

Construction Agreement

THIS AGREEMENT made this 24th day of February in the year 2026, by and between the **Township of West Orange**, a body public and corporate of the State of New Jersey, with offices located at 66 Main Street, West Orange, NJ, 07052 (the “**TOWNSHIP**” or the “**OWNER**”) and **MT CONTRACTORS, LLC**, with legal address and legal place of business at, 490 Riverview Drive, Suite 6, Totowa, NJ, 07512 hereinafter called the “**CONTRACTOR**”.

WITNESSETH:

WHEREAS, on December 19, 2025, the Township issued a set of Bid Specifications for the: **STRUCTURAL IMPROVEMENTS TO THE OSKAR SCHINDLER PERFORMING ARTS CENTER (“OSPAC”)** (the “**Bid Specifications**”), annexed hereto as Exhibit “A”; and

WHEREAS, on January 7, 2026, the Contractor submitted the lowest bid for the Bid Specifications at an amount totaling \$235,150; a copy of the Contractor’s bid submission is annexed hereto as Exhibit “B”.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter stated, the parties do hereby agree as follows:

ARTICLE 1. WORK

- 1.1. The **CONTRACTOR** shall complete all work covered under this contract, as specified or indicated in the Contract Documents, generally described as improvements to the Oskar Schindler Performing Arts Center (“OSPAC”) by installing additional amenities to the existing performing arts center with the intent to better utilize the facility as a public venue. Improvements will include the refurbishment of OSPAC including the installation of two (2) outdoor pole-mounted speakers, the expansion of the existing stage with the installation of approximately 2,130 square feet of rubberized coating for the stage floor, the relocation of existing stage staircase, the installation of window guards and lighting improvements at the existing stage building, the construction of a 10’x20’ storage shed, and related work. (hereinafter referred to as the “**Work**”).
- 1.2. The Work covered under this contract is generally described in **the Bid Specifications, Plans** attached hereto as Exhibit “A”, **together** with the Bid Documents, annexed hereto as Exhibit “B”, and as is shown and described in the Contract Documents and is listed in Article 9 herein, which contract documents are identified by the signatures of the parties hereto are hereby incorporated as a part of this Agreement as if same were set forth at length herein. The major items covered under this contract are clearly described in **the Bid Proposal Form**.

ARTICLE 2. ENGINEER

- 2.1. The Project has been designed by the **Township Engineer**, who is hereinafter called the “ENGINEER” and who is to act as OWNER’s representative, and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME

- 3.1. The Contract time shall commence on a date to be specified in a written Notice to Proceed of the OWNER and MUST be completed no later than [REDACTED].
- 3.2. CONTRACTOR agrees that the Work shall be prosecuted regularly, diligently and uninterruptedly and at such rate of progress as will ensure full completion thereof within the Contract Time stated above. It is expressly understood and agreed, by and between CONTRACTOR and OWNER, that the Contract Time is reasonable for the completion of the Work, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

ARTICLE 4. CONTRACT PRICE

- 4.1. The Owner shall pay the Contractor for performance of the Work pursuant to this Contract at the bid price agreed upon in the Contractor’s bid proposal. The contract price shall not exceed **\$235,150.00**

ARTICLE 5. APPLICATIONS FOR PAYMENT

- 5.1. CONTRACTOR shall submit Applications for Payment in accordance with the Conditions of the Contract. Applications for Payment will be processed by ENGINEER as provided in the Conditions of the Contract.
- 5.2. There shall be no advance payment under this Contract.

ARTICLE 6. PROGRESS AND FINAL PAYMENTS

- 6.1. OWNER may make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values provided for in the Conditions of the Contract.
- 6.2. Prior to Substantial Completion, progress payments to the Contractor shall be made after review and approval by Owner’s Staff in accordance with Owner’s standard policies.

- 6.3. Upon final inspection and acceptance of the Work, in accordance with the Conditions of the Contract, OWNER will pay the remainder of the Contract Price as recommended by ENGINEER.

ARTICLE 7. LIQUIDATED DAMAGES

- 7.1. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the Contract Time specified in Article 3 above, plus any extensions thereof allowed in accordance with Article 12 of the Conditions of the Contract. They also recognize the delays, expense and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER **\$500.00** per day for each day of delay beyond the Final Completion date until the Work is complete. In addition, the OWNER may have a deduction from Contractor's payments for Engineering and Inspection Fees incurred for any number of days in excess of the number allowed in this agreement.
- 7.2. Provided, that CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the Work is for reasons included in the Conditions of the Contract.
- 7.3. Provided, further, that CONTRACTOR shall, furnish OWNER the required notification of such delays in accordance with the Conditions of the Contract.

ARTICLE 8. ASSURANCE

- 8.1. CONTRACTOR has familiarized himself/herself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and Federal, State and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.
- 8.2. CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.
- 8.3. CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data [in addition to those referred to in the above paragraph] as CONTRACTOR deems necessary for the performance of the Work at the Contract Price within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required for such purposes.

- 8.4. CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
- 8.5. CONTRACTOR has given ENGINEER written notice of any conflict, error or discrepancy that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.
- 8.6. CONTRACTOR agrees that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work.
- 8.7. In accordance with New Jersey Local Public Contracts Law 40A:11-18, CONTRACTOR agrees that only domestic construction material, where available, will be used by CONTRACTOR, Subcontractors, material men and suppliers in the performance of this contract.

ARTICLE 9. CONTRACT DOCUMENTS.

- 9.1. The Contract Documents which comprise the Contract between OWNER and CONTRACTOR are attached hereto and made a part hereof and consist of the following:
 - 9.1.1. Notice to Bidders.
 - 9.1.2. Instructions To Bidders.
 - 9.1.3. Bid Proposal Form and attachments.
 - 9.1.4. This Agreement.
 - 9.1.5. Construction Performance Bond, Construction Payment Bond, and other required Bonds and Notice to Proceed.
 - 9.1.6. Certificate of Insurance.
 - 9.1.7. Contract Provisions as included in relevant Section/s of this Project Specifications & Conditions.
 - 9.1.8. General Conditions.
 - 9.1.9. Supplementary Conditions.
 - 9.1.10. Specifications (as listed in Table of Contents of the Project Manual).
 - 9.1.11. Contract Drawings as listed on the Drawing Index of the Contract Documents..
 - 9.1.12. Addenda (no addenda issued)
 - 9.1.13. Any modification, including Change Orders, duly delivered after execution of Agreement.
 - 9.1.14. New Jersey Department of Environmental Protection Regulations (If applicable)

ARTICLE 10. MISCELLANEOUS

- 10.1. Terms used in this Agreement which are defined in the Contract Documents shall have the meanings assigned in the Contract Documents.

- 10.2. To the extent of any inconsistency between the Contractor's Bid Submission and the Bid Specifications, the Bid Specifications shall govern as to that inconsistency over the Contractor's Bid Submission.
- 10.3. Contractor hereby indemnifies the Township and saves it harmless, including Township employees, representatives, agents and servants, from and against any and all losses, claims, liabilities and expenses including legal fees and costs which may arise or be claimed against the Township, its agents, representatives, servants or employees in connection Contractor's actions under this Agreement. Township agrees that all funds due Contractor for properly providing the services described in this Agreement will be provided to Contractor in a reasonable and timely manner.
- 10.4. This Agreement shall be construed in accordance with the laws of the State of New Jersey without regard to conflict of law principles. The parties consent to the personal and subject matter jurisdiction of the Superior Court of New Jersey, Essex Vicinage for resolution of any and all claims arising out of or in connection with this Contract. The parties waive any right to a jury as to any and all issues.
- 10.5. Neither OWNER nor CONTRACTOR shall, without the prior written consent of the other, assign or sublet in whole or in part any interest under any of the Contract Documents; and, specifically but without limitation, CONTRACTOR shall not assign any monies due or to become due without the prior written consent of OWNER. In case CONTRACTOR assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to CONTRACTOR shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.
- 10.6. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 10.7. The Contract Documents constitute the entire agreement between OWNER and CONTRACTOR and may only be altered, amended or repealed as stipulated in the Contract Documents.
- 10.8. All changes to this Contract shall be subject to Municipal Council approval.
- 10.9. The CONTRACTOR certifies that at least fifty-three (53) percent of the total Contract Price, as promulgated by the New Jersey Department of Treasury for the County of Essex, will be directed and paid to a minority business enterprise, either through joint venture arrangement, partnerships, subcontractors, the purchase of goods and services or any other method available. The term "minority business enterprise" shall mean a business at least fifty-one (51) percent of the stock of which is owned by a minority group member. "Minority group members" are citizens of the United States, who are African or African-American, Hispanic or Latino, Asian, American Indian, Eskimo, and Aleut.

10.10. The CONTRACTOR certifies that at least seven (7) percent of the total Contract Price will be directed and paid to a women's business enterprise through joint venture arrangement, business partnerships, subcontractors, the purchase of goods and services or any other method available. The term "women's business enterprise: shall mean a business where at least fifty-one (51) percent of the stock of which is owned by women.

10.11. The TOWNSHIP can terminate the contract without cause upon thirty-days (30) notice to the other party, to the extent permitted by law.

10.12. SEVERABILITY

If any provision of this Agreement, or any portion thereof, is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall continue in full force and effect as if such invalid, illegal, or unenforceable provision had never been contained herein. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be excessively broad, it shall be reformed and construed by limiting and reducing it so as to be enforceable to the maximum extent permitted by law. The parties expressly acknowledge and agree that they would have entered into this Agreement regardless of the enforceability of any particular provision.

10.13. ENTIRE AGREEMENT (MERGER)

This Agreement, including all exhibits, appendices, and attachments hereto, sets forth the entire agreement between the Public Entity and the other party with respect to the subject matter hereof and supersedes all prior and contemporaneous discussions, negotiations, understandings, representations, warranties, and agreements, whether oral or written, between the parties. All previous drafts, proposals, and communications between the parties relating to the subject matter of this Agreement are hereby merged into this Agreement. Neither party has relied upon any representation, warranty, or undertaking that is not expressly set forth in this Agreement. The parties acknowledge that there are no terms, conditions, representations, warranties, promises, covenants, or understandings between the parties other than those expressly set forth herein.

10.14. MODIFICATIONS

No amendment, modification, waiver, or other change to any provision of this Agreement shall be effective unless specifically set forth in a writing titled "Amendment to Agreement" that expressly identifies the provision(s) being amended and is signed by authorized representatives of both parties. No course of dealing, delay, or failure to enforce any provision of this Agreement shall constitute an amendment, modification, waiver, or continuing waiver of such provision or any other provision of this Agreement. Email exchanges, text messages, or other electronic communications, regardless of content, shall not constitute a signed writing for purposes of modifying this Agreement. The parties acknowledge that this provision is essential to maintain clarity and certainty in their

contractual relationship and to protect the interests of the Public Entity as required by New Jersey law.

10.15. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or related to this Agreement shall be instituted exclusively in the courts of the State of New Jersey, County of Essex. Each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

ARTICLE 11. CONFLICTING INFORMATION

11.1. The CONTRACTOR shall comply with all State and Local Laws and Regulations in carrying out the terms of the contract

ARTICLE 12. HOLD HARMLESS AGREEMENT

12.1. The contractor shall defend, indemnify and hold harmless the Township, its agents, servants and administrators from and against any and all claims or actions at law, whether for personal injury, property damage or liability, including any costs of defense incurred by the Township and any payment, recoveries and judgment against the Township, which arise from any actions or omissions as vendor, its agents or employees in execution of the work and/or duties to be performed under the contract.

12.2. Costs shall be deemed to include, but not limited to attorney's fees, filing expenses, expert witness fees, reproduction costs, and long-distance travel and phone expenses in connection with the defense and shall bear the prevailing interest rate, where applicable.

12.3. The CONTRACTOR shall be responsible for the damage to person or property caused or alleged to have been caused by or incidents to Work under the aforementioned Contract without expense to the Township, its agent's servants and/or administrators.

ARTICLE 13. INSURANCE

13.1 Throughout the life of this Contract, the Construction Contractor shall pay for and maintain in full force and effect with an insurance company(s) (Company) admitted by the New Jersey Department of Banking & Insurance to do business in the State of New Jersey and rated not less than "A- VIII" in Best Insurance Key Rating Guide, the following policies of insurance:

13.1.1 REQUIRED COVERAGES - the following may be provided through a combination of primary and excess policies in order to meet the minimum limits set forth below:

13.1.2 Workers' Compensation:

Provided in the State of New Jersey and elsewhere as may be required and shall include:

a) Workers' Compensation Coverage: Statutory Requirements

Where applicable, if the Construction Contractor is lending or leasing its employees to the Township for the work under this contract (e.g. crane rental with operator), it is the Construction Contractor's responsibility to provide the Workers Compensation and Employer's Liability coverage and to have their policy endorsed with the proper Alternate Employer Endorsement.

13.1.3 Commercial General Liability:

As per Section 11 of the Bid Specs, The Contractor shall secure and maintain such insurance from insurance company authorized to write casualty insurance in the State as will protect himself, his subcontractors, and the Owner from claims for bodily injury, death or property damage which may arise from operations under this Contract. The Contractor shall not commence work under this Contract until he has obtained all insurance required under this section and until he has filed a certificate of insurance with the Owner. Each insurance policy shall contain a clause providing that it shall not be canceled by the insurance company without ten (10) days written notice to the Owner of intention to cancel. An endorsement showing the Township of West Orange to be additionally insured shall be included in all policies as follows: "The Township of West Orange, its officers, agents, servants, and employees, as their interest may appear, are covered by this policy". The amounts of such insurance shall not be less than the following:

- | | | |
|----|----------------------------|--|
| a) | Injury or death | \$1,000,000 per occurrence/
\$2,000,000 aggregate |
| b) | Property Damage | \$250,000 per occurrence/
\$500,000 aggregate |
| c) | Fire and Extended Coverage | Equal to Bid Price |

13.1.4 Automobile Liability:

When autos are used in conjunction with contracts/agreements with Township, entity's coverage must include All Owned, Hired and Non-Owned Vehicles (or "Any Auto"). If you do not have any Owned Vehicles, you are still required to maintain coverage for Hired and Non-Owned Vehicles as either a standalone policy or endorsed onto the Commercial General Liability policy above (CA 0001). Minimum limits of liability:

- | | | |
|----|-----------------|-------------------------|
| a) | Injury or death | \$1,000,000 occurrence/ |
|----|-----------------|-------------------------|

		\$2,000,000 aggregate
b)	Property Damage	\$250,000 occurrence/ \$500,000 aggregate
c)	Contractor general liability Including completed operations	\$1,000,000 occurrence/ \$2,000,000 aggregate

All coverages shall be in a form and with insurers acceptable to Owner.

Contractor shall ensure that insurance policies are endorsed to provide at least thirty (30) days written notice to Owner prior to any material change or cancellation of coverage.

Contractor, prior to commencing any work, shall submit Certificate of Insurance to Owner evidencing compliance with the above requirements.

Certificate of Insurance shall also list the Township of West Orange as additionally insured.

ARTICLE 14. RECORD RETENTION

STATE REQUIRED RECORD RETENTION - N.J.S.A. 52:15C-14(d) and N.J.A.C. 17:44-2.2:

The Contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request. Refusal by **the Contractor** to provide information upon request by the State Comptroller, or otherwise impede or fail to cooperate with any audit or performance review, the State Comptroller may recommend to the Township of West Orange that the person be subject to termination of their contract, or temporarily or permanently debarred from contracting with the Township.

IN WITNESS WHEREOF, the Township and the Contractor have executed this Agreement as of the date first written above.

ATTEST:

TOWNSHIP OF WEST ORANGE

KAREN CARNEVALE,
MUNICIPAL CLERK

BY: _____
SUSAN McCARTNEY,
MAYOR

ATTEST:

MT CONTRACTORS LLC

[Print Name]

BY: _____
[Print Name]