

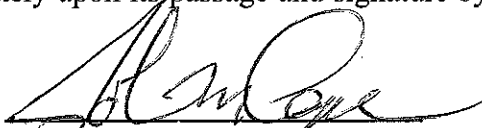
ORDINANCE NO. 98-19

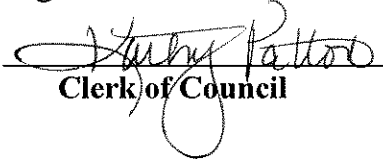
AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE BOARD OF COMMISSIONERS OF MEDINA COUNTY, OHIO TO SHARE COSTS OF PROFESSIONAL DESIGN, PLANNING AND CONSTRUCTION MANAGEMENT SERVICES FOR THE JOINT CONSTRUCTION AND MANAGEMENT OF A COUNTY-CITY COURTHOUSE, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:

- SEC. 1:** That the Mayor is hereby authorized and directed to enter into an Agreement to Share Costs of Professional Design, Planning and Construction Management Services for the Joint Construction and Management of a County-City Courthouse.
- SEC. 2:** That a copy of the Agreement is marked Exhibit A, attached hereto and incorporated herein.
- SEC. 3:** That the funds to cover the Agreement in the amount not to exceed \$133,000.00 to Brandstetter and Carroll Architects are available as follows: \$66,500.00 in Account No. 169-0705, and \$66,500.00 in Account No. 301-0707.
- SEC. 4:** That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.
- SEC. 5:** That this Ordinance shall be considered an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the further reason services are currently being provided on the project; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and signature by the Mayor.

PASSED: June 24, 2019

SIGNED: 
President of Council

ATTEST: 
Clerk of Council

APPROVED: June 25, 2019

SIGNED: 
Mayor



Exh. A
Final 7-Jun-2019

ORD. 98-19

**AGREEMENT TO SHARE COSTS OF PROFESSIONAL
DESIGN, PLANNING AND CONSTRUCTION MANAGEMENT SERVICES
FOR THE JOINT CONSTRUCTION AND MANAGEMENT
OF A COUNTY-CITY COURTHOUSE**

This Agreement (the "Agreement") is made and entered into as of the 25th day of June, 2019, by and between the **BOARD OF COMMISSIONERS OF MEDINA COUNTY, OHIO** (the "County"), a county duly organized and validly existing under the laws of the State of Ohio, and the **CITY OF MEDINA, OHIO**, (the "City"), a municipal corporation duly organized and validly existing under its Charter and the laws of the State of Ohio, pursuant to County Resolution No. 190585, adopted by the Board of County Commissioners on June 11, 2019, and City Ordinance No. 98-19, passed by the City Council on June 24, 2019.

RECITALS

WHEREAS, Section 153.61 of the Revised Code provides that a county and a municipal corporation may enter into an agreement providing for the joint construction, acquisition or improvement of any public work, public building or other permanent improvement benefiting the parties thereto and providing for the joint management, occupancy, maintenance, and repair thereof; and

WHEREAS, the City has an interest in relocating and updating the City's existing Municipal Court facilities (now located at 135 North Elmwood Avenue, Medina, Ohio 44256), and desires to work with the County to evaluate whether it would be feasible and cost effective to locate the Municipal Court at the site of the existing County Courthouse (the "Courthouse Site"); and

WHEREAS, the County and the City have reached an agreement to share the costs of professional design, planning and construction management services to prepare detailed design specifications for the joint construction of a new combined County/City Courthouse ("New Courthouse") at the site of the existing County Courthouse ("Existing Courthouse") that would accommodate the various divisions of the Medina County Court of Common Pleas and the Medina Municipal Court using the construction manager at risk procurement process set forth in Sections 9.33 through 9.335 of the Revised Code; and

WHEREAS, the County, in accordance with the process set forth in Sections 153.65 through 153.69, has selected the architectural firm of Brandstetter Carroll as the firm most qualified to prepare detailed design and construction plans for the construction of a new courthouse and has negotiated a contract for those services as set forth in the design services contract attached hereto as Exhibit A, and

WHEREAS, the County will be requesting qualifications of construction managers pursuant to the process set forth in Sections 9.33 through 9.335 of the Revised Code and various sections of the Ohio Administrative Code to engage an appropriate construction manager at risk during the design phase; and

WHEREAS, the County and the City have agreed to share the costs of this preliminary planning in the ratio of 75% to be paid by the County and 25% to be paid by the City, unless the City for any reason opts out of the process; and

WHEREAS, the County and City recognize if a joint project is advisable, they will need to negotiate an agreement that conforms with the requirements of R.C. Section 153.61 to allocate responsibilities for the joint construction, ownership, maintenance and operation of a joint facility.

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements set forth, and for other good and valuable consideration, the County and the City agree as follows:

Section 1. **Incorporation of Recitals.** The Recitals set forth above are hereby incorporated into the agreement as if fully re-written herein.

Section 2. **County's Obligations.** The County shall:

- a. Enter into an agreement with Brandstetter Carroll substantially in the form attached hereto as Exhibit A,
- b. Engage a construction manager at risk in accordance with the process set forth in Section 9.33 through 9.335 of the Revised Code and various sections of the Ohio Administrative Code,
- c. Keep the City and the Facilities Planning Taskforce informed of every step of the planning process and include City representatives in all processes, and
- d. Invoice the City for 25% of the costs of architect and construction manager services as soon as practicable after invoices have been received.

Section 3. **City's Obligations.** The City Shall:

- a. Actively participate in the planning process through its representatives to the Facilities Planning Taskforce,
- b. Reimburse the County 25% of the amount paid to the Brandstetter Carroll for design services performed under the agreement attached as Exhibit A,
- c. Reimburse the County 25% of any amount paid to a construction manager at risk engaged by the County in accordance with the process set forth in Section 9.33 through 9.335 of the Revised Code for services rendered during the design phase.

Section 4. **Facilities Planning Taskforce.** A working group has been formed to provide input into the process of evaluating and planning for the renovation of County and City court facilities, known as the "Facilities Planning Taskforce," which consists of County and City representatives (the "Taskforce"). The Taskforce shall continue to meet on a regular basis to oversee the work of the planning professional retained by the County and shall make a recommendation to both the County and the City as to the advisability of a joint project and the next steps forward.

Section 5. **Termination for Convenience.** The City may terminate this agreement by giving written notice to the County, if the City determines, in its sole discretion, that it no longer desires to participate in the joint planning and joint construction of a New Courthouse at the Site. Such termination shall become effective upon the County's receipt of the written notice. Upon



such termination the City shall pay its 25% share of the costs incurred hereunder as of the effective date of termination.

Section 6. Contingencies. Any obligations set forth herein are contingent upon availability of public funds (as determined in the sole discretion of the respective legislative authorities of the County and City). Any joint construction project recommended by the Taskforce is contingent upon the approval of a joint construction agreement that meets the statutory requirements of R.C. Section 153.61 and receives the approval of the legislative authorities of both the County and City in accordance with Ohio law and the City charter.

IN WITNESS WHEREOF, this Agreement is signed the date first written above.

COUNTY OF MEDINA, OHIO

By: [Signature]
County Commissioner

By: [Signature]
County Commissioner

By: [Signature]
County Commissioner

Approved as to Form and Correctness

[Signature]
MICHAEL K. LYONS
Chief Assistant, Civil Division
Medina County Prosecutor's Office

CITY OF MEDINA, OHIO

By: [Signature] 6/25/2019
DENNIS HANWELL, Mayor

Approved as to Form and Correctness

[Signature]
GREGORY A. HUBER
Law Director, City of Medina



REGULAR MEETING – TUESDAY, JUNE 11, 2019

The Board of County Commissioners of Medina County, Ohio met in regular session on this date with the following members present:

Colleen M. Swedyk

William F. Hutson

Patricia G. Geissman

Mrs. Swedyk offered the following resolution and moved the adoption of same, which was duly seconded by Mr. Hutson.

RESOLUTION NO. 19-0585

APPROVING AN AGREEMENT TO SHARE COSTS OF PROFESSIONAL DESIGN, PLANNING AND CONSTRUCTION MANAGEMENT SERVICES FOR THE JOINT CONSTRUCTION AND MANAGEMENT OF A COUNTY-CITY COURTHOUSE

WHEREAS, the Medina County Board of Commissioners and the City of Medina have held ongoing discussions regarding the proposed joint Medina Courthouse Project; and

WHEREAS, Section 153.61 of the Ohio Revised Code provides that a county and a municipal corporation may enter into an agreement providing for the joint construction, acquisition or improvement of any public work, public building or other permanent improvement benefiting the parties thereto and providing for the joint management, occupancy, maintenance and repair thereof; and

WHEREAS, the County and the City have reached an agreement to share the costs of professional design, planning and construction management services to prepare detailed design specifications for the joint construction of a new combined County-City Courthouse that would accommodate the various divisions of the Medina County Court of Common Pleas and the Medina Municipal Court using the construction manager at risk procurement process set forth in Sections 9.33 through 9.335 of the Ohio Revised Code; and

WHEREAS, the County and the City have agreed to share the costs of this preliminary planning with 75% to be paid by the County and 25% to be paid by the City, unless the City opts out of the process for any reason.

NOW, THEREFORE, BE IT RESOLVED by the Medina County Board of Commissioners that the Agreement to Share Costs of Professional Design, Planning and Construction Management Services for the Joint Construction and Management of a County-City Courthouse be approved.

Voting AYE thereon: Mrs. Swedyk, Mr. Hutson and Mrs. Geissman

Adopted: June 11, 2019

Prepared by: County Administrator





AIA[®] Document B101[™] – 2017

Exh. A

Ord. 9819

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the ____ day of May in the year 2019

BETWEEN the Architect's client identified as the Owner:

Medina Ohio Board of Commissioners
144 North Broadway Street
Medina, Ohio 44256t

and the Architect:

Brandstetter Carroll Inc.
1220 West Sixth Street
Cleveland, Ohio 44113

for the following Project:

Renovations & Additions to the existing Medina County Courthouse to include the City of Medina Municipal Court.

The Owner and Architect agree as follows.

The Owner intends to construct additions and renovations to the existing Medina County Courthouse to include County and Municipal Court functions. For the purposes of this Agreement, the cost of the work shall not exceed \$38,000,000, unless modified by the Owner via contract amendment.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

Init.

TABLE OF ARTICLES

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- 12 SPECIAL TERMS AND CONDITIONS**
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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

See Architect's Feasibility Study dated February 2019.

§ 1.1.1 The Owner's program for the Project:

See Architect's Feasibility Study dated February 2019.

§ 1.1.2 The Project's physical characteristics:

See Architect's Feasibility Study dated February 2019.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

\$38,000,000

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

To be Determined.

.2 Construction commencement date:

To be Determined.

.3 Substantial Completion date or dates:

Init.

To be Determined.

.4 Other milestone dates:

To be Determined.

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:

Construction Manager at Risk.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

To be Determined

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:

To be Determined

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

To be Determined

§ 1.1.9 The Owner shall retain the following consultants and contractors:

.1 Geotechnical Engineer:

To be Determined

.2 Land Surveyor:

To be Determined

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:

Nancy K. Nozik, AIA
Brandstetter Carroll Inc.
1220 W. 6th street, Suite 300
Cleveland, Ohio 44113

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1

(.1 Structural Engineer) (.2 Mechanical Engineer) (.3 Electrical Engineer) and 1.1.11.2:

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

To be Determined

.2 Mechanical Engineer:

To be Determined

.3 Electrical Engineer:

To be Determined

§ 1.1.11.2 Consultants retained under Supplemental Services:

To be Determined

§ 1.1.12 Other Initial Information on which the Agreement is based:

See Architect's Feasibility Study dated February 2019.

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 With reference to the Project, Architect agrees with Owner as follows: (a) in the performance of services Architect shall utilize Architect's professional efforts, skill, judgment and abilities in accordance with the common law standard of care for Architects and in manner which is consistent with locally accepted standards for professional skill and care; (b) Architect shall perform services with respect to the Project and take into account applicable laws, regulations, codes and orders of governmental bodies having jurisdiction; to the extent of a conflict in the code the

Architect will use his best judgment. The Architect represents to the Owner that the Architect is financially solvent and possesses sufficient license, authority and personnel to complete the services required hereunder. Architect will correct those services not performed consistent with the foregoing standard without any additional compensation of any sort.

Architect has submitted prior to entering into this Agreement a Project organization chart setting out Architect's personnel, and their responsibilities in connection with this Project, which Architect proposes to use in connection with the performance of its services on this Project. If, at any time after entering into this Agreement, Owner has any reasonable objection to any personnel or consultant employed by Architect proposed to be used in connection with this Project, Architect shall promptly propose substitutes to whom the Owner has no reasonable objection.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. Owner shall have the right to rely on all communications of such representative without any further inquiry or investigation by Owner.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains. The cost shall be considered part of the basic services fee.

§ 2.5.1 Commercial General Liability with policy limits of not less than Two Million (\$ 2,000,000) for each occurrence and at least Two Million (\$ 2,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million (\$ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at State of Ohio statutory limits.

§ 2.5.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million (\$ 2,000,000) per claim and \$2,000,000 (\$ 2,000,000) in the aggregate.

§ 2.5.6 Each insurance policy shall be:

1. Issued by insurance companies authorized to do business in the State of Ohio.
2. Currently rated by A.M. Best as A – IX or better.
3. Until such time as the insurance is no longer required by the Owner and Agency, Architect shall provide the Owner with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Architect, an insurer or surety shall fail to comply with the requirements of this contract,

as soon as Architect has knowledge of any such failure, Architect shall immediately notify the Owner and Agency and immediately replace such insurance with insurance meeting the contract requirements.

§2.5.7 Evidence of Insurance: Prior to the start of any work the architect must provide the following documents to the Owner:

1. Certificate of Insurance
2. Additional Insured Endorsements
3. Policy Cancellation Endorsements

§ 2.5.8 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.5.9 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, electrical civil engineering and landscape architectural services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. In designing the project the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

Init.

§3.1.7 The Architect shall take into account project planning, design, sustainability, operations and procedural standards of the Owner, and will not deviate from these standards unless agreed upon in writing by the Owner.

3.1.8 The Architect shall assist in preparing the request for qualifications for the construction manager at risk and all aspects of the statutory process outlined in Ohio Administrative Code Section 153:1-6-01 and other Sections of the Ohio Administrative Code and Ohio Revised Code to the selection of the construction manager at risk.

3.1.8.1 The Architect shall cooperate with the construction manager at risk during all phases of the project.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project including the feasibility of incorporating environmentally responsible design approaches in accordance with best practices. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible and sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

Init.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager in construction procurement.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner and Construction Manager in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents to prospective bidders requesting their return upon completion of the bidding process and maintaining a log of distribution and retrieval and amounts of deposits if any, received from and returned to prospective bidders;
- .2 procuring the reproduction of bidding documents;
- .3 attending a pre-bid conference for prospective bidders
- .4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an a basic service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5...2.4 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as Basic Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect’s response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect’s decisions on matters relating to aesthetic effect shall have the approval of the Owner.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect’s certification for payment shall constitute a representation to the Owner, based on the

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Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. The Architect's certification for payment constitutes a recommendation to Owner and is not legally binding on Owner.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or unless otherwise specifically stated by Architect of construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by Contractor design professionals.

§ 3.6.4.4 The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 receive from Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, , the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

Supplemental Services

Responsibility

§ 4.1.1.1 Programming

Architect (See Feasibility Report DATED February 2019)

[Redacted]

§ 4.1.1.2 See Article 12.2

Architect included in basic services

[Redacted]

§ 4.1.1.3 Intentionally Left Blank

[Redacted]

§ 4.1.1.4 Existing facilities surveys

Owner

[Redacted]

§ 4.1.1.5 Site evaluation and planning

Architect (Article 3.1) Included in basic services

[Redacted]

§ 4.1.1.6 Building Information Model management responsibilities

NP

[Redacted]

§ 4.1.1.7 Development of Building Information Models for post construction use

NP

[Redacted]

§ 4.1.1.8 Civil engineering

Architect (Article 3.1) Included in basic services

[Redacted]

§ 4.1.1.9 Landscape design

Architect (Article 3.1) Included in basic services

Init.

[Empty box]

§ 4.1.1.10 Architectural interior design excluding furniture and decor
Architect included in basic services

[Empty box]

§ 4.1.1.11 Value analysis
NP

[Empty box]

§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3
By Construction Manager

[Empty box]

§ 4.1.1.13 On-site project representation weekly
Architect included in basic services

[Empty box]

§ 4.1.1.14 Intentionally Left Blank

[Empty box]

§ 4.1.1.15 Intentionally Left Blank

[Empty box]

§ 4.1.1.16 As-constructed record drawings
Architect included in basic services

[Empty box]

§ 4.1.1.17 Post-occupancy evaluation
NP

[Redacted]

§ 4.1.1.18 Facility support services

NP

[Redacted]

§ 4.1.1.19 Tenant-related services

NP

[Redacted]

§ 4.1.1.20 Architect's coordination of the Owner's consultants

NP

[Redacted]

§ 4.1.1.21 Telecommunications/data design

NP

[Redacted]

§ 4.1.1.22 Security evaluation and planning

NP

[Redacted]

§ 4.1.1.23 Commissioning

NP

[Redacted]

§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3

NP

[Redacted]

§ 4.1.1.25 Fast-track design services

NP

Init.

[Empty rectangular box]

§ 4.1.1.26 Multiple bid packages

By Construction Manager

[Empty rectangular box]

§ 4.1.1.27 Historic preservation

NP

[Empty rectangular box]

§ 4.1.1.28 Furniture, furnishings, and equipment design

NP

[Empty rectangular box]

§ 4.1.1.29 Other services provided by specialty Consultants

NP

[Empty rectangular box]

§ 4.1.1.30 Other Supplemental Services

None

[Empty rectangular box]

[Empty rectangular box]

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

See Section 4.1.1

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§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Changes or editing of previously prepared instruments of service necessitated by the enactment or revision of codes, laws or regulations.
- .3 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .4 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .5 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .6 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- ..7 Consultation concerning replacement of Work resulting from fire or other cause during construction;
or,
- .8 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice. Owners shall have no further obligation to compensate the Architect for those services after notice:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 () No limit on reviews. There shall be enough reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor to complete the project.
- .2 Minimum of One hundred fifty (150) plus enough additional visits to complete the project visits to the site by the Architect during construction including meetings with Owner.
- .3 () No limit on inspections. There shall be enough inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents and complete the project.
- .4 () No limit on inspections. There shall be enough inspections for any portion of the Work to determine final completion and complete the project.

§ 4.2.5 Services covered by this Agreement are anticipated to be completed within Forty Eight (48) months of the date of this Agreement. However, if Architect's services extend beyond that time Architect shall not be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish for itself surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials unless the Architect is required to furnish such test inspection or report in occurrence with this Agreement.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5. 10 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5. 11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5. 12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK (See Article 12.1)

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, Construction Management fees, overhead. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques.

§ 6.4 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work or;
- .2 authorize rebidding of the Project within a reasonable time or;
- .3 terminate in accordance with Section 9.5 or;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.5.4, the Architect without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.5.1. The

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Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit instruments of service or any other information or documentation in digital form, they shall endeavor to establish necessary protocol governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. However, Owner is granted a nonexclusive license to use the documents for any purpose the Owner deems necessary.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service for purposes of constructing, using, maintaining, altering and adding to the Project, or any future project of the Owner provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums when due, under this agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material, equipment and other suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, for use in performing services or construction for the Project and any future project of Owner.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, within the period specified by applicable law.

§ 8.1.2 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation in accordance with paragraph 8.2.2. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be by using the Medina County Court of Common Pleas mediation process. A request for mediation shall be in writing, delivered to the other party who shall accept or reject the request within fourteen (14) days.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

Litigation in a court of competent jurisdiction

Other:

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services only if the interruption is not the result of the fault of the Architect. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, together with reimbursable expense then due. The Owner shall without any additional fee be allowed continued use of the Architect's Instruments of service for completing, using and maintaining the project and for any further and/or future projects by Owner.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the laws of the State of Ohio.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction as modified.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors and assigns, to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other. If either party attempts to make such an assignment without consent, such assignment shall not be effective and shall constitute a default under the Contract. Any party assigning its interest pursuant to a properly granted consent of the other party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, Ohio Sunshine Law, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.10 No Waiver: No action or failure to act by the Owner or Architect shall constitute a waiver of any right or duty afforded under this agreement, nor shall any such action or failure to act constitute any approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

§10.11 Counterparts: This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same Agreement.

§10.12 No Limitation: Unless expressly stated otherwise herein, the duties and obligations imposed upon the parties under this agreement, and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties imposed or available at law or in equity.

§10.13 This Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, understandings and negotiations with respect to the subject matter thereof.

§10.14 Architect shall advise Owner where any royalties and license fees required to be paid for the use of a particular design, process or product required by the Design and/or Contract Documents. Architect shall provide alternative and recommendations to accomplish the Project objectives without the use of a particular design, process or a product that requires any royalties and license fees required to be paid. Where any royalties and license fees are required to be paid, Architect shall account for these costs in all cost estimates for the Project. If Architect's or its Consultants services require the payment of any royalty or license fees, these royalties or license fees shall be a part of the Architect's Basic Services Fee and Compensation.

§ 10.10 Betterment

The Architect will not be responsible for any of the cost or expense related to upgrades or enhancements to the Project added at the owner's discretion.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

1. A Fixed Fee of Two Million Six Hundred Sixty Thousand Dollars (2,660,000). This fee is based on a project construction cost of Thirty Eight Million Dollars \$38,000,000. If construction cost exceeds \$38,000,000 or is less than \$38,000,000 the Architect's compensation shall remain at a fixed fee of (\$2,660,000).
2. The project is anticipated to be a joint project between the City of Medina and County of Medina. Should the City not participate in the project the Architect and Owner will negotiate a new fixed compensation for the Architect based on the change in scope of the project.
3. Should the Owner decide to expand the project beyond the Medina County Courthouse the Owner and Architect will negotiate a new fixed compensation for the Architect based on the change in scope of the project.

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

Does not apply.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

See Section 11.6.

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus 0 percent (0 %), or as follows:

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	\$532,000 20)
Design Development Phase	\$399,000 15)
Construction Documents Phase	\$1,064,000 40)
Procurement Phase	\$133,000 5)
Construction Phase	\$532,000 20)

Init.

Total Basic Compensation

\$2,660,000
100
%)

§ 11.6 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

Employee or Category
Rate (\$0.00)

Principal
\$180.00

Senior Registered Architect
\$130.00

Senior Registered Landscape Architect
\$130.00

Senior Professional Engineer
\$130.00

Registered Architect

Init.

\$110.00

Professional Architect
\$110.00

Landscape Architect
\$110.00

City Planner
\$ 95.00

Engineer-in-training
\$ 75.00

Intern Architect
\$ 65.00

Intern Landscape Architect
\$ 65.00

Engineering Designer
\$ 65.00

Resident Inspector
\$ 60.00

Auto CAD/GIS Operator
\$ 65.00

Drafter
\$ 55.00

Clerical
\$50.00

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable expenses are in addition to compensation for basic and additional services which include expenses incurred by the Architect and Architect's consultants directly related to the project. Reimbursable expenses are to be billed against the budget for reimbursable expenses. The budget for reimbursable expenses is _____ and the said reimbursable expenses shall not exceed the _____ budget. The expenses to be reimbursed under this section are as follows, to be billed against the identified budget of _____.

- .1 Transportation and authorized out-of-state travel and subsistence as authorized by owner in writing;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;

- .5 Postage, handling, and delivery;
- .6 All taxes levied on professional services and on reimbursable expenses; and
- .7 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus 0 percent (0 %) of the expenses incurred.

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

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User Notes:

Init.

§ 11.10.1.1 An initial payment of 0 (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thirty (30) days after the invoice date shall bear interest at the rate entered below.

0% zero

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

§ 11.10.2.4 Notwithstanding anything contained in this Agreement to the contrary, Owner shall not be obligated to make any payment (whether a monthly payment or Final Payment) to the Architect hereunder after notification in writing to the Architect, within 30 days of receipt of the Owner's receipt of the Architect's approved invoice, of the existence of any one or more of the following conditions and the failure of the Architect to cure such condition(s) within 14 days of such notification: (1) Architect is in default of any of its material obligations hereunder or otherwise in default under this Agreement; (2) any part of such payment attributable to services which are not performed in accordance with this Agreement; (3) Architect has failed to make payment promptly to consultants or other third parties used in connection with the services for which Owner has made payment to the Architect; Architect agrees or has been found liable for the amounts in binding dispute resolution proceeding; or (4) Owner, in its good faith judgment, reasonably determines that the portion of the compensation then remaining unpaid for a particular phase of the services of the Architect shall not be sufficient to complete the phase in accordance with the Agreement. No additional payments will be due Architect hereunder unless and until Architect, at its sole cost, performs a sufficient portion of the services so that such portion of the compensation then remaining unpaid is reasonably determined by Owner to be sufficient to so complete the services. All amounts not in dispute shall be timely paid to Architect per 11.10.2 herein. If Owner fails to timely dispute any invoice per the terms herein, then the invoices shall be timely paid in full.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

§ 12.1 The responsibility for estimates for Cost of the Work lies with the Construction Manager. Architect to assist and provide recommendations to Construction Manager and Owner.

§ 12.2 Multiple preliminary designs will be developed during the Schematic.

ARTICLE 13 SCOPE OF THE AGREEMENT

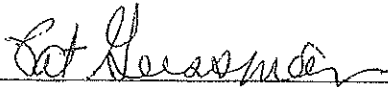
§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

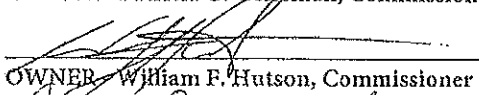
- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect as amended.

This Agreement entered into as of the day and year first written above.

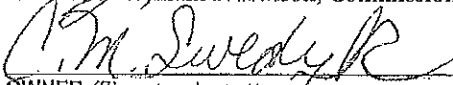
Init.



OWNER - Patricia G. Geissman, Commissioner



OWNER - William F. Hutson, Commissioner



OWNER (Signature) Colleen M. Swedyk, Commissioner

ARCHITECT (Signature)



Benjamin E. Brandstetter, P.E., President

(Printed name and title)

(Printed name, title, and license number, if required)