# AGENDA ITEM HISTORY SHEET

| ITEM TITLE | AGENDA NO. 13 |
|---|---|
| Ballroom Contracts for CMAR & Architect/Engineer | AGENDA DATE: 12/17/2024 |

**FUNDING CERTIFICATION** (Finance Director) (Signature, if applicable)

**MANAGEMENT STAFF REVIEW** (Signature)

**MAYOR** (Signature)



**ITEM HISTORY** (Previous Council reviews, action related to this item, and other pertinent history)

Will be discussed at 12/12 Council Workshop

**ITEM COMMENTARY** (Background discussion, key points, recommendations, etc.) Please identify any or all impacts this proposed action would have on the City budget, personnel resources, and/or residents.

The Construction Manager at Risk (CMAR) contract, awarded to Wilson Global General Contracting through an RFQ, includes a $30M guaranteed maximum price (GMP), with the CMAR covering overruns beyond a $2M base fee and earning bonuses for cost savings if the city approves the final scope. The Architecture/Engineering (A/E) contract, awarded to Polk Stanley Wilcox and Crafton Tull, sets fees at 7.5% of construction costs and $42,000 upfront for conceptual designs to support council approval and bond initiatives. Both contracts depend on approval from the mayor, city council, and a majority vote in a special bond election. The Saline County Economic Development Commission has also contributed $5,000 toward the conceptual design.

(This section to be completed by the Mayor)

**ACTION PROPOSED** (Motion for Consideration)

Motion to approve.

**CONTRACT**

**FOR**

**CONSTRUCTION MANAGER AT-RISK**

**BRYANT ENTERTAINMENT FACILITY PROJECT**

**WHEREAS,** the City of Bryant, Arkansas ("Owner"), has a contract to purchase that certain real estate known as Tax Parcel 840.15010.000 located on Alcoa Road in Bryant, Arkansas, on which an entertainment facility will be constructed ("the Project") if approved by the voters;

**WHEREAS,** Owner has selected Wilson Global General Contracting, LLC ("CMAR") to be the Construction Manager At-Risk for the development and construction of an outdoor entertainment facility; and

**WHEREAS**, Owner and CMAR desire to enter this contract to set forth their agreement about the engagement of CMAR as the Construction Manager At-Risk for the Project.

**NOW, THEREFORE, FOR ADEQUATE AND FULL CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, IT IS MUTUALLY AGREED AS FOLLOWS:**

1. Engagement. Wilson Global General Contracting, LLC, is hereby engaged by Owner to serve as the Construction Manager At-Risk ("CMAR") for the Project pursuant to the terms of this contract. CMAR hereby acknowledges the following scope of work:

**Overview:** Anticipated phases are identified below with associated scope of work. Scope of work is not limited to any additional industry standard scope of work necessary to complete each phase. **Coordination with the selected architectural team is critical for all phases. The CMAR shall manage (i) the architectural team including its relationship with the City of Bryant [as the owner of the Project, (ii) all other professional consultants involved in the planning and design of the Project, (iii) the Operator during the planning and design of the Project, and (iv) all subcontractors, materialmen and vendors during the bidding and construction phases in order to achieve best value for the overall success of the Project including working to achieve maximum cost savings. The CMAR will procure, and present to the City of Bryant for its approval, within ninety (90) days an experienced operator for the facilities which is a non-profit tax-exempt entity and is currently operating a sustainable outdoor entertainment facility in the State of Arkansas. Operator must be secured prior to the bond being obtained if a bond is required. The CMAR will also assist in contract negotiations with the operator.**

a. **PHASE 1: Pre-Construction Services**

CMAR will:

i. Schematic Design Phase Coordination
   1. Provide industry standard construction manager services, including but not limited to development of costs, identifying potential design changes which could result in cost savings or energy efficiency, interact with the design team for review of documents, etc.
   2. Coordinate with and manage the architectural team to prepare and submit three (3) sets of Schematic Design Documents, Preliminary Specifications, schematic cost estimate and schedule to the City staff and Architect for review and approval. (15% plan review).
      a. After receiving schematic design comments, meet with applicable divisions to resolve comments in preparation for review by Planning Commission
      b. Assist architectural team in responding in writing to all City Staff comments on plans
      c. Assist architectural team in coordinating with private utilities and service providers

ii. Design Development Phase Coordination
   1. Manage and assist architectural team to define and develop all trade bid packages and proposals. Those packages shall be reviewed and approved by the City of Bryant representatives prior to being released for the bidding process.
   2. Assist the architectural team to prepare and submit three (3) sets of Design Development Documents including Detailed Specifications, Detailed Cost Estimate and schedule to the City staff for review and approval. (50% plan review). Components to include:
      a. Site plans, paving layouts, traffic circulation, lighting, signage and utilities
      b. Floor plans, Structural, Civil, Architectural, Storm Water Pollution Prevention Plan (SWPPP), MEP, Fire Protection and landscaping
      c. Exterior elevations, rendering and color palette
      d. Building sections and details
      e. Interior elevations and casework
      f. Drainage Study and calculations, as required by City
      g. Report addressing all City's Design Criteria and Code requirements
   3. Assist architectural team in responding in writing to all City comments on plans.
   4. Assist architectural team in coordination of final utility plans.

5. Facilitate with architectural team and City cost-benefit analysis to determine most cost-effective construction after evaluation of life-cycle cost impact.

iii. Construction Documents Phase
   1. Assist architectural team in completing Construction Documents/Plans and Specifications. Architectural team will submit three (3) sets to City staff, and electronic versions as necessary, for Code and general review and approval as well as Construction Manager and City for cost analyses. (90% plan review).
   2. Attend follow up meetings with City Development Services and Fire Marshall.
   3. Complete final coordination with private utilities and service providers.
   4. Assist architectural team to prepare and submit three (3) complete sets of Construction Documents, and electronic versions as necessary, including 90% written responses, Specifications and Architect's Cost Estimate and schedule to City of Bryant Development Services for review and approval (100% plan review)
   5. Assist architectural team in correcting plans to reflect issues noted by Review for Permit, inclusive of any necessary redesign prompted from the permit process.
   6. Construction Documents/Plans, Specifications and Project Drawings shall be routed through the City of Bryant Development Services, Planning, Engineering, Building Safety, Fire Marshal, and Urban Forestry for required approvals.

iv. Bid Phase
   1. Coordinate with City Planning and Development Department to ensure all procedures followed for this phase meet state laws and City of Bryant Purchasing Policies. All sub bids will be advertised and bid by the City's Planning and Development Department
   2. Provide services for reproduction and dissemination of bid sets (project manual and stamped drawings) to the City [PM (1), Purchasing (1) and interested bidders]. Documents should be made available to any interested party electronically at no cost.
   3. Provide distribution of plans to all interested parties.
      a. Maintain open communication with the City of Bryant Planning and Development Department throughout the bidding process.
      b. Distribution of all documents shall be done in a fair and unbiased manner while keeping all interested parties on equal terms.
      c. Document and keep an updated accurate record of plan holders and provide updated listings to all interested parties in a timely manner.

    d. All questions and inquiries shall be directed to the City's Planning and Development Department and made in the form of an addendum and shall be provided to all interested parties at the same time by the Planning and Development Department.
4. Coordinate with City Planning and Development Department during pre‑bid meeting, facilitate and attend the Bid Openings conducted by City Planning and Development Department.
5. Maintain open communication with the City Planning and Development Department during any process involving Request for Information (RFI).
6. Any addenda shall be provided to the Planning and Development Department, for coordination with the City and for review and approval in advance of issuance. Bidders, interested parties, and plan holders shall receive all information included in an addendum at the time addenda is issued.
7. In the event the CMAR desires to self‑perform a portion of the work or a trade package, the CMAR shall submit a bid package in the same time and manner as other interested parties.
8. In an effort to facilitate the bid opening in a vendor neutral space, the bid opening shall be held at the City of Bryant Administration Building, City Hall, at a time and date coordinated in advance with the City Planning and Development Department.

9. Receive, review and analyze bids for the purpose of making recommendations to the City. CMAR will include the following required content:
    a. Check for math errors and reconcile any mathematical discrepancies
    b. Review for unbalanced bid items
    c. Coordinate with the City Planning and Development Department in finalizing a Certified Bid Tabulation
    d. Review of contractor's financial standing and references provided
    e. Explanation of discrepancies in bids
    f. Meeting with the City to provide a formal written recommendation of award
10. Attend City Council meeting(s) for the recommendation for award of Contract(s) for Construction.

**THIS SPACE LEFT BLANK INTENTIONALLY**

**b. PHASE 2: Guaranteed Maximum Price and Construction Administration Phase**

CMAR will:

i. After time to review all architectural and civil plans and specifications, and additionally obtain bids from the various subcontractors and vendors necessary to complete the Project, CMAR will present the Guaranteed Maximum Price ["GMP"] to Owner which will be subject to change by (i) Change Orders with notice to Owner, (ii) event(s) of Force Majeure, or (iii) increases in fees charge by Supplemental Service Consultants as that term is identified in the Owner's contract with the Architect [AIA Document B133 – 2019]. The GMP will contain a minimum fee to be paid to the CMAR as set forth in Section 2 below. In the event of an event of Force Majeure, the provisions of set forth in Exhibit A shall control.

ii. Put forth diligent and fiscally responsible efforts to ensure the project will be completed on time and within budget.

iii. After review of all bids from subcontractors and vendors, CMAR must provide Owner a timeline for completion of the Project ["Completion Date"]. In the event of a delay in meeting the Completion Date, the CMAR will be subject to liquidated damages which will be established at the time the CMAR provides the GMP to City.

iv. Conduct regular Owner, Architect, CM meetings as jointly determined by CMAR, City and Architect.

v. All requests for Change Orders will initially be reviewed by the CMAR for approval, modification or rejection. The CMAR will then submit the Change Orders to the City for review and approval with the recommendations of CMAR. The CMAR will also provide copies of the Change Order and its recommendations to the Architect. The CMAR will maintain a log of all Change Orders.

vi. The CMAR will provide construction progress reports on a monthly basis.

vii. Review and address site visit report from the architectural team if a site visit is requested by the CMAR.

viii. Make the Substantial Completion Inspection, prepare the punch list, substantiate that items noted are completed, and issue Substantial Completion Certificate.

ix. Project Close Out
    1. Provide Warranty Services during the entire Warranty Period.
    2. Provide support services as needed during the project close out process.
    3. Provide close out binder to the Owner which include, but are not limited to, the following items which are available to the CMAR:
        a. Contractor's red lines and as-built notes
        b. Warranty information
        c. Material Safety Data Sheet (MSDS)

d. Operating Manuals
e. Start up and testing reports
f. Building commissioner report [if there is a Building Commissioner]
g. As-Built record drawings (in hard copy and digital format)
h. Produce a project narrative that provides a comprehensive review of the construction activities for the project for submission to the City at the completion of each contract phase.

i. Release of Liens

CMAR will deliver a copy of the Close Out Binder to Architect.

2. If the GMP is $27,000,000 or less, the CMAR will be paid a guaranteed fee of $2,000,000. If the GMP is more than $27,000,000, the guaranteed fee to be paid to the CMAR will be $2,000,000 plus $75,000 for each increment of $1,000,000 that the GMP exceeds $27,000,000. For example purposes only, if the GMP is $30,000,000, the guaranteed fee to be paid to CMAR will be $2,000,000 plus $225,000 [$75,000 x 3]. The amount of the guaranteed fee to be paid to CMAR will be included in the GMP. The fee will be paid in the following manner:

(a.) The CMAR will be paid the sum of $250,000 during Phase 1 Pre-Constructions Services [as set forth above in Section 1 a.]. Payment will be made by the City to CMAR in equal monthly installments beginning June 1, 2025, and ending September 30, 2025.
(b.) The CMAR will be paid the remaining sum during Phase 2 Construction Administration [as set forth in Section 1 b.] in addition to any unpaid balance of the fee set forth in subsection (a). Payments will be made in equal monthly installments beginning October 1, 2025, and ending the month set forth for the Completion Date.
(c.) The CMAR will provide an invoice for each payment and submit it to the City on or before the last day of the month for which the invoice is billing. The invoice will include the monthly installment due and any extra expense incurred by the CMAR during that month.
(d.) All payments to the CMAR will be due on the 20th day of the month immediately following the month for which the invoice is submitted. Any payments made after the 20th day of the month next following will be subject to a penalty equal to 2% of the amount due under the invoice.
(e.) The CMAR will be entitled to a bonus equal to 25% of the total costs of the Project which are less than the GMP. For example purposes only, the bonus will be calculated as follows – the numbers used in this example are assumptions only for purposes of this example:

| | |
|---|---|
| GMP | $27,000,000 |
| Less: Total Costs | $26,500,000 |
| Total Costs less than GMP | $500,000 |
| Multiplier | .25 |

Bonus to CMAR $125,000

The bonus to be paid to the CMAR will be paid at the end of the Construction Administration Phase after verification and calculation of the total costs of the Project and the Project's receipt of a Certificate of Occupancy.

3. In addition to the provisions of Section 1 above, the CMAR's contractual obligations under this contract will not be complete until Owner receives a Certificate of Occupancy from City of Bryant and CMAR's completion of all punchlist items. The CMAR will assure that all work performed and materials provided to the Project will be accomplished in a good and workmanlike manner and meet or exceed the specifications in the Plans. The CMAR will have the ultimate responsibility for the construction of the facilities in accordance with the Plans and have all the duties and obligations for the timely completion of the Project. In performance of the same, CMAR will specifically include, but not be limited to, the following:

(a.) Completion of all applications for permits necessary to complete the project and submission of the same to the appropriate city, county, state, or federal official for the issuance on such permit(s) specifically including, but not limited to, a Certificate of Occupancy issued by the City of Bryant in form and substance acceptable to Owner;

(b.) Provide copies of all CMAR's onsite safety procedures to Owner and distribute such safety procedures to all subcontractors and vendors who are present on the job site;

(c.) Receipt and review of all invoices for services or material for the Project, and submission of the same to Owner monthly no later than the end of business on the last day of each month with written recommendations for payment or other treatment as the case may be. As a material element of CMAR review of all invoices, CMAR will independently determine that all vendors and material suppliers to subcontractors have been paid in full by the appropriate subcontractor or, if unable to verify full payment, CMAR will so advise Owner and develop a procedure to assure full payment to vendors, material suppliers and subcontractors.

(d.) Prompt written notice to Owner of any developing or actual circumstances relating to the Project that indicate a change in timing or costs of the Project or deviation from the Plans;

(e.) Conduct regular and periodic field verification inspections for best practices purposes to include, but not limited to, assurance of compliance with the Plans by all subcontractors and vendors and, in the case of discovery of non-compliance with the Plans, provide immediate written notification to Owner with specific details of the elements of non-compliance and identity of the subcontractor or vendor responsible.

(f.) Promptly address and correct all items identified for correction on the post-construction punchlist;

(g.) Remain on the job and be physically present until and including receipt of (i) the issuance of a permanent Certificate of Occupancy by City of Bryant in form and substance acceptable to Owner, and (ii) completion of the punchlist;

(h.) Upon completion of the Project including the punch list, issue a 12-month warranty to Owner in form and substance identical to the General Contractor's 12 Month Warranty attached hereto as Exhibit B.

(i.) In the event that any change is proposed to be made to the Plans, CMAR will immediately notify Owner in writing of the purpose, scope and extra costs/savings resulting from the proposed change in the Plans. CMAR agrees not to make any changes to the Plans until notice has been provided to the Owner.

(j.) CMAR currently has in place, and will maintain during the term of the Project, general liability insurance in an amount of not less than $1,000,000 per occurrence, an umbrella policy in an amount not less than $3,000,000, worker's compensation insurance in compliance with laws of the State of Arkansas, and Commercial Auto insurance in an amount acceptable to Owner.

(k.) The Owner must be named as Additional Insured on a Primary and Non-Contributory basis as respects to General Liability policy including both ongoing and completed operations for a minimum of the stature of repose in the State of Arkansas. Additionally, CMAR will sign a "Waiver of Subrogation" on Worker's Compensation, Commercial Auto, and General Liability policies in favor of Owner

4. Duties of Owner. In furtherance of meeting timelines and financial obligations required by the Project, Owner will:

(a) Timely pay all CMAR invoices and construction-related invoices directly to the subcontractors, materialmen and vendors in the amounts recommended by the CMAR. Owner will pay such invoices on or before the later of the 10th day of each month of the Project after Owner has reviewed the invoices and recommendations of the CMAR and validated the amounts contained therein;

(b) Upon completion of payment of CMAR and all construction-related invoices each month, Owner will provide a written report by the 15th day of the month to CMAR with itemization of the payee and amounts of all payments made for that month.

(c) Provide a form of Lien Waiver [attached hereto as Exhibit C] to CMAR for each subcontractor, vendor, and materialman to sign at the time each submits an invoice, and the form of Lien Waiver will be acceptable to CMAR and Owner;

(d) Promptly provide funding for payment of all application and permit fees;

(e) Be available to CMAR for consultation on issues relating to the Project; and

(f) Promptly review recommendations from CMAR for engagement of subcontractors, vendors, and materialmen and notify CMAR of approval or disapproval of the same.

5. Representations and Warranties. As a material inducement for CMAR and Owner to enter this contract, the following representations and warranties are made:

(a) CMAR hereby represents and warrants to Owner that (i) CMAR is qualified to do business in the State of Arkansas, (ii) CMAR maintains, and will keep current during the Project, all necessary licenses to function as a general contractor in the State of Arkansas and City of Bryant, (iii) CMAR has in place currently, and will continue to have in place during the Project, general liability insurance of not less than $1,000,000 per occurrence with $3,000,000 aggregate and workers compensation insurance, or exemption therefrom, for State of Arkansas and will provide certificates of the same to Owner naming Owner as an additional insured, and (iv) CMAR is familiar with the practices, procedures, reporting, and timelines imposed by Owner for the Project.

(b) Owner hereby represents and warrants to CMAR that (i) Owner is a duly incorporated city of the first class in the State of Arkansas, (ii) the Bryant City Council has approved this contract and Owner has all reasonable and necessary authority to enter and perform all its obligations under this contract, and (iii) Owner has, or on a date specific will have, adequate funds on hand to pay the costs it will be obligated to pay under this contract and, upon request of CMAR, Owner will verify availability of funds and grant CMAR access to such funds to pay costs of this project.

6. Changes. If the need for changes in the scope of the Project develops, CMAR will promptly notify Owner with a written Notice of Change which will specify the scope, purpose, reason, timeline, and costs of such changes.

7. Termination.

(a.) Upon Completion. This contract will terminate upon completion of CMAR duties as approved by Owner which will include, but not be limited to, the issuance of a permanent certificate of occupancy by the City of Bryant in form and substance acceptable to Owner.

(b) Without Cause. This contract may be terminated at Owner's discretion upon thirty (30) days written notice to the CMAR. In the event Owner terminates this Contract without cause pursuant to this subsection (b), Owner will pay CMAR a termination fee equal to 25% of the remaining unpaid balance of CMAR's guaranteed fee as set forth in Section 2

(c.) For Cause. This Contract may be terminated immediately by Owner for cause. If Owner terminates this contract for cause, it will be effective immediately and CMAR shall withdraw from the job immediately. For purposes of this subsection (c), "cause" shall be defined as an act of dishonesty, fraud or intentional disregard of its obligations and duties under this contract by the CMAR.

The obligations of this Section shall survive expiration of the term or termination of this Contract.

7. Governing Law. The laws of the State of Arkansas shall govern the Contract.

8. Assignment. CMAR nor Owner shall not assign this contract, or any obligations or benefits hereunder, to any other party without the prior written consent of all parties to this contract.

9. Notices and Contact Information. All notices to Owner or CMAR will be sent to::

**Owner:** City of Bryant
210 SW 3rd Street
Bryant, AR 72022
ATTN: Mayor Chris Treat
Tel: 501.943.0999

**CMAR**: Wilson Global General Contracting, LLC
P.O. Box 6480
Hot Springs, AR 71902
ATTN: Rick Wilson
Tel: 501.276.2267

10. Duplicate Originals. This contract may be signed in duplicate and each executed copy shall be considered as an original contract.

11. Effective Date. Owner hereby acknowledges receipt of CMAR's (i) license in the State of Arkansas, (ii) copy of CMAR's general liability insurance certificate on which Owner is listed as an additional named insured, and (iii) CMAR's workman's compensation insurance certificate. This contract is effective this ____ day of _____, 2024, contingent on the

passing of the bond issue to provide funding for the Project but may be cancelled at the sole discretion of Owner if the Arkansas contractor's license of CMAR is revoked or not renewed.

**OWNER**:

CITY OF BRYANT, ARKANSAS

By: _____ Date: _____, 2024
Its Mayor

**SEPARATE SIGNATURE PAGE**
**FOR**

**WILSON GLOBAL GENERAL CONTRACTING, LLC**

**CONSTRUCTION MANAGER AT RISK CONTRACT WITH CITY OF BRYANT**

**CMAR:**

WILSON GLOBAL GENERAL CONTRACTING, LLC

By: _____ Date: _____, 2024
Its President/Manager

**SCHEDULE OF EXHIBITS**

Exhibit A – Force Majeure

Exhibit B – Form of Warranty

Exhibit C – Form of Lien Waiver

**EXHIBIT A**

**FORCE MAJEURE**. If the CMAR shall be prevented or delayed from punctually performing any obligation under this Contract by reason of a Force Majeure Event (as defined below) the time to perform the obligation shall be automatically extended for a period of time equal in length to the duration of the Force Majeure Event pus one (1) week and the Completion Date established by the CMAR pursuant to Section 1 b. iii. shall automatically be extended by the same amount of time. "**Force Majeure Event**" shall include only the following: (a) any strike or lockout; (b) an Act of God specifically including, but not limited to, inclement weather conditions; (c) governmental restrictions, regulations or controls not existing as of the Effective Date; (d) enemy or hostile governmental action, war or acts of terrorism; (e) fire or other casualty not resulting from CMAR's negligence or misconduct; (f) delays caused by a pandemic or epidemic; or (g) unavoidable delays in obtaining necessary materials from vendors or suppliers including, but limited to, the furniture, fixtures or equipment required by the Operator.

**EXHIBIT B**

# [to be placed on letterhead of

# Wilson Global General Contracting, LLC]

_____, 202__

City of Bryant
ATTN: Mayor Chris Treat

Re: 12 Month Contractor's Warranty/Outdoor Entertainment Venue

Dear Mayor:

Wilson Global General Contracting, LLC, as the Construction Manager At Risk ["CMAR"] for construction of the Outdoor Entertainment Venue in Bryant, Arkansas, located at _____ ("the Project"), hereby warrants that all labor and materials furnished in conjunction with the Project are in accord with the Contract Documents and authorized modifications thereto, and will be free from defects due to defective materials or workmanship for a period of ONE YEAR from Substantial Completion of the Project. The commencement date of this warranty is _____, 202__ and expires on _____, 202__.

Should any defect develop during the warranty period due to improper materials, workmanship or arrangement, the same (including adjacent work displaced) shall be made good by the undersigned. The Owner will give CMAR written notice of defective work.

Nothing in the above shall be deemed to apply to work which has been abused or neglected by the Owner or Owner's tenant.

EFFECTIVE this _____ day of _____, 202__.

_____
Its Duly Authorized Officer

## EXHIBIT C

## WAIVER OF CLAIM AND LIEN RIGHTS
## AFFIDAVIT OF RECEIPT OF PAYMENT

**Development: Outdoor Entertainment Venue - Bryant, AR**
**Location: _____**

***This Waiver becomes effective upon (i) signature below, and (ii) receipt by the undersigned of a check, or other acceptable form of payment, that constitutes payment in full for all services and materials provided to, and including, the date below.***

**WHEREAS,** the undersigned has furnished labor and/or materials to the City of Bryant for incorporation into the **Development** at the **Location** named above;

**WHEREAS,** to induce the release of payment for the labor and/or materials provided to the **Development**, the undersigned hereby certifies, warrants and represents that all employees, subcontractors, laborers, suppliers and materialmen providing goods and services for the **Development** have been paid in full for such goods and services supplied to, for, through or at the direct or indirect request of the undersigned, and

**WHEREAS,** all necessary withholding taxes, sales taxes and other taxes due which relate to services and materials for the **Development** have been paid in full to the appropriate taxing authorities,

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PAYMENT FOR ANY AND ALL LABOR AND/OR MATERIALS FURNISHED TO THE **DEVELOPMENT** TO THIS DATE, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE UNDERSIGNED HEREBY RELEASES AND RELINQUISHES ANY AND ALL CLAIMS, ACTIONS OR CAUSES OF ACTION ARISING OUT OF, OR RELATED TO, THE **DEVELOPMENT**, AND ALSO RELEASES ALL RIGHTS TO FILE OR RECORD VENDOR, MATERIALMAN, AND/OR MECHANIC LIENS AGAINST THE REAL PROPERTY OWNED BY THE CITY OF BRYANT AT THE LOCATION.

_____
Name [Use corporate name if corporation or LLC; Partnership name if Partnership]

By: _____ Date: _____, 202___
Full legal name [Person Signing This Lien Waiver]

Its: _____
Owner, Duly Authorized Officer or Partner

**NOTE:** If this instrument is executed by a corporation or LLC, it must be signed by an officer. If executed by a partnership it must be signed by a partner.

Return to: Wilson Global General Contracting, LLC
P.O. Box 6480
Hot Springs, Arkansas 71902
Fax: 501.209.4204

# AIA® Document B133® – 2019

## *Standard Form of Agreement Between Owner and Architect,* Construction Manager as Constructor Edition

**AGREEMENT** made as of the day of in the year
*(In words, indicate day, month and year.)*

**BETWEEN** the Architect's client identified as the Owner:
*(Name, legal status, address, and other information)*

The City of Bryant, Arkansas,
210 SW 3rd Street
Bryant, Arkansas 72202
Telephone Number: (501) 943-0999

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

Polk Stanley Wilcox Architects, Subchapter S Corporation
801 S. Spring Street
Little Rock, AR
Telephone Number: (501) 378-0878

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

Bryant Outdoor Entertainment Facility
Bryant, Arkansas

The CMAR (if known):
*(Name, legal status, address, and other information)*

Wilson Global General Contracting, LLC, Limited Liability Company
P.O. Box 6480
Hot Springs, Arkansas 71902
Telephone Number: (501) 276-2267

The Owner and Architect 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.

This document is intended to be used in conjunction with AIA Documents A201–2017™, General Conditions of the Contract for Construction; 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; and A134–2019™ 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 without a Guaranteed Maximum Price. AIA Document A201™–2017 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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## ARTICLE 1 INITIAL INFORMATION

**§ 1.1** This Agreement is based on the Initial Information set forth in this Section 1.1.
*(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:
*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

An Indoor / Outdoor Entertainment Facility designed to accommodate a number of attendees to be determined through the programming phase.

**§ 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.)*

A site in Bryant, Arkansas of such size to be determined through the programming phase.

**§ 1.1.3** The Owner's budget for the Cost of the Work, as defined in Section 6.1:
*(Provide total and, if known, a line item breakdown.)*

To Be Determined (TBD)

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

.1 Design phase milestone dates, if any:

TBD



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.2 Construction commencement date:

.3 Substantial Completion date or dates:

.4 Other milestone dates:

§ 1.1.5 The Owner intends to retain a CMAR pursuant to the following agreement:
*(Indicate agreement type.)*

[ ] AIA Document A133–2019, Standard Form of Agreement Between Owner and CMAR as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

[ ] AIA Document A134–2019, Standard Form of Agreement Between Owner and CMAR as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

[ X ] Contract for CMAR At-Risk ["CMAR"] custom contract between the City of Bryant and the CMAR.CMAR

§ 1.1.6 The Owner's requirements for accelerated or fast-track design and construction, or phased construction are set forth below:
*(List number and type of bid/procurement packages.)*

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

TBD

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, CMAR 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 Architect 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.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:
*(List name, address, and other contact information.)*

Chris Treat, Mayor
210 SW 3rd Street
Bryant, Arkansas 72202

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

CMAR


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P.O. Box 6480
Hot Springs, AR 71902
**rickw@wilent.net**
501.276.2267
*(List name, address, and other contact information.)*

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

.1 CMARr:
*(The CMAR is identified on the cover page. If a CMAR has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the CMAR, complete Section 4.1.1.1)*

.2 Land Surveyor:

.3 Geotechnical Engineer:

.4 Traffic Engineer

.5 Other consultants and contractors:
*(List any other consultants and contractors retained by the Owner and/or CMAR.)*

Environmental Consultants

§ **1.1.11** The Architect identifies the following representative in accordance with Section 2.4:
*(List name, address, and other contact information.)*

David Porter
801 S. Spring Street
Little Rock, AR
Telephone Number: (501) 951-4754

Email Address: dporter@polkstanleywilcox.com


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§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:
*(List name, legal status, address, and other contact information.)*

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Structural Engineer:

Engineering Consultants, Inc.

.2 Mechanical Engineer:

HP Engineering

.3 Electrical Engineer:

HP Engineering

.4 Civil Engineer:

Crafton Tull

.5. Landscape Architect:

Crafton Tull

§ 1.1.12.2 Consultants retained under Supplemental Services:

Theatrical Design: Schuler Shook

Audio Visual Design: Schuler Shook

Acoustical Design: Jaffe Holden

Sound Modeling: Jaffe Holden

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

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

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§ 1.3 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.

§ 1.3.1 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 ARCHITECT'S RESPONSIBILITIES

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

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a CMAR as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the CMAR.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

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

§ 2.6 **Insurance.** The Architect shall maintain the following insurance until termination of this Agreement.

§ 2.6.1 Commercial General Liability with policy limits of not less than Two Million Dollars ($ 2,000,000 ) for each occurrence and Four Million Dollars ($ 4,000,000 ) in the aggregate for bodily injury and property damage.

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

§ 2.6.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.6.1 and 2.6.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.6.4 Workers' Compensation at statutory limits.

§ 2.6.5 Employers' Liability with policy limits not less than One Million Dollars ($ 1,000,000 ) each accident, One Million Dollars ($ 1,000,000 ) each employee, and One Million Dollars ($ 1,000,000 ) policy limit.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than Five Million Dollars ($ 5,000,000 ) per claim and Five Million Dollars ($ 5,000,000 ) in the aggregate.

§ 2.6.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner and CMAR as additional insureds for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional

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insured coverage shall be primary and non-contributory to any of the Owner's or CMAR's insurance policies and shall apply to both ongoing and completed operations.

**§ 2.6.8** The Architect shall provide certificates of insurance to the Owner and CMAR that evidence compliance with the requirements in this Section 2.6.

## ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

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

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

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

**§ 3.1.4** The Architect shall submit information to the CMAR and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

**§ 3.1.5** The Architect shall not be responsible for the CMAR or Owner's directive or substitution, or for the CMAR of Owner's acceptance of non-conforming work, made or given without the Architect's written approval.

**§ 3.1.6** The Architect shall, in coordination with the CMAR, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

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

**§ 3.1.8** Prior to the Owner's acceptance of the CMAR's Guaranteed Maximum Price proposal, the Architect shall consider the CMAR's requests for substitutions and, upon written request of the CMAR, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and CMAR shall include the Owner in communications related to substitution requests, clarifications, and interpretations.

### § 3.2 Review of the CMAR's Guaranteed Maximum Price Proposal

**§ 3.2.1** At a time to be mutually agreed upon by the Owner and the CMAR, the CMAR shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal. The Architect shall assist the Owner in reviewing the CMAR's proposal. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the CMAR's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inaccuracies in the information presented, the Architect shall promptly notify the Owner and CMAR.

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§ 3.2.2 Upon authorization by the Owner and CMAR, and subject to Section 4.2.1.14, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment.

**§ 3.3 Schematic Design Phase Services**

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

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

§ 3.3.3 The Architect shall present its preliminary evaluation to the Owner and CMAR

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

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

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the CMAR and Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.

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

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the CMAR. The Architect shall meet with the CMAR to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of the CMAR's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the CMAR and Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the CMAR and Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work which are to be provided by the CMAR under the CMAR's agreement with the Owner.

**§ 3.4 Design Development Phase Services**

§ 3.4.1 Based on the CMAR and Owner's approval of the Schematic Design Documents, and on the CMAR and Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the CMAR's review and the CMAR and Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the CMAR and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical

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systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

**§ 3.4.2** Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the CMAR. The Architect shall meet with the CMAR to review the Design Development Documents.

**§ 3.4.3** Upon receipt of the CMAR's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the CMAR and Owner's approval of the Design Development Documents.

**§ 3.5 Construction Documents Phase Services**

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

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

**§ 3.5.3** During the development of the Construction Documents, if requested by the Owner or CMAR, the Architect shall assist the Owner and CMAR in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

**§ 3.5.4** Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the CMAR. The Architect shall meet with the CMAR to review the Construction Documents.

**§ 3.5.5** Upon receipt of the CMAR's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the CMAR and Owner's approval of the Construction Documents.

**§ 3.6 Construction Phase Services**

**§ 3.6.1 General**

**§ 3.6.1.1 INTENTIONALLY DELETED.**

**3.6.1.2 INTENTIONALLY DELETED.**

*(Paragraph deleted)*

**§ 3.6.1.3** During the Construction Phase of the Project, the CMAR will provide comprehensive weekly reports on the progress of construction activity to the Owner and Architect. Additionally, the CMAR will hold periodic meetings for the purpose of discussing construction activities, progress and problems. The Architect will review the comprehensive weekly reports and advise and consult with the CMAR during the Construction Phase Services. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the CMAR's actions or performance. The Architect shall be responsible only for the Architect's negligent acts or omissions.

**§ 3.6.2 Evaluations of the Work**

**§ 3.6.2.1** The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to form an opinion, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the

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Architect shall keep the Owner and CMAR reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and CMAR (1) deviations from the Contract Documents that were obvious and observed by the Architect, (2) known deviations from the most recent construction schedule submitted by the CMAR, and (3) defects and deficiencies observed in the Work that were obvious and observed by the Architect.

**§ 3.6.2.2** Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to request inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, the Architect has no duty to request an inspection or test..

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

**§ 3.6.2.4** Interpretations and opinions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When forming such interpretations and opinions, the Architect shall endeavor to secure faithful performance by both Owner and CMAR, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith.

*(Paragraphs deleted)*

**§ 3.6.3 Payment to Subcontractors and Vendors**

**§ 3.6.3.1** The CMAR will review and approve all invoices for subcontractors, vendors, and materialmen before submitting the invoices to Owner for payment. The Architect will submit all Architect's invoices for Basic Services along with consultants identified in Section 1.1.12.1 Basic Services to Owner for payment with Architect's recommendations and will also simultaneously provide copies of all such invoices to the CMAR. The Architect will also submit all invoice for consultants identified in Section 1.1.12.2 and 4.1.1 Supplemental Services simultaneously to the Owner and CMAR.

**§ 3.6.3.2** INTENTIONALLY DELETED.

**§ 3.6.3.3** INTENTIONALLY DELETED.

**§ 3.6.4 Submittals**

**§ 3.6.4.1** The Architect shall review the CMAR's submittal schedule and shall not unreasonably delay or withhold its comments on the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review. The Architect's comments on the submittal schedule will not be binding on the CMAR but, instead, will be submitted solely for the CMAR's consideration.

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

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

**§ 3.6.4.4** Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information.

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

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

**§ 3.6.5 Changes in the Work**

**§ 3.6.5.1** The Architect may consult with the CMAR about the need for 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.

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

**§ 3.6.6 Project Completion**

**§ 3.6.6.1**

*(Paragraphs deleted)*

INTENTIONALL DELETED.

**§ 3.6.6.2** INTENTIONALLY DELETED.

**§ 3.6.6.3** INTENTIONALLY DELETED.

**§ 3.6.6.4** INTENTIONALLY DELETED.

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

## ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

**§ 4.1 Supplemental Services**

**§ 4.1.1** The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. The quote for the vendor of each of the Supplemental Services will be delivered to the CMAR and Owner for review and approval. The invoices submitted by each vendor of Supplemental Services will be submitted to the CMAR and Owner for review and approval. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

*(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)*


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| Supplemental Services | Responsibility (Architect, Owner, or not provided) |
|---|---|
| § 4.1.1.1 Assistance with Selection of CMAR | |
| § 4.1.1.2 Programming | In Basic Services |
| § 4.1.1.3 Multiple Preliminary Designs | |
| § 4.1.1.4 Measured drawings | |
| § 4.1.1.5 Existing facilities surveys | |
| § 4.1.1.6 Site evaluation and planning | Architect |
| § 4.1.1.7 Building Information Model management responsibilities | |
| § 4.1.1.8 Development of Building Information Models for post construction use | |
| § 4.1.1.9 Civil engineering | In Basic Services |
| § 4.1.1.10 Landscape design | In Basic Services |
| § 4.1.1.11 Architectural interior design | In Basic Services |
| § 4.1.1.12 Value analysis | |
| § 4.1.1.13 Cost estimating | |
| § 4.1.1.14 On-site project representation | |
| § 4.1.1.15 Conformed documents for construction | |
| § 4.1.1.16 As-designed record drawings | |
| § 4.1.1.17 As-constructed record drawings | |
| § 4.1.1.18 Post-occupancy evaluation | |
| § 4.1.1.19 Facility support services | |
| § 4.1.1.20 Tenant-related services | |
| § 4.1.1.21 Architect's coordination of the Owner's consultants | In Basic Services |
| § 4.1.1.22 Telecommunications/data design | Owner / Architect |
| § 4.1.1.23 Security evaluation and planning | Owner / Architect |
| § 4.1.1.24 Commissioning | |
| § 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3 | |
| § 4.1.1.26 Historic preservation | |
| § 4.1.1.27 Furniture, furnishings, and equipment design | Architect |
| § 4.1.1.28 Other services provided by specialty Consultants | Owner / Archtiect |
| § 4.1.1.29 Other Supplemental Services | Architect |
| **4.1.1.30 Capacity analysis for storm water and utility Infrastructure / offsite improvements/extensions** | Owner |
| **4.1.1.31 Off Site Street Improvements** | Owner or Architect |
| **4.1.1.32 Traffic Impact Studies / Analysis** | Owner or Architect |
| **4.1.1.33 Environment Site Assessment / Flood and Regional Drainage Studies / Wetland Delineation** | Owner |
| **4.1.1.34 Construction Surveying / Off site utility easement surveying** | Owner or Architect |
| **4.1.1.35 Theatrical Design** | Architect |
| **4.1.1.36 Audio Visual Design** | Architect |
| **4.1.1.37 Acoustical Design** | Architect |
| **4.1.1.38 Site Sound Modeling** | Architect |
| **4.1.1.39 Food Service Design** | Owner or Architect |
| **4.1.1.40 Fast Track / Multiple Bid packages** | Architect |
| | |


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**§ 4.1.2 Description of Supplemental Services**

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

*(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)*

Theatrical Design: programming and design of stage related theatrical rigging, lighting, etc., seating layout and site line analysis

Audio Visual Design: programming and design of venue audio visual equipment, requirements and provisioning as required

Acoustical Design: programming, analysis and design of venue/stage acoustical elements

Site Sound Modeling: analysis of site layout concepts to evaluate, understand and predict the impact of outdoor concert sound, mechanical equipment, ground transportation and other environmental noise sources

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

*(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)*

**§ 4.1.3** If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E234™–2019, Sustainable Projects Exhibit, CMAR as Constructor Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

**§ 4.2 Architect's Additional Services**

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

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

.1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the CMAR or the Owner, approvals given by the CMAR and Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;

.2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the CMAR's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the CMAR and Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;

.3 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;

.4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;

.5 Services necessitated by decisions of the CMAR and Owner or not rendered in a timely manner or any other failure of performance on the part of the CMAR or Owner or the Owner's consultants or contractors;

.6 Preparing digital models or other design documentation for transmission to the CMAR and Owner's consultants and contractors, or to other Owner- authorized recipients;

.7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or CMAR;

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.8 Preparation for, and attendance at, a public presentation, meeting or hearing;
.9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
.10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
.11 Assistance to the Initial Decision Maker, if other than the Architect;
.12 Services necessitated by replacement of the CMAR or conversion of the CMAR as constructor project delivery method to an alternative project delivery method;
.13 ;
.14 Making revisions to the Drawings, Specifications, and other documents resulting from agreed-upon assumptions and clarifications included in the Guaranteed Maximum Price Amendment or Control Estimate; and
.15 Making revisions to the Drawings, Specifications, and other documents resulting from substitutions included in the Guaranteed Maximum Price Amendment or Control Estimate.

**§ 4.2.2** To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the CMAR and Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the CMAR and Owner determine that all or parts of the services are not required, the Owner and CMAR shall give prompt written notice to the Architect of their determination. The Owner shall compensate the Architect for the services :

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

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

.1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the CMAR
.2 Sixteen ( 16 ) visits to the site by the Architect during construction
.3 Two ( 2 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
.4 Two ( 2 ) inspections for any portion of the Work to determine final completion

**§ 4.2.4** INTENTIONALLY DELETED.

**§ 4.2.5** If the services covered by this Agreement have not been completed within Forty-eight ( 48 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

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

**§ 5.2** The Owner shall retain a CMAR to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

**§ 5.3** INTENTIONALLY DELETED.

**§ 5.3.1** TheOwner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of

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the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the CMAR to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

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

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

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

**§ 5.7** The CMAR shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

**§ 5.8** 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, CMAR as Constructor Edition, attached to this Agreement.

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

**§ 5.10** The CMAR shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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

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

**§ 5.13** The Owner shall include the Architect in all communications with the CMAR 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 CMAR otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

**§ 5.14** The Owner shall coordinate the Architect's duties and responsibilities set forth in the Agreement between the Owner and the CMAR with the Architect's services set forth in this Agreement.

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

**§ 5.16**


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## ARTICLE 6 COST OF THE WORK

**§ 6.1** For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the CMAR's general conditions costs, overhead, fees and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the compensation of the CMAR for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

**§ 6.2** The Owner's budget for the Cost of the Work is not provided in the Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the CMAR and Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

**§ 6.3** INTENTIONALL DELETED.

**§ 6.3.1 INTENTIONALLY DELETED**
**§ 6.4 INTENTIONALLY DELETED.**

**§ 6.5**
*(Paragraphs deleted)*
INTENTIONALLY DELETED.

**§ 6.6** INTENTIONALLY DELETED.

**§ 6.7** INTENTIONALLY DELETED.

## ARTICLE 7 COPYRIGHTS AND LICENSES

**§ 7.1** The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

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

**§ 7.3** The Architect grants to the CMAR and Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due, pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the CMAR or Owner to authorize the CMAR, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

**§ 7.3.1** In the event the CMAR or Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the CMAR or Owner, as the case may be, releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

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

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Instruments of Service shall be at the CMAR or Owner's sole risk and without liability to the Architect and the Architect's consultants.

**§ 7.5** Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

**§ 8.1.1** The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this 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 Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

**§ 8.1.2** To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the CMAR, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

**§ 8.1.3** The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.

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

### § 8.2 Mediation

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

**§ 8.2.2** The Owner, CMAR and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution 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 proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 8.2.3** 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.

**§ 8.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:
*(Check the appropriate box.)*


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[ ] Arbitration pursuant to Section 8.3 of this Agreement

[ X ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

If the Owner, CMAR and Architect 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, the dispute will be resolved in a court of competent jurisdiction.

**§ 8.3 Arbitration**

**§ 8.3.1** If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement 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 this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

**§ 8.3.1.1** 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, dispute or other matter in question 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, dispute or other matter in question.

**§ 8.3.2** The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

**§ 8.3.3** The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**§ 8.3.4 Consolidation or Joinder**

**§ 8.3.4.1** Either party, at its sole discretion, 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).

**§ 8.3.4.2** Either party, at its sole discretion, 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.

**§ 8.3.4.3** The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

**§ 8.4** The provisions of this Article 8 shall survive the termination of this Agreement.

## ARTICLE 9 TERMINATION OR SUSPENSION

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

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interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 9.2** If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

**§ 9.6** If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

**§ 9.7** In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:
*(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)*

**.1** Termination Fee:

**.2** Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

**§ 9.8** Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

**§ 9.9** The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

**§ 10.1** This Agreement 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 8.3.

**§ 10.2** Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, except as modified in this Agreement. The term "Contractor" as used in A201–2017 shall mean the CMAR.

**§ 10.3** The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees

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to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

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

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

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

**§ 10.7** The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

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

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

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

## ARTICLE 11 COMPENSATION

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

**.1** Stipulated Sum: The Architect will be paid a sum not to exceed Forty-Two Thousand Dollars ($42,000) ($) for its Preliminary Concept Phase in which the Architect will prepare conceptual sketches and/or drawings/renderings of interior and exterior views of what the project may look like when completed, depending on final programming for the building and site. The amount paid for this phase will be a credit against the total amount due the Architect for the fee calculated pursuant to Section 11.1.2 below.
*(Insert amount)*

**.2** Percentage Basis
*(Insert percentage value)*

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Seven and One-Half ( 7.5 ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

.3 Other
*(Describe the method of compensation)*

**§ 11.2** For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

Lump Sum or Hourly Not to Exceed Fee Proposal. For all Supplemental Services, Fee Proposals will be presented to the CMAR and Owner for approval prior to the initiation of the work

**§ 11.3** For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
*(Insert amount of, or basis for, compensation.)*

Lump Sum or Hourly Not to Exceed Fee Proposal. For all Supplemental Services, Fee Proposals will be presented to the CMAR and Owner for approval prior to the initiation of the work

**§ 11.4** Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus Seven and One Half percent ( 7.5 %), or as follows:
*(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)*

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

| | | | | |
|---|---|---|---|---|
| Preliminary Concept Phase: Stipulated Sum of | | | $_$42,000 | |
| Programming and Concept Phase | Fifteen | percent ( | 15 | %) |
| Schematic Design Phase | Fifteen | percent ( | 15 %) | |
| Design Development Phase | Fifteen | percent ( | 15 | %) |
| Construction Documents Phase | Thirty-five | percent ( | 35 | %) |
| Construction Phase | Twenty | percent ( | 20 | %) |
| Total Basic Compensation | one hundred | percent ( | 100 | %) |

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or CMAR as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

**§ 11.6** When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the CMAR and Owner's budget for the Cost of the Work.

**§ 11.6.1** When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

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§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

| Employee or Category | Rate ($0.00) |
|---|---|

**§ 11.8 Compensation for Reimbursable Expenses**
**§ 11.8.1** Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- **.1** Transportation and authorized out-of-town travel and subsistence.
- **.2** Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- **.3** Permitting and other fees required by authorities having jurisdiction over the Project;
- **.4** Printing, reproductions, plots, and standard form documents;
- **.5** Postage, handling, and delivery;
- **.6** Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- **.7** Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- **.8** If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- **.9** All taxes levied on professional services and on reimbursable expenses;
- **.10** Site office expenses;
- **.11** Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and
- **.12** Other similar Project-related expenditures.

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

**§ 11.9 Architect's Insurance.** If the types and limits of coverage required in Section 2.6 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:
*(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.6, and for which the Owner shall reimburse the Architect.)*

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

**§ 11.10.1.2** If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of ($ ) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

**§ 11.10.2 Progress Payments**
**§ 11.10.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Ninety ( 90 ) days after the

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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 Architect.
*(Insert rate of monthly or annual interest agreed upon.)*

%

**§ 11.10.2.2** The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

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

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
*(Include other terms and conditions applicable to this Agreement.)*

## ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

**.1** AIA Document B133™–2019, Standard Form Agreement Between Owner and Architect, CMAR as Constructor Edition

**.2** Building Information Modeling Exhibit, if completed:

**.3** Exhibits:
*(Check the appropriate box for any exhibits incorporated into this Agreement.)*

[ ] AIA Document E234™–2019, Sustainable Projects Exhibit, CMAR as Constructor Edition dated as indicated below.
*(Insert the date of the E234-2019 incorporated into this agreement.)*

[ ] Other Exhibits incorporated into this Agreement:
*(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)*

**.4** Other documents:
*(List other documents, if any, forming part of the Agreement.)*

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

| **OWNER** *(Signature)* | **ARCHITECT** *(Signature)* |
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| Chris Treat, Mayor | David Porter, Principal / CEO |
| --- | --- |
| *(Printed name and title)* | *(Printed name, title, and license number, if required)* |

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# *Additions and Deletions Report for*

*AIA® Document B133® – 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 16:44:06 CT on 11/19/2024.

**PAGE 1**

The City of Bryant, Arkansas,
210 SW 3rd Street
Bryant, Arkansas 72202
Telephone Number: (501) 943-0999

...

Polk Stanley Wilcox Architects, Subchapter S Corporation
801 S. Spring Street
Little Rock, AR
Telephone Number: (501) 378-0878

...

Bryant Outdoor Entertainment Facility
Bryant, Arkansas

...

The ~~Construction Manager~~ CMAR (if known):

...

Wilson Global General Contracting, LLC, Limited Liability Company
P.O. Box 6480
Hot Springs, Arkansas 71902
Telephone Number: (501) 276-2267

**PAGE 2**

An Indoor / Outdoor Entertainment Facility designed to accommodate a number of attendees to be determined through the programming phase.

...

A site in Bryant, Arkansas of such size to be determined through the programming phase.

...

To Be Determined (TBD)

...

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TBD

**PAGE 3**

§ 1.1.5 The Owner intends to retain a ~~Construction Manager~~ CMAR pursuant to the following agreement:

...

[ ] AIA Document A133–2019, Standard Form of Agreement Between Owner and ~~Construction Manager~~ CMAR as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price.

[ ] AIA Document A134–2019, Standard Form of Agreement Between Owner and ~~Construction Manager~~ CMAR as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price.

[ X ] Contract for CMAR At-Risk ["CMAR"] custom contract between the City of Bryant and the CMAR.CMAR

...

TBD

§ 1.1.7.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, ~~Construction Manager~~ CMAR 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 Architect 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.

...

Chris Treat, Mayor
210 SW 3rd Street
Bryant, Arkansas 72202

...

CMAR
P.O. Box 6480
Hot Springs, AR 71902
**rickw@wilent.net**
501.276.2267

**PAGE 4**

§ 1.1.10 The Owner and/or CMAR shall retain the following consultants and contractors:

...

.1 ~~Construction Manager:~~CMARr:
*(The ~~Construction Manager~~ CMAR is identified on the cover page. If a ~~Construction Manager~~ CMAR has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the ~~Construction Manager,~~ CMAR, complete Section 4.1.1.1)*

...

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.4 ~~Civil Engineer:~~Traffic Engineer

...

*(List any other consultants and contractors retained by the ~~Owner.~~)Owner and/or CMAR.)*

Environmental Consultants

...

David Porter
801 S. Spring Street
Little Rock, AR
Telephone Number: (501) 951-4754

...

Email Address: dporter@polkstanleywilcox.com
**PAGE 5**

Engineering Consultants, Inc.

...

HP Engineering

...

HP Engineering

...

.4 Civil Engineer:

Crafton Tull

.5. Landscape Architect:

Crafton Tull

...

Theatrical Design: Schuler Shook

Audio Visual Design: Schuler Shook

Acoustical Design: Jaffe Holden

Sound Modeling: Jaffe Holden

...

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§ 1.2 The ~~Owner~~ Owner, CMAR and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.
**PAGE 6**

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

...

§ 2.3 The Architect shall provide its services in conjunction with the services of a ~~Construction Manager~~ CMAR as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the ~~Construction Manager.~~CMAR.

...

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

§ 2.6 **Insurance.** The Architect shall maintain the following insurance until termination of this Agreement. ~~If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.~~

§ 2.6.1 Commercial General Liability with policy limits of not less than Two Million Dollars ($ 2,000,000 ) for each occurrence and Four Million Dollars ($ 4,000,000 ) in the aggregate for bodily injury and property damage.

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

...

§ 2.6.5 Employers' Liability with policy limits not less than One Million Dollars ($ 1,000,000 ) each accident, One Million Dollars ($ 1,000,000 ) each employee, and One Million Dollars ($ 1,000,000 ) policy limit.

§ 2.6.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than Five Million Dollars ($ 5,000,000 ) per claim and Five Million Dollars ($ 5,000,000 ) in the aggregate.

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

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner and CMAR that evidence compliance with the requirements in this Section 2.6.
**PAGE 7**

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

...

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

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

§ 3.1.4 The Architect shall submit information to the ~~Construction Manager~~ CMAR and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

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

§ 3.1.6 The Architect shall, in coordination with the ~~Construction Manager,~~ CMAR, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.7 The Architect shall assist the Owner and ~~Construction Manager~~ CMAR in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Prior to the Owner's acceptance of the ~~Construction Manager's Guaranteed Maximum Price proposal, or the Owner's approval of the Construction Manager's Control Estimate, as applicable, the Architect shall consider the Construction Manager's~~ CMAR's Guaranteed Maximum Price proposal, the Architect shall consider the CMAR's requests for substitutions and, upon written request of the ~~Construction Manager,~~ CMAR, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and ~~Construction Manager~~ CMAR shall include the Owner in communications related to substitution requests, clarifications, and interpretations.

**§ 3.2**
**~~Review of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate~~Review of the CMAR's 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~~ CMAR, the CMAR shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price ~~proposal or Control Estimate.~~ proposal. The Architect shall assist the Owner in reviewing the ~~Construction Manager's proposal or estimate.~~ CMAR's proposal. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the ~~Construction Manager's~~ CMAR's proposed means, methods, sequences, techniques, or procedures; or for the

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verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any ~~inconsistencies or~~ inaccuracies in the information presented, the Architect shall promptly notify the Owner and ~~Construction Manager.~~CMAR.

**§ 3.2.2** Upon authorization by the ~~Owner,~~ Owner and CMAR, and subject to Section 4.2.1.14, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price ~~Amendment or Control Estimate.~~Amendment.
**PAGE 8**

**§ 3.3.1** The Architect shall review the ~~program, and other~~ information furnished by the Owner and ~~Construction Manager,~~ CMAR, and shall review laws, codes, and regulations applicable to the Architect's services.

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

**§ 3.3.3** The Architect shall present its preliminary evaluation to the Owner and ~~Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.~~CMAR

**§ 3.3.4** Based on the Project requirements agreed upon with the CAR and Owner, the Architect shall prepare and present, to the Owner and ~~Construction Manager,~~ CMAR, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

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

**§ 3.3.5.1** The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the CMAR and Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.

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

**§ 3.3.6** The Architect shall submit the Schematic Design Documents to the Owner and the ~~Construction Manager.~~ CMAR. The Architect shall meet with the ~~Construction Manager~~ CMAR to review the Schematic Design Documents.

**§ 3.3.7** Upon receipt of the ~~Construction Manager's~~ CMAR's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the CMAR and Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the CMAR and Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

**§ 3.3.8** In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the ~~Work,~~ Work which are to be provided by the ~~Construction Manager~~ CMAR under the ~~Construction Manager's~~ CMAR's agreement with the Owner.

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...

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

§ 3.4.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the ~~Construction Manager.~~ CMAR. The Architect shall meet with the ~~Construction Manager~~ CMAR to review the Design Development Documents.

§ 3.4.3 Upon receipt of the ~~Construction Manager's~~ CMAR's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the CMAR and Owner's approval of the Design Development Documents.

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

...

§ 3.5.3 During the development of the Construction Documents, if requested by the ~~Owner,~~ Owner or CMAR, the Architect shall assist the Owner and ~~Construction Manager~~ CMAR in the development and preparation of (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

§ 3.5.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the ~~Construction Manager.~~ CMAR. The Architect shall meet with the ~~Construction Manager~~ CMAR to review the Construction Documents.

§ 3.5.5 Upon receipt of the ~~Construction Manager's~~ CMAR's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the CMAR and Owner's approval of the Construction Documents.

...

§ 3.6.1.1 ~~The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Construction Manager modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.~~ **INTENTIONALLY DELETED.**

**3.6.1.2 INTENTIONALLY DELETED.**

§ 3.6.1.2 ~~Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Owner's~~

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~~approval of the Construction Manager's Control Estimate, or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.~~

**§ 3.6.1.3** ~~The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement.~~ During the Construction Phase of the Project, the CMAR will provide comprehensive weekly reports on the progress of construction activity to the Owner and Architect. Additionally, the CMAR will hold periodic meetings for the purpose of discussing construction activities, progress and problems. The Architect will review the comprehensive weekly reports and advise and consult with the CMAR during the Construction Phase Services. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the ~~Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible~~ CMAR's actions or performance. The Architect shall be responsible only for the Architect's negligent acts or ~~omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.~~omissions.

...

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

**§ 3.6.2.2** ~~The Architect has the authority to reject Work that does not conform to the Contract Documents.~~ Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to ~~require~~ request inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, ~~neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.~~the Architect has no duty to request an inspection or test..

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

**§ 3.6.2.4** Interpretations and ~~decisions~~ opinions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When ~~making~~ forming such interpretations and ~~decisions,~~ opinions, the Architect shall endeavor to secure faithful performance by both Owner and ~~Construction Manager,~~ CMAR, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. ~~The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.~~

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

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~~§ 3.6.3 Certificates for Payment to Construction Manager~~

§ 3.6.3 Payment to Subcontractors and Vendors

**§ 3.6.3.1** The ~~Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Construction Manager is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.~~CMAR will review and approve all invoices for subcontractors, vendors, and materialmen before submitting the invoices to Owner for payment. The Architect will submit all Architect's invoices for Basic Services along with consultants identified in Section 1.1.12.1 Basic Services to Owner for payment with Architect's recommendations and will also simultaneously provide copies of all such invoices to the CMAR. The Architect will also submit all invoice for consultants identified in Section 1.1.12.2 and 4.1.1 Supplemental Services simultaneously to the Owner and CMAR.

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

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

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**§ 3.6.4.1** The Architect shall review the ~~Construction Manager's~~ CMAR's submittal schedule and shall not unreasonably delay or withhold ~~approval of~~ its comments on the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review. The Architect's comments on the submittal schedule will not be binding on the CMAR but, instead, will be submitted solely for the CMAR's consideration.

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

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

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

...

§ 3.6.5.1 The Architect may ~~order~~ consult with the CMAR about the need for 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. ~~Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.~~

...

§ 3.6.6.1 ~~The Architect shall:~~

~~.1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;~~

~~.2 issue Certificates of Substantial Completion;~~

~~.3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager; and~~

~~.4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.~~INTENTIONALL DELETED.

§ 3.6.6.2 ~~The Architect's inspections shall be conducted with the Owner to (1) check conformance of the Work with the requirements of the Contract Documents and (2) verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.~~INTENTIONALLY DELETED.

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

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

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

...

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. The quote for the vendor of each of the Supplemental Services will be delivered to the CMAR and Owner for review and approval. The invoices submitted by each vendor of Supplemental Services will be submitted to the CMAR and Owner for review and approval. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

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| § 4.1.1.1 Assistance with Selection of ~~Construction Manager~~CMAR | |
| § 4.1.1.2 Programming | In Basic Services |

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| § 4.1.1.6 Site evaluation and planning | Architect |

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| § 4.1.1.9 Civil engineering | In Basic Services |
| § 4.1.1.10 Landscape design | In Basic Services |
| § 4.1.1.11 Architectural interior design | In Basic Services |

...

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|---|---|
| § 4.1.1.21 Architect's coordination of the Owner's consultants | In Basic Services |
| § 4.1.1.22 Telecommunications/data design | Owner / Architect |
| § 4.1.1.23 Security evaluation and planning | Owner / Architect |

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|---|---|
| § 4.1.1.27 Furniture, furnishings, and equipment design | Architect |
| § 4.1.1.28 Other services provided by specialty Consultants | Owner / Archtiect |
| § 4.1.1.29 Other Supplemental Services | Architect |
| **4.1.1.30 Capacity analysis for storm water and utility infrastructure / offsite improvements/extensions** | Owner |
| **4.1.1.31 Off Site Street Improvements** | Owner or Architect |
| **4.1.1.32 Traffic Impact Studies / Analysis** | Owner or Architect |
| **4.1.1.33 Environment Site Assessment / Flood and Regional Drainage Studies / Wetland Delineation** | Owner |
| **4.1.1.34 Construction Surveying / Off site utility easement surveying** | Owner or Architect |
| **4.1.1.35 Theatrical Design** | Architect |
| **4.1.1.36 Audio Visual Design** | Architect |
| **4.1.1.37 Acoustical Design** | Architect |
| **4.1.1.38 Site Sound Modeling** | Architect |
| **4.1.1.39 Food Service Design** | Owner or Architect |
| **4.1.1.40 Fast Track / Multiple Bid packages** | Architect |

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Theatrical Design: programming and design of stage related theatrical rigging, lighting, etc., seating layout and site line analysis

Audio Visual Design: programming and design of venue audio visual equipment, requirements and provisioning as required

Acoustical Design: programming, analysis and design of venue/stage acoustical elements

Site Sound Modeling: analysis of site layout concepts to evaluate, understand and predict the impact of outdoor concert sound, mechanical equipment, ground transportation and other environmental noise sources

...

**§ 4.1.3** If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E234™–2019, Sustainable Projects Exhibit, ~~Construction Manager~~ CMAR as Constructor Edition, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

...

**§ 4.2.1** Upon recognizing the need to perform the following Additional Services, the Architect shall notify the CMAR and Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect

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shall not proceed to provide the following Additional Services until the Architect receives the CMAR and Owner's written authorization:

.1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the ~~Construction Manager~~ CMAR or the Owner, approvals given by the CMAR and Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6;

.2 Making revisions in Drawings, Specifications, or other documents (as required pursuant to Section 6.7), when such revisions are required because the ~~Construction Manager's~~ CMAR's estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the CMAR and Owner's budget, except where such excess is due to changes initiated by the Architect in scope, capacities of basic systems, or the kinds and quality of materials, finishes, or equipment;

...

.5 Services necessitated by decisions of the CMAR and Owner or ~~Construction Manager~~ not rendered in a timely manner or any other failure of performance on the part of the CMAR or Owner or the Owner's consultants or contractors;

.6 Preparing digital models or other design documentation for transmission to the CMAR and Owner's consultants and contractors, or to other Owner- authorized recipients;

.7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or ~~Construction Manager;~~CMAR;

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.12 Services necessitated by replacement of the ~~Construction Manager~~ CMAR or conversion of the ~~Construction Manager~~ CMAR as constructor project delivery method to an alternative project delivery method;

.13 ~~Services necessitated by the Owner's delay in engaging the Construction Manager;~~

...

**§ 4.2.2** To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the CMAR and Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the ~~Owner determines~~ CMAR and Owner determine that all or parts of the services are not required, the Owner and CMAR shall give prompt written notice to the Architect of ~~the Owner's~~ their determination. The Owner shall compensate the Architect for the services ~~provided prior to the Architect's receipt of the Owner's notice:~~;

.1 Reviewing a ~~Construction Manager's~~ CMAR's submittal out of sequence from the submittal schedule approved by the Architect;

.2 Responding to the ~~Construction Manager's~~ CMAR's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the ~~Construction Manager~~ CMAR from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, ~~Construction Manager-prepared~~ CMAR-prepared coordination drawings, or prior Project correspondence or documentation;

.3 Preparing Change Orders, and Construction Change Directives that require evaluation of the ~~Construction Manager's~~ CMAR's proposals and supporting data, or the preparation or revision of Instruments of Service;

.4 ~~Evaluating an extensive number of Claims as the Initial Decision Maker; or~~

.5 Evaluating substitutions proposed by the Owner or ~~Construction Manager~~ CMAR and making subsequent revisions to Instruments of Service resulting therefrom.

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

.1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the ~~Construction Manager~~CMAR

.2 Sixteen ( 16 ) visits to the site by the Architect during construction

.3 Two ( 2 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

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.4 Two ( 2 ) inspections for any portion of the Work to determine final completion

**§ 4.2.4** ~~Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.~~INTENTIONALLY DELETED.

**§ 4.2.5** If the services covered by this Agreement have not been completed within Forty-eight ( 48 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

...

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

**§ 5.2** The Owner shall retain a ~~Construction Manager~~ CMAR to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

**§ 5.3** ~~The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and Construction Manager. 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.~~INTENTIONALLY DELETED.

**§ 5.3.1** ~~The Owner~~ TheOwner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the ~~Construction Manager~~ CMAR to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

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

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

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

**§ 5.7** The ~~Owner~~ CMAR shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

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§ 5.8 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~~ CMAR as Constructor Edition, attached to this Agreement.

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

§ 5.10 The ~~Owner~~ CMAR shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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

§ 5.13 The Owner shall include the Architect in all communications with the ~~Construction Manager~~ CMAR 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 ~~Construction Manager~~ CMAR otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.14 The Owner shall coordinate the Architect's duties and responsibilities set forth in the Agreement between the Owner and the ~~Construction Manager~~ CMAR with the Architect's services set forth in this Agreement. ~~The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.~~

§ 5.15 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the ~~Construction Manager~~ CMAR to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.16 ~~Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.~~

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§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the ~~Construction Manager's~~ CMAR's general conditions costs, overhead, fees and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the compensation of the ~~Construction Manager~~ CMAR for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is not provided in the Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the CMAR and Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 ~~The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service,~~

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~~revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.~~INTENTIONALL DELETED.

**§ 6.3.1** ~~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 Architect and the Construction Manager shall work together to reconcile the cost estimates.~~
**INTENTIONALLY DELETED**

**§ 6.4** ~~If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.~~**INTENTIONALLY DELETED.**

**§ 6.5** ~~If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall~~

~~.1 give written approval of an increase in the budget for the Cost of the Work;~~

~~.2 terminate in accordance with Section 9.5;~~

~~.3 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or~~

~~.4 implement any other mutually acceptable alternative.~~INTENTIONALLY DELETED.

**§ 6.6** ~~If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.~~INTENTIONALLY DELETED.

**§ 6.7** ~~After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, or Control Estimate that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.~~
INTENTIONALLY DELETED.

...

**§ 7.3** The Architect grants to the CMAR and Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due, pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the CMAR or Owner to authorize the ~~Construction Manager,~~ CMAR, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

**§ 7.3.1** In the event the CMAR or Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the ~~Owner~~ CMAR or Owner, as the case may be, releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

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§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner and CMAR shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the CMAR or Owner's sole risk and without liability to the Architect and the Architect's consultants.
**PAGE 17**

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the ~~Construction Manager,~~ CMAR, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

...

§ 8.2.2 The ~~Owner~~ Owner, CMAR and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution 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 proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.
**PAGE 18**

[ X ] Litigation in a court of competent jurisdiction

...

If the ~~Owner~~ Owner, CMAR and Architect 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, the dispute will be resolved in a court of competent jurisdiction.
**PAGE 19**

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, except as modified in this Agreement. The term "Contractor" as used in A201–2017 shall mean the ~~Construction Manager.~~CMAR.
**PAGE 20**

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

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

...

.1 Stipulated ~~Sum~~Sum: The Architect will be paid a sum not to exceed Forty-Two Thousand Dollars ($42,000) ($) for its Preliminary Concept Phase in which the Architect will prepare conceptual sketches

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and/or drawings/renderings of interior and exterior views of what the project may look like when completed, depending on final programming for the building and site. The amount paid for this phase will be a credit against the total amount due the Architect for the fee calculated pursuant to Section 11.1.2 below.

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Seven and One-Half ( 7.5 ) % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

...

Lump Sum or Hourly Not to Exceed Fee Proposal. For all Supplemental Services, Fee Proposals will be presented to the CMAR and Owner for approval prior to the initiation of the work

...

Lump Sum or Hourly Not to Exceed Fee Proposal. For all Supplemental Services, Fee Proposals will be presented to the CMAR and Owner for approval prior to the initiation of the work

**§ 11.4** Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus Seven and One Half percent ( 7.5 %), or as follows:

...

| | | | | |
|---|---|---|---|---|
| Preliminary Concept Phase: Stipulated Sum of | | | $ $42,000 | |
| Programming and Concept Phase | Fifteen | percent ( | 15 | %) |
| Schematic Design Phase | Fifteen | percent ( | 15 %) | |
| Design Development Phase | Fifteen | percent ( | 15 | %) |
| Construction Documents Phase | Thirty-five | percent ( | 35 | %) |
| Construction Phase | Twenty | percent ( | 20 | %) |

...

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or ~~Construction Manager~~ CMAR as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

**§ 11.6** When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the CMAR and Owner's budget for the Cost of the Work.

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.1 Transportation and authorized out-of-town travel and ~~subsistence;~~ subsistence.

...

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

...

**§ 11.10.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Ninety ( 90

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) 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 Architect.

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.1 AIA Document B133™–2019, Standard Form Agreement Between Owner and Architect, ~~Construction Manager~~ CMAR as Constructor Edition

...

[ ] AIA Document E234™–2019, Sustainable Projects Exhibit, ~~Construction Manager~~ CMAR as Constructor Edition dated as indicated below.

**PAGE 24**

Chris Treat, Mayor

David Porter, Principal / CEO

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*AIA® Document D401™ – 2003*

I, David Porter, 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 16:44:06 CT on 11/19/2024 under Order No. 4104247333 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B133™ – 2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, other than those additions and deletions shown in the associated Additions and Deletions Report.

_____

*(Signed)*

_____

*(Title)*

_____

*(Dated)*

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