



319 Black River Lane
Lorain, Ohio 44052
440.204.2269
lorainport.com

DATE: December 8, 2023
TO: Board of Directors
FROM: Jeff Zellers, Chairman, Contract Management Committee
SUBJECT: Meeting Notice

Please be advised that a Contract Management Committee Meeting has been scheduled for 5:00 p.m. on

Tuesday, December 12, 2023

Location:
Lorain Port and Finance Authority
319 Black River Lane
Lorain, OH 44052

cc: Mayor/Administration
City Council
Media

Lorain Port and Finance Authority
Contract Management Committee Meeting
Tuesday, December 14, 2023, at 5:00 p.m.
Port Offices

AGENDA

- I. Roll Call
- II. Disposition of Meeting Minutes
 - A. May 9, 2023, Contract Management Committee Meeting
 - B. May 16, 2023, Joint Contract Management and Marketing & Public Affairs Committee Meeting
 - C. June 13, 2023, Contract Management Committee Meeting
- III. Report of Chairman
 - A. Murray Ridge Litter Control Contract
 - B. Trolls Under the Bridge Lease Discussion
 - C. Stage Architects Proposal
- IV. Other Business
- V. Adjournment

Lorain Port and Finance Authority
Board of Directors
Contract Management Committee Meeting
Port Office
Tuesday, May 9, 2023, at 6:30 p.m.

Committee Members: Ms. Kiraly; Messrs. Nielsen, Veard, Zellers and Zgonc (5)

Board of Directors: Mrs. Silva Arredondo (6:55 p.m.); Mr. Mullins and Scott (6:36 p.m.)

Staff: Tom Brown, Executive Director
Tiffany McClelland, Assistant Director
Kelsey Leyva-Smith, Office Manager
Michael Brosky, Esq., Port Attorney (6:45 p.m.)

Guests: None

I. Roll Call

A. The meeting was called to order at 6:30 p.m. by Contract Management Committee Chairman Jeff Zellers with roll call indicating a quorum present.

II. Report of Chairman

1. Construction Manager at Risk Agreement: Mr. Zellers said this is to bring everyone up to speed on the contract and where we stand. Goal is approval by the full board. Last 3-4 weeks, been working with construction manager at risk, with Bialosky, Ms. McClelland, Mr. Brown and Mr. Maschke. Working with Whiting-Turning has been a good give and take. First start pre-construction for \$30,000, which gives us preliminary budgets. He feels good about that. We'll also get a better idea of the schedule and how we'll phase this. Gone over hourly rates for project managers, schedulers. They seem in line. Overall fee for project is 3 percent. Any subcontractor would get 3 percent on top as part of their fee. In line with the industry and what we've talked about before. A few minor changes to come, but wholly good to go. Mr. Brown said legal found two or three mechanical issues. Insurance is also reviewing. We'll be ready and we'll come back to the board, so we have construction insurance. Jeff has put in an extraordinary amount of time. He's an asset. Mr. Brosky had 3-4 things in the final review. Mr. Zgonc asked if we

talked to any other companies? Mr. Brown said there was a whole process. Sent out request for proposals. 8 companies submitted proposals. Subcommittee picked top 4, then did a scoring matrix. Picked Whiting-Turner and then began negotiations. (Mr. Scott 6:35 p.m.) Mr. Zellers was concerned previously about not getting enough bids, so he reached out to four companies personally (Turner Construction, Higley, Krill, one other). He didn't have any experience with Whiting-Turner, but still preferred them over the others. They were a step above. And after being selected, they've been great to work with. Ms. McClelland said this was publicly advertised as well in multiple locations for three weeks. Mr. Zellers said the list of submittals was strong. All of them seemed excited about doing something unique. The dollar amount isn't a big deal for them, but the creativity factor is a big deal. Mr. Zgonc asked about the cost in total... Mr. Zellers said everything is explained in the exhibits. The basic thing is they will go out and get competitive bids. Everything will be subcontracted. We pay them through their hourly rates for project managers, schedules, etc. All hourly rates have been established and are within the industry standards. Subcontractors get quotes from different local people. We will have a large say in who we select for each of the different subcontractors. They get a fee of 3 percent on those subcontractor agreements. Mr. Zgonc asked if this was for high-risk projects? Mr. Zellers said yes and explains that the construction manager gives us a maximum price (\$8 million for example). If it comes back higher than the maximum price, it will come out of their fee. If it's lower, it'll go into the contingency fund. Mr. Mullins asked if it was in writing that we want Lorain County companies? Mr. Zellers said no. But we will be sure to use as many local contractors as we can. We have the talent to do most of it here. Mr. Brown said everyone graded Whiting-Turner as number one. Mr. Zgonc asked about the auditing portion. Mr. Zellers said he's not sure we'll need to do auditing. We shouldn't get involved in the hourly rates. Mr. Zgonc said the whole project has to be audited. We need to have someone or somebody who has expertise in this. (Mr. Brosky 6:44 p.m.) Mr. Zellers said he doesn't think we need an outside

entity. He thinks Mr. Brown, Ms. McClelland and himself can take care of reviewing quotes internally. Mr. Zellers said according to the contract, if we run into an issue, we have the ability to audit and go through everything again. He thinks we can make sure we're making the best selections for the project and the community. Mr. Zgonc said he trusts the board and staff will do the auditing. Mr. Zellers said if things go awry, we still have the ability to have an outside group to audit their books. Mr. Zgonc said of the Whiting-Turner reviews, from 0 to 5, 29% gave 5, 12% gave 4, 14% gave 2 and 39% gave 1 star. Mr. Zellers said he has never heard a negative remark in the industry, and he thinks the group we're working with is great. Mr. Veard said he gives no weight to ratings online. He's a general contractor and knows what it's like. Ms. McClelland said she didn't know any of the companies coming in, but we're working with a sub-office or branch of the Cleveland office. This is a specific team of individuals. She put a lot of weight on the people brought to the table. Every company could do the job, but who would we be working with and what are they like. Mr. Zellers said Eric Betts is who we'll be working with, he's the project lead manager. Ms. Kiraly asked about work experience? Ms. McClelland said Mr. Zellers carefully interviewed everyone on the team. Mr. Brown said we are not getting interns. Ms. McClelland said Lucas Ward is who they see most often. Mr. Zellers said Mr. Bialosky and Mr. Maschke both have worked with Whiting-Turner and had good things to say. He is very comfortable moving forward with Whiting-Turner. Mr. Brown said the architect team told him that they did a project with Whiting-Turner recently. Whiting-Turner provided them alternatives and saved them hundreds of thousands of dollars. Mr. Zgonc said he would have liked a project-labor agreement. There are some disadvantages, but other disadvantages with what we have today. Mr. Brown said he asked industry professionals the pros and cons of a project-labor agreement and was told it wouldn't be the best route. Mr. Zgonc asked why? Mr. Zellers said Brewer-Garret (company he worked for) is a union contractor. He agrees certain things needs to be done by first class craftsmen. But when you open that up,

it becomes more competitive. And some trades, we won't get a lot of union contractors to submit. Such as landscaping. We do have the ability to look at the different subcontractors who are brought in and make the decision if that's the route we want to go. He's not as concerned about having a project-labor agreement, as long as we have the ability to pick and choose, he thinks we'll be fine. Mr. Zgonc said we're entering into an agreement to begin a process for \$30,000. If we're not satisfied, can we opt out? Mr. Zellers said there is language in there for termination for convenience. Mr. Brown said the architects asked about that, too. Mr. Zellers said these are standard forms not created by Whiting-Turner. Mr. Zgonc said the project-labor agreement saved Lorain City Schools over \$3 million. Mr. Veard said a lot of subs worked for the schools and didn't get paid. Mr. Zgonc said one of the biggest issues noted in the reviews was subcontractors not getting paid in a timely manner. Mr. Zellers said there's language in the contract that allows the port to make sure subcontractors get paid, he wants local contractors to feel good about working with the port authority. Mr. Zgonc said he wants it to be on task, on time and on budget. Mr. Zellers said that will take communication every step of the way. Committee members are encouraged to be involved. Mr. Zgonc said Whiting-Turner just recently settled a harassment suit. He hopes that doesn't happen here because Lorain deserves better than that. He wants a company that shows respect to workers and community. Mr. Brown said one person's job is public engagement. Mr. Zgonc said the harassment was in Tennessee during a data center construction project. Mr. Zellers asked for a vote to send to the full board. Mr. Brosky said he thinks the contract is good from a legal standpoint. Mr. Nielsen moved to recommend approval by the full board. Second by Mr. Veard and Ms. Kiraly. Motion carried with one no.

III. Other Business

A. None.

IV. Adjournment

A. There being no further business to come before the committee, Ms. Kiraly moved to adjourn. Mr. Zgonc seconded. Meeting adjourned at 7:06 p.m.

Jeff Zellers, Chairman

Tom Brown, Executive Director

Lorain Port and Finance Authority
Board of Directors
Joint Contract Management and Marketing & Public Affairs Committee Meeting
Port Office
Tuesday, May 16, 2023, at 5:15 p.m.

Contract Committee: Ms. Kiraly; Messrs. Nielsen, Veard, Zellers and Zgonc (5)

Marketing Committee: Ms. Bonilla & Kiraly; Messrs. Nielsen, Scott and Veard (5)

Board of Directors: Mrs. Silva Arredondo; Mr. Mullins

Staff: Tom Brown, Executive Director
Tiffany McClelland, Assistant Director
Yvonne Smith, Accountant
Kelsey Leyva-Smith, Office Manager

Guests: Megan Bush Granson, Inbloom Consulting
Kate Newsome, Inbloom Consulting

I. Roll Call

A. The meeting was called to order at 5:10 p.m. by Contract Committee Chairman Mr. Zellers and Marketing Committee Chairman Mr. Nielsen with roll call indicating a quorum present.

II. Report of Officers

A. Inbloom Consulting Presentation: Humble about what they do. Accountable to their promises. Embrace change. They don't want time wasted. They want to give clients the best ROI possible. They also offer marketing services. They do a lot of strategic planning work, coaching and training. They help people launch their own organizations. They launch campaigns with a kick-off meeting, then onboarding (client describes situation). Then put together the project outline that describes deliverables and when to expect them. General campaign timeline starts with a feasibility study. Going out to the market to see what the market will bear. They meet up with individuals anonymously and distribute surveys. They'll work with us to craft messaging. We already have some of that. Planning phase and then quiet phase (talking with big donors). Go public with campaign after that. One strategy is a brick campaign. Work is categorized into these

components: Leadership, Strategic messaging, Donors and prospects, Process infrastructure, Resources. Generally, there's a four to one ratio (every four prospects will amount to one gift. Megan opened the floor to questions. Mr. Mullins asked about the success rate. Megan said they've never not met a goal, but feasibility studies don't always result in a yes. They realized one of their clients wasn't ready after doing a feasibility study. Instead of a campaign, they built them a two-year plan to get ready for a campaign. That was the only time in 10 years. Mr. Mullins asked where the contacts will come from. Megan said they "start with your contacts and squeeze all the juice." They do a lot of research to expand that list. Some people they know, some people they don't. Getting the right message in when you get in the door. Mr. Scott asked about the cost for the study? And how are they paid? They are paid on hours worked. The study is four months. It will tell us how much money people have said they'll give. They will give us a list prioritized of people to talk to. We should still raise money during that time. First 4 months is the study, the next 8 months is going out to those people. Ms. Bonilla asked about potential funders? Will the reach be beyond Lorain? Megan said it depends on the funder, and who is affected by the economic development you're pulling in. Mr. Zgonc asked if Megan had a similar project. Megan said there are fundamentals they've done before, but they haven't worked with a Port Authority before. They're working with City Club of Cleveland right now. At \$7 million of \$10 million goal. This is their first Lorain Project. They worked with LCCC and hard hatted women, Nord center, Nordson. Mr. Zellers asked who she worked with at LCCC. Terry Sandu. Mr. Zgonc asked when Kate graduated from Lorain Catholic. 2003. One of their team members (Arlene Watson) works in marketing, wayfinding and graphic design. We'll have the whole team. We're better together. They put together a team for every project. Mr. Brown asked if donors would be strictly from Lorain County or regional. Megan said it sounds regional, but she doesn't know for sure. It's a conversation to have with adjacent counties. Kate said they do some look-alike modeling. Comparing similar projects and areas. Megan said they're looking nationally (Florida, Texas, DC.). Mr. Veard asked if it would be more difficult due to the

market? Everyone is losing money. Fundraising follows the market. They're hoping it's a timing issue. Who are our audiences? Think outside the box. It's a family-friendly opportunity. Thinking about different races, and religions. Mr. Zellers asked about the investment. First 4 months, flat fee of \$42,000 or \$10,500 a month. Then the next 8 months is \$44,000 or \$5,500 a month. If this takes longer, then what happens? She said it would be \$5,500 a month. They are flexible. They monitor hours and would have a conversation if they're working more than anticipated. Mr. Zellers asked about travel, printing and what we should expect as far as a cost? Megan said there isn't a lot of travel. They only charge for our printed materials. Kate said over two years marketing materials costed \$600 from one client but brought in \$2,000. Mr. Zellers said if we're targeting Lorain County, without the experience, how nervous should we be? Megan said we shouldn't be nervous. They start by meeting with us. She thinks if they can do it in DC, they can do it here. It doesn't scare her to work in a new area. Even if they did know, they would still start with the leadership. She's confident in their abilities. Mr. Scott said who determines who makes the ask? Kate said during the feasibility study, they call... Megan said with who does the call, it depends on the person. Some people are more comfortable with others. It should feel good to be a part of this. Mr. Zellers points out the typical timeline on page 13. It estimates the campaign to take 3 years, but we want the project completed before then. Are we unrealistic? Megan said the feasibility study will tell them. Mr. Brown asked about skipping the feasibility study. Megan they could do a mini feasibility study, but the initial planning still takes time. Mr. Scott asked how soon we can get up and running? Kate said they would need to know how big our donor database is. Megan guessed 2.5-3 months, versus 4. It would be a feasibility on steroids. Mr. Brown said from the jump, he goes back to a hybrid approach. He thinks people are behind us. He thinks the cost will come down some, we'll have a more realistic number in a week or two. We absolutely need a consultant. Mr. Mullins said he thinks we don't need a feasibility study because we're doing this. He wants to get the ball rolling. Mr. Scott said we want a plan of attack. Megan said the message and sales pitch changes if we skip the study.

Megan asked if people could donate to us directly? Yes. Ms. Kiraly thanked them for their time. (6:11) Mr. Mullins said he hates spending money on a feasibility study. He wants to just do it. Mr. Scott said they're going to come back either way. A three-month study would cost \$31,500. Mr. Zellers said it doesn't seem like they've done a lot of research on Lorain County. PowerPoint not tailored to us. He wants to talk to a few more people. He proposed Kate Brown, director at Lorain County Community College. He wants to run this by her tomorrow. For \$30,000 we're getting world class schematic design. That's a lot of money for one year. He's not sure there's a lot of value outside of the fundraising background. Mr. Mullins doesn't think they have contacts in Lorain. Other firms tied it back to Lorain. Mr. Scott said if not them, then who else. He thinks we need this type of support. Ms. Kiraly said and soon. Mr. Brown said the other firm he met with wasn't a good fit. Ms. McClelland said we can't fall into the trustee or alumni database. We don't have that. They appreciated that Inbloom could still work with us even though we have no contacts. They look at net wealth. Ms. McClelland said we're at a disadvantage because we don't have a donor base. The feasibility study tells us the perception of the port. Personally, she thinks we're "putting the cart before the horse... if people don't know who we are or what we do, why would they give us money?" Mr. Zellers said he agrees, but the college has that base. Ms. McClelland and Ms. Kiraly said no, they won't share that information with us. Mr. Zellers said, "The college is promoting Lorain County, why wouldn't they want to see the project succeed?" Ms. Kiraly said she could see them sharing it if there was some type of incentive. Mr. Brown said the incentive could be letting them have programs here since they don't have an outside amphitheater. Mr. Mullins said every feasibility study has come back not good. He's afraid they might be discouraged. Ms. McClelland said she thinks they're setting up the right fundamentals. She wants to be educated, have the materials and approach them the right way. Mr. Zellers said he thinks we need a firm. But is this the right one? Mr. Brown said we can keep looking. Mr. Zellers said we need to move on this. Mr. Scott said we need a second opinion. We can't go blindly into this. We should have sat down with her six months ago. Kate is

Mary Springowski's daughter. Tom was worried about bringing them in near a mayoral election. This needed to be done yesterday. By Friday, he expects to have more names. Mr. Zgonc will make some phone calls tonight.

III. Adjournment

A. There being no further business to come before the board, Mr. Scott moved to adjourn. Ms. Kiraly seconded. The meeting adjourned at 6:24 p.m.

Jeff Zellers, Contract Chairman

Tom Brown, Executive Director

Carl Nielsen, Marketing Chairman

**Lorain Port and Finance Authority
Board of Directors
Contract Management Committee Meeting
Port Office
Tuesday, June 13, 2023, at 6:00 p.m.**

Committee Members: Messrs. Nielsen, Veard, Zellers and Zgonc (4)

Board of Directors: None

Staff: Tom Brown, Executive Director
Tiffany McClelland, Assistant Director
Kelsey Leyva-Smith, Office Manager
Michael Brosky, Esq., Port Attorney (6:52 p.m.)

Guests: Stacy Caddey (6:03 p)

I. Roll Call

A. The meeting was called to order at 6:00 p.m. by Contract Management Committee Chairman Jeff Zellers with roll call indicating a quorum present.

II. Report of Chairman

1. Presentation by Stacy Caddey: Mr. Zellers said last we met with Inbloom consulting group. Wanted to reach out to different people. One was Lisa Brown. She's the director of the LCCC foundation board. She thought Sarah Stilgenbauer would be a good choice, although she can't work on it full time. Sarah recommended Stacy Caddey and Scott Pember. She is a consultant all by herself and familiar with Lorain County. Mr. Zellers, Mr. Brown and Ms. McClelland were impressed with Sarah after speaking with her via Zoom. Scott is with Mercy Health organization. Lisa wasn't sure he would be the right fit. There is a sense of urgency here. Even just to do the stage portion, we have to raise a lot of money quickly. Ms. Stacy Caddey said typically a fundraising consultant is used when a nonprofit is seeking to raise funds outside of their capacity. This project is something that is leading us to want to raise philanthropic funds, which we haven't done before. Her experience with capital campaigns goes back 32 years in NE Ohio and nationally. The feasibility study portion happens in the planning phase of capital campaigns.

Four phases of capital campaign: Planning, cultivation, solicitation, stewardship. Planning phase asks, "What should be the goal based on expenses?" doing prospective research and recruiting leadership for a steering committee to widen the pool of perspective donors. Feasibility tests the project's ability to raise money in the... market. In this case, a feasibility study would be something we would partner on. Create a prospectus. Identify 25-35 donors. Could be foundations, corporations, individual donors known to organization and other people suggest. We then send out prospectus and schedule meetings. Then she uses a questionnaire agreed upon by staff and board to get a sense of people's favorability about the organization, the project, if they think it's worthy, if they want to volunteer or help in any way and to identify their gift range. Gift range is how we assess how many potential donors we have at every gift level to see what the study predicts we're able to raise, and then we'll know the remaining balance. This project can be broken into phases. Sometimes people give multiple times to different phases. Feasibility will tell us whether or not people support the project, which is what we need to know to decide if we should go full scale or partial. Mr. Mullins asks if she has a network of donors or if she's starting from scratch? Ms. Caddey said she would talk with Tom and Tiffany about the potential donors in Lorain. There are foundations and individuals who give to other projects in the county. Cultivate from there. She worked with Barb Piscopo (Lorain Historical Society) and their board. Positive comments about this project. She previously helped to raise funds for the Oberlin Center for the Arts. She knows who the players are. She doesn't see it being difficult to persuade people to get involved. Mr. Zellers asked about Ms. Caddey's capacity? Ms. Caddey said she just wrapped two other projects, so she has plenty of time. She is independent for a reason. Her niche is acting like an additional staff person. A lot of firms tell you what to do but don't help beyond that. She does the legwork for us. She enjoys doing the direct work. She's worked with organizations anywhere from 6 months to 5 years. She's in a sweet spot time wise. Mr. Zellers asked how long the feasibility phase would

take, and elaborated that we're undertaking the project either way, but we'd like to know how much we could expect from donations. She said feasibility usually takes 3-4 months. What drags it out is the availability of people to be interviewed. If they're free, it could move faster. She thinks we're starting at a good time. She could start as soon as July 1. Start the list, then start scheduling. Interviews in August-Sept. Then compile the report. Mr. Zellers asks, "who does the interview?" Ms. Caddey said she does. She is the independent third party to keep anonymity. Mr. Zellers asked if we need a committee? Ms. Caddey said it doesn't require a committee, but we should be internally thinking of a steering committee and who would have a seat on that. Usually, board members with a wide network and community members with a wide reach, too. Then the board decides if the project should move forward and prepares to launch the campaign. That usually starts with a quiet phase to raise about 50%. Normally you don't go public until you reach that point. If you don't have the ability to raise \$12 million now, then you can start on phase one for \$5 million and build support that way. Mr. Zellers asked if board members and Ms. Caddey talk to people? She said yes. Mr. Zellers asked how long fundraising will take? She said fundraising campaigns for \$5 million and above can take years. It all depends on the response and what is available to us as far as grants and other funding sources. Mr. Zellers asked if she would help with that? She said yes. She thinks feasibility will help us what the philanthropic goal of this larger project should be. It could be a \$12 million project, but maybe with tax credits and other sources we find \$6 million and only need 50% philanthropic. Mr. Brown asked if there was a typical ratio to shoot for? She said no, every organization is different. Schools have built in donors with alumni. We don't have that. We have a public focused campaign. We need to find people who find Lorain very special to them. Mr. Zellers asked if she thought our donors would be from city of Lorain, Lorain County, or surrounding area? Ms. Caddey said the center of it will be people who care about the city of Lorain. Then Lorain County would be next. Then, wider and more difficult donors would be those with NE Ohio interest. Or corporations

with a big employee base. Mr. Zellers said the feasibility part is \$25,000, half at the time of signing and half once complete. Then the capital campaign it's \$90 per hour. Ms. Caddey said those are monthly fees she's billing for. In general, she works over hours, but they usually purchase one two or two and a half days a week. She doesn't take on more clients than she has time for. There are other types... Most of her campaigns are 1-2 days a week. Mr. Zgonc asked about national and state sources to tap into. Ms. Caddey said no, she's not aware of them today. She said we want to get information from local politicians and constituents to learn about sources. Mr. Zgonc asked who writes the grant if we find something like that? Ms. Caddey said she isn't a grant writer, but there are firms who can provide that support. There's a firm called Grants Plus that does grants contracting. Lots of options for grant writing. Mr. Zgonc confirmed these fees would be in addition to Ms. Caddey's. She said yes. He asked for a price range. Ms. Caddey said the hourly rate is probably anywhere from \$40-80 per hour. It costs money to raise money. All allocated to the capital budget. You can raise money to offset that cost. Grant writing is minimal compared to the return on the investment. Mr. Zgonc asked about capacity building grants, would we be in a position to write one of those? She said absolutely. She's very curious to find out about how the foundations will view the project based on us not being a 501c3. Mr. Zgonc asked her to document success in the county or city of Lorain. Ms. Caddey said through her advice and strategy, they raise more and created a legacy society where people left money in their wills. She has raised many of millions. Most recently, \$8.1 million in Cleveland. Mr. Veard asked if she saw an inability for people to donate with the current market? Are people donating? She said yes, they are donating. We have to identify top prospects and then work our way down the pyramid. We need to focus on who we can get in on the ground level and who will give \$100,000. That will build the momentum and make it easier. During the pandemic they may have changed what they're giving to but they're still giving. Economic development is a driver right now and what people get excited about. Feasibility informs,

educates and prevents embarrassment. We don't know until we ask them how they feel about the project. We think it's great, but if it isn't a priority for major donors then we need to know that and take time to build more relationships. Mr. Brown said some people think we already have all the money we need due to past successes (BRL and pier). Then there's other people who think we put on the concerts. It will give us a better idea of what we can afford. If someone other than us is asking, the public will be honest. She says we should inform potential donors that our tax levy covers operational costs but not additional projects. Everyone thanked Ms. Caddey for her time and information. Mr. Zellers said to put things in place: the two companies we're looking at are Inbloom and Ms. Caddey. Inbloom's feasibility study was a fixed rate of \$42,000 for four months. Stacy is \$25,000 for four months. The next phase would cost \$5500 per month for about 8 months with Inbloom. With Stacy, it's between \$3-6000 depending on the number of days a week she works. Committee needs to make a recommendation tonight. Mr. Nielsen said Stacy gave a way better presentation than the other people. She seems dialed in on what to do. He's not sure it's something we need to do, and we don't have years to fundraise \$10,000,000. We have to spend the money from the county and city by the end of 2026. Given that, we have a very short leash to get where we need to be. Mr. Mullins said we need to go back to the county for more. Mr. Brown said he pitched a concept to the commissioners; we should go back with and do it again with the right team. Upset we only got \$995,000 and the racetrack gets \$2 million from county and city. Mr. Browns said we could do a one penny sales tax. It would bring in about \$10 million per year. All they have to do is say "We'll get you \$4 million for two years" and we'll be done. Mr. Nielsen said Middleburg Heights did it. Work together with other organizations (sheriffs, judges, etc.) and make a pitch for a levy. Mr. Brown said if we're going philanthropic, we need a consultant. We don't have the time or expertise. Mr. Veard said they're not going to do that for us. Mr. Zellers said she's going to train us and get us started. Mr. Nielsen said if we go consultant, he likes Stacy. Mr. Brown

mentioned that we may be able to raise some funds through philanthropy, but we'll likely need other sources. Mr. Mullins said he votes for Stacy too. He thinks we need a consultant. (Mr. Brosky 6:52p) Mr. Zgonc said he would have liked to hear from a 3rd or 4th, but he liked Stacy most. Mr. Veard said he thinks they'll point us in the right direction. Ms. McClelland said we need a consultant. She's happy with either. Mr. Brown said he's also happy with either. Stacy has better rates and Lorain County experience. We just have to be ready to hear whatever they come back with. Mr. Zgonc moved to hire Stacy Caddey CFRE Independent. Second by Mr. Nielsen. Motion carried. We'll present this to the full board for approval. Mr. Brown will prepare a resolution for next meeting. The numbers are high. \$8-9 million for phase one. Mr. Zellers asked if we need a committee? Mr. Brown said he has no objection to that. Mr. Zgonc said Stacy wants that. Mr. Brown said that's in the campaign phase. If the board approves Stacy, when do we do the committee? We can make committee later. Mr. Brown said we don't know about commissioners until we ask.

III. Other Business

A. None.

IV. Adjournment

A. There being no further business to come before the committee, Mr. Zgonc moved to adjourn. Mr. Nielsen seconded. Meeting adjourned at 7:01 p.m.

Jeff Zellers, Chairman

Tom Brown, Executive Director



December 8, 2023

Kelsey Leyva-Smith
Lorain Port Authority
319 Black River Lane
Lorain, OH 44052

Dear Kelsey:

For calendar year 2024, Murray Ridge Production Center's quote for cleaning the port Authority. We greatly appreciate the opportunity to work with you and have tried to keep your costs low.

- | | |
|--|---|
| A. All Parks | \$200.00 per occurrence- 1 time per month in January, February, March, November and December. |
| B. All Parks | \$200.00 per occurrence- 1 time per week on Monday in April and October. |
| C. All Parks | \$200.00 per occurrence - 2 time per week on Monday and Thursday May, June, July, August and September. |
| D. As requested work
(i.e. Festival clean ups, Port Fest, etc.) | \$11.00 per man-hour |

During January, February, March, November and December we will provide service to all parks one time per month (weather will determine the day).

During April and October, we will provide services one time per week on Monday (weather permitting).

During May, June, July, August and September we will provide services twice per week to all parks on Monday and Thursday at the Black River Landing, Riverside/Lakeside Park and the Diked Disposal Site (weather permitting).

If these prices are acceptable, please return this letter, signed to acknowledge acceptance.

Sincerely,

Bob Pando
Custodial Manager

Accepting for Lorain Port Authority:

Signature

Date


AIA® Document B133® – 2019
Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition

AGREEMENT made as of the 07th day of December in the year 2023
(In words, indicate day, month and year.)

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

Lorain Port Authority
319 Black River Lane
Lorain, Ohio 44052

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

Bialosky + Partners Architects, dba Bialosky Cleveland
6555 Carnegie Ave., Suite 200
Cleveland, Ohio 44103

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

Black River Landing Amphitheater
Lorain, Ohio

The Construction Manager (if known):
(Name, legal status, address, and other information)

The Whiting-Turner Contracting Company
1001 Lakeside Avenue, Suite 100
Cleveland, Ohio 44114

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.)

Black River Landing Amphitheater and Festival Venue Phases 1A & 1B. The project, located at Black River Landing 319 Black River Lane, Lorain Ohio 44052, consists of the construction of a new 2,847 square foot covered concrete performance stage with a 6,078 square foot sculptural form roof, amphitheater with 48,000 square feet of lawn seating for 4,000 seated patrons and a standing capacity of 8,000, and an adjacent building housing a 1,364 square foot green room facility that includes a changing room, bathroom, office, water closet, janitor closet, and 1,528 square feet of additional storage space. Refer to Exhibit A for completed schematic design that includes the limits of Phases 1A & 1B of the project.

§ 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.)

As described in Section 1.1.1 above and as indicated in 6/30/23 Schematic Design Package.

§ 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.)

As indicated in Construction Manager's 11/09/23 Schematic Estimate Cost Options: \$5,625,550 for Phase-1A and \$2,574,450 for Phase 1B for a total Phase-1 budget of \$8,200,000

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

.1 Design phase milestone dates, if any:

Design Development: To commence on or about 01/02/24
 Bid & Permit Documents: To be issued on or about 8/30/24

.2 Construction commencement date:

On or about 10/30/24

.3 Substantial Completion date or dates:

5/31/25

.4 Other milestone dates:

N/A

§ 1.1.5 The Owner has retained a Construction Manager pursuant to the following agreement:
(Indicate agreement type.)

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

§ 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.)

N/A

§ 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.)

N/A

§ 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 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.)

Mr. Thomas Brown, Executive Director
 Lorain Port Authority
 319 Black River Lane
 Lorain, Ohio 44052

§ 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:
(List name, address, and other contact information.)

Mr. Thomas Brown, Executive Director
Lorain Port Authority
319 Black River Lane
Lorain, Ohio 44052

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

- .1 Construction Manager:
(The Construction Manager is identified on the cover page. If a Construction Manager 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, complete Section 4.1.1.1)

The Whiting-Turner Contracting Company
1001 Lakeside Avenue, Suite 100
Cleveland, Ohio 44114

- .2 Land Surveyor:

Mc Steen & Associates, Inc.
1415 East 286th St.
Wickliffe, Ohio 44092

- .3 Geotechnical Engineer:

URS Corporation
800 West ST. Clair Avenue
Cleveland, Ohio 44113

- . 1 Utilizing report dated March 08, 2001

- .4 Civil Engineer:

N/A

- .5 Other consultants and contractors:

(List any other consultants and contractors retained by the Owner.)

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

Jack A. Bialosky, Jr., FAIA – Principal In-Charge
Robert Maschke, FAIA – Design Architect

§ 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 Design Architect:

Robert Maschke Architects, Inc.
1287 West 54th Street
Cleveland, Ohio 44102

.2 Structural Engineer:

ARUP
77 Water Street
New York, NY 10005

.3 Mechanical Engineer:

Bialosky Cleveland
6555 Carnegie, Avenue
Suite 200
Cleveland, Ohio 44103

.4 Electrical Engineer:

Bialosky Cleveland
6555 Carnegie, Avenue
Suite 200
Cleveland, Ohio 44103

.5 Civil Engineer:

Osborne Engineering
1111 Superior Avenue
Suite 2100
Cleveland, Ohio 44114

.6 Landscape Architect:

REALM Collaborative
100 East Broad Street
Suite 1710
Columbus, Ohio 43215

.8 Lighting Design:

Claude R. Engle Lighting Consultant
3 Wisconsin Circle
Suite 860
Chevy Chase, Maryland 20815

§ 1.1.12.2 Consultants retained under Supplemental Services:

N/A

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

N/A

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

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA

Init.

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User Notes:

(1296322159)

Document G202™-2013, Project Building Information Modeling Protocol Form, 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. 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 Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 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 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 One Million Dollars (\$ 1,000,000) for each occurrence and Two Million Dollars (\$ 2,000,000) 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, Two Million Dollars (\$ 2,000,000) each employee, and Two Million Dollars (\$ 2,000,000) 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 Seven Million Dollars (\$ 7,000,000) 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 for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 2.6.8 The Architect shall provide certificates of insurance to the Owner 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, and electrical engineering 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 Construction Manager, 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, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, 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 review, for the performance of the Construction Manager'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 Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall submit information to the Construction Manager 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 Owner's directive or substitution, or for the Owner's acceptance of non-conforming work, made or given without the Architect's written approval.

§ 3.1.6 The Architect shall, in coordination with the Construction Manager, 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 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 requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager 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

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager 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. The Architect shall assist the Owner in reviewing the Construction Manager's proposal or estimate. 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 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 inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

§ 3.2.2 Upon authorization by the Owner, 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.

§ 3.3 Schematic Design Phase Services (Services completed under previous agreement dated January 05, 2023)

§ 3.3.1 The Architect shall review the program, and other information furnished by the Owner and Construction Manager, 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 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 Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.3.3 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.

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

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for Construction Manager'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 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 the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

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

§ 3.3.7 Upon receipt of the Construction Manager'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 Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the 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 Construction Manager under the Construction Manager's agreement with the Owner.

§ 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager 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. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.4.3 Upon receipt of the Construction Manager'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 Owner's approval of the Design Development Documents.

§ 3.5 Construction Documents Phase Services

§ 3.5.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager 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, the Architect shall assist the Owner and Construction Manager 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. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.5.5 Upon receipt of the Construction Manager'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 Owner's approval of the Construction Documents.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the 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.

§ 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 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. 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 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.

§ 3.6.2 Evaluations of the Work

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

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

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, 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.

§ 3.6.3 Certificates for Payment to Construction Manager

§ 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.

§ 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.

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

§ 3.6.4 Submittals

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

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Construction Manager'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 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 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 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. 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 Construction Manager in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. 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.

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

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 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.

§ 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.

§ 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.

§ 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.

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

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. 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.)

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.1 Assistance with Selection of Construction Manager	Not Provided – Accomplished during Schematic Design
§ 4.1.1.2 Programming	Not Provided
§ 4.1.1.3 Multiple Preliminary Designs	Not Provided
§ 4.1.1.4 Measured drawings	Not Provided
§ 4.1.1.5 Existing facilities surveys	Not Provided
§ 4.1.1.6 Site evaluation and planning	Not Provided
§ 4.1.1.7 Building Information Model management responsibilities	Architect
§ 4.1.1.8 Development of Building Information Models for post construction use	Not Provided
§ 4.1.1.9 Civil engineering	Architect
§ 4.1.1.10 Landscape design	Architect
§ 4.1.1.11 Architectural interior design	Architect
§ 4.1.1.12 Value analysis	Owner-Architect
§ 4.1.1.13 Cost estimating	Owner
§ 4.1.1.14 On-site project representation	Architect
§ 4.1.1.15 Conformed documents for construction	Architect
§ 4.1.1.16 As-designed record drawings	Architect
§ 4.1.1.17 As-constructed record drawings	Not Provided
§ 4.1.1.18 Post-occupancy evaluation	Not Provided
§ 4.1.1.19 Facility support services	Not Provided
§ 4.1.1.20 Tenant-related services	Not Provided
§ 4.1.1.21 Architect's coordination of the Owner's consultants	Architect
§ 4.1.1.22 Telecommunications/data design	Not Provided
§ 4.1.1.23 Security evaluation and planning	Not Provided
§ 4.1.1.24 Commissioning	Not Provided
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.26 Historic preservation	Not Provided
§ 4.1.1.27 Furniture, furnishings, and equipment design	Architect (For Green Room Building)
§ 4.1.1.28 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.29 Other Supplemental Services	Not Provided

§ 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.)

- § 4.1.1.7 Building Information Model management responsibilities: Architect will lead coordination of BIM model between design and engineering consultants.
- § 4.1.1.9 Civil engineering: Included in Architect's Base Services
- § 4.1.1.10 Landscape design: Included in Architect's Base Services
- § 4.1.1.11 Architectural interior design: Finish selections for Green Room facility are included in Architect's Base Services

- § 4.1.1.14 On-site project representation: Attendance at on-site Owner-Architect-Construction Manager meetings is included in base services.
- § 4.1.1.15 Conformed documents for construction: Architect will create conformed documents at conclusion of bidding and permitting to be used for construction.
- § 4.1.1.16 As-designed record drawings: Architect will create As-designed documents at conclusion of construction that will incorporate design changes and supplemental sketches created during construction.
- § 4.1.1.21 Architect's coordination of the Owner's consultants: Included in base services
- § 4.1.1.27 Furniture, furnishings, and equipment design: Furniture selections for Green Room facility are included in Architect's Base Services.

§ 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.)

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

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

- .1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or 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 estimate of the Cost of the Work, Guaranteed Maximum Price proposal, or Control Estimate exceeds the 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 Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .6

- .7 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner or Construction Manager;
- .8
- .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 Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;
- .13 Services necessitated by the Owner's delay in engaging the Construction Manager;
- .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 Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice:

- .1 Reviewing a Construction Manager's submittal out of sequence from the submittal schedule approved by the Architect;
- .2 Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager-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 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 and making subsequent revisions to Instruments of Service resulting therefrom.

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

- .1 Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Construction Manager
- .2 Thirty Five (35) 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 One (1) 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.

§ 4.2.5 If the services covered by this Agreement have not been completed within Two (2) 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 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 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.

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

§ 5.5 The Owner 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 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 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, Construction Manager as Constructor Edition, attached to this Agreement.

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

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

§ 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 Construction Manager 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 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 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 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 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.

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 Construction Manager's general conditions costs, overhead, 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 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 provided in the Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the 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, 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.

(Paragraph 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.

§ 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.

§ 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.

§ 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.

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 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 Owner to authorize the Construction Manager, 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 Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner 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 shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 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 Construction Manager, 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 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.)

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

If the Owner 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.

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

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

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. 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:

N/A

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

\$100,000

§ 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 Construction Manager.

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

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

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

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

(Paragraphs deleted) See Exhibit-B: Fee Matrix

§ 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.)

N/A

§ 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.)

Architect will provide a written proposal to the Owner for requested additional services. Compensation for additional services will be provided on an Hourly-Estimated basis at the rates identified in Exhibit-C, Hourly Billing Rates Table.

§ 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 Zero percent (0 %), or as follows:

(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

Architect's time to coordinate additional services provided by Architect's consultants will be billed to the Owner on an hourly basis as described in Section 11.3.

§ 11.5 When compensation for Basic Services is based on a stipulated sum, the proportion of compensation for each phase of services shall be as indicated in Exhibit-B: Fee Matrix.

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager 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 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.

§ 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.)

See Exhibit-C: Hourly Billing Rates Table

§ 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.)

N/A

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

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

(Paragraph deleted)

§ 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 Sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

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

One and One Half 1 ½% Per Month

§ 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.)

This contract is prepared under the assumption that Phase 1A and 1B of the project will be constructed concurrently and to meet a schedule to open the venue in advance of the 2025 event season on 6/01/25. In the event the entire project is not constructed concurrently, and a portion of it is deferred to be built at a later date, the Architect will be due additional compensation for Construction Administration Phase services accordingly. The amount of this additional compensation can be quantified once the Owner determines the work scope that will be implemented in the initial phase of construction and when deferred work will commence.

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, Construction Manager as Constructor Edition

(Paragraphs deleted)

- .2 Exhibits:

(Check the appropriate box for any exhibits incorporated into this Agreement.)

(Paragraphs deleted)

- 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.)

Exhibit-A: Fee Matrix

Exhibit-B: Hourly Billing Rates Table

Exhibit-C: ARUP Structural Engineering Proposal Dated 10/13/22

Exhibit-D: REALM Landscape Architecture Proposal Dated 6/21/23

Exhibit-E: Osborne Engineering Proposal Dated 6/9/23

Exhibit-F: Claude Engle Lighting Design Proposal Dated 6/16/23

- .3 Other documents:

(List other documents, if any, forming part of the Agreement.)

N/A

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

OWNER (Signature)

Thomas Brown, Executive Director
Lorain Port Authority

(Printed name and title)


ARCHITECT (Signature)

Jack Alan Bialosky, Jr., FAIA
Senior Principal

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

**EXHIBIT-A
FEE MATRIX**

Black River Landing Amphitheater
Design Development, Construction Documents, and Construction Administration Phases
Fee Matrix
12-07-23

Discipline	Firm	Design Development	Construction Documents	Construction Administration	Total Fee
Architectural & Interior Design	Bialosky	\$129,090	\$290,453	\$225,908	\$645,450
Structural Engineering	ARUP	\$35,000	\$35,000	\$30,000	\$100,000
MEP Engineering	Bialosky	\$15,000	\$41,250	\$18,750	\$75,000
Base Scope (ASMEP) Total		\$179,090	\$366,703	\$274,658	\$820,450

Additional Consultants					Fee
Civil Engineering	Osborne	\$18,000	\$20,250	\$6,750	\$45,000
Landscape Architecture	Realm	\$12,500	\$24,750	\$15,750	\$53,000
Irrigation Design (Allowance)	Realm	\$0	\$5,000	\$0	\$5,000
Lighting Design	Claude Engle	\$32,500	\$14,100	\$16,200	\$62,800
Total Additional Consultants		\$63,000	\$64,100	\$38,700	\$165,800

Totla All - Base Scope (ASMEP) + Additional Consultants		\$242,090	\$430,803	\$313,358	\$986,250
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EXHIBIT-B
HOURLY BILLING RATES

Bialosky ClevelandArchitectural and Interior Design Staff

Principal Emeritus	\$300.00/hour
Sr. Principal	\$250.00/hour
Principal	\$215.00/hour
Associate Principal	\$175.00/hour
Senior Project Manager/Spec Writer	\$170.00/hour
Project Manager/ Sr. Designer	\$135.00/hour
Architect	\$120.00/hour
Designer	\$110.00/hour
Intern 2	\$95.00/hour
Intern 1	\$85.00/hour
Administrative 2	\$150.00/hour
Administrative 1	\$100.00/hour

MEP Engineering Staff

Senior Engineer/Associate Principal	\$200.00/hour
Engineers	\$150.00/hour
Engineering Designer	\$125.00/hour
Jr. Engineer	\$110.00/hour

Robert Maschke Architects

Principal	\$300.00/hour
Designer	\$110.00/hour

ARUP

Principal	\$420.00/hour
Associate Principal	\$300.00/hour
Associate	\$255.00/hour
Senior Engineer/Consultant	\$235.00/hour
Engineer/Consultant	\$160.00/hour
BIM Manager	\$200.00/hour
Senior BIM Technician	\$185.00/hour
BIM Technician	\$150.00/hour
Sr. Project Controls	\$240.00/hour
Project Controls	\$160.00/hour
Administrative 1	\$90.00/hour

REALM

Principal	\$200.00/hour
Senior Professional	\$125.00/hour
Professionals	\$100.00/hour
Interns	\$85.00/hour

Osborne Engineering

Principal	\$270.00/hour
Director	\$254.00/hour
Discipline Manger/Lead	\$239.00/hour
Senior Project Manager	\$224.00/hour
Senior Architect/Engineer, Sr. Specs. Des.	\$203.00/hour
Project Manager	\$177.00/hour
Senior Project Architect/Engineer/BIM Manager	\$168.00/hour
Project Architect/Engineer, Sr. Specs. Des.	\$144.00/hour
Arch 3, Engineer 3, Designer 3	\$124.00/hour
Arch 2, Engineer 2, Designer 2	\$112.00/hour
Arch 1, Engineer 1, Designer 1, Admin 1	\$107.00/hour
CO-OP, Admin 1	\$91.00/hour

Claude Engle

Principal	\$300.00/hour
Senior Designer	\$225.00/hour
Associate Designers	\$150.00/hour
Drafting & Technical Services	\$150.00/hour

EXHIBIT-C
ARUP STRUCTURAL ENGINEERING PROPOSAL

Bialosky Architects

Black River Landing Amphitheater

Proposal for Structural Engineering Services

October 13, 2022



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1. Overview

Arup US, Inc (Arup) is pleased to present this proposal for structural engineering services associated with the Black River Landing Amphitheater project.

The Black River Landing Amphitheater project consists of a new landscaped park area on the banks of the Black River in Lorain, OH. The focal point of the design is a sculptural canopy over a stage area which fronts grass seating areas with limited hard landscaping. There is a small wedge building of approximately 1,400sf with an accessible inclined grass roof to the side of the canopy which contains a multi-purpose room, kitchen and restrooms. There is also a larger wedge building to the west of the site of approximately 11,800sf which will be a commercial/retail space. There is an existing Lorain Port Authority building to the north of the site behind the proposed stage and canopy. Our understanding of the project is based on the documentation received titled ‘221004 Black River Landing Amphitheater SD Drawings.pdf’

We understand the project will be developed in phases, with Phase 1 consisting of the stage and canopy and smaller wedge building and Phase 2 consisting of the larger wedge building. The total construction cost is understood to be in the range of \$12-15 million.

2. Project Team

The project architecture team consists of a combination of Robert Maschke Architects and Bialosky Architects. We understand that Arup’s client will be Bialosky Architects and the ultimate client is the Lorain Port and Finance Authority. We will take ultimate direction from Bialosky Architects in the event that inconsistent requests are made from various partners. It is assumed that other disciplines shall be brought on as needed as the project progresses.

3. Scope of Work

Arup propose the following scope of work, which is split between project stages. This proposal assumes Arup will develop Phases 1 & 2 to a Schematic Design level, and then continue only Phase 1 through to its completion.

The basis of this proposal is for Arup to develop the design for the canopy structure to schematic design level after which a specialty fabricator can be brought on by the client in a design assist role, and who would be responsible for final detailing. For the Phase 1 stage smaller wedge building, it is assumed that Arup would develop the design through to completion for conventional design bid build procurement.

Arup can provide further scope as an additional service to facilitate other procurement options as follows:

- Full 100% CD’s Developed by Arup for a traditional design bid build procurement
- Design Development level of Detail Design by Arup along with a performance specification for a design Build approach

Our base scope of services in this proposal includes the following:

Schematic Design

- Develop basis of design for canopy and wedge buildings

- Provide up to three (3) structural concepts for the primary canopy structure
- Develop initial foundation concepts
- Provide a concept presentation with sketches
- Provide initial structural quantity estimates for pricing
- Develop wind tunnel testing specification, if considered necessary
- Provide geotechnical investigation specifications
- Develop one selected structural concept to a schematic level of design
- Produce a set of schematic design drawings to include:
 - Foundation layout
 - Plans
 - Sections
 - Typical details

Design Development

- Engage with specialty fabricators for initial construction and erection ideas for canopy
- Produce full set of drawings suitable for pricing for Phase 1 wedge building and canopy

Construction Documents

- Work with selected specialty fabricator to provide all information required to finalize the canopy design, including structural loads, connection design intent and specifications
- Produce a full set of drawings for the canopy and Phase 1 wedge building at a nominally 50% CD level of detail suitable for submission to the local building department
- Produce full detailed designs for canopy foundations and Phase 1 wedge building
- Review detailed design of canopy superstructure by specialty fabricator to ensure compliance with the design intent

Construction Administration

- Review of canopy and Phase 1 wedge building shop drawings and submittals
- Visit to fabricator during fabrication

We would be happy to discuss alternative procurement options with the client if it is of interest.

4. Information Required

In order to carry out the proposed scope of work, the following information will be needed:

- Geotechnical Interpretative Report, providing sufficient information for the design of the foundations
- Frozen backgrounds from the architect two weeks before the delivery of engineering documents for each project phase

5. Schedule

At this stage the project schedule is not confirmed, however this proposal is based on the project durations noted below. If the schedule differs from these assumed durations, Arup will adjust the proposal to reflect the confirmed schedule. It is assumed that the schematic design phase will commence at the start of November 2022.

Schematic Design (Phases 1 & 2)	6 weeks
Design Development (Phase 1 only)	2 months
Construction Documents (Phase 1 only)	3 months

A two-week client approval period between each phase has been assumed.

For Construction Administration, it is assumed that all submittals related to the canopy will be received and approved within 3 months of the fabricator's notice to proceed. Any review of materials by Arup beyond this period will be charged as an additional fee on a time and materials basis (beyond the fabricator and site visits included in the section below).

6. Meetings

We will meet the client and other appropriate members of the design team on a bi-weekly basis through Schematic Design, Design Development and Construction Documents. This proposal assumes one (1) in-person meeting in Lorain/Cleveland, OH for each project stage, for a total of three (3) in-person meetings. Arup are happy to increase the number of meetings at the request of the client for an additional fee.

During construction, Arup will visit the steel fabricator one (1) time for an in-progress review. Arup will also visit site one (1) time during erection. Additional visits during the CA period will be charged to the client at cost, following acceptance.

7. Fees

For the scope of work outlined in this proposal we propose a lump sum fee of **\$135,000**.

Schematic Design (Canopy and Phase 1 & 2 Wedge Buildings)	\$35,000
Design Development (Design Assist Canopy and Phase 1 Wedge Building Design)	\$35,000
Construction Documents (Canopy review and Phase 1 Wedge Building Design)	\$35,000
Construction Administration (Canopy & Phase 1 Wedge Building)	\$30,000

We will invoice our fees monthly in equal instalments for the phase of works currently underway as indicated above. All invoices are due for payment within 30 days of issue. If invoices remain unpaid after 45 days we reserve the right to stop work until all outstanding invoices are paid in full.

8. Reimbursable Expenses

Out-of-pocket expenses will be invoiced at cost, and will include:

- Printing, plotting and reproduction of documents
- Travel expenses outside of New York City
- Messenger service and overnight mail
- Costs of laboratory testing
- Costs of wind tunnel testing, if required
- Filing, code consulting and expediting services

Invoices for reimbursable expenses will be submitted monthly.

9. Additional Services

Arup would be happy to provide the following design disciplines as an additional service at the request of the client:

- Acoustic Consulting
- Audiovisual/Performance Sounds, Video and Communications
- Lighting Design

10. Hourly Rates

For any services outside of the scope of works described, we would propose to work on a time and materials basis at the following hourly rates, following client approval. Our rates are subject to change on April 1st each year.

Principal	\$420
Associate Principal	\$300
Associate	\$255
Senior Engineer/Consultant	\$235
Engineer/Consultant	\$160
BIM Manager	\$200
Senior BIM Technician	\$185
BIM Technician	\$150
Senior Project Controls	\$240
Project Controls	\$160
Project Administration	\$120

11. Assumptions and Additional Services

Arup has assumed the following in preparing this proposal:

- Arup will not be responsible for any structural or civil design associated with the landscaping
- All cladding for the canopy will be non-structural, and designed and detailed by others
- The architect will provide a 3D model (either Revit or Rhino) as well as 2D backgrounds, and will be ultimately responsible for the canopy geometry and setting out
- Arup will not be responsible for providing any 3D models for fabrication or setting out purposes

12. Terms and Conditions

Arup's standard terms and conditions are attached. These terms and conditions along with this proposal shall control, govern and constitute the entire agreement between us, unless and until another contract is agreed to and signed by both parties. We are happy to address any concerns you may have prior to commencement of services.

This proposal remains valid for 90 days from the date of issue.

13. Agreement

If you are in agreement with our proposal, please provide us with a formal written notification of acceptance, including a signed copy of this document. We very much look forward to working with you on this exciting project.

Standard Terms and Conditions

Version: AFL-01A

10/13/2022 Bialosky Architects Arup US, Inc.

Lorain Port &
Finance AuthorityBlack River Landing
Amphitheater

Date	Client Entity ("Client")	Arup Entity ("Arup")	Owner Entity ("Owner")	Project Title ("Project")	Exhibits
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1. EXTENT OF AGREEMENT: These terms and conditions are hereinafter referred to as the "Agreement" and supplement and govern all aspects of the obligations and liabilities between Arup and the Client relating to the Project. Unless otherwise expressly defined, the terms used in this document have the same meaning as terms in the engineering proposal ("Engineering Proposal") which this document may supplement. This Agreement shall control and supersede all prior or simultaneous negotiations, representations and agreements, either written or oral including separate agreements between the Client and an Owner or other party if applicable. In the event that this Agreement is not fully executed, it shall nonetheless be effective and controlling to the parties so long as Arup has provided same to the Client.

2. DEFINITIONS:

2.1. The term "Instruments of Service" means the plans, specifications, reports, opinions, letters and or other deliverables prepared by or for Arup, in any medium, including graphic and pictorial representations, which relate to its professional services for the Project and shall include but not be limited to engineering designs, details, schedules, diagrams and written descriptions which set forth the design intent of the Project. If the Instruments of Service are a report, it is understood by the Client that it is intended for and may be relied upon only by the Client and other expressly identified project stakeholders. Arup shall be entitled to rely on the completeness and accuracy of services, information and documents furnished by or on behalf of Client.

2.2. The term "Work" means the construction and services, supplies, labor, equipment, materials, components, or assemblies related to or required for the construction of the Project by a contractor and other construction specialists. The Work may constitute the whole or a part of the Project, whether completed or partially completed.

2.3. The term "Record Documents" means documents that are provided to the Owner at the completion of the construction contract, recording changes from Construction Documents made during construction such as drawings, specifications, addenda, change orders and other modifications, approved shop drawings, product data, samples, and similar submittals.

2.4. The term "Standard of Care" shall mean the standard under which Arup's services shall be evaluated which shall be in accordance with current, accepted professional engineering practice appropriate for the size, complexity, schedule, and other characteristics of the Project in the jurisdiction where the Project is located.

3. ARUP'S RESPONSIBILITIES: Arup shall prepare the Instruments of Service in a manner consistent with the Standard of Care and shall only be liable for negligent errors and omissions which fall below that standard. Any error in the Instruments of Service, whether or not in violation of the Standard of Care, shall be promptly corrected by Arup without charge to Client for the effort in effectuating same upon discovery by, or notice to, Arup. Client and Arup agree that the Instruments of Service, while consistent with the Standard of Care as defined above, may contain errors, omissions, and inconsistencies (collectively "Errors") at the time

they are provided to the Client. If the Errors do not increase the Project cost by more than five percent (5%), Client releases Arup from liability for increase in the Project cost in connection with the Errors. This release does not limit Arup's liability for increases beyond five percent (5%) in the event the Instruments of Service are not prepared in a manner consistent with the Standard of Care.

4. CLIENT'S RESPONSIBILITIES: The Client shall provide the following: (1) Full information identifying its requirements for and limitations on the Project. (2) A representative authorized to act on the Client's behalf with respect to the Project who shall render decisions in a timely manner pertaining to all requests and/or documents submitted by Arup. (3) A periodic update to the budget for the Project with the understanding that same shall not be materially changed and shall not significantly increase or decrease the portion allocated for the services set forth in the Engineering Proposal without the agreement of Arup as to whether the change will require a corresponding change in the Project scope and quality. (4) Tests, inspections and reports required by law or the Agreement, including, but not limited to, chemical tests and tests for hazardous materials. (5) All legal, insurance and accounting services, including auditing services that Client determines necessary to address its needs and interests relating to the Project. (6) All fees necessary for securing the approval of authorities having jurisdiction over the Project. (7) Prompt written notice to Arup if the Client becomes aware of any Arup fault or defect on the Project. (8) Recognition that there will be changes and additions to engineering drawings during construction as a result of field conditions or unanticipated developments and that Client shall establish a design and construction contingency fund after discussion with Arup to cover additional costs which may result from such changes and additions. (9) If applicable the Client shall review and approve submissions for each phase of the work in a timely manner and shall authorize Arup in writing to proceed with each succeeding phase. The Client shall provide written notice of any known inconsistencies in Arup's services expeditiously after discovery.

5. ADDITIONAL SERVICES: Arup's fee was determined based on expected time and effort to complete its scope of services as defined in the Engineering Proposal for the Project and with the construction cost and construction schedule contemplated in the original budget and schedule. It is understood and acknowledged by the Client and/or the Owner that Arup shall be entitled to an equitable adjustment of its fees so that the percentages of its fee to construction cost remain constant if the design or construction schedule is lengthened beyond the original schedule or if the construction cost or project budget is increased beyond five percent (5%). Except to the extent caused by a negligent error or omission, if the Client requests that Arup perform any of the following services (the "Additional Services"), the Client shall provide Arup with additional compensation equal to Arup's hours expended at Arup's standard hourly rates. Arup's hourly rates are subject to annual adjustment in accordance with Arup's standard practice. In the alternative, the Client and Arup may agree on stipulated sum fees for specific Additional Services. In no event shall Arup be compelled or required to perform what it deems in its reasonable

professional judgment to be an Additional Service unless and until the Client and/or Owner provides the appropriate written change order.

5.1. PRIOR TO ISSUANCE OF CONSTRUCTION DOCUMENTS: It shall be an Additional Service if Arup is requested to make any revisions in the Instruments of Service when such revisions are: (1) inconsistent with approvals or instructions previously given by the Client; (2) required because of changes in the Project including, size, quality, complexity, the Client's schedule, the Client's budget, or the method of bidding or negotiating and contracting for construction; (3) required due to errors or omissions in the services of any other Consultant working for the Owner; (4) required by the enactment or revisions to codes, laws or regulations subsequent to the preparation of such documents; (5) due to changes required as a result of the Client's failure to render decisions in a timely manner; or (6) required to reduce the cost of the Project to comply with previous cost estimates or Project budgets, including value engineering. If this project is located outside of the United States or Canada, any and all costs associated with corporate or personal registrations and/or business permits has been excluded and will be charged as an additional sum at cost to the Client.

5.2. AFTER THE ISSUANCE OF CONSTRUCTION DOCUMENTS: All of the following activities after the issuance of construction documents shall be considered Additional Services: (1) preparing any changes to the Instruments of Service or preparing other documentation, analysis and supporting data, evaluating contractors' proposals, and providing other services in connection with change orders and construction change or extra work directives; (2) providing services in connection with evaluating substitutions or alternates proposed by a contractor, the Client or others; (3) providing services made necessary by the default or termination of a contractor, by defects or deficiencies in the construction of the Project or by the failure of performance on the part of the Client, any contractor or others performing services or Work in connection with the Project; (4) providing services in connection with claims submitted by any contractor or others performing services or providing Work on the Project; (5) providing services in connection with the preparation for legal proceedings or attendance at public hearings or other meetings (6) providing services when submittals are reviewed prior to receiving a submittal schedule, reviewing submittals out of sequence, or if more than two reviews are required of any submittal (7) providing services in responding to unnecessary, excessive or unreasonable requests for information submitted by the Client, any contractor or others who are performing Work or supplying materials in connection with the Project; (8) providing services in excess of one punch list compilation for each area or component of the Project and one review of the punch list items for completion; (9) providing any services requested by the Client after the earlier of the issuance of the final Certificate for Payment or sixty (60) days after Substantial Completion was originally scheduled; (10) providing services that are not customarily provided by an engineer as basic services on projects of similar size, complexity and scope as the Project and which have not been set forth as Basic or Additional Services in this Agreement; (11) providing "fast track" services; or (12) segregating bidding packages for pricing and award of contracts for the construction of the Project. (13) providing Record Drawings (as defined in Article 7.5)

6. LIMITATIONS OF LIABILITY:

6.1. AGGREGATE LIMITS: TO THE FULLEST EXTENT PERMITTED BY LAW, CLIENT AND ARUP EACH WAIVE ANY RIGHT TO CONSEQUENTIAL, LIQUIDATED OR INCIDENTAL DAMAGES AND AGREE THAT THE TOTAL LIABILITY, IN THE AGGREGATE, OF ARUP AND ARUP'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND INDEPENDENT PROFESSIONAL ASSOCIATES OR ENGINEERS, AND ANY OF THEM, TO THE CLIENT AND ANY ONE CLAIMING BY, THROUGH OR UNDER THE CLIENT, SPECIFICALLY INCLUDING ANY THIRD PARTY BENEFICIARIES OR INDEMNIFIED PARTIES, FOR ANY AND ALL INJURIES, CLAIMS LOSSES, EXPENSES, OR DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO ARUP'S SERVICES, THE PROJECT OR THIS AGREEMENT, FROM ANY CAUSE OR CAUSES WHATSOEVER, INCLUDING BUT NOT LIMITED TO, THE NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT, MISREPRESENTATION, OR BREACH OF WARRANTY OF ARUP OR ARUP'S OFFICERS, DIRECTOR, EMPLOYEES, AGENTS OR INDEPENDENT PROFESSIONAL ASSOCIATES OR ENGINEERS, OR ANY OF THEM, SHALL NOT EXCEED THE LESSER OF THE TOTAL COMPENSATION RECEIVED BY ARUP FOR THE SPECIFIC WORK PERFORMED RESULTING IN CLIENT'S DAMAGES OR THE LIMITS OF THE AVAILABLE INSURANCE COVERAGE SPECIFICALLY IDENTIFIED AND REQUIRED BY THE CLIENT FOR THIS PROJECT AT THE TIME OF JUDGMENT.

6.2. WARRANTIES/GUARANTEES: Arup makes no express or implied warranty or guaranty of any sort. All warranties and guarantees, including warranty of merchantability or warranty of fitness for a particular purpose, are expressly disclaimed.

6.3. NO THIRD PARTIES: Services provided by Arup herein are solely for the benefit of the Client and nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party.

7. RESPONSIBILITY FOR CONSTRUCTION OF PROJECT

7.1. INSTRUMENTS OF SERVICE: The Instruments of Service are not a substitute for the shop drawings and other submittals which will be used to actually construct the Project. Nothing in the Agreement shall create or be deemed to create any duty upon Arup to supervise the construction means and methods and/or safety procedures of any contractor, subcontractor, or their employees or agents, or any other person or party. Arup shall not incur any liability as a result of the acts, omissions, or failure to properly perform of any contractor, subcontractor, or their employees or agents, or any other person or party.

7.2. REVIEW SERVICES: Observation or review services performed by Arup pursuant to the Agreement, whether of material or work and whether performed prior to, during or after completion of construction, are performed solely for the purpose of attempting to determine general conformity of the work performed by others with the design intent of contract plans and specifications. Although Arup will follow standard industry practices and procedures, as appropriate under the circumstances, Arup may nevertheless fail to detect non-conformances. In the absence of gross negligence, and without affecting other limitations herein, Arup shall not be liable to the Client for the economic or other consequences stemming from

such undetected non-conformances or their subsequent correction. It is agreed that the professional services of Arup do not extend to or include the review or site observation of a contractor's work or performance. Arup has no responsibility to reject or stop work of any employee or agent of Client.

7.3. RESPONSIBILITY FOR CONSTRUCTION COSTS: Arup is not responsible for the actual construction of the Project and shall not be deemed to have a duty of means and methods. Upon the request of the Client, Arup shall review and comment on any proposed Project construction budget or estimates of construction costs prepared by or for the Client. The Client acknowledges Arup is not responsible for (1) cost increases due to the timing of a contractor's buy-outs for the Project; (2) the cost of labor, materials or equipment; (3) Contractor's methods of determining bid prices; (4) competitive bidding, market or negotiating conditions; (5) contractor's, fabricator's or supplier's failure to meet Project schedules; or (6) the quality of construction work or the materials supplied for the Project. Accordingly, Arup makes no representation that bids or negotiated prices will not vary from the Client's Project construction budget or from any estimate of construction costs reviewed by Arup. The Client further agrees that Arup shall have no liability for actual construction costs exceeding the Project construction budget or prior cost estimates. If the Client requests that Arup provide redesign services to reduce construction costs, Arup shall be compensated for such redesign efforts as Additional Services, provided that such redesign efforts were not required due to a negligent error, inconsistency or omission in the Instruments of Service.

7.4. RESPONSIBILITY FOR PROJECT SCHEDULE: Arup is responsible for meeting the milestone dates set forth in a schedule of design deliverables that it agrees to and are incorporated in to the Client's Project Schedule. However, if Arup is delayed or disrupted in performing its services or its ability to meet any of its specific milestone dates is adversely affected in either case by the actions of the Client, construction manager, any contractor or others, or for reasons beyond Arup's reasonable control (including without limitation a Force Majeure Event), then: (1) Arup's liability for missing any milestone dates shall be reduced to the extent the delay is caused by the actions or failure to act of others or for reasons beyond Arup's control, (2) the time for performance of Arup's services shall be equitably adjusted, and (3) Arup shall be compensated for any additional resources employed as an Additional Service.

7.5. RECORD DOCUMENTS: The Client acknowledges that Arup is generally not responsible for the production or modification of Record Documents as it is a contractor's sole responsibility, who through its superintendent, is constantly present at the site, in control of operations, and involved in all details of construction. Should Arup be requested to prepare or modify Record Documents, the Client understands the limitations of the Record Documents and acknowledges and agrees that Arup has not verified the accuracy or completeness of the information on which the Record Documents are based and agrees to indemnify and release Arup for any liability for any errors or omissions that may be incorporated therein.

7.6. ACCELERATED PROJECT DELIVERY OR FAST TRACK: In the event the Client chooses to take advantage of the potential time and cost savings benefits of an accelerated project delivery or fast-track process, the Client acknowledges that it has been advised that the Project will be affected. Some of the effects of either process include the necessity of making early or premature

commitments to design decisions and the issuance of incomplete and uncoordinated construction documents for permitting, bidding, and construction purposes. The Client acknowledges that the Project, if developed on either basis, will likely require associated coordination, design, and redesign of parts of the Project after construction documents are issued and the construction contract is executed, and may require removal of work-in-place, all of which events may cause an increase in the Cost of the Work and/or an extension of the Project construction schedule. Therefore, the Client acknowledges the necessity of including sufficient contingencies in the budget for the Cost of the Work to account for additional costs and construction schedule extensions arising from either process.

7.7. ELECTRONIC FILES: If requested, Arup shall provide the Client with the Instruments of Service in electronic form. However the Client recognizes that the use of electronic media such as CADD formats may subject them to tampering, and modifications by parties over whom Arup has no control and which may result in discrepancies and translation errors stemming from differences in computer software, hardware and equipment-related problems, disc malfunctions and user error. The Client releases Arup from any claims as a result of differences between Arup's filed hard copy and the electronic form of the Instruments of Service if applicable. For each recipient to whom the Client provides the Instruments of Service in electronic form or to whom Arup provides the Instruments of Service in electronic form at the Client's request or under this Agreement, the Client agrees to defend, indemnify and hold harmless Arup from all claims, causes of action, suits, demands, and damages, arising from any differences between the filed hard copy and the electronic form of the Instruments of Service.

7.8. HAZARDOUS MATERIALS: Arup's services do not include services related to detection, reporting, permitting, analysis, or abatement of asbestos, hazardous or toxic materials including molds and fungus (collectively "hazardous materials") at the Project site. In the event Arup or any other party encounters hazardous materials at the jobsite, or should it become known in any way that hazardous materials may be present at the jobsite or any adjacent areas that may affect the performance of Arup's services, Arup may, without liability for consequential or any other damages, suspend performance of services on the Project until the Client retains appropriate specialist consultants or contractors to identify, abate and/or remove the hazardous materials and warrant that the jobsite complies with applicable laws and regulations. To the fullest extent permitted by law, the Client shall defend, indemnify and Hold Harmless Arup, its officers, directors, shareholders, partners, principals, agents, employees, consultants, successors, and assigns from and against all liability, loss, damages, costs, and expenses, including attorneys' fees and disbursements, which any of them may at any time sustain or incur by reason of any demands, claims, causes of action or legal proceedings arising out of or in connection with asbestos, hazardous or toxic materials on the Project site.

7.9. LEED: The LEED Green Building Rating system or similar environmental guidelines ("LEED") utilizes certain design, construction and usage criteria in order to promote environmentally friendly buildings. The Client and/or Owner acknowledges and understands that LEED is subject to interpretation, and achieving levels of compliance involves factors beyond the control of Arup, including, but not limited to, the end use, operation and maintenance of the completed Project. In addressing LEED, Arup shall use the

Standard of Care in performing its services, in interpreting LEED and designing in accordance with LEED. However, Arup does not warrant or represent that the Project will actually achieve LEED certification or realize any particular energy savings. Arup shall not be responsible for any environmental or energy issues arising out of the end use and operation of the completed Project

8. INDEMNIFICATION:

8.1. ARUP INDEMNIFICATION OF CLIENT: Arup shall indemnify the Client and its officers, employees and successors from and against all third party damages, losses, and judgments, including reasonable attorney's fees and expenses to the extent they result from Arup's negligent acts or negligent omissions in the preparation of the Instruments of Service and for patent, copyright or trademark infringement attributable to Arup's services. The Client acknowledges and agrees that Arup shall have no affirmative duty to provide a defense for the Client or any other party in connection with indemnified claims and that Arup's responsibility for reimbursement of any reasonable legal fees of the indemnified parties shall be conditioned upon a finding against Arup of negligence by a court of competent jurisdiction and then only to the extent there is a clear nexus between the costs and the negligent act. The Client further agrees that, to the fullest extent permitted by law, no shareholder, officer, director, partner, principal, or employee of Arup shall have personal liability under this Indemnification provision, under any provision of the Agreement or for any matter in connection with the professional services provided in connection with the Project.

8.2. CLIENT INDEMNIFICATION OF ARUP: The Client assumes liability for and agrees to indemnify and hold harmless Arup, its consultants, and their respective officers, directors, shareholders, partners, principals, employees, and successors from and against all damages, losses and judgments, including reasonable attorney's fees and expenses, to the extent they arise from or are alleged to arise from an act or omission of the Client, its agents, employees, consultants, contractors or construction manager (collectively for this indemnity "Client Entity"). The provisions of this section shall extend for all time notwithstanding the termination or expiration of the Agreement.

9. INSURANCE COVERAGES:

9.1. All deductibles and premiums associated with the below coverages except a project-specific policy of professional liability insurance shall be the responsibility of Arup. The use of umbrella or excess liability insurance to achieve the above required liability limits is permitted, provided that such umbrella or excess insurance results in the same type and amounts of coverage as required under the required individual policies identified below. Arup shall upon request provide to the Client certificates of insurance evidencing compliance with the insurance requirements.

9.2. MINIMUM AMOUNT OF COVERAGE: Arup shall maintain the following **minimum** amounts of insurance during the term of this Agreement.

Type	Coverage
Workmen's Compensation	Statutory
Employer's Liability	\$ 100,000
Commercial General (Bodily Injury/Property Damage)	\$ 500,000
Automobile Liability	\$ 500,000
Professional Liability	\$ 1,000,000
Umbrella Liability	\$ 1,000,000

9.3. PROJECT POLICIES: If the Client chooses to acquire a policy of professional liability insurance for the Project, then the Client agrees that it will pay the cost of the project policy and that Arup must agree on the limits of coverage, parties covered, deductible required and length of the policy period after substantial completion of the services.

10. OWNERSHIP AND USE OF INSTRUMENTS OF SERVICE: Arup is the author of the Instruments of Service and shall retain all common law, statutory and other rights, including copyrights. Provided Arup is fully compensated for its services and expenses on the Project, the Instruments of Service shall be made available to be used for construction of the Project and for operation, modification and maintenance of the Project following its completion. In the event any software and/or digital models (collectively referred to as "Digital IP") is created by or on behalf of Arup in relation to the Project, Arup grants to Client a non-exclusive license to use the Digital IP for the sole purpose of completing the Project provided that Arup is fully compensated for its services and expenses on the Project. Unless otherwise agreed, Client shall not be entitled to make multiple copies of the Digital IP, permit use by multiple users of the Digital IP, and/or use the Digital IP for purposes other than the completion of the Project. Arup shall have a non-exclusive, irrevocable, royalty-free license to use any data or information supplied to it in connection with the Project (excluding personal data as defined under applicable data privacy legislation) for the purpose of improving its internal processes and project delivery. Where any data or information generated during the course of Arup's services is held within an externally-hosted data storage system, project extranet or similar hosted or controlled by the Client, the Client shall at any time up to 12 months from practical completion of the Project provide to Arup (or procure from a third party) access to all such data and information. The Client agrees that Arup will not have any liability to the Client for any revision or addition to, alteration or deviation from the Instruments of Service occurring subsequent to Arup's completion of services under the Agreement or earlier termination in accordance with the Agreement. To the fullest extent permitted by law, the Client shall indemnify, defend and hold harmless Arup, its officers, directors, shareholders, partners, principals, agents, employees, consultants, successors, and assigns from and against all liability, loss, damages, costs, and expenses, including attorneys' fees and disbursements, which any of them may at any time sustain or incur by reason of any revision or addition to, misuse of or deviation from the Instruments of Service occurring subsequent to Arup's completion of services under or the earlier termination of this Agreement by or on behalf of the Client. Client acknowledges Arup's right to include photographic or artistic representations of the design of the Project among its promotional and educational materials including Arup's website or elsewhere. If the Client publicizes the Project and credits other designers, it shall give Arup credit as appropriate and in accordance with industry standards.

11. TERMINATION AND SUSPENSION: Except as otherwise provided in this section, this Agreement may be terminated by either party upon not less than thirty (30) calendar days' written notice for convenience or 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. If the defaulting party fails to cure its default within the thirty (30) calendar day notice period or fails to commence action to cure its default when the cure cannot reasonably be completed within thirty (30) days, the termination

shall take effect without further notice. Upon a suspension of services by the Client or termination for convenience, Arup shall be paid for all fees and expenses for services performed through the date of the suspension / termination plus demobilization expenses. In the event of a suspension of services or a termination, Arup shall have no liability for any delay or damage caused because of such suspension/termination of services. Upon the resumption of Arup's services, Arup's fee shall be equitably adjusted and Arup shall be reimbursed for all expenses incurred as a result of the suspension. If the Client's suspension of Arup's services continues for more than ninety (90) calendar days, Arup may terminate this Agreement upon seven (7) calendar days' written notice to the Client.

12. PAYMENT PROVISION: Invoices shall be submitted monthly and payments are due within 30 days. All monies secured by the Client by its client to pay for Arup's services identified herein shall be deemed to be held in trust for Arup. Payment of Arup's fees shall not be dependent on Client receiving funding from a third party. In the event of a dispute pursuant to the services rendered hereunder, the Client shall not have the right to set off any payments due or owing to Arup. Payments due Arup and which remain unpaid shall bear interest 30 days from the date of the invoice at the rate of one and a half percent (1.5%) cumulatively per month or the maximum amount permitted by law. Arup is entitled to recover any and all legal fees and any other costs expended if it becomes necessary to pursue legal actions to collect fees due hereunder. Client expressly acknowledges that Arup shall be entitled to a judgment for its attorney fees and court costs attributable to the collection of its fees which are ultimately adjudicated/arbitrated to be rightfully due and owing. Failure of the Client to make payments to Arup in accordance with this Agreement shall be considered substantial non-performance and grounds for Arup to terminate the Agreement or suspend its services without liability for delay. Arup's full payment pursuant to this section shall be a condition precedent for its obligation of performance. Reimbursable Expenses will be billed at cost plus ten percent (10%). Reimbursable Expenses include the actual expenses incurred directly or indirectly in connection with the Project such as those for travel (including transportation and associated expenses); toll telephone calls; reproduction of Project-related documents, reproduction of drawings; filing and permit fees; delivery, express and courier services; and film and processing. Back up, including receipts, will not be provided unless specifically requested by Client at the outset and only for expenses in excess of one hundred dollars. This fee is in addition to the budget. The Client shall pay all taxes (including any goods or services tax, or any equivalent thereof) or government charges payable in respect of the services and all fees are stated exclusive of such taxes and net of any non US withholding taxes. Client shall take special care to review the email and domain when it receives invoices to confirm that they are genuine and not a cyber attack, such as phishing, pharming, etc, failure of hardware, software, human error, etc and Client assumes all risk with no right of set-off or credit for an incident not the fault of Arup. To assist Client in fraud prevention, we have initiated a Digital Signature /Certificate to allow Client to ensure the emails they receive from us originate within the Arup network.

13. NO SOLICITATION OF EMPLOYEES: The Client agrees and acknowledges that it will not, directly or indirectly, solicit or hire any employee of Arup or induce any Arup employee to terminate his or her employment with Arup without the express written consent of Arup. Recognizing that Arup has expended a

substantial investment in recruitment, advertisement, testing, and training of their personnel, the Client agrees that if it violates this clause and hires an Arup employee within one year of the completion of the Project, it shall pay Arup for each employee thus hired, the amount of one (1) year's salary, at the last level of annual remuneration that employee received from Arup.

14. DISPUTE RESOLUTION: In mutual recognition of the negative consequences associated with disputes both in terms of lost time and expense to all parties, the Client and Arup agree to settle their disputes by good-faith mediation as a condition precedent to the institution of legal proceedings by either party. The parties shall share the mediator's fee and any court or related legal filing fees equally. The mediation shall be held in the state and locality of the primary Arup office performing the work, unless another location is mutually agreed upon. In the event that the matter cannot be resolved through (or is not appropriate for) negotiation or mediation, the dispute shall be submitted for determination in the applicable courts of the state or territory where the primary Arup office performing the work is located and this Agreement shall be subject to and construed in accordance with the laws of that state or territory. The Client shall not assert any claim against Arup more than three (3) years after the date of the substantial completion of the Project.

15. FORCE MAJEURE: Neither the Client nor Arup shall be held accountable or penalized under the terms of this Agreement for the failure to perform which is occasioned by a Force Majeure Event, which shall mean an event or circumstance which is (1) beyond a Party's reasonable control, (2) the affected Party could not have reasonably avoided or overcome, and (3) which is not substantially attributable to the other Party. Force Majeure Events may include, without limitation, war, invasion, act of terror, strike (but not strikes or disputes unique to a Party), riot or other public disorder, intervening Act of God, natural disaster, hurricane force winds, tornadoes, disease outbreak, epidemic or pandemic, or other declaration of public health emergency, quarantine restriction.

16. NOTICES/MODIFICATION / ASSIGNMENT: Any and all notices or other communications required by this Agreement or by law to be served on, given to, or delivered to either party, shall be in writing and shall be deemed received when personally delivered to the party to whom it is addressed, project manager, or in lieu of such personal service, upon receipt of telegraphic, facsimile or electronic notice or three (3) days after deposit in the United States mail, first-class, postage prepaid. The Agreement may be amended only by written modification executed by both parties and neither obligations relating to this Agreement or claims arising there from may be assigned without the written permission of the non-assigning party. However, Client agrees that Arup may upon written notice to Client assign all or any part of its rights and obligations under this Agreement to an affiliated or related entity.

ETHICS/WHISTLEBLOWING PROCEDURE: Arup is committed to a culture of ethical conduct and transparency as part of its mission to shape a better world through right and honorable dealings. Should you witness any unethical conduct or behavior by Arup or any of its officers or employees please report such incident in accordance with Arup's **Speak Up Procedure** for the Americas Region. Subject to local laws, you may make your report confidentially. Once a report is made, Arup will investigate and respond accordingly.

EXHIBIT-D

REALM LANDSCAPE ARCHITECTURE PROPOSAL

Proposal

June 21, 2023

PROJECT

Black River Landing Phase 1
 Lorain, Ohio

SCOPE

**Site Design &
 Landscape Architecture**

CLIENT

Bialosky Architects
 Attn: Paul Deutsch
 Architect / Senior Associate
 6444 Carnegie Avenue
 Cleveland, Ohio 44103
 pauld@bialosky.com

OWNER

Lorain Port & Finance Authority
 319 Black River Ln,
 Lorain, OH 44052

AGREE AND ACCEPTED

 Signatory:

 Date:

SCHEDULE & SCOPE AREA

Refer to Exhibit A

SCOPE

Refer to Exhibit B

GENERAL PROJECT ASSUMPTIONS

Refer to Exhibit C

TERMS & CONDITIONS

Refer to Exhibit D

Dear Paul,

It is with great pleasure that we submit this proposal for Landscape Architecture services for **Phase 1 of the Black River Landing Amphitheater** project in Lorain, Ohio. We look forward to continuing our collaboration with Bialosky Architects and your consultant team to deliver a high quality design process and built project. Should you have any questions, please do not hesitate to contact me to discuss.

Sincerely,



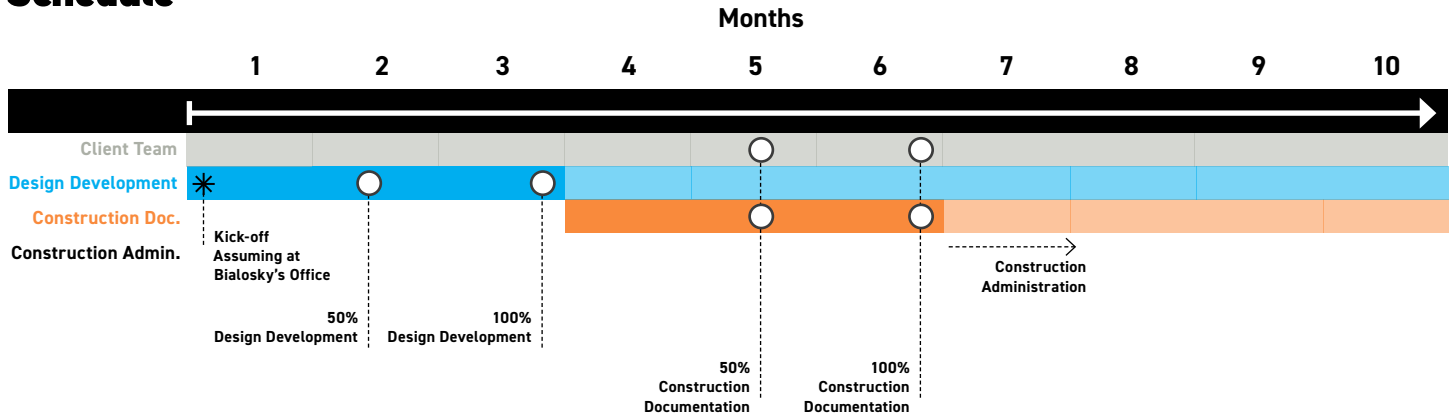
Brian Bernstein PLA, ASLA
 Principal / Co-Founder

Overview

1	Project Understanding	
	Type Size Design Delivery Process Const. Budget Estimated	Waterfront Park +/- 2.8 ac. Bid Drawings +/- \$3M Site Improvement Costs
2	Process	
	Design Development Construction Documentation Construction Administration	3 Months 3 Months TBD
3	Investment	
	Phase 1A+B Design Development Construction Documentation Construction Administration	\$12,500 \$24,750 \$15,750
		Lump Sum Sub-Total: \$53,000
	Add Alternate Design Development Construction Documentation Construction Administration	\$12,280 \$15,050 \$7,175
		Lump Sum Sub-Total: \$34,505
	Consultant Allowance Irrigation Design	Allowance: \$5,000

Exhibit A

Schedule



Scope Area

Phase 1A + 1B
 (Assumed Site Improvements Budget based on WT's SD Estimate +/- \$2M)

Add Alternate Area
 (Assumed Site Improvements Budget based on WT's SD Estimate +/- \$1M)

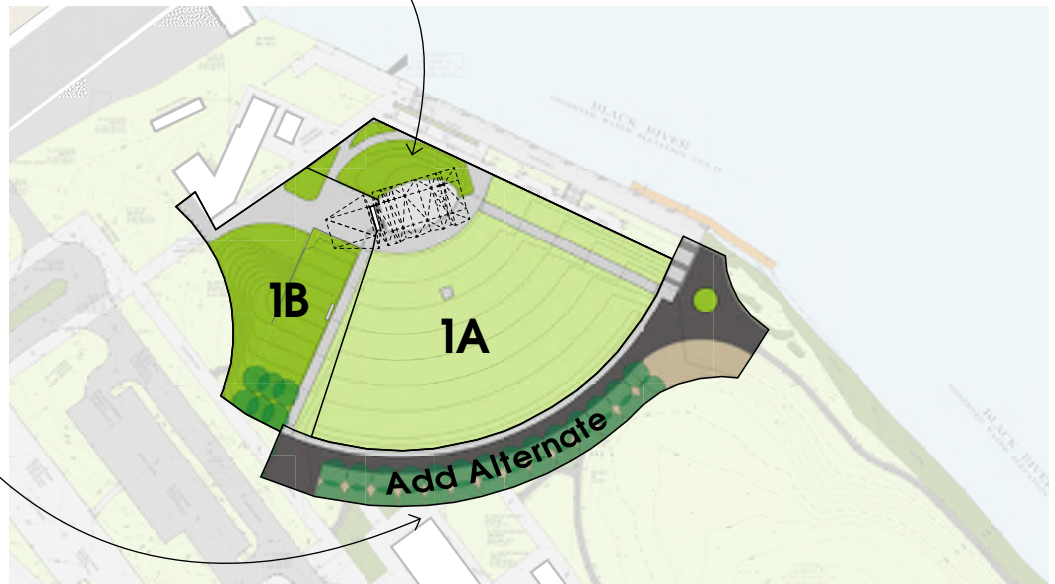


Exhibit B1

Design Development Scope

During this phase, REALM will focus on refining the approved schematic design from a technical perspective while providing the necessary graphic exhibits to convey the design to the client. In particular, we understand the following to be a part of our services:

Tasks:

- **Design Development Process** - REALM will complete the following tasks:
 - **Design Refinement** - incorporate feedback from the client team as well as budget considerations into the overall site design. Advance technical documentation.
 - **Presentation Graphics** - preparation of presentation level graphics to assist with conveying the design intent to the client.
 - **Overall Site Plan** - develop a site plan showing the proposed design in relation to existing site conditions.
 - **Hardscape & Materials Plans** - develop pedestrian areas (behind curbs) for hardscape materials, walls, stairs and site furnishings as required.
 - **Grading Plan** - prepare a grading plan in collaboration with the Civil Engineer's mass grading plan. Spot grades provided in all pedestrian areas (behind curbs).
 - **Lighting Plans** - in collaboration with the team's Lighting Designer and Electrical Engineer, coordination of fixture location.
 - **Preliminary Soils Plan** - Identify all areas of imported planting soil areas.
 - **Landscape Plans** - refinement of the landscape plan indicating specific material selection.
 - **Irrigation Plans** - develop a proposed irrigation design.
 - **Sections / Elevations & Typical Const. Details** - provide the necessary information to describe the design.
-
- **Cost Estimating Assistance** - assist the team's cost estimator with quantity take-offs and material identification as necessary
 - **Client Presentations** - participate in client presentation and client board level presentation.

Design Development

DELIVERABLES:

Illustrative Exhibits

Refined Illustrative Site Plan

DD Technical Design Set

Overall Site Plan

Notes + Finishes Legends

DD Materials Plans

DD Planting Plans

DD Soils Plans

DD Irrigation

DD Site Sections + Elevations + Details

DD Outline Specs. (CSI Format)

Meetings

Weekly Design Team Meetings

(via zoom)

(1) Client Presentation

(In-person)

(1) Client Board Presentation

(In-Person)

Exhibit B2

Construction Documentation Scope

During this phase, REALM will focus on final documentation of the design. In particular, we understand the following to be apart of our services:

Tasks:

- **Construction Documentation Process** - REALM will complete the following tasks:
 - **Overall Site Plan** - develop a site plan showing the proposed design in relation to existing site conditions.
 - **Tree Protection Plan** - (If Required)
 - **Site Soils Plan** - finalize areas and specification of site soils
 - **Hardscape & Materials Plans** - finalize material specifications and finishes inclusive of site furnishings.
 - **Layout & Jointing Plan** - site layout & jointing as it relates to pedestrian hardscape and landscape areas inclusive of dimensions and alignment notations.
 - **Grading Plan** - prepare a grading plan in collaboration with the Civil Engineer's mass grading plan. Spot grades provided in all pedestrian areas (behind curbs).
 - **Lighting Plans** - in collaboration with the team's lighting designer and electrical engineer, identify fixture locations.
 - **Landscape Plans** - finalize landscape selections and specifications inclusive of plant genus, species size and type of plant, planting details, limits of seed/sod, general notes.
 - **Irrigation Plans** - finalize design of the irrigation system.
 - **Site Details** - finalize site details, sections, elevations and enlarged plans necessary to convey design intent to bidders / contractors.
 - **Specifications** - prepare technical specifications in CSI format.
-
- **Cost Estimating Assistance** - assist the team's cost estimator with quantity take-offs and material identification.
 - **Client Presentations** - participate in client presentation and client board level presentation.

Construction Documentation

DELIVERABLES:

Technical Drawing Set

- Note + Finishes Legend
- CD Soils Plan
- CD Materials Plan
- CD Jointing
- CD Layout Plan
- CD Grading Plan (Ped. Areas)
- CD Planting Plan
- CD Irrigation
- CD Site Sections + Elevations
- CD Details
- CD Specs. (CSI Format)

Meetings

- Weekly Design Team Meetings (via zoom)
- (1) Client Presentation (In-person)
- (1) Client Board Presentation (In-Person)

Exhibit B3

Bidding & Permitting + Construction Admin.

During this phase, REALM will focus on developing the necessary information to assist with bidding and permitting. In particular, we understand the following to be apart of our services:

Tasks:

- **Bidding & Negotiations** - REALM to assist with:
 - **Bid Packages** - Assist with the production of Bid Packages as required.
 - **Pre-Bid Meeting** - Participate in pre-bid meeting
 - **Bid Review** - Assist in the review all bids received
 - **Bid RFI's** - Assist with clarifications and addenda during bidding.
 - **Pre-award Conference** - Participate in pre-award meetings

- **Construction Administration** - REALM to provide the following services in relation to the scope of Landscape Architecture:
 - **Pre-Construction Meeting** - Participate in a pre-construction meeting
 - **OAC Meetings** - Participate in weekly OAC meetings.
 - **RFI's** - Review landscape related RFI's and shop drawings
 - **Field Observations & Reports** - Complete a series of field observations during construction and provide a detailed report for each visit.
 - **Local Field Observation Strategy** - It is assumed an experienced & licensed Landscape Architect from Snyder & Associates will perform weekly site observations inclusive of photos and a written report for the scope of work. This report will be provided to REALM within 1 business day from the time of the site visit.
 - **Tree Tagging** - REALM to provide tree tagging review via imagery provided by local / regional nursery. On-site visits can be provided at a per diem rate of \$1,200 + reimbursable expenses.
 - **Pre & Final Punch** - provide a pre and final punch list report.

Bidding & Negotiations + Const. Admin

DELIVERABLES:

Bidding & Negotiations

- Pre-Bid Meeting
- Bid RFI's
- Addendum / Bulletins
- Review / Evaluate Bid Results

Construction Admin.

- Pre-Construction Meeting
- RFI + Submittal Review
- Tree Tagging
- On-site Construction Observation
- On-site Mock-up Reviews
- In-Office Documentation
- Final Inspections / Punch List

Meetings / Site Visits

- (1) Pre-Construction Meeting
- OAC Meetings LA Scope (by Zoom)
 - (1) Tree Tagging Trips
 - (3) Site Observation Visits
 - (1) Pre Punch Visit
 - (1) Final Closeout Visit

Exhibit C

General Project Assumptions

Assumptions / Exclusions

- **Existing Conditions Survey & Geo-Tech Report:**
 Survey to be provided by Owner in electronic drawing format inclusive of all existing conditions. Geotechnical report provided by owner if required.
- **Architectural**
 It is assumed that the team's Architect will be responsible for the design of the buildings.
- **Civil Engineer**
 It is assumed that the Civil Engineer will be responsible for documentation of work within roadways / parking lots from curb to curb (excluding landscaping and specialty vehicular drop-off areas requiring a higher level of finish). Additionally, it is assumed the team's Civil Engineer will be responsible for mass grading of the site, sub-surface drainage, stormwater strategies and utility coordination. REALM will provide input on how stormwater strategies, particularly those that reduce the need for additional below grade infrastructure can be considered for implementation. In areas within REALM's scope (behind the curbs), we will responsible for the:
 - Hardscape design (pavement, walls, stairs, etc.)
 - Landscape design (soils, ground covers, shrubs, trees, etc.)
 - Fine grading and drainage fixture selection (to be coordinated with the Civil Engineer and shown on their sheets in Civil 3D.)
 - CSI Specifications for associated items
- **Exterior Lighting:**
 REALM will work in collaboration with the team's lighting designer and electrical engineer to coordinate design intent, fixture selection and location. Lighting design, engineering, photometrics, wiring, conduit, and structural provided by the team's electrical engineer.
- **Structural Engineering:**
 Structural Engineering for site related items (i.e. freestanding walls, retaining walls, water features, canopy structures, stairs, etc.) is not currently part of this scope. If required, it can be provided as part of the consultant allowance or as an additional service.
- **Irrigation Design:**
 Irrigation Design for site improvement areas (i.e. control system, electrical components, water source) is part of this scope and will be provided by an Irrigation Consultant.
- **Cost Estimating:**
 Cost estimating in not part of this scope.
- **Signage & Wayfinding:**
 Necessary signage and wayfinding design is not provided as part of this scope.
- **Audio / Visual Equipment & MEP:**
 Audio/Visual Equipment & MEP engineering are not currently part of this scope. If required, it can be provided as part of the consultant allowance or as an additional service.

Consultant Services

- Survey & Geo-Tech**
 NIC
- Architectural Design**
 NIC
- Civil Engineering**
 NIC
- Lighting Design & Engineering**
 NIC
- Structural Engineering**
 NIC
- Irrigation Design**
 WC3 Irrigation Consultants
 PM: Steve Lukasik
 \$5k Allowance
- Cost Estimating**
 NIC
- Signage & Wayfinding**
 NIC
- Audio / Visual Equipment & MEP**
 NIC

Exhibit D

Terms & Conditions

1. Standard of Care

1.1 The Landscape Architectural Services shall be performed with care and diligence in accordance with the professional standards applicable at the time and in the location of the project and appropriate for a project of the nature and scope of this Project.

2. Scope of Services

2.1 Landscape Architectural Services to be provided under this Agreement are as listed in this proposal, anything not listed will be considered additional services/supplemental services.

3. Supplemental Services

3.1 Supplemental Services are in addition to the basic Scope of Services and, when requested in writing by the Client, shall entitle the Landscape Architect to additional compensation beyond the Compensation provided in this proposal. Supplemental Services under this agreement include any additional items not currently listed in this proposal.

4. Changes to Approved Services

4.1 Revisions to drawings or other documents shall constitute Supplemental Services when made necessary because of Client-requested changes to previously approved drawings or other documents, or because of Client changes to previous Project budget parameters or Project requirements.

5. Schedule of Performance

5.1 The Client's signature on this Agreement shall be the basis for the Landscape Architect to begin providing services for the Project. The Landscape Architect shall perform the services as expeditiously as is consistent with the standard of care described above.

6. Information

6.1 The Client shall provide data about the site and other information on which the design is to be based as well as Client's budget parameters for the Project. The Landscape Architect shall be entitled to rely on the accuracy and completeness of information provided by the Client.

7. Budget

7.1 The Landscape Architect shall reasonably strive to propose designs and prepare documents consistent with the Client's budget parameters. If provided by the Landscape Architect as a part of the Scope of Services, opinions of probable construction costs are based on the Landscape Architect's familiarity with the landscape construction industry and are provided only to assist the Client's budget planning. Such opinions shall not be construed to provide a guarantee or warranty that the actual construction costs will be within the Project budget parameters at the time construction bids are solicited or construction contracts negotiated.

8. Approvals

8.1 The Client's decisions, approvals, reviews, and responses

shall be communicated to the Landscape Architect in a timely manner so as not to delay the performance of the Landscape Architectural Services.

9. Project Permit and Review Fees

9.1 The Client shall pay all fees required to secure jurisdictional approvals for the Project.

10. Ownership of Documents

10.1 The Landscape Architect shall be deemed the author and owner of all documents and deliverables developed pursuant to this Agreement and provided to the Client by the Landscape Architect (collectively, the "Design Materials"). Subject to payment by the Client of all fees and Reimbursable Expenses owed to the Landscape Architect, the Landscape Architect grants to the Client an irrevocable, non-exclusive license to reproduce the Design Materials solely for the construction of the Project and for information and reference with respect to the use of the Project.

11. Landscape Architect Compensation

11.1 Compensation for the Landscape Architectural Services performed under this Agreement shall be as indicated in the Preliminary Provisions plus Reimbursable Expenses as defined below. Supplemental Services, when requested in writing by the Client, shall require additional compensation to be determined on an hourly basis or on the basis of a negotiated fee.

11.2 Reimbursable Expenses are expenditures made by the Landscape Architect, its employees, and consultants in the interest of the Project plus an administrative fee of 10%. Reimbursable Expenses include but are not limited to travel expenses, costs of reproduction of documents, postage, services of professional consultants which cannot be quantified at the time of contracting, and other, similar direct Project-related expenditures.

11.3 Monthly payments to the Landscape Architect shall be based on (1) the percentage of the Scope of Services completed and shall include payments for (2) Supplemental Services performed, and (3) Reimbursable Expenses incurred.

11.4 Payments are due and payable 30 days from the date of the Landscape Architect's invoice. Invoiced amounts unpaid 45 days after the invoice date shall be deemed overdue and shall accrue 15% simple interest per month. At the Landscape Architect's option, overdue payments may be grounds for termination or suspension of services.

11.5 If through no fault of the Landscape Architect, the Scope of Services to be provided under this Agreement has not been completed within 45 calendar days of the initial notice to proceed, the compensation for services rendered after that time period shall be equitably adjusted.

Exhibit D

Terms & Conditions

12. Indemnification

12.1 Client and Landscape Architect each agree to indemnify and hold harmless the other, and their respective officers, employees and representatives, from and against liability for losses, damages, and expenses, including reasonable attorneys' fees, to the extent such losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors, or omissions. In the event losses, damages, or expenses are caused by the joint or concurrent negligence of Client and Landscape Architect, they shall be borne by each party in proportion to its negligence.

13. Dispute Resolution

13.1 If a dispute arises out of or relates to this Agreement, the parties shall endeavor to resolve their differences first through direct discussions. If the dispute has not been settled within 21 days of the initial discussions, the parties shall submit the dispute to mediation, the cost of which shall be shared equally by the parties. Nothing in these provisions shall limit rights or remedies not expressly waived under applicable lien laws.

14. Termination

14.1 This Agreement may be terminated by either party on seven (7) days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination, provided the defaulting party has not cured or in good faith diligently commenced to cure the breach during the 7-day notice period.

15. Assignment

15.1 Neither party shall assign their interest in this Agreement without the express written consent of the other, except as to the assignment of proceeds.

16. Governing Law

16.1 The law in effect at the Landscape Architect's principal place of business shall govern this Agreement.

17. Complete Agreement

17.1 This Agreement represents the entire understanding between the Client and the Landscape Architect and supersedes all prior negotiations, representations, or agreements, whether written or oral with respect to its subject matter. The person(s) signing this Agreement on behalf of the parties hereby individually warrant that they have full legal power to execute this Agreement on behalf of the respective parties and to bind and obligate the parties with respect to all provisions contained herein. This Agreement may be amended only in a writing signed by both the Client and the Landscape Architect.

Firm Hourly Rates

Principal.....	\$200/hr.
Senior Professional.....	\$125/hr.
Professionals.....	\$100/hr.
Interns.....	\$85/hr.

REALM Collaborative
 100 E Broad Street, Suite 1710
 Columbus, OH 43215



 Brian Bernstein
 Principal / Co-Founder

ACCEPTED:
Bialosky Architects
 Attn: Paul Deutsch
 Architect / Senior Associate
 6444 Carnegie Avenue
 Cleveland, Ohio 44103
 pauld@bialosky.com

 Signature

 Print Name

 Date

EXHIBIT-E

OSBORNE ENGINEERING CIVIL ENGINEERING PROPOSAL



P20230530.000

June 9, 2023

Paul Deutsch, AIA, LEED AP
Bialosky + Partners Architects, LLC
6555 Carnegie Ave., Suite 200
Cleveland, OH 44103

sent via email: pauld@bialosky.com

Re: Proposal for Civil Engineering Services for Design Development, Construction Documents and Construction Administration for Phases 1A & 1B + Add Alternate Area of the Black River Landing Amphitheater project in Lorain, Ohio

Dear Mr. Deutsch:

Osborn Engineering appreciates the opportunity to continue working with your team on this exciting and transformative project.

SCOPE OF SERVICES:

1. Design Development Phase

- 1.01 Participate in conference call coordination meetings as required.
- 1.02 Review all City, County and State requirements that apply to this project and share key information with the team.
- 1.03 Coordinate with the project surveyor to verify that all required project areas are included in their scope and that all captured information is in-line with stakeholders' available record drawings.
- 1.04 Perform site visits with the design team for continued coordination.
- 1.05 Continue in the development of the site plan with fellow design team members.
- 1.06 Identify potential utilities that would need to be relocated, upsized or modified in some other manner.
- 1.07 Due to the project area exceeding 1.0 acre in size and being highly impervious, post-construction stormwater management is expected for this project. Due to the adjacency of the project to the Black River, stormwater quantity control is not anticipated or included.
- 1.08 Develop preliminary stormwater management calculations and concepts to fit the site plan program.
- 1.09 Meet with AHJ's to introduce the project and clarify permitting requirements.
- 1.10 Coordinate with design team members on the determination of grading, layout of site amenities, sidewalks and hardscape plans.

2. Construction Documents Phase

- 2.01 Prepare the following site/civil plan sheets for the proposed development:
 - 2.01.1 Existing Conditions and Demolition Plan
 - 2.01.2 Site Grading Plan
 - 2.01.3 Site Utility Plan (Domestic and Fire Water, Sanitary Sewer, Storm & Gas)
 - 2.01.4 Horizontal Control Plan



- 2.01.5 Stormwater Management Layout, Calculations and Details
- 2.01.6 Storm Water Pollution Prevention Plans, Details and Notes Sheets
- 2.01.7 Miscellaneous Site Work Details and General Notes Sheets.
- 2.02 Participate in weekly conference calls for project coordination.
- 2.03 Develop project specifications covering divisions 31, 32 and 33. Division 32 items that overlap with scope of the landscape architect will be coordinated.
- 2.04 Develop any/all proposed easement linework to provide to team's surveyor for plat preparation.
- 2.05 Prepare one CD progress submittal and respond to design review comments.
- 2.06 Conduct follow-up meetings with AHJ's to keep them engaged in the project.
- 2.07 Respond to plan review comments from AHJ's.
- 2.08 Review and coordinate design with construction cost estimate, developed by others, schedule and phasing.
- 2.09 Update drawings and specifications.
- 2.10 Prepare final Construction Document drawings and specifications for permit and bidding.
- 2.11 Specifications will be prepared in standard CSI six-digit division format.
- 2.12 Submit stamped and signed PDF drawings and specifications for plan approval.

3. Construction Phase

- 3.01 Attend necessary meetings during CA.
- 3.02 Maximum number of two (2) shop drawing reviews and approvals per submittal.
- 3.03 Civil engineer to complete site observations every two (2) weeks during construction phase, while site development operations are underway.
- 3.04 Respond to Contractor RFI's.

4. Clarifications

- 4.01 Our fee assumes that, although changes are expected throughout the early development of the design, there will be no significant design changes after the 75% CD stage. If there are any significant design changes after that point, other than re-design work necessary to bring the project within the budget, we would be entitled to additional design fees.
- 4.02 Prepare construction documents, including plans and specifications, in accordance with the City of Lorain, Lorain County, State of Ohio and applicable Federal requirements as of the start date of the project.
- 4.03 Osborn's civil team will review the geotechnical soils report, prepared by others, and incorporate recommendations into the plans and specifications.
- 4.04 Coordinate site exterior lighting with the design team's selected electrical engineer.
- 4.05 Provide input and review of the cost estimate, provided by others. Cost data will be limited to site work including demolition, grading, infrastructure, utilities, pavement and storm water management.

FEES:

Our lump sum fee to provide the services described above for the base scope of Phases 1A & 1B is **\$47,500.00**, not including reimbursable expenses, which will be billed in accordance with the attached rate sheet. The Add Alternate segment of the project can be designed for an additional **\$15,000.00**. Osborn will invoice monthly based on percentage of work completed and expenses incurred to date.

Osborn Engineering will invoice monthly based on a percentage of work completed to date. The fees presented are based on a fixed fee/lump sum plus expenses basis.



Service	DD	CD	CA	Total
Civil – 1A & 1B	\$ 14,250	\$ 23,750	\$ 9,500	\$ 47,500
Civil – Add Alt	\$ 4,500	\$ 7,500	\$ 3,000	\$ 15,000

ESTIMATED EXPENSES:

Osborn Engineering estimates the reimbursable expenses for this project to be **\$500**. Reimbursable expenses will only be invoiced as they are charged to the project.

EXCLUSIONS:

1. SUE Level A utility mapping services.
2. Site surveying and base mapping.
3. Offsite improvements to roadways or utilities. Osborn can provide offsite improvement services under a separate proposal upon request.
4. Geotechnical soils investigations or reporting.
5. LEED Administration.
6. Permits involving the Army Corps of Engineers or ODNR involving the existing coastline of the Black River.
7. Environmental assessments or remediation design.
8. Site lighting design or Photometric Plans – this will be prepared by the team's electrical engineer.
9. Cost estimating services.
10. Traffic volume analysis or signalization requirements including any traffic control plans. Osborn can provide these services under a separate proposal upon request.
11. Planting Plans, Irrigation Plans or selection of final vegetation – these shall be performed by the Landscape Architect.
12. Full time construction observation.
13. Reimbursable costs, which includes printing, shipping, travel and permit fees.

Should you have any questions or need additional information, please don't hesitate to let us know. We are excited to be a part of the project and the development team and are ready to begin work upon receiving authorization.

Sincerely,

OSBORN ENGINEERING

Joe Ferenczy, PE
Director of Infrastructure

By: Jon-Michael C. Lemon, P.E., LEED GA
Director of Civil Engineering

cc: OECAct

PHASING PLAN



LEGEND

PHASE 1A:
1.50 ACRES

PHASE 1B:
0.59 ACRES

PHASE 1 TOTAL:
2.09 ACRES

ADD ALTERNATE:
0.64 ACRES

TOTAL:
2.73 ACRES

EXHIBIT-F

CLAUDE ENGLE LIGHTING DESIGN PROPOSAL

CLAUDE R. ENGLE
LIGHTING CONSULTANT

CLAUDE R ENGLE III
CLAUDE R ENGLE IV
TEL: 301 654 5502
FAX: 301 654 5503

June 16, 2023

Robert Mashke
robert mashke ARCHITECTS inc.

Re: Proposal for Lighting Consultation on Black River Landing (DD+ 50%CD & 50%CA)

Dear Robert,

Happy to see this project and your vision move into the next phase of realization.

As we discussed previously, your idea of having a local lighting consultant of the electrical engineer manage CD & CA is a good one. We have worked internationally like that successfully for many years on many important projects. Our involvement mirrors that of a Design Architect where our involvement is focused on the design and then switches to a more supervisory role during the Contract Document and Construction Phases. It does require us to do a more complete Design Definitive Phase Package than usual to ensure that not only is the design fully expressed, but that the specifications are developed as well.

The local Project Electrical Engineer or lighting consultant is familiar with the local codes and practices and is best positioned for coordinating the Contract Documents with all the other local trades and fielding questions from the site during construction. The Project Electrical Engineer would also be responsible for code compliance and brings knowledge of local practices to the project.

For the Contract Document Phase, we would review the lighting package at 50% and at 95% to make sure that the design intent and criteria has been maintained. Should there be any changes to the design during this phase which require our input or the design of a special lighting system, we would charge on an hourly basis.

Though the local consultant would be fielding most of the questions during the Construction Phase, we are presuming we would oversee the procurement phase. The answering of any RFIs that the local lighting consultant felt they could not answer or items that potentially affected the design would be charged on an hourly basis. For the final commissioning of the lighting, I will put in as an additional service should you deem that necessary.

From our discussions, we propose to provide architectural lighting consultation as follows:

PROJECT AREAS:

Phase 1A

1. Amphitheatre Canopy Lighting
2. House Stage Lighting
3. Surrounding Site & Area Lighting Lighting
4. Audience Area

Phase 1B

1. Exterior Lighting of Peel
2. Interior Lighting of Peel
 - a. Green Room
 - b. Multi-purpose Room
 - c. Office
 - d. Amenities

Add Alternate

1. Tree-lined Avenues
2. Riverside Promontory
3. Back of Audience Area

SCOPE OF WORK:

Design Development Phase

1. Working from the approved lighting design concepts, continue developing the lighting design for all areas listed above to achieve the developed concepts. This includes working with the design team to develop integration of lighting systems into the architecture, decorative lighting fixtures and fixtures for integration into the millwork.
2. These will be documented as Master Lighting Plans indicating the locations, types and wattages of each fixture. Our plans will be based on RMA's plans, reflected ceiling plans, and sections and will be intended to be electronically indexed into the Architectural drawings.
3. Using a rendering program and working in black and white, develop the sculptural lighting of the Amphitheatre Canopy. These will generate the lighting specification as well.
4. Work with RMA to develop the interior lighting of the Green Room Peel.
5. Develop a hierarchy of light levels for the project, and how the central concept of the project applies to the different spaces or how the different spaces inform the design concept of the building.
6. Prepare a complete study of photometric calculations of all interior and exterior spaces. Target lux levels and brightness levels will be described in a diagrammatic form or list format of the project areas.
7. Work with Realm & RMA to develop lighting of Add Alternate Phase (4 mtgs, design, calculate, prepare spec \$5000 fee)
8. Where the control of the lighting is critical to maintaining the overall image and quality of light for the project, we will prepare lighting control logic plans that show

lighting groups and how they are controlled. These diagrams are intended for the project engineers for developing their branch circuiting, developing the electrical system and control specifications and for explaining to the Client how the lighting works. We will also work with the Client on developing the kind of interface they want with the lighting control and how they want to use the spaces.

9. We will develop an outline lighting specification which will use fixture sketches and catalog cuts to illustrate the appearance and size of the luminaires and power consumption. This will entail a work session with the electrical engineers to make sure that local codes and practices are being respected in the design. Neither the plans nor fixture sketches will be intended for use as stand-alone bidding and construction documents at this stage.
10. Develop the information needed to produce a lighting control line diagram. Provide lighting control diagrams and a written description of the intent of the lighting control system.
11. We will work with the Cost Consultant to help develop the budgets of the designed systems.
12. Attend 12 coordination meetings via Video Conferencing & 6 design sessions.
13. Where required, develop designs for mockups to be built by others of exterior façade lighting. Participate in the review and evaluation of these mockups and prepare the technical portions of any reports. (This is an additional service, for which we will provide an estimate of the fee and expenses for our involvement before we proceed).
14. Participate in the presentation of the DD Design to the Client, if required.
15. Incorporate any comments from or changes requested by the Client into a revised final Design Development Lighting Report.

We presume 6 design sessions with RMA via video conferencing.
\$32,500 fee. (+ \$5,000 with Add Alternate Phase)

Construction Document Phase

1. Having presented and explained the lighting Design in detail to the local engineers, we would be available for any questions they may have during the Construction Document Phase. Being "local", they are knowledgeable about local codes and in close proximity to the project architect and engineers for all coordination. We presume they will answer most questions from the field, but in the case they cannot, we will. The answering of ongoing queries would be charged on an hourly basis.
2. The local lighting consultant will be responsible for code compliance. Wherever possible the local engineers should utilize architectural luminaires for emergency lights. Where the engineers identify special problems, we will work with them to resolve them to avoid the use of standalone emergency fittings.
3. Should we need to prepare the lighting specification drawings and writings for any "special" lighting systems, that would be an additional service. The Project Electrical Engineer shall be responsible for preparing all parts of the specification.
4. Review the 50% Contract Documents that have been prepared by the local engineer to make sure that the Construction Documents continue to represent and articulate the intended lighting design. We would also be reviewing in detail the

lighting specification to make sure that it is solid and that it can purchase the specified performance of the lighting design.

5. Review the 95% Contract Documents that have been prepared by the local engineer to make sure that the Construction Documents continue to represent and articulate the intended lighting design. We would also be reviewing in detail the lighting specification to make sure that it is solid and that it can purchase the specified performance of the lighting design.
6. Attend 8 coordination meetings.
7. Mockups. Where required, develop designs for any further mockups to be built by others. Participate in the review and evaluation of these mockups and prepare the technical portions of any reports. This would be an extra.

We presume 4 design sessions with RMA via video conferencing.
\$14,100 fee (+ \$1,000 with Add Alt Phase).

Contract Administration Phase

1. Review tender proposals and make recommendations on their acceptance and suggesting any modifications that could help them meet the specification.
2. Should there be any further mockups we will develop designs for those mockups to be built by others. Participate in the review and evaluation of these mockups and prepare the technical portions of any reports.
3. Work with approved manufacturers from the lighting submission process reviewing their shop drawings and samples to develop special lighting systems for final acceptance. (Hourly Basis)
4. Attend twelve 1-hour Construction Coordination meetings.
5. Provide on-going replies to field questions during the construction (hourly basis).
6. Review the final installation, provide a punch list and give directions for the focusing of the lights and the programming of all the light scenes. (optional)

Procurement Process: \$5,400
Attend Coordination Meetings: \$2,400
Answer RFIs on an hourly basis (\$250/hour).
(+ \$1,000 with Add Alt Phase)
One visit to site for final commissioning of the lighting systems.(2 days)
\$8,400 fee; \$600 expenses.

Our fee involvement based on Design Phases is as follows:

	Phases 1A & 1B	Add Alt Phase	Expenses
Design Development Phase	USD 32,500	USD 5,000	
Contract Document Phase	USD 14,100	USD 1,000	
Construction Admin Phase	<u>USD 16,200</u>	<u>USD 1,000</u>	<u>USD 600</u>
	USD 62,800	USD 7,000	USD 600
Total Fee:	USD 63,400 or USD 70,400 with Add Alternate Phase		

REIMBURSABLE EXPENSES:

In addition to the above fees, we will invoice for long distance telephone, telecopy, shipping and transportation, reproduction services, courier, and mailing charges. We will also be reimbursed for the direct costs of travel and lodging incurred on trips to Ohio for project work sessions and presentations.

ADDITIONAL SERVICES:

Additional services will be provided at our normal hourly rates, if authorized, but are not included in the fee estimates. These include:

1. Mock-ups or models:

Any costs of mock-ups or models, other than study models intended for our own use will be reimbursed, subject to approval prior to their fabrication.

2. Computer Modeling:

The costs for computer modeling or computer calculations for emergency lighting or LEED reports other than what we develop for our own use will be reimbursed, subject to approval prior to development.

3. Additional Site Visits or trips for mockups that are not enumerated above.

4. Photo realistic renderings:

We provide accurate black and white renderings to illustrate lighting effects and appearances, but photo realistic rendering is an additional service.

5. Design Changes:

Any changes of approved designs that cause a major redesign of an area is an additional service.

INSURANCE:

We shall maintain Professional Liability Insurance in an amount not less than Three Million Dollars (\$3,000,000.00) and Public Liability and Motor Vehicle Liability Insurance in an amount of Five Hundred Thousand Dollars (\$500,000.00) and shall furnish certificates of such insurance to you if requested.

DRAWINGS AND SPECIFICATIONS:

All drawings, specifications and other work products of the Lighting Consultant for this project are instruments of service for this project only. Re-use of any of the instruments of service of the Lighting Consultant on extensions of this project or any other project without the written permission of the Lighting Consultant, shall be at the Owner's risk.

RECORDS:

Time records and records of the Lighting Consultant's direct personnel expenses and reimbursable expenses shall be kept on a generally recognized accounting basis and shall be available to authorized representatives at mutually convenient times.

INVOICES AND PAYMENTS:

If out of scope additional work is required or requested, it shall be invoiced on a monthly basis in the month that it is accrued. Out of scope work, can either be a firm fixed fee or hourly basis as described above.

All payments should be made in the form of Wire Transfers as listed on the invoice. All invoices are payable at Net-30 days. We offer a discount of 5% for invoices that are paid within 10 days of invoicing.

Any/All payments made after Net-30 days shall incur 1.5% interest on the unpaid balance per month.

If you have any questions or comments regarding the proposal or if I have left something out, please call me.

Best Regards,

A handwritten signature in black ink, appearing to read "Claude R. Engle, Jr.", with a stylized flourish extending to the right.

Claude R. Engle, Jr