknowledgment or other communication between the Parties relating to its subject matter during the term of this Agreement.

Any amendment to this Agreement shall be in writing and signed by the duly authorized representative of each Party.

No Party shall be deemed to have waived any provision of the Agreement, unless such waiver shall be in writing and signed by the waiving Party. No waiver shall be deemed to be a continuing waiver, unless expressly stated in writing.

XIV. MISCELLANEOUS PROVISIONS

Any provision of this Agreement prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions of this Agreement. The Parties to this Agreement expressly agree that this Agreement was jointly drafted, and that 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.



This Agreement shall be governed by and construed in accordance with the laws of the State where the Project is located.

The following Exhibit is attached to this Agreement and incorporated herein by reference:

Exhibit A: Scope of Work

Scope of Services:

- 1.
- 2.
- 3.
- 4.

Inclusions:

- 1.
- 2.
- 3.

Optional Scope:

- 1.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set for the above.

Superior Construction Co., Inc.

Janssen & Spaans Engineering, Inc.

By:

By:





Daniel J. Sopczak

Abe Swidan

Title: President

Title: President

Date: 3/9/2020

Date: 3/9/2020