

**MAYOR DENNIS HANWELL – STATE OF THE CITY ADDRESS
6:30 PM – IN THE CITY COUNCIL ROTUNDA**

**CITY OF MEDINA
AGENDA FOR COUNCIL MEETING**

September 9, 2024
Medina City Hall – Council Rotunda
7:30 p.m.

Call to Order.

Roll Call.

Reading of minutes. (August 26, 2024)

Reports of standing committees.

Requests for council action.

Reports of municipal officers.

Notices, communications and petitions.

Unfinished business.

Ord. 146-24
An Ordinance amending the Codified Ordinances of the City of Medina, Ohio by the addition of a new Chapter 164, Transient Lodging Tax.
(SECOND READING)

Introduction of visitors.

(speakers limited to 5 min.)

Introduction and consideration of ordinances and resolutions.

Motion to suspend the Rules requiring three readings on the following ordinances and resolutions: Ord. 148-24, Res. 149-24, Res. 150-24, Res. 151-24, Res. 152-24, Res. 153-24, Ord. 154-24, Ord. 155-24, Ord. 156-24, Ord. 157-24, Ord. 158-24, Ord. 159-24, Ord. 160-24, Ord. 161-24, Ord. 162-24, Ord. 163-24, Ord. 164-24, Ord. 165-24, Ord. 166-24, Ord. 167-24, Ord. 168-24, Ord. 169-24

Ord. 148-24

An Ordinance authorizing the Job Creation Grant Payment of \$53,491.89 to Carlisle Brake & Friction, aka Friction Products for Tax Year 2023.

Res. 149-24

A Resolution accepting the grant award from the Ohio Department of Mental Health & Addiction Services Specialized Docket Subsidy Project Funding Grant for the Medina Municipal Court Veteran's Treatment Court.

Res. 150-24

A Resolution authorizing the Mayor to file an application for grant assistance with the Bureau of Justice Assistance, U.S. Department of Justice for the Edward Byrne Justice Assistance Grant (JAG) Program for the Police Department.

Res. 151-24

A Resolution accepting the ARPA Grant award from the Medina County Board of Developmental Disabilities for the Medina Municipal Court.

Res. 152-24

A Resolution authorizing the filing of an Ohio Environmental Protection Agency (EPA) Targeted Brownfield Assessment Grant application for the environmental assessments of the former Yost Sunoco Site located at 426 W. Liberty Street.

Res. 153-24

A Resolution authorizing the Mayor to file an application for the Ohio Cybersecurity Grant to assist with purchases of security software and services to boost preparedness and resilience of cybersecurity attacks.

Ord. 154-24

An Ordinance amending Section 31.05 and 31.07 of the Salaries and Benefits Code of the City of Medina, Ohio relative to the Payroll Clerk and approving the new Payroll Clerk job description.
(emergency clause requested)

Ord. 155-24

An Ordinance amending Section 31.05 of the Salaries and Benefits Code of the City of Medina, Ohio relative to the Account Clerk II in the Service Department.

Ord. 156-24

An Ordinance amending Section 31.05 of the Salaries and Benefits Code of the City of Medina, Ohio relative to the Motor Equipment Operators in the Street Department.

Ord. 157-24

An Ordinance amending Sections 31.02(B)(8) and 31.05 of the Salaries and Benefits Code of the City of Medina, Ohio relative to the Sanitation Department.

Ord. 158-24

An Ordinance authorizing the Mayor to advertise for the auction, sale or disposal of City equipment and vehicles no longer in use.

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Ord. 159-24

An Ordinance authorizing the purchase of two (2) portable traffic signals from A & A Safety, Inc. for the Service/Street Departments.

Ord. 160-24

An Ordinance authorizing the purchase of one (1) 2024 Ford F150 pickup truck from Montrose Ford for the Sanitation Department.

Ord. 161-24

An Ordinance authorizing the expenditure to MNJ Technologies for computer, laptop and monitor upgrades for various departments.
(emergency clause requested)

Ord. 162-24

An Ordinance authorizing the Mayor to advertise for competitive bids and to award a contract to the successful bidder for the Airport Hangar Apron Improvements Project.

Ord. 163-24

An Ordinance amending Ordinance No. 95-23, passed May 22, 2023, relative to the agreement with IamGIS for Geographic Information Systems (GIS) services.

Ord. 164-24

An Ordinance establishing a Celebrations Fund (#172).

Ord. 165-24

An Ordinance authorizing the Finance Director to make certain fund transfers.

Ord. 166-24

An Ordinance authorizing the Mayor to enter into the Standard Form of Agreement between the City of Medina and the Ruhlin Company as Constructor for the renovation of the 1969 Former Medina County Courthouse Building to house the Medina Municipal Court.

Ord. 167-24

An Ordinance authorizing the Mayor to enter into a Test Purchase Agreement with Grail, Inc. to participate in the Galleri Multi-Cancer Early Detection Screenings for the City of Medina Firefighters.
(emergency clause requested)

Ord. 168-24

An Ordinance authorizing the Mayor to grant one (1) Utility Easement to Legacy Hotel of Medina LLC for the Legacy Hotel Project.
(Emergency clause requested)

Ord. 169-24

An Ordinance accepting a Dedication of a portion of Mast Parkway and Easement Dedication and Vacation Plat.

Council comments.

Adjournment.

MEDINA CITY COUNCIL
Monday, August 26, 2024

Call to Order:

Medina City Council met in regular session on Monday, August 26, 2024 at Medina City Hall. The meeting was called to order at 7:30 p.m. by President of Council John M. Coyne III, with him Commander Dave Wetzel and the American Legion Post 202 led in the Pledge of Allegiance.

Dave Wetzel, Commander of the American Legion of post 202 presented a Special National Award of Legion of Honor and Humanity to Mayor Dennis Hanwell.

Roll Call:

The roll was called with the following members of Council present: J. Hazeltine, P. Rose, J. Shields, D. Simpson, J. Coyne, N. DiSalvo, and R. Haire.

Also present were the following members of the Administration: Mayor Hanwell, Greg Huber, Keith Dirham, Nino Piccoli, Patrick Patton, Chief Kinney, Chief Walters, Dan Gladish, Kimberly Marshall and Andrew Dutton.

Minutes:

Mr. Shields moved that the minutes from the regular meeting on Monday July 8, 2024, as prepared and submitted by the Clerk be approved, seconded by D. Simpson. The roll was called and minutes were approved by P. Rose, J. Shields, D. Simpson, J. Coyne, N. DiSalvo, R. Haire, and J. Hazeltine.

Reports of Standing Committees:

Finance Committee: Mr. Coyne stated the Finance Committee kicked off this evening with a 2-hour meeting and we will have another meeting in 2 weeks.

Public Properties Committee: Mr. Shields had no report.

Health, Safety & Sanitation Committee: Mr. Simpson had no report.

Special Legislation Committee: Mr. Rose had no report.

Streets & Sidewalks Committee: Ms. Haire had no report.

Water & Utilities Committee: Ms. Hazeltine had no report.

Emerging Technologies Committee: Ms. DiSalvo had no report.

Requests for Council Action:

Finance Committee

- 24-151-8/26 – Expenditure – WRIS Web Services
- 24-152-8/26 – Annual Transfer Request – Parking Fund
- 24-153-8/26 – Increase Exp. – Airgas – MCRC
- 24-154-8/26 – Increase Exp. - Heritage OP Aquatics – MCRC
- 24-155-8/26 – Increase Exp. – Paul Davis Restoration – PY20 CHIP Project
- 24-156-8/26 – Job Creation Grant Payment – Carlisle Brake & Friction

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- 24-157-8/26 – Amend S&B Code re Payroll Clerk Classification / Job Description
- 24-158-8/26 – Mast Parkway R-O-W Dedication
- 24-159-8/26 – Various Zoning Code Amendments
- 24-160-8/26 – OHMAS Specialized Dockets Project Funding/Veteran’s Treatment
- 24-161-8/26 – Grant Application – 2024 JAG Grant – Police
- 24-162-8/26 – Establish new Celebration Fund
- 24-163-8/26 – State Bid, MNJ Technologies – Computer/Laptop/Monitor Replacement
- 24-164-8/26 – Budget Amendments
- 24-165-8/26 – Purchase (1) 2024 F150 – Service Dept.
- 24-166-8/26 – Expenditure – A & A Safety Inc. – Street Dept.
- 24-167-8/26 – Amend S&B Code, add F/T Account Clerk II to Service Dept.
- 24-168-8/26 – Amend S&B Code, add F/T Mother Equipment Operator – Street Dept.
- 24-169-8/26 – Amend S&B Code, add second F/T Sanitation Laborer
- 24-170-8/26 – 2024 City Auction
- 24-171-8/26 – Accept Grant Donation from Medina County Board of Developmental Disabilities
- 24-172-8/26 – EPA Brownfield Assessment Grant for former Yost Sunoco property
- 24-173-8/26 – Interurban Building Relocation and Use
- 24-174-8/26 – Cyber Security Grant Application
- 24-175-8/26 – Bids, Airport Hangar Apron Improvements
- 24-176-8/26 – Design Discussion, US 42 Resurfacing
- 24-177-8/26 – Design Discussion, N. Huntington Sidewalks
- 24-178-8/26 – Utility Easement for Legacy Hotel Project
- 24-179-8/26 – Expend. / Agreement – Grail, Inc. – Fire Dept. Cancer Screening
- 24-180-8/26 – Amend Ord. 95-23, Increase Estimated Amount

Reports of Municipal Officers:

Dennis Hanwell, Mayor,

- A. Welcome back Council Members from Summer Break.
- B. Art in the Park 50th Anniversary was celebrated on Sunday, July 21st. A Proclamation recognizing the Medina County Art League was presented. Mayor issued awards with Medina County Art League Members. Two Artists recognized as being at the first Art in the Park as well as the 50th including local resident Elaine Lamb – Congratulations!
- C. School Summer Break ended with students returning Monday, August 19th.
- D. Thanks to Street Department for painting school warning signs and crosswalks prior to student return. Please be attentive and careful of students during arrival and departure times.
- E. State of City to Council will be September 9th at 6:30 p.m., then to the Chamber September 10th at 11:30 a.m. at Williams on the Lake.
- F. 9/11 Memorial Ceremony will be at the Memorial, southside of Medina Fire Station 1, on Wednesday, September 11th at 9:50 a.m.
- G. Mayor Dennis Hanwell and his wife Chis are celebrating 46 years of marriage today!

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Keith Dirham, Finance Director, Keith stated the city has a property tax levy on this fall and it is a renewal levy for the EMS.

Greg Huber, Law Department, had no report. Congratulations to Mayor Hanwell and many thanks for what you do.

Kimberly Marshall, Economic Development Director, Kimberly stated the City of Medina Economic Development office is going to begin publishing a news letter designed to link job seekers with those Medina Businesses that are hiring. The new publication will be called Medina Town Search and will include both full time and part time employment opportunities. To receive the newsletter, go to the City website www.medinaoh.org and sign up by clicking the Workforce News Letter link at the bottom of the page. First issue will be published in early September. If you are a business that would like to utilize this resource contact Kimberly's office either herself or Sarah Tome at stome@medinaoh.org

Chief Kinney, Police Department, Chief stated that recently they have had an unusual increase in vehicle verses pedestrian accidents in the square and he shared some tips for pedestrians and drivers with the hope of minimizing some of these accidents.

Drivers:

Drivers must yield to pedestrians while they are in the crosswalk, it is the law. Observe the speed limits, drive within the posted speed limit as you are coming through the square or anywhere there are crosswalks or high pedestrian traffic is present. Be aware of crosswalks if coming through an intersection and be prepared to stop for pedestrians. Don't block crosswalks, always check for pedestrians, use your turn signals so people know where you're going and pedestrians can forecast where you are going. Slow down at the intersections. Avoid distractions – most importantly! Keep focus on the road, be alert to surroundings, put the phone down and pay attention.

Pedestrians:

Use the crosswalks, always! Obey the signals. Try making eye contact with any drivers that are in the area as you are trying to cross the street. Stay alert – avoid any distractions such as your phone or listening to music when trying to cross a street. Cross quickly but safely and be cautious with turns. Be aware that some drivers may not see you in a crosswalk as they are turning.

Additional steps taking to increase safety include:

Increased patrols and enforcement in the area of the square which they have been doing for the past several weeks. Potential for increase penalties for crosswalk violations is being researched. Further more the City's engineer is also researching additional design options to improve safety at our crosswalks in the square.

Municipal Hunting Program is in full swing and they are accepting applications for that program, the season starts September 28th and goes to February 2nd, 2025. www.medinaoh.org navigate to the Police Dept. website to find that information, there is an application packet there or come to

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the Police Dept. Lobby to pick up an application packet. Lt. Marcum is the point of contact for that program.

Congratulations on your recognition Mayor Hanwell, Well deserved!

Chief Walters, Fire Department, had no report.

Jansen Wehrley, Parks and Recreation Director, was absent.

Dan Gladish, Building Official, had no report.

Nino Piccoli, Service Director, had no report, other than congratulating the Mayor on being honored and on his wedding anniversary of 46 years – that’s a long time.

Patrick Patton, City Engineer, Patrick stated the citywide concrete street repair project is still continuing and crews are currently working in the southeast and southwest quadrants of the city and should continue and be completed in another 3 to 4 weeks.

Andrew Dutton, Planning and Community Development Director, had no report.

Notices, communications and petitions:

Liquor Permit:

Not to object to the issuance of a new D5 permit to Recovery Center of Medina County, dba Serenite Restaurant & Porch & Patio, 538 West Liberty Street. Mr. Shields moved not to object, seconded by Mr. Simpson. The roll was called and motion passed by the yea votes of J. Shields, D. Simpson, J. Coyne, N. DiSalvo, R. Haire, J. Hazeltine, and P. Rose

Unfinished Business:

There was none.

Introduction of Visitors:

Tammy Kirby resides at 246 W. Friendship St. – Tammy thanked all for the continued efforts on the Yost Sunoco property and the other Brownfield items that we have in Medina. Tammy questioned if Air B&B’s (short term rentals) ever have an issue at the property that maybe the police have to be called, do the property owners get notified immediately? How does that differ from a long-term rental?

Chief Kinney stated if they are called due to an issue and were able to identify it is an Air B&B they would contact the owner immediately, same with long term rentals.

Introduction and consideration of ordinances and resolutions

Mr. Shields moved to suspend the rules requiring three readings on the following ordinances and resolutions, seconded by Mr. Simpson: Ord. 141-24, Res. 142-24, Res. 143-24, Ord. 144-24, Ord. 145-24, Ord. 147-24. Mr. Shields moved to suspend the rules requiring three readings on the listed Ordinances and Resolutions, seconded by Mr. Simpson. Motion passed with the yea votes of D. Simpson, J. Coyne, N. DiSalvo, R. Haire, J. Hazeltine, P. Rose, and J. Shields.

Ord. 141-24

An Ordinance to approve, adopt and enact current replacement pages to the Codified Ordinances of the City of Medina, Ohio. Mr. Shields moved for the adoption of Ordinance/Resolution No. 141-24, seconded by Mr. Simpson. Mr. Coyne stated this is just their annual adoption to codify the ordinances. The roll was called and Ordinance/Resolution No. 141-24 passed by the yeas votes of J. Coyne, N. DiSalvo, R. Haire, J. Hazeltine, P. Rose, J. Shields, and D. Simpson.

Res. 142-24

A Resolution authorizing the Mayor to file an application for grant assistance with the Federal Highway Administration (FHWA) for a Planning Study through their Safe Streets and Roads for All (SS4A) Program. Mr. Shields moved for the adoption of Ordinance/Resolution No. 142-24, seconded by Mr. Simpson. Mr. Patton stated this grant will pay for a planning study. This study will review all the city's accident data and basically prioritize the hot spots in our city and suggest projects that could address those. Once this study is completed it opens up the door to access \$3 million dollars in Federal money that is available to pay for these projects. The roll was called and Ordinance/Resolution No. 142-24 passed by the yeas votes of N. DiSalvo, R. Haire, J. Hazeltine, P. Rose, J. Shields, D. Simpson, and J. Coyne.

Res. 143-24

A Resolution authorizing an application for grant assistance from the State of Ohio, Ohio Public Works Commission, relative to Issue 1 and LTIP Program funding. Mr. Shields moved for the adoption of Ordinance/Resolution No. 143-24, seconded by Mr. Simpson. Mr. Patton stated internally they met to discuss several potential projects. The one they are recommending to council is a reconstruction of E. Smith road between Jefferson and Harmony. These two blocks were among the lowest in the city in terms of traffic volume and there is also a storm sewer issue they would like to address with this project that will benefit an area much larger than this. The project is budgeted at \$1,525,000.00 and this grant will pay for \$530,000.00 of that. The roll was called and Ordinance/Resolution No. 143-24 passed by the yeas votes of R. Haire, J. Hazeltine, P. Rose, J. Shields, D. Simpson, J. Coyne, and N. DiSalvo.

Ord. 144-24

An Ordinance authorizing the Finance Director to make certain fund transfers. Mr. Shields moved for the adoption of Ordinance/Resolution No. 144-24, seconded by Mr. Simpson. Mr. Dirham stated this is a transfer to the parking fund, the revenues in that fund aren't sufficient so we do an annual transfer to cover the difference. The roll was called and Ordinance/Resolution No. 144-24 passed by the yeas votes of J. Hazeltine, P. Rose, J. Shields, D. Simpson, J. Coyne, N. DiSalvo, and R. Haire.

Ord. 145-24

An Ordinance amending Ordinance No. 106-24 passed May 28, 2024. (Petitioned Special Assessments for Legacy Hotel of Medina, LLC) Mr. Shields moved for the adoption of Ordinance/Resolution No. 145-24, seconded by Mr. Simpson. Mr. Coyne explained that this is for the special assessments that the property owner is going to assess themselves and it goes on their

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tax bill. They didn't have the interest rate and number that they were going to be assessed and that finally came in so all we are doing is making a modification to that ordinance adding those numbers that the property owner will be assessed going forward. The roll was called and Ordinance/Resolution No. 145-24 passed by the yea votes of P. Rose, J. Shields, D. Simpson, J. Coyne, N. DiSalvo, R. Haire, and J. Hazeltine.

Ord. 146-24 (FIRST READING)

An Ordinance amending the Codified Ordinances of the City of Medina, Ohio, by the addition of a New Chapter 164, Transient Lodging Tax. Mr. Shields moved for Ordinance/Resolution No. 146-24 be put before council for consideration only and discussion without a vote, seconded by Mr. Simpson. Mr. Rose requested the three readings so that anyone wanting to comment about this can. This is an opportunity afforded to us by the State of Ohio, we are allowed up to 3%, the cities of Brunswick and Wadsworth are doing it now on their hotels and this is part of another way to increase the tax flow into the city without increasing the tax rate. Mr. Coyne stated the goal of council would be to use the money generated near the hotel that the money was generated from to make the area more attractive.

Ord. 147-24

An Ordinance amending Ordinance No. 190-23, passed November 28, 2023. (Amendments to 2024 Budget) Mr. Shields moved for the adoption of Ordinance/Resolution No. 147-24, seconded by Mr. Simpson. Mr. Dirham stated there are a number of amendments here. The roll was called and Ordinance/Resolution No. 147-24 passed by the yea votes of J. Shields, D. Simpson, J. Coyne, N. DiSalvo, R. Haire, J. Hazeltine, and P. Rose

Council comments

Mr. Simpson congratulated Mayor Hanwell on the honor he received tonight. Happy Anniversary! Think about how fortunate we are in this country to have so many issues that we all agree on like supporting our Military, loving our families, and supporting the first second amendment. We have so much more in common than what we disagree on, so during this upcoming election season he asked for people to remember that and when in discussions with family members or friends or public it is ok to disagree with someone just do it respectfully and be kind to one another.

Ms. Haire stated she is glad to be back tonight but commented on how fast the summer went. We are now into the school season and there is a lot more traffic coming into town or cut throughs to the various schools so please be careful driving. Look out for the deer also.

Ms. Hazeltine stated we may not always agree, but in this case, she congratulated Mayor Hanwell – well deserved.

Mr. Shields extended congratulations to the Mayor.

Invited everyone to the Ward 3 & 4 meeting on September 3rd at 7 p.m. being hosted by he and Ms. Haire at Ella Canavan school located 825 Lawrence Street. Large parking lot on south side of building where you can enter.

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Mr. Rose congratulated Mayor Hanwell.
Thanked Chief Kinney for extra patrols around the square.
Maybe think about making the square a circle, change the paint / lights.

Mrs. DiSalvo thanked the Mayor for his service.
With school starting there is going to be a lot of new drivers. Please set a good example for those young drivers.

Mr. Coyne welcomed everyone back and stated its time to get to work.

Adjournment

There being no further business, the City Council meeting adjourned at 8:15p.m.

Kathy Patton, Clerk of Council

John M. Coyne, III, President of Council

ORDINANCE NO. 146-24**AN ORDINANCE AMENDING THE CODIFIED ORDINANCES OF THE CITY OF MEDINA, OHIO, BY THE ADDITION OF A NEW CHAPTER 164, TRANSIENT LODGING TAX.****BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:**

- SEC. 1:** That the codified ordinances of the City of Medina, Ohio shall be amended by the adoption of a new Chapter 164, relative to establishing a transient lodging tax.
- SEC. 2:** That the new Chapter 164 shall read as follows:

CHAPTER 164
Transient Lodging Tax

164.01 DEFINITIONS.

As used in this chapter, the following definitions shall apply:

- (a) "Hotel": Every establishment kept, used, maintained, advertised, or held out to the public to be a place where sleeping accommodations are offered to guests in which sixteen (16) or more rooms are used for accommodation or as otherwise defined in Ohio R.C. 5739.01(M) or is hereinafter amended by the General Assembly.
- (b) "Transient guests": As defined in Ohio R.C. 5739.01(N) as it now exists or is hereinafter amended by the General Assembly.
- (c) "Occupancy": The use or possession, or the right to use or possession, of any room or rooms or space or portion thereof in any hotel or motel, for dwelling, lodging or sleeping purposes. The use or possession or right to use or possess any room or any suite of connecting rooms as office space, banquet or private dining rooms, or exhibit, sample or display space shall not be considered occupancy within the meaning of this definition unless the person exercising occupancy uses or possesses or has the right to use or possess, all or any portion of such room or suite of rooms for dwelling, lodging or sleeping purposes.

164.02 LEVY.

There is hereby levied an excise tax at the rate of three percent (3%) on all transactions within the City of Medina by which lodging is furnished by a hotel to transient guests. The tax shall be 3% of the rent paid or to be paid by the transient guest for the uses set forth in the definitions in 164.01 hereinabove. The tax shall apply and be due at the time the accommodations are furnished, regardless of the time when the rent is paid.

164.03 USE.

All revenue derived from this tax shall be deposited in the General Fund.

164.04 COLLECTION.

Every hotel shall collect the tax herein levied commencing on the date of adoption of this ordinance and make a return and payment to the City of Medina Director of Finance on forms

supplied by the Department of Finance no later than January 31, April 30, July 31 and October 31 for the preceding quarter.

164.05 RULES AND REGULATIONS.

The Department of Finance shall establish rules and regulations necessary to provide for the administration of said tax including, but not limited to, the proper notification to all hotels and a consistent reporting format.

164.06 PENALTIES AND INTEREST.

(A) *Original delinquency.* Any operator who fails to remit any tax imposed by this subchapter within the time required shall pay a penalty equal to 10% of the amount of the tax, in addition to the tax.

(B) *Continued delinquency.* Any operator who fails to remit any delinquent tax on or before a period of 30 days following the date on which the tax first became delinquent shall pay a second delinquency penalty equal to 10% of the amount of the tax and previous penalty in addition to the tax and the 10% penalty first imposed. An additional penalty equal to 10% of the total tax and penalty of the previous 30-day period shall be added for each successive 30-day period that the operator remains delinquent.

(C) *Fraud.* If the Tax Administrator determines that the nonpayment of any remittance due under this subchapter is due to fraud, a penalty equal to 25% of the amount of the tax shall be added thereto in addition to penalties stated in divisions (A) and (B) hereof.

(D) *Interest.* In addition to the previous penalties imposed, any operator who fails to remit any tax imposed by this subchapter shall pay interest at the rate of ½% per month, or fraction thereof, on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(E) *Penalties during pendency of hearing or appeal.* No penalty provided under this subchapter shall be imposed during the pendency of any hearing provided for in § 34.64, nor during the pendency of any appeal to the Board of Review provided for in § 34.64.
(65 Code, § 732.10)

164.99 PENALTY.

(A) Whoever violates Chapter 164 by failing to remit City of Medina income taxes deducted and withheld from an employee, shall be guilty of a misdemeanor of the first degree and shall be subject to a fine of not more than \$1,000 or imprisonment for a term of up to six months, or both. If the individual that commits the violation is an employee, or official, of the City of Medina, the individual is subject to discharge from employment or dismissal from office.

(B) Any person who discloses information received from the Internal Revenue Service in violation of Federal law shall be guilty of a felony of the fifth degree and shall be subject to a fine of not more than \$5,000 plus the costs of prosecution, or imprisonment for a term not exceeding five years, or both. If the individual that commits the violation is an employee, or official, of the City of Medina, the individual is subject to discharge from employment or dismissal from office.

(C) Each instance of access or disclosure in violation of Federal law constitutes a separate offense.

(D) If not otherwise specified herein, no person shall:

- (1) Fail, neglect or refuse to make any return or declaration required by this chapter;
- (2) File any incomplete or false return;
- (3) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter;
- (4) Refuse to permit the Tax Administrator or any duly authorized agent or employee to

examine his books, records, papers and federal and state income tax returns relating to the income or net profits of a taxpayer;

(5) Fail to appear before the Tax Administrator and to produce his books, records, papers or

federal and state income tax returns relating to the income or net profits of a taxpayer upon order or subpoena of the Tax Administrator;

(6) Refuse to disclose to the Tax Administrator any information with respect to the income or

net profits of a taxpayer;

(7) Fail to comply with the provisions of this chapter or any order or subpoena of the Tax Administrator authorized hereby;

(8) Give to an employer false information as to his true name, correct social security number,

and residence address, or fail to promptly notify an employer of any change in residence address and date thereof;

(9) Attempt to do anything whatsoever to avoid the payment of the whole or any part of the

tax, penalties or interest imposed by this chapter.

(E) Any person who violates any of the provisions of Federal law shall be subject to the penalties provided for by Federal law.

(F) Whoever violates Chapter 164 is guilty of a misdemeanor of the first degree and shall be imprisoned for not more than six months and shall be fined not more than \$1,000.

(G) Whoever violates any of the provisions of Chapter 164 for which no penalty is otherwise provided shall be subject to the penalty as provided in Chapter 164.

SEC. 3: 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. 4: That this Ordinance shall be in full force and effect at the earliest period allowed by law.

PASSED: _____

SIGNED: _____

President of Council

ATTEST: _____

APPROVED: _____

Clerk of Council

SIGNED: _____

Mayor

ORDINANCE NO. 148-24

**AN ORDINANCE AUTHORIZING THE JOB CREATION GRANT
PAYMENT OF \$53,491.89 TO CARLISLE BRAKE & FRICTION,
AKA FRICTION PRODUCTS FOR TAX YEAR 2023.**

WHEREAS: Ordinance No. 63-17, passed May 8, 2017, authorized the Job Creation Grant Agreement #JCG13 for Carlisle Brake & Friction; and

WHEREAS: Ordinance No. 114-20, passed June 22, 2020, authorized the Job Creation Grant Agreement #JCG21 for Carlisle Brake & Friction; and

WHEREAS: The Business Development Committee has determined that Carlisle Brake & Friction has met their job creation goals, which qualifies them for grant payments.

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

SEC. 1: That the Job Creation Grant payment of \$18,750.06 to Carlisle Brake & Friction for JCG13 is hereby authorized, and funds are available in Account No. 001-0749-56630.

SEC. 2: That the Job Creation Grant payment of \$34,741.83 to Carlisle Brake & Friction for JCG21 is hereby authorized, and funds are available in Account No. 001-0749-56630.

SEC. 3: 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. 4: That this Ordinance shall be in full force and effect at the earliest period allowed by law.

PASSED: _____

SIGNED: _____
President of Council

ATTEST: _____
Clerk of Council

APPROVED: _____

SIGNED: _____
Mayor

RESOLUTION NO. 149-24

A RESOLUTION ACCEPTING THE GRANT AWARD FROM THE OHIO DEPARTMENT OF MENTAL HEALTH & ADDICTION SERVICES SPECIALIZED DOCKET SUBSIDY PROJECT FUNDING GRANT FOR THE MEDINA MUNICIPAL COURT VETERAN'S TREATMENT COURT.

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

SEC. 1: That the grant award from the Ohio Department of Mental Health & Addiction Services Specialized Docket Subsidy Project Funding Grant, in the amount of \$75,000, is hereby accepted for the Medina Municipal Court Veteran's Treatment Court.

SEC. 2: That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution 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. 3: That this Resolution shall be in full force and effect at the earliest period allowed by law.

PASSED: _____ **SIGNED:** _____
President of Council

ATTEST: _____ **APPROVED:** _____
Clerk of Council

SIGNED: _____
Mayor

RESOLUTION NO. 150-24

A RESOLUTION AUTHORIZING THE MAYOR TO FILE AN APPLICATION FOR GRANT ASSISTANCE WITH THE BUREAU OF JUSTICE ASSISTANCE, U.S. DEPARTMENT OF JUSTICE FOR THE EDWARD BYRNE JUSTICE ASSISTANCE GRANT (JAG) PROGRAM FOR THE POLICE DEPARTMENT.

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

- SEC. 1:** That the Mayor is hereby authorized and directed to file an application for grant assistance with the Bureau of Justice Assistance, U.S. Department of Justice for the Edward Byrne Justice Assistance Grant (JAG) Program for the Police Department.
- SEC. 2:** That if the Grant is awarded to the City, the Mayor is authorized to accept the grant and complete all documentation necessary for the implementation and administration of the grant.
- SEC. 3:** That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution 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. 4:** That this Resolution shall be in full force and effect at the earliest period allowed by law.

PASSED: _____ **SIGNED:** _____
President of Council

ATTEST: _____ **APPROVED:** _____
Clerk of Council

SIGNED: _____
Mayor

RESOLUTION NO. 151-24

A RESOLUTION ACCEPTING THE ARPA GRANT AWARD FROM THE MEDINA COUNTY BOARD OF DEVELOPMENTAL DISABILITIES FOR THE MEDINA MUNICIPAL COURT.

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

SEC. 1: That an American Rescue Plan Act grant award from the Medina County Board of Developmental Disabilities, in the amount of \$8,680.00 to cover the cost of an adult changing table for the 1969 Courthouse, is hereby accepted for the Medina Municipal Court.

SEC. 2: That the funds to purchase the table, in the amount of \$8,680.00, are available in Account No. 001-0705-53315, and will be reimbursed by the Medina County Board of Developmental Disabilities within 30 days of Invoice.

SEC. 3: That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution 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. 4: That this Resolution shall be in full force and effect at the earliest period allowed by law.

PASSED: _____ **SIGNED:** _____
President of Council

ATTEST: _____ **APPROVED:** _____
Clerk of Council

SIGNED: _____
Mayor

RESOLUTION NO. 152-24

A RESOLUTION AUTHORIZING THE FILING OF AN OHIO ENVIRONMENTAL PROTECTION AGENCY (EPA) TARGETED BROWNFIELD ASSESSMENT GRANT APPLICATION FOR THE ENVIRONMENTAL ASSESSMENTS OF THE FORMER YOST SUNOCO SITE LOCATED AT 426 W. LIBERTY STREET.

WHEREAS: The City of Medina, Ohio intends to file a grant application for the Ohio EPA Targeted Brownfield Assessment Grant to cover the cost of Environmental Assessments of the former Yost Sunoco site located at 426 W. Liberty Street.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:

- SEC. 1:** That the Mayor is hereby authorized to file an application for the Ohio EPA Targeted Brownfield Assessment Grant to cover the cost of the Environmental Assessments of the former Yost Sunoco site located at 426 W. Liberty Street.
- SEC. 2:** That if the Grant is awarded to the City, the Mayor is authorized to accept the grant and complete all documentation necessary for the implementation and administration of the grant.
- SEC. 3:** That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution 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. 4:** That this Resolution shall be in full force and effect at the earliest period allowed by law.

PASSED: _____ **SIGNED:** _____
President of Council

ATTEST: _____ **APPROVED:** _____
Clerk of Council

SIGNED: _____
Mayor

RESOLUTION NO. 153-24

A RESOLUTION AUTHORIZING THE MAYOR TO FILE AN APPLICATION FOR THE OHIO CYBERSECURITY GRANT TO ASSIST WITH PURCHASES OF SECURITY SOFTWARE AND SERVICES TO BOOST PREPAREDNESS AND RESILIENCE OF CYBERSECURITY ATTACKS.

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

- SEC. 1:** That the Mayor is hereby authorized and directed to file an application for grant assistance for the Ohio Cybersecurity Grant to assist with purchases of security software and services to boost preparedness and resilience of cybersecurity attacks against the City of Medina.
- SEC. 2:** That if the Grant is awarded to the City, the Mayor is authorized to accept the grant and complete all documentation necessary for the implementation and administration of the grant.
- SEC. 3:** That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution 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. 4:** That this Resolution shall be in full force and effect at the earliest period allowed by law.

PASSED: _____

SIGNED: _____
President of Council

ATTEST: _____
Clerk of Council

APPROVED: _____

SIGNED: _____
Mayor

ORDINANCE NO. 154-24

AN ORDINANCE AMENDING SECTION 31.05 AND 31.07 OF THE SALARIES AND BENEFITS CODE OF THE CITY OF MEDINA, OHIO RELATIVE TO THE PAYROLL CLERK AND APPROVING THE NEW PAYROLL CLERK JOB DESCRIPTION, AND DECLARING AN EMERGENCY.

WHEREAS: Section 31.05 of the Salaries and Benefits Code of the City of Medina, Ohio presently reads in part as follows pertaining to the Finance Department:

FINANCE DEPARTMENT

<u>Number</u>	<u>Classification</u>	<u>Steps Authorized</u>
1	Director of Finance	Sec. 31.01 15 A-F
1	Deputy Director of Finance	9 A-F
1	Payroll Clerk	8 A-F
1	Utility Billing Clerk	8 A-F
1	Accounts Payable Clerk	5 A-F
2	Account Clerk II (Cashier)	

Ord. 273-05, 85-17, 115-17, 23-20, 158-23

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

SEC. 1: That Section 31.05 of the Salaries and Benefits Code of the City of Medina, Ohio shall be amended to read in part as follows pertaining to the Payroll Clerk:

FINANCE DEPARTMENT

<u>Number</u>	<u>Classification</u>	<u>Steps Authorized</u>
1	Director of Finance	Sec. 31.01 15 A-F
1	Deputy Director of Finance	9 A-F 13 A-F
1	Payroll Clerk	8 A-F
1	Utility Billing Clerk	8 A-F
1	Accounts Payable Clerk	5 A-F
2	Account Clerk II (Cashier)	

Ord. 273-05, 85-17, 115-17, 23-20, 158-23, 154-24

SEC. 2: That in accordance with Section 31.07 of the Salaries and Benefits Code of the City of Medina, Ohio the job description for the Payroll Clerk is hereby accepted.

SEC. 3: That a copy of the job description is marked Exhibit A, attached hereto and incorporated herein.

THE CITY OF MEDINA
JOB DESCRIPTION

IV-115
NEW
EXH. A
ORD 154-24,

TITLE: Payroll Clerk
REPORTS TO: Deputy Finance Director
DEPARTMENT/DIVISION: Finance
CIVIL SERVICES STATUS: Unclassified
JOB STATUS: Full-time
EXEMPT STATUS: Non-exempt

CLASSIFICATION FEATURES: The individual in this classification performs a wide variety of clerical tasks relating to financial accounts and records. The work performed in the classification involves account keeping, auditing and related functions that are not always clearly defined. Most duties are of a recurring nature with routine solutions that have been previously determined. In the event of nonrecurring situations, such cases are referred to supervisors for solution.

ESSENTIAL JOB FUNCTIONS:

- Calculate, input and process employee work hours, overtime bonuses and other relevant payroll components.
- Prepares biweekly, monthly, quarterly, annual and special reports relating to various payroll functions.
- Ensures timely and accurate payroll distribution in accordance with established schedules.
- Maintains employee insurance, hospitalization, compensatory time and overtime records.
- Generates records, accounting statements, vouchers and form letters.
- Maintain accurate and up-to-date payroll records, including deductions, taxes, child support, Family Medical Leave, worker's compensation, COBRA and other relevant information for audits and record-keeping purposes.
- Verify and reconcile discrepancies in payroll data, including pension reports.
- Maintains master file of all City employees and officials.
- Maintain confidentiality of sensitive information.
- Initiates and maintains computer forms/ledgers to record each pay period.
- Interprets various labor contracts, City Council pay codes and the Ohio Revised Code as it relates to various City departments.
- Works in conjunction with the Civil Service Secretary, who checks and certifies the payroll calculated for all City employees.

Reviews contract language and proposals to assist management in determining financial ramifications that might result.

Collaborate with other departments to resolve and respond to employee inquiries regarding payroll and benefits.

Stay informed about federal, state and local payroll regulations to ensure compliance with tax laws, pension plans and other statutory requirements.

Work closely with other Finance department employees to ensure seamless financial operations.

Assists with other departmental assignments and responsibilities as required.

Able to perform physical demands that include but are not limited to being able to sit continuously at a computer terminal, desk or work station. Able to spend time walking, standing, bending, stooping, crawling, squatting, lifting, kneeling and reaching throughout the work day.

Maintains regular and consistent attendance.

EDUCATION, TRAINING AND EXPERIENCE:

Considerable clerical experience, including accounting duties at an entry-level and high school diploma or GED, preferably supplemented by business school or college courses in accounting, or any equivalent combination of experience and training that would provide the required knowledge, skills and abilities.

QUALIFICATIONS:

Knowledge of:

- Office practices used in keeping fiscal accounts and records;
- Office terminology and equipment; and
- Business arithmetic and proper grammar.

Skilled in:

- Personal computer use;
- Strong attention to detail and accuracy in data entry;
- Excellent organizational and time management.

Ability to:

- Communicate effectively in writing or orally with co-workers, supervisors and the general public in person or over a telephone;
- Understand and follow complex oral and written instructions;
- Provide administrative and professional leadership and direction to Department personnel; and

- Operate standard office equipment including but not limited to, personal computer, fax and copy machines, telephone and printers.

ENVIRONMENTAL ELEMENTS:

This position requires the employee to spend a large portion of the working day at a desk or computer workstation. This position includes a high incidence of interaction with citizens, government officials and municipal employees, often under stressful conditions.

WORKING CONDITIONS:

May be required to work outside normal business hours including weekends, evenings and holidays.

EQUIPMENT USED: calculator, computer, copier, telephone

ADDITIONAL REQUIREMENTS: The above information on this description has been designed to indicate the general nature and level of work performed by employees within this classification. It is not designed to contain or be interpreted as a comprehensive inventory of all duties, responsibilities and qualifications required of employees assigned to this job. Employee understands that conditions may require the City to modify this Job Description and that the City reserves the right to exercise its discretion to make such changes.

EMPLOYEE ACKNOWLEDGMENT: _____

DATE: _____

ORDINANCE NO. 155-24

AN ORDINANCE AMENDING SECTION 31.05 OF THE SALARIES AND BENEFITS CODE OF THE CITY OF MEDINA, OHIO RELATIVE TO THE ACCOUNT CLERK II IN THE SERVICE DEPARTMENT.

WHEREAS: Section 31.05 of the Salaries and Benefits Code of the City of Medina, Ohio presently reads in part as follows pertaining to the Service Department:

SERVICE DEPARTMENT

<u>Number</u>	<u>Classification</u>	<u>Steps Authorized</u>
1	Public Service Director	43 A-F
1	Account Clerk II	5 A-F
1	Building Maintenance & Repair	32 A-F per contract
1	Clerical Help (part-time)	Sec. 31.02(B)(2)
7	Seasonal Laborers (part-time)	Sec. 31.02(A)(2)
1	Custodian (part-time)	Sec. 31.02(B)(2)

Ord. 2-04, 242-04, 273-05, 76-08, 81-09, 82-10, 32-14

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

SEC. 1: That Section 31.05 of the Salaries and Benefits Code of the City of Medina, Ohio shall be amended to read in part as follows pertaining to the Service Department:

SERVICE DEPARTMENT

<u>Number</u>	<u>Classification</u>	<u>Steps Authorized</u>
1	Public Service Director	43 A-F
1 2	Account Clerk II	5 A-F
1	Building Maintenance & Repair	32 A-F per contract
1	Clerical Help (part-time)	Sec. 31.02(B)(2)
7	Seasonal Laborers (part-time)	Sec. 31.02(A)(2)
1	Custodian (part-time)	Sec. 31.02(B)(2)

Ord. 2-04, 242-04, 273-05, 76-08, 81-09, 82-10, 32-14, 155-24

SEC. 2: 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. 3: That this Ordinance shall be in full force and effect at the earliest period allowed by law.

PASSED: _____

SIGNED: _____
President of Council

ATTEST: _____
Clerk of Council

APPROVED: _____

SIGNED: _____
Mayor

ORDINANCE NO. 156-24

AN ORDINANCE AMENDING SECTION 31.05 OF THE SALARIES AND BENEFITS CODE OF THE CITY OF MEDINA, OHIO RELATIVE TO THE MOTOR EQUIPMENT OPERATORS IN THE STREET DEPARTMENT.

WHEREAS: Section 31.05 of the Salaries and Benefits Code of the City of Medina, Ohio presently reads in part as follows pertaining to the Street Department:

STREET DEPARTMENT

<u>Number</u>	<u>Classification</u>	<u>Steps Authorized</u>
1	Street Superintendent	15 A-F
1	Street Foreman	37 A-F
7	Motor Equipment Operator	34 A-F per contract
2	Laborer	31 A-F per contract
1	Laborer (part-time)	per contract
1	Sign Technician (part-time)	per contract

Ord. 241-04, 273-05, 119-20

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

SEC. 1: That Section 31.05 of the Salaries and Benefits Code of the City of Medina, Ohio shall be amended to read in part as follows pertaining to the Street Department:

STREET DEPARTMENT

<u>Number</u>	<u>Classification</u>	<u>Steps Authorized</u>
1	Street Superintendent	15 A-F
1	Street Foreman	37 A-F
7 8	Motor Equipment Operator	34 A-F per contract
2	Laborer	31 A-F per contract
1	Laborer (part-time)	per contract
1	Sign Technician (part-time)	per contract

Ord. 241-04, 273-05, 119-20, **156-24**

SEC. 2: 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. 3: That this Ordinance shall be in full force and effect at the earliest period allowed by law.

PASSED: _____

SIGNED: _____
President of Council

ATTEST: _____
Clerk of Council

APPROVED: _____

SIGNED: _____
Mayor

ORDINANCE NO. 157-24

AN ORDINANCE AMENDING SECTIONS 31.02(B)(8) AND 31.05 OF THE SALARIES AND BENEFITS CODE OF THE CITY OF MEDINA, OHIO RELATIVE TO THE SANITATION DEPARTMENT.

WHEREAS: Section 31.02 (B) (8) of the Salaries and Benefits Code of the City of Medina, Ohio presently reads in part as follows pertaining to the Sanitation Department:

(8) SANITATION DEPARTMENT

		<u>Hourly Rate</u>
3	Laborer	per contract
(Ord. 27-13, Ord. 196-21)		

WHEREAS: Section 31.05 of the Salaries and Benefits Code of the City of Medina, Ohio presently reads in part as follows pertaining to the Sanitation Department:

SANITATION DEPARTMENT

<u>Number</u>	<u>Classification</u>	<u>Steps Authorized</u>
1	Sanitation Superintendent	15 A-F
1	Sanitation Foreman	37 A-F
12	Motor Equipment Operator	34 A-F per contract
1	Laborer	31 A-F per contract
3	Laborer (part-time)	Sec. 31.02(B)(7) per contract
(Ord. 273-05, 27-13, 196-21)		

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

SEC. 1: That Section 31.02(B)(8) of the Salaries and Benefits Code of the City of Medina, Ohio shall be amended to read as follows:

- (8) This Section (Sanitation) removed per Ordinance No. 157-24, passed September 9, 2024.**

SEC. 2: That Section 31.05 of the Salaries and Benefits Code of the City of Medina, Ohio shall be amended to read in part as follows pertaining to the Sanitation Department:

SANITATION DEPARTMENT

<u>Number</u>	<u>Classification</u>	<u>Steps Authorized</u>
1	Sanitation Superintendent	15 A-F
1	Sanitation Foreman	37 A-F
12	Motor Equipment Operator	34 A-F per contract
1 3	Laborer	31 A-F per contract

SEC. 3: 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. 4: That this Ordinance shall be in full force and effect at the earliest period allowed by law.

PASSED: _____ **SIGNED:** _____
President of Council

ATTEST: _____ **APPROVED:** _____
Clerk of Council

SIGNED: _____
Mayor

ORDINANCE NO. 158-24

AN ORDINANCE AUTHORIZING THE MAYOR TO ADVERTISE FOR THE AUCTION, SALE OR DISPOSAL OF CITY EQUIPMENT AND VEHICLES NO LONGER IN USE.

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

- SEC. 1:** That the Mayor is hereby authorized and directed to advertise for the auction, sale or disposal of city equipment and vehicles no longer in use.
- SEC. 2:** That a list of the items to be auctioned and/or sold is marked Exhibit A, attached hereto and made a part hereof.
- SEC. 3:** That the Mayor is hereby authorized to dispose of any items not purchased in accordance with the law.
- 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 in full force and effect at the earliest period allowed by law.

PASSED: _____ **SIGNED:** _____
President of Council

ATTEST: _____ **APPROVED:** _____
Clerk of Council

SIGNED: _____
Mayor

VEHICLES TO BE SOLD AT 2024 CITY AUCTION

<u>VEHICLE DESCRIPTION</u>	<u>VIN NUMBER</u>	<u>MILEAGE</u>	<u>DEPARTMENT</u>
2010 Ford Escape (white)	1FMCU9C75AKC78585		Public Buildings
2011 Ford F150 Truck	1FTMF1CM9BKD97834		Water
2005 (or 2006) Ford F550 1 ton dump	FDAF56P86EB92778		Water
2010 GMC Sierra 1500 4x4	1GTSKTEAXAZ236299		Water
2020 Ford Explorer	1FM5K8AB9LGA19555	102,451	MPD
2020 Ford Explorer	1FM5KAB0LGA19556	108,770	MPD
2010 Steath Enclosed 5th wheel trailer GVW 9990 lbs.	52LGE2288BE004422		Streets
2005 Case Wheel Loader Mod#MW24C	Serial Number: 9156636		Streets

ORD 158-24
Exh. A

2024 Auction Items

DEPT.	ITEM	QUANTITY	SERIAL NUMBER	Model Number
Rec Center	Maroon Desk Chair	1	GLB4561BKCU01	
Rec Center	Star Trac CTE	3	CTEB1407-L01094	SKU 9-6080-MUNBPO
Rec Center			CTEB1407-L01091	SKU 9-6080-MUNBPO
Rec Center			CTEB1407-L01100	SKU 9-6080-MUNBPO
Rec Center	Audio - Technica Microphone	2		ATW-T76HE
Rec Center	Audio- Technica Transmitter	3		ATW-T75
Rec Center	Box with Plug, clip on mics, cords	1		
Rec Center	Audio-Technica Head set			PRO8HE
Rec Center	Harman/Kardon Speakers	2	CN-01D430-48220-16K-01U1	DS/N
Rec Center	Audio Technica Synthesized Diversity Receiver	1		ATW-R73 UHF
Rec Center	TASCAM DVD Player		#0030423	DV-D6500
Rec Center	Anchor Xstream Speaker		K20-4531	XTR-6000C

Small Items from Lost and Found

DEPT	Description	Item Number
Rec Center	JBL Speaker	1
Rec Center	TI-84 Plus Texas Instrument Calculator	2
Rec Center	Ormekol Sunglasses	3
Rec Center	Gold Color Chain	4
Rec Center	1 White earbud	5
Rec Center	Brown/Bead Rosary	6
Rec Center	Silver color necklace with black/silver cross	7
Rec Center	silver color ring with stones in cross shape	8
Rec Center	siliver color ring with pink color heart	9
Rec Center	sony black headphones	10
Rec Center	silver color ring	11
Rec Center	silver color ring with shiny stones	12
Rec Center	Onn black ear phones	13
Rec Center	Black Model X19 Pro headphones	14
Rec Center	Grey and Blue MPOW Headphones	15
Rec Center	shiny stud earring (one)	16
Rec Center	black Canbor earphones	17
Rec Center	Black watch, w square face	18
Rec Center	Black watch with rectange Face	19
Rec Center	White Stylus	20
Rec Center	Black headphones	21
Rec Center	Solo3 beats Headphones	22
Rec Center	Target giftcard, \$35.18 = Amount on Card	23
Rec Center	Target giftcard, \$15= Amount on Card	24
Rec Center	Starbucks giftcard, \$10= Amount on card	25
Rec Center	Skull Candy Black headphones	26
Rec Center	Black headphones	27
Rec Center	White and red - Super EQ Headphones	28
Rec Center	Silver Color Bracelet	29
Rec Center	Silver color necklace with circle charm	30
Rec Center	black ear buds	31

ITEMS FOR AUCTION 2024

PUBLIC BUILDINGS:

2010 FORD ESCAPE (WHITE) 1FMCU9C75AKC78

MISCELLANEOUS TOOLS

MISCELLANEOUS OFFICE FURNITURE (CHAIRS, WOODEN/METAL DESKS)

POULAN 14' CHAINSAW

87 CASES OF COPY PAPER (8 1/2" x 14")

VEHICLES TO BE SOLD AT 2024 CITY AUCTION

<u>VEHICLE DESCRIPTION</u>	<u>VIN NUMBER</u>	<u>MILEAGE</u>	<u>DEPARTMENT</u>
2010 Ford Escape (white)	1FMCU9C75AKC78585		Public Buildings
2011 Ford F150 Truck	1FTMF1CM98KD97834		Water
2005 (or 2006) Ford F550 1 ton dump	FDAF56P86EB92778		Water
2010 GMC Sierra 1500 4x4	1GTSKTEAXAZ236299	102,451	Water
2020 Ford Explorer	1FM5K8AB9LGA19555		MPD
2020 Ford Explorer	1FM5KAB0LGA19556	108,770	MPD
2010 Steath Enclosed 5th wheel trailer GVW 9990 lbs.	52LGE2228BE004422		Streets
2005 Case Wheel Loader Mod#MW24C	Serial Number: 9156636		Streets

Laptops

Make	Model	Serial #	
Dell	Precision M4700	D8KNX1	**No Hard Drive**
Dell	Latitude 5590	FCW6TT2	**No Hard Drive**
Dell	Latitude 5500	9CGV733	**No Hard Drive**
Dell	Latitude 5590	1VFFWT2	**No Hard Drive**
Microsoft	Surface Pro 6		**With Charger**

iPads

iPad Air (3rd generation)
iPad 6th generation

Tablets

Make	Model	Serial #	
Panasonic	CF-19	9CKYA58607	**Used-no battery**
Motion	R12		**Used-no battery**
Xplore	iX125R1		**Used-no battery**
Xplore	iX125R1		**Used-no battery**
Xplore	iX125R1		**Used-no battery**
Xplore	iX125R1		**Used-no battery**

Cables/Adapters/Cords

Cords

<u>Qty</u>	<u>Type</u>	<u>Comments</u>
2	C13 Power Cords	**Used**

Cables

<u>Qty</u>	<u>Type</u>	<u>Comments</u>
1	DVI to DP Cable	**Used**
2	DVI to DVI Cable	**Used**
3	VGA Cable	**Used**
6	USB 3.0 Cable A to B - Male to Male	**New**

Adapters

<u>Qty</u>	<u>Type</u>	<u>Comments</u>
2	DVI to DP Adapter	**Used**
3	VGA to DP Adapter	**Used**

Computer Accessories

Mice

Qty
8

Type
Dell USB Mouse

Comments
Used

Keyboards

Qty
9

Type
Dell USB Keyboard

Comments
Used

Monitors

Qty
4
1
3
1

Type
Dell 1907FPt
Dell 1909Wf
Dell PP213t
Dell Dual Monitors w/stand

Comments
Used
Used
Used
Used

Monitor Bases

Qty
3

Type
Tripp-Lite Mounts

Comments
Used

Speakers

Qty
1

Type
Dell Speakers

Comments
Used

Networking Equipment

Wireless Equipment

<u>Qty</u>	<u>Type</u>	<u>Comments</u>
1	Meraki MR66	**Used**

Switches

<u>Qty</u>	<u>Type</u>	<u>Comments</u>
5	Cisco MS220-48LP Switches	**Used**
1	Cisco Catalyst 2960 Switch	**Used**

Servers

<u>Qty</u>	<u>Type</u>	<u>Comments</u>
1	Dell PowerEdge R520	**Used-No Hard Drives**

Miscellaneous

<u>Qty</u>	<u>Type</u>	<u>Comments</u>
1	Sierra Wireless Modem - GX450	**Used**
1	Cisco Meraki Z1 Firewall	**Used**
1	Sierra Wireless Modem - RV55	**Used**

Miscellaneous

<u>Qty</u>	<u>Type</u>	<u>Comments</u>
1	Misc. Server Rails	**Used**
2	Verifone Credit Card Machines	**Used**
1	Ricoh MPC4503R	**Used**
2	Ricoh MPC5503R	**Used**
1	Ricoh MPC4500R	**Used**
1	Cozy Toes Foot Warmer	**Used**
2	Bulletin Boards	**Used**
1	Olympus D-220L Camera	**Used**
1	HP Jornada Pocket PC	**Used**
23	Misc. Ricoh Toner Cartridges	**Some New/Some Used**
2	Ricoh MO C6003 Waste Toner Bottles	**New**

ITEMS FOR AUCTION

Item	MPD Property (Auction - 2024)	Quantity
1	(Motorola EL5 System) - IX B Key to Network Cables	12
2	RAM Double Socket Arms	10
3	Trimble GPS Antennas	12
4	PCTEL Glass Mount Antennas	12
5	4RE Cabin Microphones	23
6	2020 Ford Explorer (MPD#116), 1FM5K8AB9LGA19555, mileage 102,451	1
7	2020 Ford Explorer (MPD#117), 1FM5KABOLGA19556, mileage 108,770	1

ITEMS FOR AUCTION

Medina PD Property #	Description of Property	Forfeiture Order #
16-000388-008	Metal Camo Gun Case	2341-003
17-000304-002	Blue Jam Box	2341-003
17-000304-004	LG DVD Player	2341-003
17-000304-006	Black Speaker	2341-003
17-000304-009	Extender Cable	2341-003
17-000304-010	Black TV Remote	2341-003
17-000304-012	Sony DVD	2341-003
18-026828-007	Watch/Lighter/Knife	2341-003
19-002358-001	Reciprocating Saw	2341-003
19-003913-013	Scope	2341-003
19-008586-001	3 Phone Chargers	2341-003
19-014805-012	Dell Computer Tower only - no hard drive	2341-003
21-002170-001	Tools and Speaker	2441-001
22-004271-001	Silver Pear Shaped Ring	2441-001
22-005079-003	Wrist Watch	2441-001

ITEMS FOR AUCTION

23-001125-001	Tool Box w/Tools	2441-001
23-002789-001	Bicycle, Diamondback Outlook	2441-001
23-002932-001	Bicycle, Roadmaster	2441-001
23-002983-001	Bicycle, Liv Alight	2441-001
23-003199-001	Bicycle, Malibu Ozone 500	2441-001
23-003214-001	Bicycle, Next PX4.0	2441-001
23-003639-001	Bicycle, Dynacraft	2441-001
23-003774-001	Bicycle, Inspire Genesis	2441-001
23-003921-001	Bicycle, Diamondback BMX	2441-001
24-000833-001	Bicycle, Huffly	2441-001
24-000856-001	Bicycle, Roadmaster Sport	2441-001
24-001078-001	Bicycle, Mongoose	2441-001
24-001209-001	Bicycle, BMX	2441-001
24-001250-001	Scooter, Hello Kitty	2441-001
24-001273-001	Bicycle, Huffly	2441-001
24-001507-001	Bicycle, Magna Glacier	2441-001
24-002443-001	Bicycle, Huffly Rocket Creek	2441-001

Water Department Auction Items 2024

2010 GMC Sierra 1500 4x4 Vin# 1GTSKTEAXAZ236299

2011 Ford F150 Truck Vin# 1FTMF1CM9BKD97834

2006 Ford F550 Dump Truck Vin# 1FDAF56P86EB92778

One pickup truck back rack with strobe

One stand alone strobe light

Fire Department Auction Items 2024

Bolt bin with misc bolts

Parts washer

Automotive jack stands (5)

Cooling fan with case

20 Ft roof ladder

35 Ft Extension ladder (2)

Attic ladder

Gas fan (2) unknown if they work

Several robe bags with rope

Cord reels w/ cords

Metal tool box – no tools

Misc FF hand tools... Pike Pools/Hooks/Axes/Shovels/and many more

Ice rescue sled with misc equipment

Electric fan

Honda generator (2) unknown if runs

Misc bins of appliances and nozzles / We agreed to keep from last year but we have not touched them.

Plastic step chokes

Helmets (6) misc sizes

PFD's

Old wooden bench from tool room

Old bench from St 3

Several tarps varying sizes

Traffic barricades

Tv/ VCR/ Filing cabinets

Green cabinet metal – at St 1

ORDINANCE NO. 159-24

AN ORDINANCE AUTHORIZING THE PURCHASE OF TWO (2) PORTABLE TRAFFIC SIGNALS FROM A & A SAFETY, INC. FOR THE SERVICE/STREET DEPARTMENTS.

WHEREAS: In accordance with ORC 125.04 the City of Medina, Ohio requested authority to participate in State contracts which the Department of Administrative Services has entered into for the purchase of supplies, services, equipment and certain materials; and

WHEREAS: The request for participation provides for the waiving of the state and local competitive bidding requirements and allows the City the ability to purchase from centralized state contracts; and

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

SEC. 1: That the purchase of two (2) portable traffic signals the State Contract #090-23 from A & A Safety, Inc., is hereby authorized for the Service/Street Departments.

SEC. 2: That in accordance with Ohio Revised Code §5705.41(D), at the time that the contract or order was made and at the time of execution of the Finance Director's certificate, sufficient funds were available or in the process of collection, to the credit of a proper fund, properly appropriated and free from any previous encumbrance.

SEC. 3: That the funds to cover this purchase, in the amount of \$63,100, are available as follows: \$40,000.00 from OBWC Grant in Account No. 105-0610-54413 and \$23,100.00 city funds in Account No. 105-0610-54413.

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 in full force and effect at the earliest period allowed by law.

PASSED: _____

SIGNED: _____
President of Council

ATTEST: _____
Clerk of Council

APPROVED: _____

SIGNED: _____
Mayor

ORDINANCE NO. 160-24

**AN ORDINANCE AUTHORIZING THE PURCHASE OF ONE
(1) 2024 FORD F150 PICKUP TRUCK FROM MONTROSE
FORD FOR THE SANITATION DEPARTMENT.**

WHEREAS: In accordance with ORC 125.04 the City of Medina, Ohio requested authority to participate in State contracts which the Department of Administrative Services has entered into for the purchase of supplies, services, equipment and certain materials; and

WHEREAS: The request for participation provides for the waiving of the state and local competitive bidding requirements and allows the City the ability to purchase from centralized state contracts; and

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

SEC. 1: That the purchase of one (1) 2024 Ford F-150 4WD Extended Cab Truck through the CUE (Community University Education Purchasing Contract) from Montrose Ford, is hereby authorized for the Sanitation Department.

SEC. 2: That in accordance with Ohio Revised Code §5705.41(D), at the time that the contract or order was made and at the time of execution of the Finance Director's certificate, sufficient funds were available or in the process of collection, to the credit of a proper fund, properly appropriated and free from any previous encumbrance.

SEC. 3: That the funds to cover this purchase, in the amount of \$44,500.00, are available in Account No. 514-0543-54417.

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 in full force and effect at the earliest period allowed by law.

PASSED: _____

SIGNED: _____
President of Council

ATTEST: _____
Clerk of Council

APPROVED: _____

SIGNED: _____
Mayor

ORDINANCE NO. 161-24

AN ORDINANCE AUTHORIZING THE EXPENDITURE TO MNJ TECHNOLOGIES FOR COMPUTER, LAPTOP AND MONITOR UPGRADES FOR VARIOUS DEPARTMENTS, AND DECLARING AN EMERGENCY.

WHEREAS: In accordance with ORC 125.04 the City of Medina, Ohio requested authority to participate in State contracts which the Department of Administrative Services has entered into for the purchase of supplies, services, equipment and certain materials; and

WHEREAS: The request for participation provides for the waiving of the state and local competitive bidding requirements and allows the City the ability to purchase from centralized state contracts; and

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

SEC. 1: That the expenditure to MNJ Technologies for computer, laptop and monitor upgrade for various departments within the City of Medina is hereby for the IT Department, through State Contracts STS-534109 and STS-534354.

SEC. 2: That in accordance with Ohio Revised Code §5705.41(D), at the time that the contract or order was made and at the time of execution of the Finance Director's certificate, sufficient funds were available or in the process of collection, to the credit of a proper fund, properly appropriated and free from any previous encumbrance.

SEC. 3: That the funds to cover this purchase, in the amount not to exceed \$40,000.00, are available as follows: \$6,658.00 in Account No. 388-714-53315, \$19,671.00 in Account No. 574-0351-53315, \$6,485.00 in Account No. 513-0533-53315, \$2,360.00 in Account No. 106-0101-53315, \$3,650.00 in Account No. 514-0543-53315.

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 quotes are only good for 30 days; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and signature by the Mayor.

PASSED: _____

SIGNED: _____
President of Council

ATTEST: _____
Clerk of Council

APPROVED: _____

SIGNED: _____
Mayor

ORDINANCE NO. 162-24

AN ORDINANCE AUTHORIZING THE MAYOR TO ADVERTISE FOR COMPETITIVE BIDS AND TO AWARD A CONTRACT TO THE SUCCESSFUL BIDDER FOR THE AIRPORT HANGAR APRON IMPROVEMENTS PROJECT.

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

- SEC. 1:** That the Mayor is hereby authorized and directed to advertise for competitive bids and to award a contract to the successful bidder for Job #1139, the Airport Hangar Apron Improvements Project in accordance with plans and specifications on file in the office of the Mayor.
- SEC. 2:** That the estimated cost of the project, in the amount of \$200,000.00, is available as follows: \$180,000.00 in Account No. 171-0610-54411 (ARPA Funds), and \$20,000.00 in Account No. 547-0650-54411.
- SEC. 3:** 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. 4:** That this Ordinance shall be in full force and effect at the earliest period allowed by law.

PASSED: _____

SIGNED: _____
President of Council

ATTEST: _____
Clerk of Council

APPROVED: _____

SIGNED: _____
Mayor

ORDINANCE NO. 163-24

**AN ORDINANCE AMENDING ORDINANCE NO. 95-23,
PASSED MAY 22, 2023, RELATIVE TO THE AGREEMENT
WITH IamGIS FOR GEOGRAPHIC INFORMATION
SYSTEMS (GIS) SERVICES.**

WHEREAS: Ordinance No. 95-23, passed May 22, 2023, authorized an Agreement with IamGIS to provide Geographic Information Services for the City; and

WHEREAS: We are asking that the original agreement be amended by increasing the estimated amount by \$2,750.00, from \$42,000.00 to \$44,750.00.

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

SEC. 1: That estimated amount in Ordinance 95-23, passed May 22, 2023 is hereby amended from \$42,000.00 to \$44,750 for the Agreement with IamGIS.

SEC. 2: That the funds to cover this increase, in the amount of \$2,750.00 are available in Account No. 108-0610-54411.

SEC. 3: 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. 4: That this Ordinance shall be in full force and effect at the earliest period allowed by law.

PASSED: _____

SIGNED: _____
President of Council

ATTEST: _____
Clerk of Council

APPROVED: _____

SIGNED: _____
Mayor

ORDINANCE NO. 164-24

AN ORDINANCE ESTABLISHING A CELEBRATIONS FUND (#172).

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

- SEC. 1:** That the Finance Director of the City of Medina is hereby authorized to establish a Celebrations Fund (#902) in accordance with Section 5705.09 of the Ohio Revised Code.
- SEC. 2:** That the funds shall be used for City wide celebrations including Medina's involvement in the National Quarter Millennial Celebration coming up in 2026, and other future City events.
- SEC. 3:** That the Clerk of Council is hereby authorized to forward a certified copy of this Ordinance to the Auditor of the State of Ohio.
- 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 in full force and effect at the earliest period allowed by law.

PASSED: _____

SIGNED: _____
President of Council

ATTEST: _____
Clerk of Council

APPROVED: _____

SIGNED: _____
Mayor

ORDINANCE NO. 165-24

AN ORDINANCE AUTHORIZING THE FINANCE DIRECTOR TO MAKE CERTAIN FUND TRANSFERS.

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

SEC. 1: That the Finance Director is hereby authorized to make the following fund transfers:

- \$12,534.76 from the Bicentennial Fund (#902) to the General Fund (#001)
- \$12,534.76 from the General Fund (#001) to the Celebrations Fund (#172)

SEC. 2: That the Clerk of Council is hereby authorized to forward a certified copy of this Ordinance to the Medina County Auditor.

SEC. 3: 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. 4: That this Ordinance shall be in full force and effect at the earliest period allowed by law.

PASSED: _____

SIGNED: _____
President of Council

ATTEST: _____
Clerk of Council

APPROVED: _____

SIGNED: _____
Mayor

ORDINANCE NO. 166-24

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO THE STANDARD FORM OF AGREEMENT BETWEEN THE CITY OF MEDINA AND THE RUHLIN COMPANY AS CONSTRUCTOR FOR THE RENOVATION OF THE 1969 FORMER MEDINA COUNTY COURTHOUSE BUILDING TO HOUSE THE MEDINA MUNICIPAL COURT.

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

- SEC. 1:** That Council hereby authorizes the Mayor to enter into the Standard Form of Agreement between the City of Medina and The Ruhlin Company, an Ohio Corporation, as constructor for the renovation of the 1969 former Medina County Courthouse building to house the Medina Municipal Court.
- SEC. 2:** That a copy of the Standard Form of Agreement is marked Exhibit A, attached hereto and made a part hereof.
- SEC. 3:** 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. 4:** That this Ordinance shall be in full force and effect at the earliest period allowed by law.

PASSED: _____

SIGNED: _____
President of Council

ATTEST: _____
Clerk of Council

APPROVED: _____

SIGNED: _____
Mayor

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 26th day of August in the year 2024
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

City of Medina
132 N. Elmwood Avenue
Medina, OH 44256

and the Construction Manager:
(Name, legal status, address, and other information)

The Ruhlin Company, an Ohio Corporation
6931 Ridge Road
PO Box 190
Sharon Center, Ohio 44274
Attn: James Ruhlin Jr.
Telephone: (330) 239-2800

for the following Project:
(Name, location, and detailed description)

Medina Municipal Court Renovation
93 Public Square
Medina, OH 44256

The Architect:
(Name, legal status, address, and other information)

Brandstetter Carroll Inc.
1220 West 6th Street, Suite 300
Cleveland, OH 44113
Attn: Nancy K. Nozik, AIA

The Owner and Construction Manager agree as follows.

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.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

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2 GENERAL PROVISIONS
3 CONSTRUCTION MANAGER'S RESPONSIBILITIES
4 OWNER'S RESPONSIBILITIES
5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
7 COST OF THE WORK FOR CONSTRUCTION PHASE
8 DISCOUNTS, REBATES, AND REFUNDS
9 SUBCONTRACTS AND OTHER AGREEMENTS
10 ACCOUNTING RECORDS
11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
12 DISPUTE RESOLUTION
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15 SCOPE OF THE AGREEMENT

- EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT
- EXHIBIT B INSURANCE AND BONDS
- EXHIBIT C RUHLIN CMR REQUEST FOR PROPOSAL JUNE 21, 2024

ARTICLE 1 INITIAL INFORMATION

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

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

The Owner's program for the project is as detailed and described in the Ruhlin CMR Request for Proposal June 21, 2024 attached as Exhibit C.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

The City of Medina is renovating space at the former Medina County Courthouse building to house the Medina Municipal Courts. This project will renovate three (3) floors of the former County Courthouse. The project will renovate approximately 30,800 square feet of the portion of the courthouse known as the 1969 building, and renovate another 1,800 square feet in the new County Courthouse to accommodate an in-custody corridor. Additional miscellaneous repairs and

Init.

renovations to the building envelope and mechanical, electrical and plumbing facilities, and hazardous materials abatement will also be completed. The project has a construction budget of \$7.28 M.

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

\$7,280,000

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

.1 Design phase milestone dates, if any:

Construction Documents (90%) 09-16-2024
Construction Documents (100%) 10-14-2024

.2 Construction commencement date:

Selective Demolition 11-14-2024
Mobilization 12-12-2024

.3 Substantial Completion date or dates:

10-24-2025

.4 Other milestone dates:

Notice to Proceed 08-07-2024
GMP Approved 10-14-2024

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

n/a

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

n/a

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234-2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234-2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

n/a

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

.2 Civil Engineer:

.3 Other, if any:
(List any other consultants retained by the Owner, such as a Project or Program Manager.)

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

Nancy K. Nozik, AIA, Division Principal (216) 539-0772
Brandstetter Carroll Inc.
1220 West 6th Street, Suite 300
Cleveland, OH 44113

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

Mike Schumaker, Senior Project Manager (216) 316-1046
The Ruhlin Company
6931 Ridge Road PO Box 190 Sharon Center, OH 44274

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

n/a

Init.

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

n/a

§ 1.1.15 Other Initial Information on which this Agreement is based:

n/a

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both

Init.

phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and 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 Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing written protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models for the Project.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 Deleted

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

n/a

Init.

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.2.10 The Construction Manager and Owner acknowledges and agrees that the Parties may execute more than one GMP Amendment in accordance with this Agreement. As such, the Parties will execute a new GMP Amendment with each GMP Amendment supplementing the previous GMP Amendment(s). Each GMP Amendment is per the stated scope of work contained within, however each GMP Amendment will not mutually exclusive. Funds associated with items such as staffing, GC's, General Requirements, CM Contingency, etc. identified within one GMP Amendment can be used to cover costs incurred in prior or future GMP Amendments.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner

shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing 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.

§ 4.1.4.3 The Owner, when such services are requested, 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.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 Deleted

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. 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.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

\$38,335.00*

*Ruhlin will waive 3 months of Preconstruction Phase Services. In the event, Preconstruction Phase Services extend beyond this time frame, thru no fault of the Construction Manager, the Construction Manager shall be compensated on a monthly basis of \$12,778.33.

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

The Ruhlin Company

Individual or Position	Rate
Director of Preconstruction	\$109.00
Chief Estimator	\$99.00
Senior Estimator	\$80.00
Project Manager	\$100.00

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within three (3) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.1.4 **Early Release Work.** The Construction Manager shall not incur any cost to be reimbursed as part of the Contract Sum prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs. Construction Manager acknowledges and agrees that, prior to execution of the Guaranteed Maximum Price Amendment, Owner may direct Construction Manager to perform certain preliminary items of the Work, such as the purchase of long lead items, site mobilization or other discrete elements of the Work (the "Early Release Work"). The Early Release Work is included in the definition of "Work" under the Contract Documents and all obligations and responsibilities of Construction Manager related to the Work shall apply to the same extent to the Early Release Work. Unless otherwise approved by Owner in writing, Construction Manager shall be paid for the Early Release Work in the same manner as the other Work provided by Construction Manager hereunder, and subject to the same terms, conditions restrictions and limitations applicable to payment for the Work as set forth in the Contract Documents. The Early Release Work shall be included in the overall GMP established by the GMP Amendment pursuant to Section 5.2.3.

§ 5.1.5 Construction Manager and Owner acknowledge that Owner may issue a Limited Notice to Proceed ("LNTP") to Construction Manager directing Construction Manager to perform certain pre-construction services and/or to purchase certain long lead items, site mobilization, or other discrete elements of the Work as set forth in the LNTP. All such "Authorized Work" (as defined in the LNTP) shall be considered "Early Release Work" pursuant to the terms of Section The parties acknowledge that, upon execution of this Agreement by both parties, the LNTP shall be deemed terminated and all Authorized Work performed thereunder shall be considered Work performed under the Contract Documents hereunder.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid 60 days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

18 %

init.

§ 5.2.3 GMP PHASE AND DEVELOPMENT

§ 5.2.3.1 On or before the date set forth in the Project Schedule, Owner shall cause the Architect to prepare and deliver to the Construction Manager a set of design documents completed to a level sufficient for the purposes of developing the GMP as determined by Owner ("GMP Drawings and Specifications"), and the Architect's detailed written description of all material incomplete design elements of the GMP Drawings and Specifications that includes the Architect's statement of intended scope (including anticipated qualities and quantities) and describing the future design and development to be provided by the Architect for such incomplete elements (the "Prose Statement"). On or before the date set forth in the Project Schedule, the Construction Manager shall submit its proposed GMP ("GMP Proposal") including Construction Manager's proposed qualifications and assumptions ("GMP Qualifications and Assumptions") based upon the GMP Drawings and Specifications and the draft Prose Statement (if any). Within seven (7) days thereof, the Construction Manager, Owner and Architect shall meet to reconcile any questions, discrepancies or disagreements relating to the GMP Drawings and Specifications, the draft Prose Statement (if any), the GMP Proposal and/or the proposed GMP Qualifications and Assumptions. The reconciliation shall be documented by an addendum to the GMP Qualifications and Assumptions, all of which shall be distributed to the parties on or before the date set forth in the Project Schedule. As soon as practicable, but in no event later than the date set forth in the Project Schedule, the Construction Manager shall submit a proposed final GMP to Owner for Owner's approval. Owner shall respond to the proposed GMP on or before the date set forth in the Project Schedule. Contingent upon the Owner's approval of the final GMP, the parties will enter into an amendment to this Agreement ("GMP Amendment").

§ 5.2.3.2 Construction Manager acknowledges that design and engineering documents will be incomplete at the time the GMP is established. The Construction Documents prepared by the Architect may include additional or more fully developed plans, sections or details not included in the GMP Documents. Provided these additional or more fully developed plans, sections or details are consistent with or are reasonably inferable as being required by the GMP Documents, the Construction Manager will make no claim against the Owner for an increase in the GMP.

§ 5.2.3.3 Construction Manager shall review the additional or more fully developed plans, sections or detailed included in the Construction Documents and advise Owner of any items inconsistent with or not reasonably inferable as being required by the GMP Documents, including the Prose Statement and GMP Qualifications and Assumptions. If such items are inconsistent with or not reasonably inferable as being required by the GMP Documents, including the Prose Statement and GMP Qualifications and Assumptions, then Owner shall either (a) require the Architect to revise the Construction Documents as necessary to conform to the GMP Documents, or (b) agree to increase the GMP on account of the additional costs for such items, in accordance with and subject to the Change Order provisions of the Contract Documents.

§ 5.2.3.4 The GMP, once established, shall be revised only upon the issuance of a properly authorized Change Order. The GMP shall be based upon completion of the Work pursuant to the dates for Substantial Completion and Final Completion set forth in the Project Schedule.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

1.5%

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

The Fee shall be increased by 5.0% of the Cost of the Work for any additive Change Order, and reduced by 1.5% of the Cost of the Work removed from the Work by any deductive Change Order.

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

Subcontractors shall be limited to 10% overhead and 5% profit on Change Orders, with markups limited to the first two tiers of Subcontractors only.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed ninety-five percent (95 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6

(Paragraphs deleted)

Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

n/a

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

Staff positions and wage rates contained within Ruhlin Proposal dated July 2024.

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201-2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

Int.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager elects not to perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than 30 days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence when requested by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;

- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

10%

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

CMR Staff, Insurance, Bond, GC's, General Reqs and Fee

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(Paragraph deleted)

With the pay application where completed Work is equal to or greater than 50% of the original contract value, retainage shall be frozen, additional withholdings shall not occur on subsequent applications.

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld and unpaid from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

Upon the written recommendation of Construction Manager, Owner will consider requests for early release of retainage for Subcontractors whose portion of the Work is fully performed prior to overall Substantial Completion of the Work; provided, however, that the final decision shall rest with Owner in its sole discretion.

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201-2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

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- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

n/a

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from 30 days from the date the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

18%

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

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§ 12.1.2
(Paragraphs deleted)
(Paragraphs deleted)

There will not be an Initial Decision Maker for this Project.

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

Litigation in a court of competent jurisdiction
(Paragraphs deleted)

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a

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condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

All costs with fee, incurred up to date of formal Notice of Termination, plus costs with fee associated with the termination of purchase orders, subcontract agreements and demobilization from the site.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner’s rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. The Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than \$2,000,000 (\$ 1,000,000) for each occurrence and (\$ 2,000,000) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than \$1,000,000 (\$ 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.

§ 14.3.1.3 The Construction Manager 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 that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, 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.

§ 14.3.1.4 Workers’ Compensation at statutory limits and Employers Liability with policy limits not less than \$1,000,000 (\$ 1,000,000) each accident, (\$ 1,000,000) each employee, and (\$ 1,000,000) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than 3,000,000 (\$ 3,000,000) per claim and (\$ 3,000,000) in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits
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If any other coverages, including but not limited to Builder’s Risk, are required by Owner, the Owner is responsible for placing and maintaining coverage for the duration of the project.

(Paragraphs deleted)

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§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™-2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

n/a

§ 14.5 Construction Contingency

§ 14.5.1 The "Construction Contingency" shall initially be in the amount of one and a half percent (1.5%) of the current estimated Cost of the Work. The Construction Contingency shall be adjusted, as the case may require, to reflect savings ("Buy-Out Savings") or losses ("Buy-Out Losses") resulting from the award of subcontracts in each GMP Phase. If the Construction Manager is able to achieve any Buy-Out Savings on a subcontract award (as shown by an actual, demonstrable, net decrease between the actual Subcontract award pricing amount established at award and the previous amount originally scheduled, the estimate of the Subcontract award estimated in a pricing estimate, or the Schedule of Values (attached to the GMP Amendment), as the case may be, depending on when the buy-out occurs), then the amount of such Buy-Out Savings shall be credited to the Construction Contingency and shall increase the amount of the Construction Contingency by the amount of such Buy-Out Savings. Buy-Out Savings remaining in the Construction Contingency at the GMP finalization milestones set forth in the Project Schedule shall be returned to the Owner. If the amount of the actual subcontract award exceeds the amount shown in the initial schedule of values, then the amount of such excess shall be payable out of the Construction Contingency and, if the amount of such excess exceeds the balance of the Construction Contingency, the remaining balance shall be payable out of the Construction Manager's Fee. All Buy-Out Savings and Buy-Out Losses shall be shown on the monthly progress report.

§ 14.5.2 The Construction Manager may expend funds from the Construction Contingency for Cost of the Work incurred for completion of the Work, including Buy-Out Losses, scope differences, scope gaps (including scope gaps between GMP Phases), subcontractor defaults, overtime, acceleration, corrective Work, and errors in estimating; provided, however, that with respect to any expenditure of the Construction Contingency relating to a subcontractor default, the Construction Manager shall first demonstrate, to the Owner's reasonable satisfaction, that the Construction Manager has in good faith exercised reasonable steps to obtain performance by subcontractor or subcontractor's surety and that the claim is not covered by insurance. For purposes of this Agreement, the term "covered by insurance" shall mean that the event or claim underlying the Construction Manager's request for the use of Construction Contingency is an insured claim under any policy of insurance carried by the Construction Manager or any subcontractor. Any use of the funds in the Construction Contingency must be for permitted Costs of the Work and any recoveries shall be used to replenish the Construction Contingency.

§ 14.5.3 In no event shall the Construction Manager be permitted to use the Construction Contingency for any additional costs or expenses caused by: (a) the breach of this Agreement by the Construction Manager; (b) the breach of any agreement by the Construction Manager under any subcontract; or (c) the negligence of the Construction Manager or any subcontractor.

§ 14.6 Self-Performed Work

§ 14.6.1 Construction Manager or its affiliates shall be permitted, with the Owner's consent, to self-perform portions of the Work. "Self-Performed Work" shall mean such Work (other than Work relating to any staff costs or general conditions expenses) in which a substantial portion thereof (as determined by Owner in its reasonable discretion) is performed directly by the Construction Manager's own labor forces or the labor forces of any affiliate of the Construction Manager (including the joint venture partners of the Construction Manager, if any), and not through Subcontracts or purchase

Init.

orders with third party contractors or suppliers.

§ 14.6.1.1 Bidding Self-Performed Work. The Owner has the option, in its sole discretion, to require the Construction Manager to follow the following bidding requirements for Self-Performed Work. Construction Manager shall submit a sealed proposal for Self-Performed Work pursuant to the competitive procedures applicable to all Subcontractors; provided, however, that Construction Manager or its affiliates must submit its bid or proposal for Self-Performed Work one (1) day before the deadline for other Subcontractors to submit their proposals; (b) the opening, review and advice with respect to award or rejection of such bids or proposals shall be managed by the Owner and Architect; (c) Construction Manager shall review the Self-Performed Work (including the bid packaging plan) with the Owner prior to finalizing the bid package; (d) there shall be a strict separation of the personnel involved with bidding the Self-Performed Work and Construction Manager's other personnel involved in the Project.

n/a

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .5 Building Information Modeling Exhibit, if completed:

n/a

- .6 Other Exhibits:
(Check all boxes that apply.)

[N/A] AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

n/a

- [n/a] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

- .7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

Init.

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

OWNER *(Signature)*

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

James L. Ruhlin, Jr. President and CEO
(Printed name and title)

Init.

Additions and Deletions Report for **AIA® Document A133® – 2019**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:49:32 ET on 08/26/2024.

PAGE 1

AGREEMENT made as of the 26th day of August in the year 2024

...

City of Medina
132 N. Elmwood Avenue
Medina, OH 44256

...

The Ruhlin Company, an Ohio Corporation
6931 Ridge Road
PO Box 190
Sharon Center, Ohio 44274
Attn: James Ruhlin Jr.
Telephone: (330) 239-2800

...

Medina Municipal Court Renovation
93 Public Square
Medina, OH 44256

...

Brandstetter Carroll Inc.
1220 West 6th Street, Suite 300
Cleveland, OH 44113
Attn: Nancy K. Nozik, AIA

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EXHIBIT B INSURANCE AND BONDS
EXHIBIT C RUHLIN CMR REQUEST FOR PROPOSAL JUNE 21, 2024

...

The Owner's program for the project is as detailed and described in the Ruhlin CMR Request for Proposal June 21, 2024 attached as Exhibit C.

...

The City of Medina is renovating space at the former Medina County Courthouse building to house the Medina Municipal Courts. This project will renovate three (3) floors of the former County Courthouse. The project will renovate approximately 30,800 square feet of the portion of the courthouse known as the 1969 building, and renovate another 1,800 square feet in the new County Courthouse to accommodate an in-custody corridor. Additional miscellaneous repairs and renovations to the building envelope and mechanical, electrical and plumbing facilities, and hazardous materials abatement will also be completed. The project has a construction budget of \$7.28 M.

PAGE 3

\$7,280,000

...

Construction Documents (90%) 09-16-2024
Construction Documents (100%) 10-14-2024

...

Selective Demolition 11-14-2024
Mobilization 12-12-2024

...

10-24-2025

.4 Other milestone dates:

Notice to Proceed 08-07-2024
GMP Approved 10-14-2024

...

n/a

...

n/a

...

n/a

PAGE 4

Nancy K. Nozik, AIA, Division Principal (216) 539-0772
Brandstetter Carroll Inc.
1220 West 6th Street, Suite 300
Cleveland, OH 44113

...

Mike Schumaker, Senior Project Manager (216) 316-1046
The Ruhlin Company
6931 Ridge Road PO Box 190 Sharon Center, OH 44274

...

n/a

PAGE 5

n/a

...

n/a

PAGE 7

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement. ~~Deleted~~

...

n/a

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§ 3.2.10 The Construction Manager and Owner acknowledges and agrees that the Parties may execute more than one GMP Amendment in accordance with this Agreement. As such, the Parties will execute a new GMP Amendment with each GMP Amendment supplementing the previous GMP Amendment(s). Each GMP Amendment is per the stated scope of work contained within, however each GMP Amendment will not mutually exclusive. Funds associated with items such as staffing, GC's, General Requirements, CM Contingency, etc. identified within one GMP Amendment can be used to cover costs incurred in prior or future GMP Amendments.

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§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement. ~~Deleted~~

PAGE 11

\$38,335.00*

*Ruhlin will waive 3 months of Preconstruction Phase Services. In the event, Preconstruction Phase Services extend beyond this time frame, thru no fault of the Construction Manager, the Construction Manager shall be compensated on a monthly basis of \$12,778.33.

...

The Ruhlin Company

...

<u>Director of Preconstruction</u>	<u>\$109.00</u>
<u>Chief Estimator</u>	<u>\$99.00</u>
<u>Senior Estimator</u>	<u>\$80.00</u>
<u>Project Manager</u>	<u>\$100.00</u>

...

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within three (3) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.1.4 Early Release Work. The Construction Manager shall not incur any cost to be reimbursed as part of the Contract Sum prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs. Construction Manager acknowledges and agrees that, prior to execution of the Guaranteed Maximum Price Amendment, Owner may direct Construction Manager to perform certain preliminary items of the Work, such as the

purchase of long lead items, site mobilization or other discrete elements of the Work (the "Early Release Work"). The Early Release Work is included in the definition of "Work" under the Contract Documents and all obligations and responsibilities of Construction Manager related to the Work shall apply to the same extent to the Early Release Work. Unless otherwise approved by Owner in writing, Construction Manager shall be paid for the Early Release Work in the same manner as the other Work provided by Construction Manager hereunder, and subject to the same terms, conditions restrictions and limitations applicable to payment for the Work as set forth in the Contract Documents. The Early Release Work shall be included in the overall GMP established by the GMP Amendment pursuant to Section 5.2.3.

§ 5.1.5 Construction Manager and Owner acknowledge that Owner may issue a Limited Notice to Proceed ("LNTP") to Construction Manager directing Construction Manager to perform certain pre-construction services and/or to purchase certain long lead items, site mobilization, or other discrete elements of the Work as set forth in the LNTP. All such "Authorized Work" (as defined in the LNTP) shall be considered "Early Release Work" pursuant to the terms of Section The parties acknowledge that, upon execution of this Agreement by both parties, the LNTP shall be deemed terminated and all Authorized Work performed thereunder shall be considered Work performed under the Contract Documents hereunder.

...

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid (→) 60 days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

...

18 %

§ 5.2.3 GMP PHASE AND DEVELOPMENT

§ 5.2.3.1 On or before the date set forth in the Project Schedule, Owner shall cause the Architect to prepare and deliver to the Construction Manager a set of design documents completed to a level sufficient for the purposes of developing the GMP as determined by Owner ("GMP Drawings and Specifications"), and the Architect's detailed written description of all material incomplete design elements of the GMP Drawings and Specifications that includes the Architect's statement of intended scope (including anticipated qualities and quantities) and describing the future design and development to be provided by the Architect for such incomplete elements (the "Prose Statement"). On or before the date set forth in the Project Schedule, the Construction Manager shall submit its proposed GMP ("GMP Proposal") including Construction Manager's proposed qualifications and assumptions ("GMP Qualifications and Assumptions") based upon the GMP Drawings and Specifications and the draft Prose Statement (if any). Within seven (7) days thereof, the Construction Manager, Owner and Architect shall meet to reconcile any questions, discrepancies or disagreements relating to the GMP Drawings and Specifications, the draft Prose Statement (if any), the GMP Proposal and/or the proposed GMP Qualifications and Assumptions. The reconciliation shall be documented by an addendum to the GMP Qualifications and Assumptions, all of which shall be distributed to the parties on or before the date set forth in the Project Schedule. As soon as practicable, but in no event later than the date set forth in the Project Schedule, the Construction Manager shall submit a proposed final GMP to Owner for Owner's approval. Owner shall respond to the proposed GMP on or before the date set forth in the Project Schedule. Contingent upon the Owner's approval of the final GMP, the parties will enter into an amendment to this Agreement ("GMP Amendment").

§ 5.2.3.2 Construction Manager acknowledges that design and engineering documents will be incomplete at the time the GMP is established. The Construction Documents prepared by the Architect may include additional or more fully developed plans, sections or details not included in the GMP Documents. Provided these additional or more fully developed plans, sections or details are consistent with or are reasonably inferable as being required by the GMP Documents, the Construction Manager will make no claim against the Owner for an increase in the GMP.

§ 5.2.3.3 Construction Manager shall review the additional or more fully developed plans, sections or detailed

included in the Construction Documents and advise Owner of any items inconsistent with or not reasonably inferable as being required by the GMP Documents, including the Prose Statement and GMP Qualifications and Assumptions. If such items are inconsistent with or not reasonably inferable as being required by the GMP Documents, including the Prose Statement and GMP Qualifications and Assumptions, then Owner shall either (a) require the Architect to revise the Construction Documents as necessary to conform to the GMP Documents, or (b) agree to increase the GMP on account of the additional costs for such items, in accordance with and subject to the Change Order provisions of the Contract Documents.

§ 5.2.3.4 The GMP, once established, shall be revised only upon the issuance of a properly authorized Change Order. The GMP shall be based upon completion of the Work pursuant to the dates for Substantial Completion and Final Completion set forth in the Project Schedule.

PAGE 12

1.5%

...

The Fee shall be increased by 5.0% of the Cost of the Work for any additive Change Order, and reduced by 1.5% of the Cost of the Work removed from the Work by any deductive Change Order.

PAGE 13

Subcontractors shall be limited to 10% overhead and 5% profit on Change Orders, with markups limited to the first two tiers of Subcontractors only.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed ninety-five percent (95 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

~~§ 6.1.7~~ Other:

...

n/a

PAGE 14

Staff positions and wage rates contained within Ruhlin Proposal dated July 2024.

PAGE 17

§ 9.1 Those portions of the Work that the Construction Manager ~~does not customarily elects not to~~ perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

...

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than ~~the~~ the 25th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ~~(—)~~ 30 days after the Architect receives the Application for Payment.

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§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence ~~required when requested~~ by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

PAGE 19

10%

...

CMR Staff, Insurance, Bond, GC's, General Reqs and Fee

...

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

With the pay application where completed Work is equal to or greater than 50% of the original contract value, retainage shall be frozen, additional withholdings shall not occur on subsequent applications.

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld and unpaid from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

...

Upon the written recommendation of Construction Manager, Owner will consider requests for early release of retainage for Subcontractors whose portion of the Work is fully performed prior to overall Substantial Completion of the Work; provided, however, that the final decision shall rest with Owner in its sole discretion.

PAGE 20

n/a

...

Payments due and unpaid under the Contract shall bear interest from 30 days from the date the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

...

~~% 18%~~

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§ 12.1.2 ~~The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.~~

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

(Paragraphs deleted)

There will not be an Initial Decision Maker for this Project.

...

~~Arbitration pursuant to Article 15 of AIA Document A201-2017~~

~~Litigation in a court of competent jurisdiction~~

~~Other: (Specify)~~

PAGE 22

All costs with fee, incurred up to date of formal Notice of Termination, plus costs with fee associated with the termination of purchase orders, subcontract agreements and demobilization from the site.

PAGE 23

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. ~~If The Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.~~ If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than \$2,000,000 (\$ 1,000,000) for each occurrence and (\$ 2,000,000) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than \$1,000,000 (\$ 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.

...

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than \$1,000,000 (\$ 1,000,000) each accident, (\$ 1,000,000) each employee, and (\$ 1,000,000) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than 3,000,000 (\$ 3,000,000) per claim and (\$ 3,000,000) in the aggregate.

...

If any other coverages, including but not limited to Builder's Risk, are required by Owner, the Owner is responsible for placing and maintaining coverage for the duration of the project.

~~§ 14.3.1.7 Additional Insured Obligations.~~ To the fullest extent permitted by law, the Construction Manager 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 Construction Manager'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.

~~§ 14.3.1.8~~ The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

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n/a

§ 14.5 Other provisions: Construction Contingency

§ 14.5.1 The "Construction Contingency" shall initially be in the amount of one and a half percent (1.5%) of the current estimated Cost of the Work. The Construction Contingency shall be adjusted, as the case may require, to reflect savings ("Buy-Out Savings") or losses ("Buy-Out Losses") resulting from the award of subcontracts in each GMP Phase. If the Construction Manager is able to achieve any Buy-Out Savings on a subcontract award (as shown by an actual, demonstrable, net decrease between the actual Subcontract award pricing amount established at award and the previous amount originally scheduled, the estimate of the Subcontract award estimated in a pricing estimate, or the Schedule of Values (attached to the GMP Amendment), as the case may be, depending on when the buy-out occurs), then the amount of such Buy-Out Savings shall be credited to the Construction Contingency and shall increase the amount of the Construction Contingency by the amount of such Buy-Out Savings. Buy-Out Savings remaining in the Construction Contingency at the GMP finalization milestones set forth in the Project Schedule shall be returned to the Owner. If the amount of the actual subcontract award exceeds the amount shown in the initial schedule of values, then the amount of such excess shall be payable out of the Construction Contingency and, if the amount of such excess exceeds the balance of the Construction Contingency, the remaining balance shall be payable out of the Construction Manager's Fee. All Buy-Out Savings and Buy-Out Losses shall be shown on the monthly progress report.

§ 14.5.2 The Construction Manager may expend funds from the Construction Contingency for Cost of the Work incurred for completion of the Work, including Buy-Out Losses, scope differences, scope gaps (including scope gaps between GMP Phases), subcontractor defaults, overtime, acceleration, corrective Work, and errors in estimating; provided, however, that with respect to any expenditure of the Construction Contingency relating to a subcontractor default, the Construction Manager shall first demonstrate, to the Owner's reasonable satisfaction, that the Construction Manager has in good faith exercised reasonable steps to obtain performance by subcontractor or subcontractor's surety and that the claim is not covered by insurance. For purposes of this Agreement, the term "covered by insurance" shall mean that the event or claim underlying the Construction Manager's request for the use of Construction Contingency is an insured claim under any policy of insurance carried by the Construction Manager or any subcontractor. Any use of the funds in the Construction Contingency must be for permitted Costs of the Work and any recoveries shall be used to replenish the Construction Contingency.

§ 14.5.3 In no event shall the Construction Manager be permitted to use the Construction Contingency for any additional costs or expenses caused by: (a) the breach of this Agreement by the Construction Manager; (b) the breach of any agreement by the Construction Manager under any subcontract; or (c) the negligence of the Construction Manager or any subcontractor.

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§ 14.6.1 Construction Manager or its affiliates shall be permitted, with the Owner's consent, to self-perform portions of the Work. "Self-Performed Work" shall mean such Work (other than Work relating to any staff costs or general conditions expenses) in which a substantial portion thereof (as determined by Owner in its reasonable discretion) is performed directly by the Construction Manager's own labor forces or the labor forces of any affiliate of the Construction Manager (including the joint venture partners of the Construction Manager, if any), and not through Subcontracts or purchase orders with third party contractors or suppliers.

§ 14.6.1.1 Bidding Self-Performed Work. The Owner has the option, in its sole discretion, to require the

Construction Manager to follow the following bidding requirements for Self-Performed Work. Construction Manager shall submit a sealed proposal for Self-Performed Work pursuant to the competitive procedures applicable to all Subcontractors; provided, however, that Construction Manager or its affiliates must submit its bid or proposal for Self-Performed Work one (1) day before the deadline for other Subcontractors to submit their proposals; (b) the opening, review and advice with respect to award or rejection of such bids or proposals shall be managed by the Owner and Architect; (c) Construction Manager shall review the Self-Performed Work (including the bid packaging plan) with the Owner prior to finalizing the bid package; (d) there shall be a strict separation of the personnel involved with bidding the Self-Performed Work and Construction Manager's other personnel involved in the Project.

n/a
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n/a

...

[N/A] AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:

...

n/a

[n/a] Supplementary and other Conditions of the Contract:

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James L. Ruhlin, Jr. President and CEO

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:49:32 ET on 08/26/2024 under Order No. 2114497382 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

AIA Document A201[®] – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Medina Municipal Court Renovation
93 Public Square
Medina, OH 44256

THE OWNER:

(Name, legal status and address)

City of Medina
132 N. Elmwood Avenue
Medina, OH 44256

THE ARCHITECT:

(Name, legal status and address)

Brandstetter Carroll Inc.
1220 West 6th Street, Suite 300
Cleveland, OH 44113

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11	INSURANCE AND BONDS
12	UNCOVERING AND CORRECTION OF WORK

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.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503[™], Guide for Supplementary Conditions.

Init.

AIA Document A201 – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 11:21:58 ET on 08/26/2024 under Order No.2114497382 which expires on 02/05/2025, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents[®] Terms of Service. To report copyright violations, e-mail docinfo@aiaccontracts.com.

User Notes:

(1483763254)

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init.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect or Owner. The Architect shall incorporate into the Contract Documents any order for a minor change in the Work issued by the Owner. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

There is no Initial Decision Maker for this Project.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents 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 Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 If there is any inconsistency in the quality or quantity of the Work required under the Contract Documents, then the Contractor shall immediately notify the Architect in writing of such inconsistency. Computed dimensions shall take precedence over scale dimensions and large-scale drawings shall take precedence over small scale drawings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Owner shall own the Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Architect and the Architect's consultants shall be deemed the authors of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form. All executed counterparts shall constitute one

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Agreement, and each counterpart shall be deemed an original. The parties hereby acknowledge and agree that facsimile signatures, DocuSign signatures, or signatures transmitted by electronic mail in so-called "pdf" format shall be legal and binding and shall have the same full force and effect as if an original of this Agreement had been delivered. The Owner and the Contractor (1) intend to be bound by the signatures on any document sent by facsimile or electronic mail, (2) are aware that the other party will rely on such signatures, and (3) hereby waive any defenses to the enforcement of the terms of this Agreement based on the foregoing forms of signature.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

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§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

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§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 Contractor shall assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work. If necessary, as a matter of law, the Contractor may retain the right to enforce directly any such manufacturers' warranties during the one-year period following the date of Substantial Completion referred to in Section 9.8 of this Agreement.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first

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observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of all materials and equipment delivered at the site and all required taxes, less applicable trade discounts, plus Contractor's costs for unloading and handling at the site, labor, installation costs, design and engineering costs, and any other expenses required to perform the intended allowance item.
- .2 Contractor's overhead and profit shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and written communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

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§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the

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deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

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§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, 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 will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will 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,

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and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications 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. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, 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.

§ 4.2.7 The Architect will 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. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect 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. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any 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.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will 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 will be made in writing within seven (7) days of written request.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations

and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within three (3) days of written request. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Owner may require the Contractor to change any Subcontractor or Sub-subcontractor previously approved and, if at such time the Contractor is not in default hereunder, the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change. Neither Owner's nor Architect's review or input on any Subcontractor or Subcontract shall be construed as Owner's approval thereof. Owner does not accept any liability or responsibility for Subcontractors or Subcontracts.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract

Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly

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notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

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- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

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's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the

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Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, shortages affecting multiple contractors, fire, wide-spread disease that results in government-ordered shutdown or shutdown in compliance with appropriate Centers for Disease Control guidelines of construction activity at the Project site or of the business of Construction Manager or a subcontractor or a supplier after execution of the Agreement that prevents performance of Work during such shutdown, or other unavoidable casualties beyond the Contractor's control and that could not have been anticipated by it, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to

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substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least five (5) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the 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 an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will 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;

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or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld within seven (7) days of Contractor's request or the Architect or Owner's notification to Contractor that the reasons for withholding payment have been removed or satisfied.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than ten (10) days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

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§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any,

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the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

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§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. The Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within fourteen (14) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within fourteen (14) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

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§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the

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Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

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§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2; or
- .5 The Owner has not made payment within the time stated in the Contract Documents.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance,

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the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall upon at least seven (7) days' prior written notice to the Contractor.

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party.

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User Notes:

(1483763254)

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 (Deleted)

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 There will be no Initial Decision Maker for this Project.

(Paragraphs deleted)

(Paragraphs deleted)

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

Additions and Deletions Report for AIA® Document A201® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

Medina Municipal Court Renovation
93 Public Square
Medina, OH 44256

...

City of Medina
132 N. Elmwood Avenue
Medina, OH 44256

...

Brandstetter Carroll Inc.
1220 West 6th Street, Suite 300
Cleveland, OH 44113

PAGE 10

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the ~~Architect~~ Architect or Owner. The Architect shall incorporate into the Contract Documents any order for a minor change in the Work issued by the Owner. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

...

~~The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith. There is no Initial Decision Maker for this Project.~~

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§ 1.2.4 If there is any inconsistency in the quality or quantity of the Work required under the Contract Documents, then the Contractor shall immediately notify the Architect in writing of such inconsistency. Computed dimensions shall take precedence over scale dimensions and large-scale drawings shall take precedence over small scale drawings.

...

§ 1.5.1 The Owner shall own the Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. 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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the ~~Owner, Architect, and the Architect's consultants.~~ Owner.

...

The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form. All executed counterparts shall constitute one Agreement, and each counterpart shall be deemed an original. The parties hereby acknowledge and agree that facsimile signatures, DocuSign signatures, or signatures transmitted by electronic mail in so-called "pdf" format shall be legal and binding and shall have the same full force and effect as if an original of this Agreement had been delivered. The Owner and the Contractor (1) intend to be bound by the signatures on any document sent by facsimile or electronic mail, (2) are aware that the other party will rely on such signatures, and (3) hereby waive any defenses to the enforcement of the terms of this Agreement based on the foregoing forms of signature.

PAGE 15

§ 3.5.3 Contractor shall assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work. If necessary, as a matter of law, the Contractor may retain the right to enforce directly any such manufacturers' warranties during the one-year period following the date of Substantial Completion referred to in Section 9.8 of this Agreement.

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- ~~.1 allowances-~~ Allowances shall cover the cost to the Contractor of all materials and equipment delivered at the site and all required taxes, less applicable trade ~~discounts;~~
- ~~.2—discounts, plus Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts design and engineering costs, and any other expenses required to perform the intended allowance item.~~
- .2 Contractor's overhead and profit shall be included in the Contract Sum but not in the allowances; and

...

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and written communications given to the superintendent shall be as binding as if given to the Contractor.

PAGE 17

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. ~~Submittals that are not required by the Contract Documents may be returned by the Architect without action.~~

PAGE 20

§ 4.2.11 The Architect will 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 will be made in writing within ~~any time limits agreed upon or otherwise with reasonable promptness~~ seven (7) days of written request.

PAGE 21

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within ~~any time limits agreed upon or otherwise with reasonable promptness~~ three (3) days of written request. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

...

§ 5.2.4 ~~The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution. Owner may require the Contractor to change any Subcontractor or Sub-subcontractor previously approved and, if at such time the Contractor is not in default hereunder, the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change. Neither Owner's nor Architect's review or input on any Subcontractor or Subcontract shall be construed as Owner's approval thereof. Owner does not accept any liability or responsibility for Subcontractors or Subcontracts.~~

PAGE 25

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, shortages affecting multiple contractors, fire, wide-spread disease that results in government-ordered shutdown or shutdown in compliance with appropriate Centers for Disease Control guidelines of construction activity at the Project site or of the business of Construction Manager or a subcontractor or a supplier after execution of the Agreement that prevents performance of Work during such shutdown, or other unavoidable casualties beyond the Contractor's control and that could not have been anticipated by it, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the ~~Owner pending mediation and binding dispute resolution; Owner;~~ or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable ~~time as the Architect may determine.~~ time.

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§ 9.3.1 At least ~~ten~~ five (5) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

...

§ 9.4.1 The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

PAGE 27

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously ~~withheld~~ withheld within seven (7) days of Contractor's request or the Architect or Owner's notification to Contractor that the reasons for withholding payment have been removed or satisfied.

...

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than ~~seven-ten (10)~~ days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. ~~Unless otherwise required by the Contract Documents, the~~ The Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

PAGE 32

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within ~~three (3)~~ fourteen (14) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

...

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within ~~three (3)~~ fourteen (14) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

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.4 The Owner has failed to furnish to the Contractor reasonable evidence as required by ~~Section 2.2, Section 2.2;~~ or

.5 The Owner has not made payment within the time stated in the Contract Documents.

PAGE 37

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall upon at least seven (7) days' prior written notice to the Contractor.

...

~~§ 15.1.3.1~~ Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker party. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

~~§ 15.1.3.2~~ Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

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~~§ 15.1.4.2~~ The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker. *(Deleted)*

...

~~§ 15.2.1~~ Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner. There will be no Initial Decision Maker for this Project.

(Paragraphs deleted)

~~§ 15.2.2~~ The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

~~§ 15.2.3~~ In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

~~§ 15.2.4~~ If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

~~§ 15.2.5~~ The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

~~§ 15.2.6~~ Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

~~§ 15.2.6.1~~ Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

~~§ 15.2.7~~ In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

~~§ 15.2.8~~ If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:21:58 ET on 08/26/2024 under Order No. 2114497382 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

ORDINANCE NO. 167-24

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A TEST PURCHASE AGREEMENT WITH GRAIL, INC. TO PARTICIPATE IN THE GALLERI MULTI-CANCER EARLY DETECTION SCREENINGS FOR THE CITY OF MEDINA FIREFIGHTERS, AND DECLARING AN EMERGENCY.

WHEREAS: The National Institute for Occupational Safety and Health (NIOSH) identified that firefighters have a 9% greater risk of being diagnosed with cancer and a 14% greater chance of dying from cancer than the general U.S. population; and

WHEREAS: The Grail Galleri early detection test was chosen over all other available screenings following extensive research that included published studies, national health and wellness standards and recommendations; and

WHEREAS: The funding to cover the cost of these services has been donated from the Park Foundation.

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

SEC. 1: That the Mayor is hereby authorized to enter into a Test Purchase Agreement with Grail, Inc. to participate in the Galleri Multi-cancer early detection screenings for the Medina Firefighters.

SEC. 2: That a copy of the Test Purchase Agreement is marked Exhibit A, attached hereto, incorporated herein, and has been approved by the Law Director.

SEC. 3: That the funds to cover this agreement, in the amount of \$28,556.00, are available in Account No. 107-0110-52226.

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 to secure September 26 and 27, 2024 screening dates; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and signature by the Mayor.

PASSED: _____

SIGNED: _____

President of Council

ATTEST: _____

APPROVED: _____

Clerk of Council

SIGNED: _____

Mayor

ORD 167-24
Exh. A

GRAIL, Inc.
TEST PURCHASE AGREEMENT

This Test Purchase Agreement (the "Agreement") is made effective as of the date of the last signature below (the "Effective Date") by and between GRAIL, Inc., a Delaware corporation with a principal place of business at 1525 O'Brien Drive, Menlo Park, CA 94025 ("GRAIL") and Medina Fire Department, having a principal place of business at 300 W. Reagan Pkwy, Medina, Ohio 44256 ("Company"). Company and GRAIL may each be referred to herein as a "Party" or collectively as the "Parties."

WHEREAS, Company wishes to purchase GRAIL's Galleri®, a multi-cancer early detection test (the "Test") and such other laboratory tests from GRAIL from time to time (collectively, the "Laboratory Test(s)"), as more fully set forth in each applicable Test purchase specific addendum to be attached to this Agreement and incorporated herein by reference (the "Purchase Addendum");

NOW, THEREFORE, in consideration of the premises and the mutual promises set forth in this Agreement, and other good and valuable consideration, the exchange, receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1.0 Test Purchases

1.1 Purchase Addenda. Each Purchase Addendum will include (a) a description of the Laboratory Test(s); (b) applicable fees, and (c) any other responsibilities mutually agreed by the Parties. To the extent any terms set forth in a Purchase Addendum conflict with the terms set forth in this Agreement, the terms of this Agreement will control unless otherwise expressly agreed by the Parties in such Purchase Addendum that the conflicting terms in such Purchase Addendum will control.

1.2 Invoices. GRAIL will invoice Company and/or any applicable third party for the Laboratory Tests in each case as described in the Purchase Addendum. Invoicing will follow the delivery of the Laboratory Test results report. Company will pay each invoice within thirty (30) days of the invoice date. In addition to any other rights and remedies available to GRAIL, interest will be payable on any payments under this Agreement that are not paid when due at a monthly rate of 1.5%, or the maximum applicable legal rate, if less, calculated on the total number of days that payment is delinquent. In the event the Company fails to make payments due, GRAIL reserves the right to suspend providing Laboratory Tests and collection materials.

1.3 Payments. All payments of amounts owing to GRAIL will be made at the following account or address or such other account or address designated by GRAIL in writing:

For electronic payment:

Beneficiary:	GRAIL, Inc.
Beneficiary Address:	1525 O'Brien Dr. Menlo Park, CA 94025, USA
Bank Name:	Silicon Valley Bank
Bank Address:	3003 Tasman Drive Santa Clara, CA 95054, USA
Routing & Transit Number:	121140399
SWIFT Code:	SVBKUS6S
Account Number:	3303126108

For payment by check:
GRAIL, Inc.
Dept LA 25195
Pasadena, CA 91185-5195

2.0 Specimens and Personal Data

2.1 Protections. GRAIL is a Covered Entity healthcare provider under the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations at 45 C.F.R. Part 160 and Part 164 (Subparts A – E) (collectively, “HIPAA”). Any personal data about a participant in Company’s offering of the Laboratory Test that GRAIL receives directly from either (a) such participant, or (b) a healthcare professional who orders the Laboratory Test for such participant is Protected Health Information (as defined under HIPAA), exclusively governed by HIPAA, and is subject to GRAIL’s administrative, technical, and physical safeguards and applicable policies for protecting the privacy and security of Protected Health Information. The Parties will maintain records and data related to its obligations under this Agreement in accordance with applicable laws.

2.2 Collection and Rights. For Laboratory Tests collected by GRAIL’s third-party phlebotomy provider, GRAIL will ensure transfer of blood specimens from patient(s) (“Specimens”) by such third-party provider to GRAIL. As between the Parties, GRAIL will own all rights, title and interest in and to Specimens and will have sole right to use and analyze Specimens and any related Protected Health Information consistent with the permissions granted by relevant participants in connection with the Test and applicable laws. Company will have no access to Specimens and such Protected Health Information.

2.3 Inability to Process. GRAIL may not be able to process Specimens or to provide Laboratory Test results reports in certain instances, including but not limited to: (a) Specimens lost or damaged prior to delivery at GRAIL laboratories; (b) contaminated Specimens; (c) incomplete or inaccurate information on the Laboratory Test requisition form; (d) the relevant patient canceling the Laboratory Test; (e) the ordering healthcare professional canceling the Laboratory Test; and (f) shipping delays. Specimens collected from patients who are twenty-one (21) years old or younger or who are pregnant will not be processed.

3.0 Confidentiality

3.1 Confidential Information. The Parties acknowledge that a Party (the “Recipient”) may have access to confidential or proprietary information (“Confidential Information”) of the other Party (the “Discloser”) in connection with this Agreement. In order to be protected as Confidential Information, information must be marked or confirmed in writing as such or it must be information reasonably expected to be treated in a confidential manner under the circumstances of disclosure or by the nature of the information itself. This Agreement, including its terms, including pricing, is Confidential Information. During the Term of this Agreement and for a period of five (5) years thereafter, the Recipient will hold the Discloser’s Confidential Information in confidence using at least the degree of care that is used by the Recipient with respect to its own Confidential Information, but no less than reasonable care. The Recipient will disclose the Confidential Information of the Discloser solely on a need-to-know basis to its employees, contractors, officers, directors, and representatives, under written confidentiality and restricted use terms consistent with this Agreement. The Recipient will not use the Discloser’s Confidential Information for any purpose other than exercising its rights and fulfilling its obligations under this Agreement. The Confidential Information will at all times remain the property of the Discloser. The Recipient will, upon written request of the Discloser, return to the Discloser or destroy the Confidential Information of the Discloser.

Notwithstanding the foregoing, the Recipient may maintain one copy of the Discloser's Confidential Information to be retained by the Recipient for archival purposes or if required to be retained by law.

3.2 Exceptions. Notwithstanding any provision contained in this Agreement to the contrary, the Parties' confidentiality and non-use obligations shall not apply to: (a) information that, at the time of disclosure to the Recipient, is in the public domain through no breach of this Agreement or breach of another obligation of confidentiality owed to the Discloser by the Recipient, (b) information that, after disclosure hereunder, becomes part of the public domain by publication or otherwise, except by breach of this Agreement or breach of another obligation of confidentiality owed to the Discloser by the Recipient; (c) information that was in the Recipient's possession at the time of disclosure by the Discloser unless subject to an obligation of confidentiality or restricted use owed to the Discloser; (d) information that is independently developed by or for the Recipient without use of or reliance on Confidential Information of the Discloser, or (e) information that the Recipient receives from a third party where such third party was under no obligation of confidentiality to the Discloser with respect to such information.

3.3 Required Disclosures. The Recipient may disclose Confidential Information of the Discloser as required by court order, operation of law, or government regulation; provided that, the Recipient promptly notifies the Discloser of the requirement prior to disclosure, uses diligent and reasonable efforts to limit the scope of such disclosure or obtain confidential treatment of the Confidential Information if available, and allows the Discloser to participate in the process undertaken to protect the confidentiality of the Discloser's Confidential Information.

4.0 Indemnification, Responsibility and Limitation of Liability

4.1 Indemnification and Responsibility. GRAIL hereby agrees to defend, hold harmless and indemnify the Company and its officers, directors, employees, agents, representatives, and affiliates from and against any and all liabilities, expenses, damages and/or losses (including without limitation reasonable legal expenses and attorneys' fees) resulting from any third-party claim to the extent arising out of (a) the material breach by GRAIL or its officers, directors, employees, agents, or representatives of its obligations under this Agreement, (b) the gross negligence or willful misconduct of GRAIL or its officers, directors, employees, agents or representatives in the performance of its obligations under this Agreement, or (c) any failure by GRAIL to comply with any applicable federal, state, or local laws, regulations, or codes in the performance of its obligation under this Agreement; provided, GRAIL will not have an obligation to indemnify the Company and its officers, directors, employees, agents, representatives and affiliates to the extent any liability, expense, damage, and/or loss is caused by the Company and/or its officers, directors, employees, agents, representatives and/or affiliates (i) material breach of this Agreement, (ii) negligence or willful misconduct in the performance of its obligations under this Agreement, and/or (iii) any failure to comply with applicable federal, state, or local laws, regulations or codes in the performance of its obligations under this Agreement. The Company is responsible for its and its officers, directors, employees, agents, representatives and affiliates actions and omissions in the performance of this Agreement.

4.2 Indemnification Procedure. To be eligible to be indemnified hereunder, the Company will provide GRAIL with prompt notice of the third-party claim giving rise to the indemnification obligation pursuant to this Article 4 and the right to control the defense (with the reasonable cooperation of the indemnified Party) and settlement of any such claim; provided, however, that GRAIL will not enter into any settlement that admits fault, wrongdoing or damages without the Company's written consent. The Company will have the right to participate, at its own expense and with counsel of its choice, in the defense of any claim or suit that has been assumed by GRAIL.

4.3 Limitation of Liability. IN NO EVENT WILL GRAIL BE RESPONSIBLE FOR ANY PUNITIVE DAMAGES OR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES (INCLUDING LOST PROFITS OR REVENUE) OF COMPANY OR OF ANY THIRD PARTY.

5.0 Term and Termination

5.1 Term; Non-Renewal. This Agreement will commence on the Effective Date and continue in effect for an initial one (1) year period ("Initial Term") and will automatically extend for two (2) additional one (1) year periods (each, a "Renewal Term") unless earlier terminated by Company providing written notice of non-renewal during the thirty (30) day period ending on the last day of the Initial Term or the first Renewal Term.

5.2 Termination. This Agreement may be immediately terminated by either Party upon written notice, if the other Party is in material breach of this Agreement and fails to cure that breach within thirty (30) days after receiving written notice from the non-breaching Party. This Agreement may be terminated by GRAIL, without cause, upon thirty (30) days' prior written notice to Company.

5.3 Effect of Termination. Upon termination or expiration of this Agreement for any reason, Company will make payment to GRAIL for any Laboratory Tests results reports delivered, including those provided after the termination or expiration date for Laboratory Tests ordered prior to such date (other than those for which GRAIL has agreed in the Purchase Addendum to invoice any third party). In addition, Company will return any Collection Materials it possesses as of the expiration or termination date back to GRAIL.

5.4 Survival. Expiration or termination of this Agreement for any reason will not affect either Party's rights or obligations which, at the time of such expiration or termination, have already accrued to such Party. In addition, the obligations of the Parties contained in Articles 3, 4, and 6 and Sections 2.2, 5.3, and 5.4 hereof will survive expiration or termination of this Agreement.

6.0 Miscellaneous

6.1 Force Majeure. In the event either Party will be delayed or hindered in or prevented from the performance of any act required hereunder by reasons of strike, lockouts, labor troubles, pandemic, restrictive government or judicial orders or decrees, riots, insurrection, war, Acts of God, inclement weather or other similar reason or cause beyond such Party's reasonable control, then performance of such act will be excused for the period of such delay, and the affected Party will receive time to perform the act equal to the period of delay. Notice of the start and stop of any such force majeure will be promptly provided to the other Party, and the affected Party will use commercially reasonable efforts to end the delay and resume performance under this Agreement as soon as reasonably practicable.

6.2 Notices. Every notice or other communication required or permitted under this Agreement or by applicable laws will be in writing and will be deemed to have been delivered and received (a) when personally delivered, (b) on the seventh (7th) business day after which sent by registered or certified mail, (c) by email with confirmation by the recipient confirming such email has been received and reviewed, or (d) on the third (3rd) business day after the business day on which deposited with a regulated public carrier (e.g., FedEx) for overnight delivery (receipt verified), addressed to the Party as specified in this Section.

For GRAIL
GRAIL, Inc.
1525 O'Brien Drive
Menlo Park, CA 94025
Attn: Legal
Email: legalnotice94025@grailbio.com

For Company
Medina Fire Department
300 W. Reagan Pkwy
Medina, Ohio 44256
Attn: Dennis Hanwell
Email: dhanwell@medinaoh.org

6.3 Public Relations Activities; Use of Name. Following execution of this Agreement, Company and GRAIL will discuss strategic public relations activities to support publicly announcing the execution of this Agreement, which may include a joint press release. The content and timing of any press release will be mutually agreed upon by the Parties and approved by each Party's corporate communications team. Each Party's corporate name, logo, trademark, or product name(s) may be used only with such Party's prior written consent for such use on each occurrence.

6.4 Compliance with Laws. Each Party will comply with all applicable state and federal laws and regulations in the performance of this Agreement.

6.5 Governing Law and Venue; Arbitration. The Parties agree that any dispute or controversy arising out of, in relation to, or in connection with this Agreement, or the making, interpretation, construction, performance or breach hereof, will be finally settled by binding arbitration under the then current rules of the Judicial Arbitration and Mediation Services (JAMS) by three (3) arbitrators, one appointed by each Party and the third being mutually agreed upon by the Parties in accordance with such rules. The arbitrators may grant injunctive or other relief in such dispute or controversy. The decision of the arbitrators will be final, conclusive and binding on the Parties to the arbitration. Judgment may be entered on the arbitrators' decision in any court of competent jurisdiction. Without limiting the foregoing, each Party shall also have the right to seek injunctive relief for any violation or threatened violation of Section 3.

6.6 Severability; Waiver. If any one or more provisions of this Agreement will be found to be illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby, provided the surviving agreement materially comports with the Parties' original intent. Waiver or forbearance by either Party or the failure by either Party to claim a breach of any provision of this Agreement or exercise any right or remedy provided by this Agreement or applicable law, will not be deemed to constitute a waiver with respect to any subsequent breach of any provision hereof.

6.7 Entire Agreement; Amendments. This Agreement, including all Purchase Addenda, represents the complete and entire understanding between the Parties regarding the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral, regarding this subject matter. No changes or modifications of this Agreement or any Purchase Addendum will be deemed effective unless in writing and executed by the Parties hereto.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the Effective Date.

GRAIL, INC.

MEDINA FIRE DEPARTMENT

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

PURCHASE ADDENDUM NO. 1

This Purchase Addendum No. 1 ("Purchase Addendum No. 1") is intended to supplement and be read together with the Test Purchase Agreement by and between Medina Fire Department ("Company") and GRAIL, Inc. ("GRAIL") effective as of the date of the last signature below (the "Agreement"). This Purchase Addendum No. 1 is incorporated herein to the Agreement by this reference. All capitalized terms not defined in this Purchase Addendum No. 1 will have the meanings given to them in the Agreement. This Purchase Addendum No. 1 will remain in effect until expiration of the Agreement, unless the Agreement is earlier terminated as provided therein.

1.0 The Offering

1.1 Scope. The Test will be made available as an offering (the "Offering") to U.S.-based firefighters (active, retired only) and their spouses ("Eligible Participants").

1.2 Implementation. Eligible Participants who request a Test (whether or not a Test is authorized, a "User") will have their requests reviewed by third party healthcare professionals under the direction and control of GRAIL's telemedicine or, as applicable, onsite provider (each a "Healthcare Professional"). The Healthcare Professional will, for Users for whom a Test request is authorized, be responsible for ordering the Test via a Test requisition form. GRAIL will also arrange for a phlebotomy provider who can assist with Specimen collection.

1.3 Determination of Use Criteria. GRAIL intends the Test for use in adults with an elevated risk for cancer, such as those aged 50 or older. Company is solely responsible for determining the age, risk factors, and any other criteria required for those whom the Test may be ordered by a Healthcare Professional. Company acknowledges that GRAIL has not yet examined the performance of the Test in all elevated cancer risk populations included in the criteria and performance of the Test could vary in those populations, which may result in a decreased cancer signal detected rate in those aged under 50. Company acknowledges the cancer signal detected rate for those under age 50, regardless of other factors contributing to an elevated risk for cancer, may be lower than those aged 50+.

1.4 Test Processing. GRAIL will process the Specimen collected for the Test and provide a Test results report for each Test ordered to the Healthcare Professional who issued the Test requisition form to GRAIL, unless the Test is canceled, or the Specimen is unable to be processed. In the event that GRAIL is unable to generate a Test results report for a User, GRAIL will notify the Healthcare Professional in a timely manner. GRAIL's contracted telemedicine provider's Healthcare Professionals will be solely responsible for delivering and communicating the Test results report to Users.

1.5 Collection Materials. GRAIL or its designee will deliver or otherwise make available the kits necessary for collection of the Specimens for Users for whom a Test has been authorized. If GRAIL determines, in its sole discretion, that Company has breached the terms of the Agreement or this Purchase Addendum No. 1, GRAIL reserves the right, in addition to the other remedies available hereunder, to cease the provisioning of kits.

1.6 Onsite Testing. GRAIL and Company agree to perform at least one onsite offering of the Test, at a mutually agreed location and time ("Onsite Testing Events"). Onsite Testing Events will be conducted in a manner that safeguards patient privacy in a manner consistent with applicable law. Notwithstanding the foregoing, GRAIL may determine not to provide Onsite Testing Events if GRAIL determines in its sole discretion that (a) applicable law in the location would make such an Onsite Testing Event infeasible, or (b) an Onsite Testing Event cannot be conducted in a manner that complies with

applicable law. Company acknowledges that neither GRAIL nor its third-party providers will verify whether any individual seeking the Test is an Eligible Participant, and Company agrees that Company nonetheless remains responsible for payment with respect to any Test results report delivered as a result Onsite Testing Events.

1.7 Access to the Offering. Company and GRAIL may agree to utilize the eligibility file method and/or Galleri Key method (each as further described below) to provide Eligible Participants access to the Offering.

(a) Eligibility File and Data. If the Parties agree to use the eligibility file method, Company will provide GRAIL with eligibility files, in accordance with GRAIL's specifications for format and transmission method and such other requirements provided by GRAIL in writing, necessary for GRAIL to verify whether an Eligible Participant (based on the eligibility criteria determined by Company) may participate in the Offering, and GRAIL, itself or through a third-party, will process the eligibility files to perform such verification and GRAIL may utilize such eligibility file information for other activities in support of the Offering, including any business review for Company, other Company requests for reporting or analytics, and any communications activities described herein or in the communications plan. If Company requires use of a Company-specific eligibility file format or transmission method, additional approvals and fees may apply. Company agrees to timely provide GRAIL with accurate eligibility files prior to the agreed upon launch of the Offering and at the frequency mutually agreed upon by the Parties. Any eligibility file data and other personal data provided to GRAIL by Company is Confidential Information of Company.

i. Company acknowledges and agrees that GRAIL does not perform eligibility verification at the time of invoicing and Company agrees that Company remains responsible for payment with respect to any Test results report delivered regardless of whether the applicable patient remains an Eligible Participant at the time of invoicing.

ii. Company represents and warrants that, prior to the transfer of and GRAIL's use of any Eligible Participants and/or Users' personal information (including such information in the eligibility files), Company has or will obtain from its Eligible Participants and/or Users any and all necessary rights, consents, and authorizations required by applicable law in order for Company to collect any and all data and information in the eligibility files, to transfer such data and information to GRAIL, and for GRAIL to use such data and information in support of the Offering, including for the purpose of Direct Communications.

(b) Galleri Key (Eligibility File Replacement). If the Parties agree to use the Galleri Key method, GRAIL will generate and provide to Company unique alphanumeric codes necessary for Eligible Participants to access GRAIL's contracted independent telemedicine healthcare provider to have a Test request reviewed by a Healthcare Professional ("EFR Galleri Key").

i. Company acknowledges and agrees that GRAIL will not verify whether an individual using an EFR Galleri Key is an Eligible Participant, and further, that neither the Healthcare Professional nor GRAIL's contracted telemedicine provider will review Test orders to confirm eligibility other than the Healthcare Professional utilizing his/her own medical and clinical judgment in determining whether to order the Test (for example, no review will be performed to determine whether an individual seeking the Test is enrolled in a specific health plan even if that is a requirement for participation in the Offering). Company agrees that Company remains responsible for payment with respect to any Test results report delivered as a result of use of an EFR Galleri Key, regardless of whether, for example, the applicable patient is an Eligible Participant at the time of invoicing.

ii. Each EFR Galleri Key becomes active for use upon delivery to the Company or, as applicable, delivery by GRAIL to Eligible Participants. All unused EFR Galleri Keys expire at midnight 11:59 PT on the earlier of: (a) the date or the number of days after the delivery of the EFR Galleri Key that the Parties have agreed in writing for that specific distribution of EFR Galleri Keys; or (b) the termination of the Agreement. Company will cease distribution of the EFR Galleri Key (if Company is distributing) and agrees that GRAIL may cease distribution (if GRAIL is distributing) and deactivate all EFR Galleri Keys in the event the Agreement is terminated for any reason or if Company violates any terms of the Agreement. If Company is distributing EFR Galleri Keys, Company will promptly disclose any eligibility requirements and will be responsible for ensuring that EFR Galleri Keys are distributed only to persons consistent with Company-determined eligibility requirements. Company will include the expiration date of the EFR Galleri Key on any instrument used to distribute the EFR Galleri Key (e.g., email, cards, etc.). Company will not export any EFR Galleri Key for use outside the United States, and acknowledges that Test orders from outside the United States will be refused.

(c) If Company desires to make changes to eligibility criteria for the Offering, including to enable any individual attending an Onsite Testing Event who is not an Eligible Participant to access the Offering, only Company's designated principal contact, _____, may authorize such changes to eligibility criteria and, in such cases, such authorization will be made in writing and Company is solely responsible for any such changes.

1.8 Company-Provided Services. GRAIL and Company may agree, on a case-by-case basis for any Onsite Testing Events, for Company to provide third party healthcare professionals for Test request review and ordering and/or phlebotomy services for Specimen collection. GRAIL will have no responsibility for such service providers and disclaims any liability resulting from performance of such Company-provided service providers. For each Test ordered by Company-provided healthcare professionals, Company will ensure use of GRAIL's TRF and entry of the correct partnership program code in the "Billing Information" section of TRF(s) submitted for Company's account and pricing set forth herein.

2.0 Payments; Schedule

2.1 Payment: GRAIL will process the Test at a charge of \$649 per Test for Eligible Participants. It is understood that for Tests ordered for active firefighters, Company will be responsible for \$649 of the Test price. It is also understood that for Tests ordered for retired firefighters and spouses, the User will be responsible for the full amount of \$649

2.2 Payment Schedule: GRAIL will invoice Company on a calendar month basis for all Test results reports delivered in the preceding calendar month. GRAIL will invoice Users directly. User invoices are due within thirty (30) days of User's receipt of invoice. For avoidance of doubt, to the extent any Tests were ordered for a User during the term of this Purchase Addendum No. 1, Company will pay such amount for each Test even if the Test results report is delivered after the termination of this Purchase Addendum No. 1. Company will be solely responsible for compensating GRAIL for the Test, and GRAIL will not be required to seek any amounts from any Healthcare Professional or patient.

For a Test requisition form ("TRF") marked "Other," GRAIL will invoice Company on a calendar month basis for all Test results reports delivered to Company in the preceding calendar month; or, if a partnership program code is entered for First Responder Pricing, the third party that is associated with that partnership program code. For TRFs marked as "Patient Self-Pay," GRAIL will invoice patients directly. Company may choose to restrict the billing method for Test results reports delivered by checking the appropriate box

below, subject to the following: *In order to comply with state billing laws for Test orders received from Healthcare Professionals in NY and RI, GRAIL will always bill the patient directly, regardless of the selection on the TRF or checkbox below, or request by the Company to the contrary.*

You are not required to check a box below. If you are checking a box below, then by doing so you authorize and instruct GRAIL to instruct its third-party billing services provider to program your account to override any TRF requests that are marked with a bill to-type other than the method chosen below; and further you represent and warrant that you have the legal authority to act on behalf of Company to authorize and instruct GRAIL to do so.

- Bill to: Company only (for states other than NY and RI)
 Patient only

If you are signing on behalf of the Company, you represent and warrant that you: (1) have full legal authority to bind the Company to these terms and conditions; (2) have read and understood the TPA and Purchase Addendum; and (3) agree to this Purchase Addendum on behalf of the Company. If you do not have the legal authority to bind the Company, do not sign this Purchase Addendum.

GRAIL and Company concur with the above and Company authorizes GRAIL, and GRAIL agrees, to begin this Purchase Addendum No. 1, each by signing in the space provided below.

GRAIL, INC.

MEDINA FIRE DEPARTMENT

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

ORDINANCE NO. 168-24

AN ORDINANCE AUTHORIZING THE MAYOR TO GRANT ONE (1) UTILITY EASEMENT TO LEGACY HOTEL OF MEDINA LLC FOR THE LEGACY HOTEL PROJECT, AND DECLARING AN EMERGENCY.

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

- SEC. 1:** That the Mayor is hereby authorized to grant one (1) Utility Easement to Legacy Hotel of Medina LLC for the Legacy Hotel Project located at 257 South Court Street.
- SEC. 2:** That the Easement marked Exhibit A, attached hereto and incorporated herein, is part of Medina City Lot (MCL) 359 as shown by plat recorded in Document Number 2024PL000016 of the Medina County Recorder’s Records, Parcel No. 028-19A-21-240.
- SEC. 3:** 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. 4:** 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 to not delay the project; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and signature by the Mayor.

PASSED: _____

SIGNED: _____

President of Council

ATTEST: _____

APPROVED: _____

Clerk of Council

SIGNED: _____

Mayor

Utility Easement

ORD. 168-24
EXH. A

KNOW ALL MEN BY THESE PRESENTS:

That in consideration of (ONE and 00/100) Dollar (\$1.00) and other good and valuable consideration recited herein given to CITY OF MEDINA, Ohio, hereinafter "Grantor(s)" by the LEGACY HOTEL OF MEDINA LLC, hereinafter "Grantee", the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell, transfer and convey unto the Grantee, its successors and assigns, a utility easement for the purpose of erecting, constructing, installing and thereafter using, operating, inspecting, maintaining, repairing, replacing or removing UTILITIES (WATER LINES, ELECTRIC LINES, STORM SEWERS AND APPURTENANCES) under, across, and through certain land of the Grantor(s) situated in the City of Medina, County of Medina and State of Ohio and more particularly described as follows:

Said easement is granted upon parcel number: 028-19A-21-240

Situated in the City of Medina, County of Medina, State of Ohio and being known as part of Medina City Lot (MCL) 359 as shown by plat recorded in Document Number TBD of the Medina County Recorder's Records, further bounded and described in Exhibits A and B:

together with the right of reasonable ingress and egress over the immediately adjacent lands of the Grantor(s) for the purpose and use of said easement. The Grantee covenants and agrees that it will not use said easement for public right-of-way purposes.

As additional consideration for this easement and right-of-way, the Grantee covenants and agrees as follows:

1. Grantee shall observe, maintain, repair, or replace the proposed utilities and appurtenances if any maintenance issues arise.
2. Grantee will be responsible for all excavation and backfill associated with any such maintenance activities; all surface restoration will be the responsibility of the Grantee.
3. Grantee will for its successors and assigns agrees that it will use its best efforts to have any future maintenance of the proposed utilities and appurtenances undertaken by competent utility contractors who shall complete said construction as expeditiously as possible.
4. Grantee shall complete the installation and testing of the proposed utilities and appurtenances in accordance with the plans and/or specifications approved by the City of Medina.

5. Grantee shall replace any existing surface treatment, pavement, patio pavers, lawn, landscaping, shrubbery, or other improvements which may be damaged as a result of future maintenance, repair, or replacement of the utilities and appurtenances by the Grantee.
6. Grantee will secure and protect all permanent structures associated with the utilities in the easement area.
7. Grantee will pay for all costs of surveying, recording of documents, filing and transfer fees, escrow costs and title expenses, if any.

Grantor(s) covenant and agrees as follows:

1. Grantor will not install, erect or maintain any structure, fixture or device upon the easement which could in any way interfere with Grantee's use of the easement and right-of-way without written consent from the Legacy Hotel Of Medina Llc; however, Grantor retains the right to use the surface of the easement area provided said use does not interfere with the uses granted to Grantee.

All the terms and conditions of this Easement and Right-of-way shall be binding upon and inure to the benefit of the Grantor(s), the Grantee, their heirs, executors, administrator, successors and assigns.

The grant of this Easement and Right-of-way shall constitute a covenant running with the land for the benefit of the Grantee, its successors and assigns.

IN WITNESS WHEREOF, the undersigned has executed this instrument this _____ day of _____, 20_____.

Grantor:

City of Medina, Ohio

Signature: _____

Name: Dennis Hanwell

Official Title: Mayor, City of Medina, Ohio

State of Ohio)
) SS:
County of Medina)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____
By The City of Medina Ohio by its Mayor Dennis Hanwell who acknowledged that he did sign this Power of
Attorney, and that it is his free act and deed.

I have signed and sealed this Power of Attorney at Medina, Ohio this ____ day of _____, 20____

Notary Signature: _____

Print Name: _____

My Commission Expires: _____

Notary Seal:

This instrument was prepared by:

Gregory Huber, Law Director, City of Medina, Ohio
132 N. Elmwood Avenue
Medina, OH 44256



Cunningham & Associates, Inc.

Civil Engineering & Surveying
203 W. Liberty St., Medina, Oh 44256
Phone: (330) 725-5980 * Fax (330) 725-8019

EXHIBIT A

Legal Description for Varied Width Utility Easement
Project No. 22-137
August 27, 2024

Situated in the City of Medina, County of Medina, State of Ohio and being known as part of Medina City Lot (MCL) 359, also being part of lands conveyed to The City of Medina by deed dated July 17, 1984 as recorded in Official Record Volume 211, Page 33 of the Medina County Recorder's Records, further bounded and described as follows:

Commencing at the Southeast corner of MCL 9423 as shown by plat recorded in Document Number 2024PL000016 of the Medina County Recorder's Records, also being a point on the Western Right-of-Way of South Court Street, having a 66-foot Right-of-Way;

Thence along the Western right-of-Way of South Court Street, bearing South 00°10'13" West, a distance of 15.15 feet to a point thereon and the **TRUE PLACE OF BEGINNING** of the Easement Area herein described;

Thence, continuing along the Western Right-of-Way line of South Court Street, bearing South 00°10'13" West, a distance of 15.00 feet to a point thereon;

Thence parallel to the Southern line of aforesaid MCL 9423, bearing, North 89°40'53" West, a distance of 19.91 feet to a point;

Thence, bearing North 45°00'00" West, a distance of 21.54 feet to a point;

Thence parallel to the Southern line of aforesaid MCL 9423, bearing North 89°40'53" West, a distance of 104.67 feet to a point;

Thence at a right angle and perpendicular to the Southern line of said MCL 9423, bearing South 00°19'07" West, a distance of 27.86 feet to a point;

Thence at a right angle and parallel the Southern line of said MCL 9423, bearing North 89°40'53" West, a distance of 10.00 feet to a point;

Thence at a right angle and perpendicular the Southern line of said MCL 9423, bearing North 00°19'07" East, a distance of 27.86 feet to a point;

Thence at a right angle and parallel the Southern line of said MCL 9423, bearing North 89°40'53" West, a distance of 51.53 feet to a point;

Thence at a right angle and perpendicular the Southern line of said MCL 9423, bearing North 00°19'07" East, a distance of 15.00 feet to a point on the Southern line of said MCL 9423;

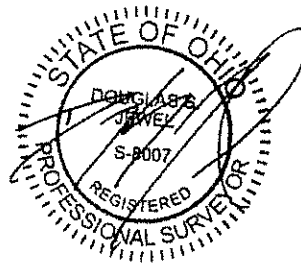
Thence along the Southern line of said MCL 9423, bearing South 89°40'53" East, a distance of 185.98 feet to a point thereon;

Thence at a right angle and perpendicular the Southern line of said MCL 9423, bearing South 00°19'07" West, a distance of 15.15 feet to a point;

Thence at a right angle and parallel the Southern line of said MCL 9423, bearing South 89°40'53" East, a distance of 15.40 feet to a point on the Western right-of-Way of South Court Street and the **TRUE PLACE OF BEGINNING** containing 0.0800 Acres of land, more or less but subject to all legal highways and all covenants and agreements of record.

Bearings are based on an assumed meridian and are used herein to indicate angles only.

This legal description was prepared based on a survey by and/or under the supervision of Douglas S. Jewel P.S. # S-8007 by Cunningham & Associates, Inc. in August 2024.

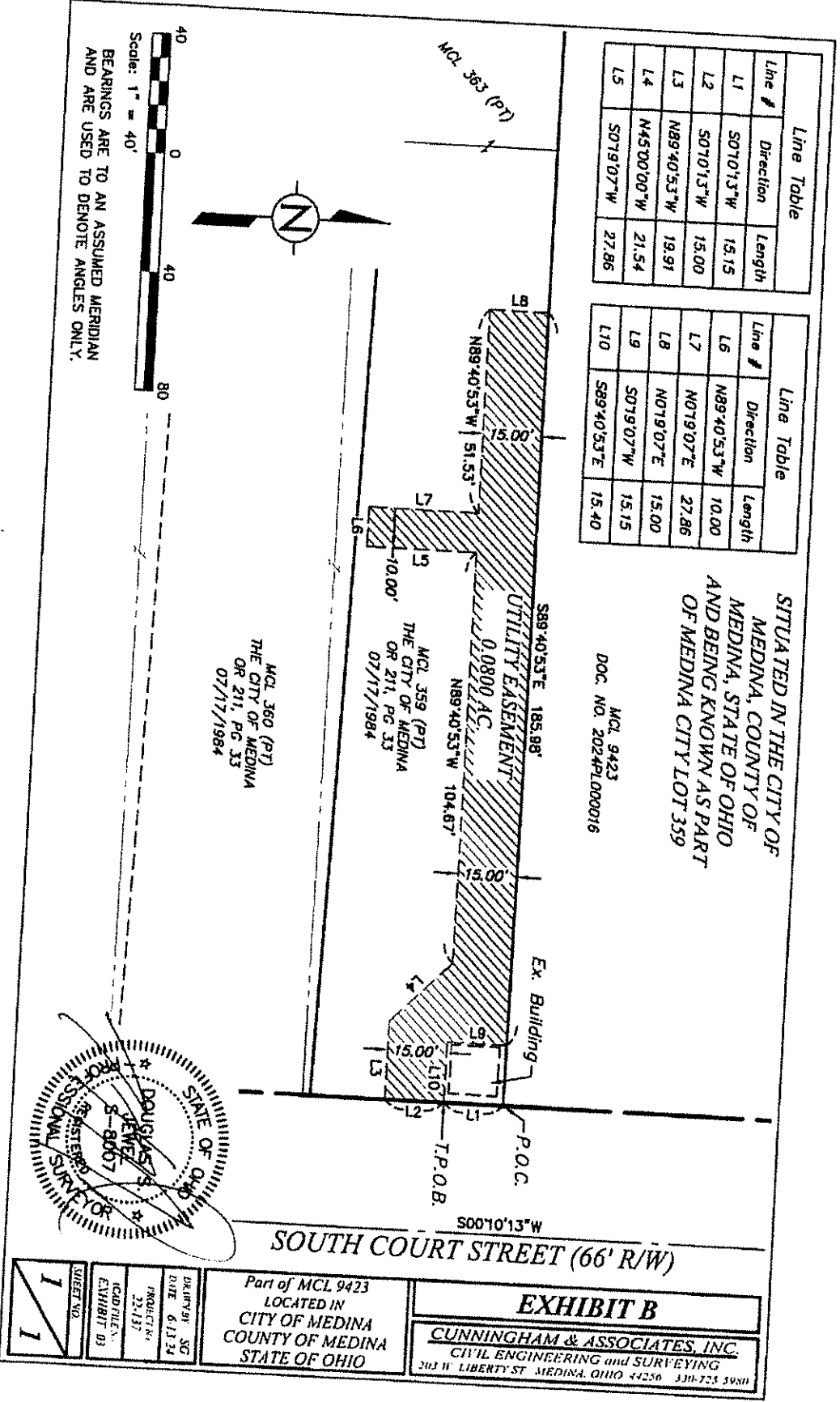


Line #	Direction	Length
L1	S07°13'W	15.15
L2	S07°13'W	15.00
L3	N89°40'53"W	19.91
L4	N45°00'00"W	21.54
L5	S07°10'7"W	27.86

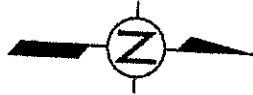
Line #	Direction	Length
L6	N89°40'53"W	10.00
L7	N07°19'07"E	27.86
L8	N07°19'07"E	15.00
L9	S07°19'07"W	15.15
L10	S89°40'53"E	15.40

STITUATED IN THE CITY OF
MEDINA, COUNTY OF
MEDINA, STATE OF OHIO
AND BEING KNOWN AS PART
OF MEDINA CITY LOT 359

MCL 9423
DOC. NO. 2024PL0000016

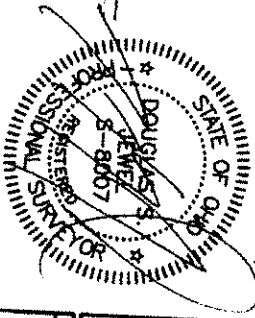


Scale: 1" = 40'
BEARINGS ARE TO AN ASSUMED MERIDIAN
AND ARE USED TO DENOTE ANGLES ONLY.



MCL 360 (PT)
THE CITY OF MEDINA
OR 211, PG 33
07/17/1984

MCL 359 (PT)
THE CITY OF MEDINA
OR 211, PG 33
07/17/1984



SOUTH COURT STREET (66' R/W)

1	1
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Part of MCL 9423
LOCATED IN
CITY OF MEDINA
COUNTY OF MEDINA
STATE OF OHIO

EXHIBIT B
CUNNINGHAM & ASSOCIATES, INC.
CIVIL ENGINEERING and SURVEYING
313 W. LIBERTY ST. MEDINA, OHIO 44256 330-723-5900

ORDINANCE NO. 169-24

AN ORDINANCE ACCEPTING A DEDICATION OF A PORTION OF MAST PARKWAY AND EASEMENT DEDICATION AND VACATION PLAT.

WHEREAS: The intendant of this Plat is to Vacate Portions of the Existing Utility Easements and Dedicate New Utility Easements being part of Medina City Lot 9224, and to Dedicate of Portion of Mast Parkway being Medina City Lot No. 9320.

WHEREAS: The applicant is proposing to dedicate the 0.0628 acre center circular island to the City of Medina as public right-of-way.

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

SEC. 1: That the Right-of-Way Dedication Plat of part of Mast Parkway is hereby dedicated to public use for street and all other utility purposes.

SEC. 2: That a copy of the Dedication of a Portion of Mast Parkway and Easement Dedication and Vacation Plat is marked Exhibit A, attached hereto and made a part hereof.

SEC. 3: That the City Engineer is hereby authorized and directed to cause the record plat to be properly recorded in the Medina County Record of Plats.

SEC. 4: That this Ordinance shall be in full force and effect at the earliest period allowed by law.

PASSED: _____

SIGNED: _____

President of Council

ATTEST: _____

APPROVED: _____

Clerk of Council

SIGNED: _____

Mayor

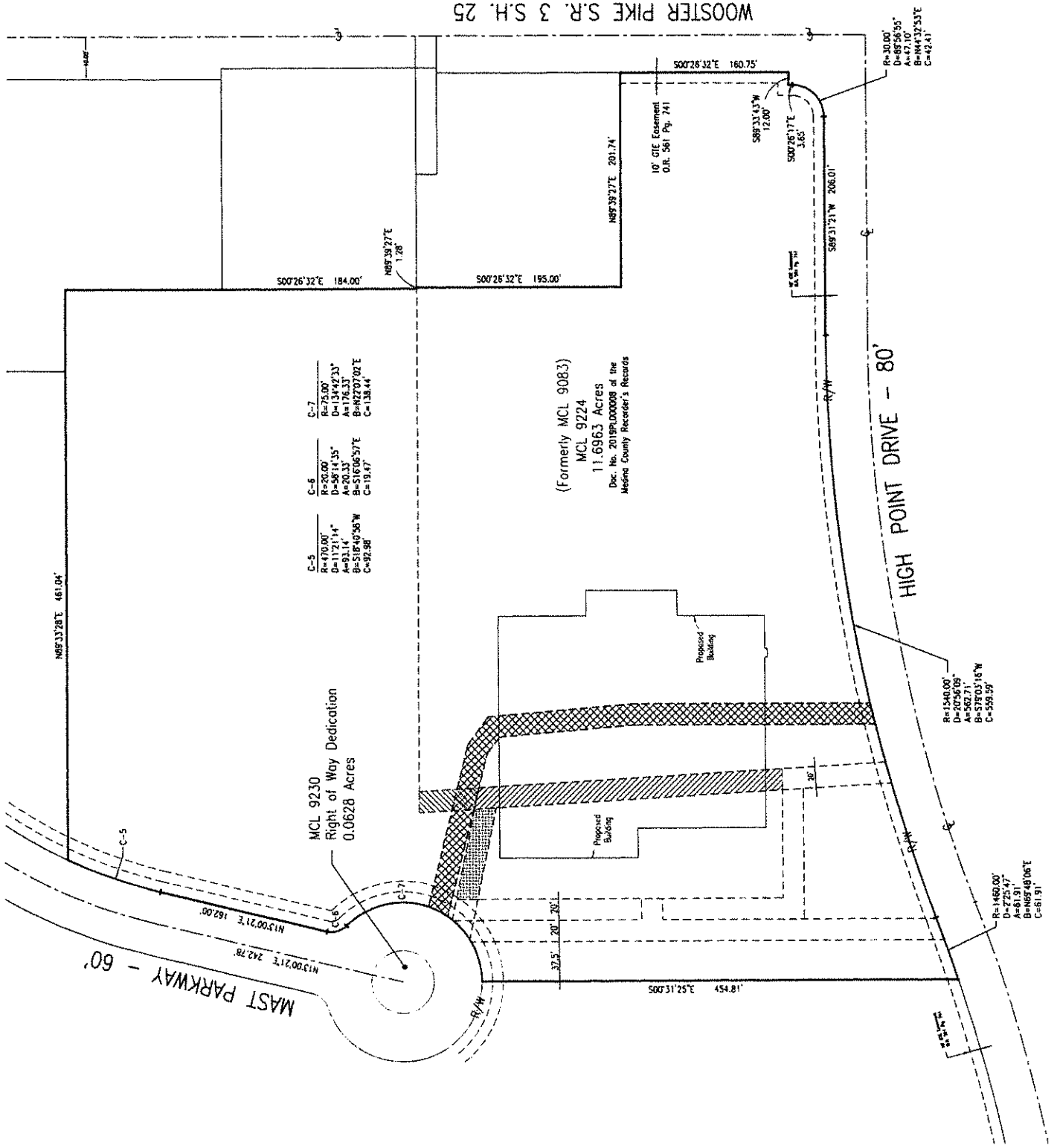
NORTH



SCALE 1" = 60'
Basis of Bearings: Grid North
Ohio Coordinate System of 1983
North Zone, NAD 1983 (2011),
Referenced to 0607 VRS

LEGEND

- S CENTERLINE
- R/W RIGHT OF WAY
- FF FINISH FLOOR
- EDP EDGE OF PAVEMENT
- PPH PERMANENT PARCEL NUMBER
- (M) MEASURED
- (R) RECORD
- (C) CALCULATED
- (U) USED
- (O) ODD



HIGH POINT DRIVE - 80'

WOOSTER PIKE S.R. 3 S.H. 25

(Formerly MCL 9083)
MCL 9224
11.6963 Acres
Doc. No. 2019P.000068 of the
Madison County Recorder's Records

MCL 9230
Right of Way Dedication
0.0628 Acres

- C-5
R=470.00'
D=1121.14'
A=93.14'
B=518'49"36"W
C=92.98'
- C-6
R=20.00'
D=58'14.35"
A=20.33'
B=516'06.57"E
C=19.67'
- C-7
R=25.00'
D=134'42.33"
A=176.33'
B=422'07.92"E
C=138.44'

R=1540.00'
D=3245.08'
A=562.71'
B=57503.16"W
C=550.59'

R=1460.00'
D=225.47'
B=NM8748'06"E
C=61.91'

R=30.00'
D=8856.55'
A=43.10'
B=NM43253"E
C=42.41'

S89'31'17"W 206.01'
S89'31'17"E 1.65'
S89'31'17"W 12.00'
S89'31'17"W 201.74'

S00'26'32"E 184.00'
S00'26'32"E 195.00'

N89'39'27"E 1.28'

S00'26'32"E 160.75'

S00'26'32"E 3.23'92.00S

S89'31'17"W 206.01'

S89'31'17"E 1.65'

S89'31'17"W 12.00'

S89'31'17"W 201.74'

S00'26'32"E 184.00'

S00'26'32"E 195.00'

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S00'26'32"E 184.00'

S00'26'32"E 195.00'

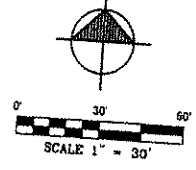
N89'39'27"E 1.28'

Easement
Dedication & Vacation Plat



ALBER & RICE
CIVIL + STRUCTURAL + SURVEY
2410 Cedar Hill | Lewis Heights | Ohio 44124
313-248-7800 | Fax 313-248-7801 | Pa

NORTH



Basis of Bearings Grid North
Ohio Coordinate System of 1983
North Zone NAD 1983 (2011),
Referenced to ODOT VRS

MCL 9230
Right of Way Dedication
0.0528 Acres

C-1 R=75.00' D=307'00.02" A=39.27° B=N74°28'18"E C=38.82'	C-2 R=75.00' D=20'03.26" A=26.25° B=S49°28'33"W C=26.12' (New Water Esm't)	C-3 R=75.00' D=19'05.42" A=25.00° B=N47°56'52"E C=24.88' (Ex. Storm Sewer)	C-4 R=75.00' D=15'43.10" A=20.58° B=S26°30'43"W C=20.51' (Ex. Water Esm't)
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(MCL 9224)
MCL 9224
11.6963 Acres

Existing 10' Perpetual Highway
Easement Recorded in
Doc. No. 2019PL000008
Medina County Recorder's Records

Existing 10' Utility
Easement Recorded in
Doc. No. 2019PL000008
Medina County Recorder's Records

Existing 37.5' Ingress/Egress
Easement Recorded in
Doc. No. 2019PL000008
Medina County Recorder's Records

20' Storm Sewer Easement
To Be Dedicated By This Plat
0.1907 Acres

20' Waterline Easement
To Be Dedicated By This Plat
0.2183 Acres

Portion of Existing Storm Sewer and
Drainage Easement
Recorded in Doc. No. 2019PL000008
Medina County Recorder's Records
To Be Vacated By This Plat
0.0401 Acres

Portion of Existing Storm Sewer and
Drainage Easement
Recorded in Doc. No. 2019PL000008
Medina County Recorder's Records
To Remain 0.0150 Acres

Portion of Existing Storm Sewer Easement
Recorded in P.B. 23 Pg. 49
Medina County Recorder's Records
To Be Vacated By This Plat
0.1339 Acres

Existing Waterline Easement
Recorded in Doc. No. 2019PL000008
Medina County Recorder's Records
To Be Vacated By This Plat
0.2503 Acres

Existing 20' Storm Sewer Easement
P.B. 23 Pg. 49
Medina County Recorder's Records
Remaining Portion 0.0466 Acres

10' CTE Easement
O.R. 561 Pg. 741

R=1460.01'
D=1°33'31"
A=39.72°
B=N70°14'13"E
C=39.72'

R=1460.00'
D=0°50'15"
A=21.34°
B=N69°02'20"E
C=21.34'

R=1460.00'
D=0°02'00"
A=0.85°
B=N68°36'12"E
C=0.85'

R=1540.00'
D=4°59'05"
A=133.98°
B=S71°04'45"W
C=133.94'

R=1540.00'
D=0°45'41"
A=20.46°
B=S73°37'08"W
C=20.46'

R=1540.00'
D=1°22'24"
A=36.91°
B=N75°01'10"E
C=36.91'

R=1540.00'
D=0°45'55"
A=20.57°
B=N76°05'19"E
C=20.57'

HIGH POINT DRIVE - 80'

Easement
Dedication & Vacation Plat

ALBER & RICE
CIVIL + STRUCTURAL + SURVEY
3993 Oak Road | North Kingsville | Ohio | 44039
216-252-7840 Office 216-252-7841 Fax