

CONTRACT
FOR
CONSTRUCTION MANAGER AT-RISK
BRYANT ENTERTAINMENT FACILITY PROJECT

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

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

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

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

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

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

a. PHASE 1: Pre-Construction Services

CMAR will:

i. Schematic Design Phase Coordination

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

ii. Design Development Phase Coordination

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

5. Facilitate with architectural team and City cost-benefit analysis to determine most cost-effective construction after evaluation of life-cycle cost impact.
- iii. Construction Documents Phase
1. Assist architectural team in completing Construction Documents/Plans and Specifications. Architectural team will submit three (3) sets to City staff, and electronic versions as necessary, for Code and general review and approval as well as Construction Manager and City for cost analyses. (90% plan review).
 2. Attend follow up meetings with City Development Services and Fire Marshall.
 3. Complete final coordination with private utilities and service providers.
 4. Assist architectural team to prepare and submit three (3) complete sets of Construction Documents, and electronic versions as necessary, including 90% written responses, Specifications and Architect's Cost Estimate and schedule to City of Bryant Development Services for review and approval (100% plan review)
 5. Assist architectural team in correcting plans to reflect issues noted by Review for Permit, inclusive of any necessary redesign prompted from the permit process.
 6. Construction Documents/Plans, Specifications and Project Drawings shall be routed through the City of Bryant Development Services, Planning, Engineering, Building Safety, Fire Marshal, and Urban Forestry for required approvals.
- iv. Bid Phase
1. Coordinate with City Planning and Development Department to ensure all procedures followed for this phase meet state laws and City of Bryant Purchasing Policies. All sub bids will be advertised and bid by the City's Planning and Development Department
 2. Provide services for reproduction and dissemination of bid sets (project manual and stamped drawings) to the City [PM (1), Purchasing (1) and interested bidders]. Documents should be made available to any interested party electronically at no cost.
 3. Provide distribution of plans to all interested parties.
 - a. Maintain open communication with the City of Bryant Planning and Development Department throughout the bidding process.
 - b. Distribution of all documents shall be done in a fair and unbiased manner while keeping all interested parties on equal terms.
 - c. Document and keep an updated accurate record of plan holders and provide updated listings to all interested parties in a timely manner.

- d. All questions and inquiries shall be directed to the City's Planning and Development Department and made in the form of an addendum and shall be provided to all interested parties at the same time by the Planning and Development Department.
4. Coordinate with City Planning and Development Department during pre-bid meeting, facilitate and attend the Bid Openings conducted by City Planning and Development Department.
5. Maintain open communication with the City Planning and Development Department during any process involving Request for Information (RFI).
6. Any addenda shall be provided to the Planning and Development Department, for coordination with the City and for review and approval in advance of issuance. Bidders, interested parties, and plan holders shall receive all information included in an addendum at the time addenda is issued.
7. In the event the CMAR desires to self-perform a portion of the work or a trade package, the CMAR shall submit a bid package in the same time and manner as other interested parties.
8. In an effort to facilitate the bid opening in a vendor neutral space, the bid opening shall be held at the City of Bryant Administration Building, City Hall, at a time and date coordinated in advance with the City Planning and Development Department.
9. Receive, review and analyze bids for the purpose of making recommendations to the City. CMAR will include the following required content:
 - a. Check for math errors and reconcile any mathematical discrepancies
 - b. Review for unbalanced bid items
 - c. Coordinate with the City Planning and Development Department in finalizing a Certified Bid Tabulation
 - d. Review of contractor's financial standing and references provided
 - e. Explanation of discrepancies in bids
 - f. Meeting with the City to provide a formal written recommendation of award
10. Attend City Council meeting(s) for the recommendation for award of Contract(s) for Construction.

THIS SPACE LEFT BLANK INTENTIONALLY

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

CMAR will:

- i. After time to review all architectural and civil plans and specifications, and additionally obtain bids from the various subcontractors and vendors necessary to complete the Project, CMAR will present the Guaranteed Maximum Price [“GMP”] to Owner which will be subject to change by (i) Change Orders with notice to Owner, (ii) event(s) of Force Majeure, or (iii) increases in fees charge by Supplemental Service Consultants as that term is identified in the Owner’s contract with the Architect [AIA Document B133 – 2019]. The GMP will contain a minimum fee to be paid to the CMAR as set forth in Section 2 below. In the event of an event of Force Majeure, the provisions of set forth in Exhibit A shall control.
- ii. Put forth diligent and fiscally responsible efforts to ensure the project will be completed on time and within budget.
- iii. After review of all bids from subcontractors and vendors, CMAR must provide Owner a timeline for completion of the Project [“Completion Date”]. In the event of a delay in meeting the Completion Date, the CMAR will be subject to liquidated damages which will be established at the time the CMAR provides the GMP to City.
- iv. Conduct regular Owner, Architect, CM meetings as jointly determined by CMAR, City and Architect.
- v. All requests for Change Orders will initially be reviewed by the CMAR for approval, modification or rejection. The CMAR will then submit the Change Orders to the City for review and approval with the recommendations of CMAR. The CMAR will also provide copies of the Change Order and its recommendations to the Architect. The CMAR will maintain a log of all Change Orders.
- vi. The CMAR will provide construction progress reports on a monthly basis.
- vii. Review and address site visit report from the architectural team if a site visit is requested by the CMAR.
- viii. Make the Substantial Completion Inspection, prepare the punch list, substantiate that items noted are completed, and issue Substantial Completion Certificate.
- ix. Project Close Out
 1. Provide Warranty Services during the entire Warranty Period.
 2. Provide support services as needed during the project close out process.
 3. Provide close out binder to the Owner which include, but are not limited to, the following items which are available to the CMAR:
 - a. Contractor’s red lines and as-built notes
 - b. Warranty information
 - c. Material Safety Data Sheet (MSDS)

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

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

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

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

GMP	\$27,000,000
Less: Total Costs	<u>\$26,500,000</u>
Total Costs less than GMP	<u>\$500,000</u>
Multiplier	.25

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

3. In addition to the provisions of Section 1 above, the CMAR's contractual obligations under this contract will not be complete until Owner receives a Certificate of Occupancy from City of Bryant and CMAR's completion of all punchlist items. The CMAR will assure that all work performed and materials provided to the Project will be accomplished in a good and workmanlike manner and meet or exceed the specifications in the Plans. The CMAR will have the ultimate responsibility for the construction of the facilities in accordance with the Plans and have all the duties and obligations for the timely completion of the Project. In performance of the same, CMAR will specifically include, but not be limited to, the following:
 - (a.) Completion of all applications for permits necessary to complete the project and submission of the same to the appropriate city, county, state, or federal official for the issuance on such permit(s) specifically including, but not limited to, a Certificate of Occupancy issued by the City of Bryant in form and substance acceptable to Owner;
 - (b.) Provide copies of all CMAR's onsite safety procedures to Owner and distribute such safety procedures to all subcontractors and vendors who are present on the job site;
 - (c.) Receipt and review of all invoices for services or material for the Project, and submission of the same to Owner monthly no later than the end of business on the last day of each month with written recommendations for payment or other treatment as the case may be. As a material element of CMAR review of all invoices, CMAR will independently determine that all vendors and material suppliers to subcontractors have been paid in full by the appropriate subcontractor or, if unable to verify full payment, CMAR will so advise Owner and develop a procedure to assure full payment to vendors, material suppliers and subcontractors.
 - (d.) Prompt written notice to Owner of any developing or actual circumstances relating to the Project that indicate a change in timing or costs of the Project or deviation from the Plans;

- (e.) Conduct regular and periodic field verification inspections for best practices purposes to include, but not limited to, assurance of compliance with the Plans by all subcontractors and vendors and, in the case of discovery of non-compliance with the Plans, provide immediate written notification to Owner with specific details of the elements of non-compliance and identity of the subcontractor or vendor responsible.
- (f.) Promptly address and correct all items identified for correction on the post-construction punchlist;
- (g.) Remain on the job and be physically present until and including receipt of (i) the issuance of a permanent Certificate of Occupancy by City of Bryant in form and substance acceptable to Owner, and (ii) completion of the punchlist;
- (h.) Upon completion of the Project including the punch list, issue a 12-month warranty to Owner in form and substance identical to the General Contractor's 12 Month Warranty attached hereto as Exhibit B.
- (i.) In the event that any change is proposed to be made to the Plans, CMAR will immediately notify Owner in writing of the purpose, scope and extra costs/savings resulting from the proposed change in the Plans. CMAR agrees not to make any changes to the Plans until notice has been provided to the Owner.
- (j.) CMAR currently has in place, and will maintain during the term of the Project, general liability insurance in an amount of not less than \$1,000,000 per occurrence, an umbrella policy in an amount not less than \$3,000,000, worker's compensation insurance in compliance with laws of the State of Arkansas, and Commercial Auto insurance in an amount acceptable to Owner.
- (k.) The Owner must be named as Additional Insured on a Primary and Non-Contributory basis as respects to General Liability policy including both ongoing and completed operations for a minimum of the stature of repose in the State of Arkansas. Additionally, CMAR will sign a "Waiver of Subrogation" on Worker's Compensation, Commercial Auto, and General Liability policies in favor of Owner

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

- (a) Timely pay all CMAR invoices and construction-related invoices directly to the subcontractors, materialmen and vendors in the amounts recommended by the CMAR. Owner will pay such invoices on or before the later of the 10th day of each month of the Project after Owner has reviewed the invoices and recommendations of the CMAR and validated the amounts contained therein;
- (b) Upon completion of payment of CMAR and all construction-related invoices each month, Owner will provide a written report by the 15th day of the month to CMAR with itemization of the payee and amounts of all payments made for that month.
- (c) Provide a form of Lien Waiver [attached hereto as Exhibit C] to CMAR for each subcontractor, vendor, and materialman to sign at the time each submits an invoice, and the form of Lien Waiver will be acceptable to CMAR and Owner;
- (d) Promptly provide funding for payment of all application and permit fees;
- (e) Be available to CMAR for consultation on issues relating to the Project; and
- (f) Promptly review recommendations from CMAR for engagement of subcontractors, vendors, and materialmen and notify CMAR of approval or disapproval of the same.

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

- (a) CMAR hereby represents and warrants to Owner that (i) CMAR is qualified to do business in the State of Arkansas, (ii) CMAR maintains, and will keep current during the Project, all necessary licenses to function as a general contractor in the State of Arkansas and City of Bryant, (iii) CMAR has in place currently, and will continue to have in place during the Project, general liability insurance of not less than \$1,000,000 per occurrence with \$3,000,000 aggregate and workers compensation insurance, or exemption therefrom, for State of Arkansas and will provide certificates of the same to Owner naming Owner as an additional insured, and (iv) CMAR is familiar with the practices, procedures, reporting, and timelines imposed by Owner for the Project.
- (b) Owner hereby represents and warrants to CMAR that (i) Owner is a duly incorporated city of the first class in the State of Arkansas, (ii) the Bryant City Council has approved this contract and Owner has all reasonable and necessary authority to enter and perform all its obligations under this contract, and (iii) Owner has, or on a date specific will have, adequate funds on hand to pay the costs it will be obligated to pay under this contract and, upon request of CMAR, Owner will verify availability of funds and grant CMAR access to such funds to pay costs of this project.

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

7. Termination.

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

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

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

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

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

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

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

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

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

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

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

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

OWNER:

CITY OF BRYANT, ARKANSAS

By: _____
Its Mayor

Date: _____, 2024

**SEPARATE SIGNATURE PAGE
FOR**

WILSON GLOBAL GENERAL CONTRACTING, LLC
CONSTRUCTION MANAGER AT RISK CONTRACT WITH CITY OF BRYANT

CMAR:

WILSON GLOBAL GENERAL CONTRACTING, LLC

By: _____
Its President/Manager

Date: _____, 2024

SCHEDULE OF EXHIBITS

Exhibit A – Force Majeure

Exhibit B – Form of Warranty

Exhibit C – Form of Lien Waiver

EXHIBIT A

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

EXHIBIT B

[to be placed on letterhead of
Wilson Global General Contracting, LLC]

_____, 202__

City of Bryant
ATTN: Mayor Chris Treat

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

Dear Mayor:

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

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

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

EFFECTIVE this ____ day of _____, 202__.

Its Duly Authorized Officer

EXHIBIT C

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

Development: Outdoor Entertainment Venue - Bryant, AR

Location: _____

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

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

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

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

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

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

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

Its: _____
Owner, Duly Authorized Officer or Partner

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

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