

## POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT NO. 1

### REGULAR MEETING

November 20, 2025, at 11:00 a.m.

ANCHOR LOCATION: 1201 E. Wilmington Ave, Suite 115, Salt Lake City, UT 84106

*This meeting is open to the public and may be joined using the following information:*

LINK: [Join the meeting now](#)

MEETING ID: 236 721 302 280 3

PASSCODE: rY3jc9uV

DIAL IN: 720-721-3140

PHONE CONFERENCE ID: 435 163 192#

<b>Trustees</b>	<b>Terms</b>
Jay Hardy - Chair	Term from June 28, 2024, to 4 years from appointment
Robert Booth – Treasurer/Vice Chair	Term from June 28, 2024, to 6 years from appointment
Zachary Clegg – Clerk/Secretary	Term from June 28, 2024, to 6 years from appointment
Trever Nicoll - Trustee	Term from June 28, 2024, to 4 years from appointment
Michael Ambre – Trustee	Term from June 28, 2024, to 6 years from appointment

### **NOTICE OF MEETING AND AGENDA**

1. Call to Order/Declaration of Quorum.
2. Preliminary Action Items.
  - a. Approve Agenda.
3. Public Comment – Members of the public may express their views to the Board on matters that affect the District. Comments will be limited to three (3) minutes.
4. Action Items.
  - a. Approve Draft Minutes from October 16, 2025, Regular Meeting. **(Enclosure)**
  - b. Approve First Additional Services Addendum with Arcadis, Inc. **(Enclosure)**
  - c. Approve Contract with Chapman Parking. **(Enclosure)**
  - d. Rescind Approval of Contract with Dunn Associates, Inc. **(Enclosure)**
  - e. Ratification of Second Additional Services Addendum with Rios, Inc. **(Enclosure)**
  - f. Ratification of Pre-Opening Services and Management Agreement with Global Spectrum, L.P. d/b/a Oak View Group. **(Enclosure)**
  - g. Tentative Budgets.

- i. Approve Tentative Amended Operating and Capital Budget for 2025 and Set Public Hearing Date to take Public Comment on Same.  
**(To be distributed under a separate cover)**
  - ii. Approve Tentative Operating and Capital Budget for 2026 and Set Public Hearing Date to take Public Comment on Same.  
**(To be distributed under a separate cover)**
- 5. Discussion Items.
- 6. Administrative Non-Action Items.
- 7. Adjourn.

## RECORD OF PROCEEDINGS

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### MINUTES OF THE MEETING OF THE POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT NO. 1

HELD  
October 16, 2025

The Meeting of Point Phase 1 Public Infrastructure District No. 1 was held at the offices of the Colmena Group, 1201 E. Wilmington Ave, Suite 115, Salt Lake City, UT 84106 and via MS Teams and Teleconference at 11:00 a.m.

#### ATTENDANCE

##### Trustees in Attendance:

Jay Hardy – Chair  
Zachary Clegg – Clerk/Secretary  
Trevor Nicoll – Trustee

##### Trustees Absent, and Excused:

Robert Booth – Treasurer/Vice Chair  
Michael Ambre – Trustee

##### Also in Attendance:

Megan Murphy, Esq., and Betsy Russon, Esq.; WBA, PC.  
Shannon McEvoy, Jason Woolard, Brendan Campbell, and Jake Downing; Pinnacle Consulting Group, Inc.  
Chase Hanusa; The Connexion Group.

#### ADMINISTRATIVE ITEMS

Call to Order: The Meeting of the Board of Trustees of The Point Phase 1 Public Infrastructure District No. 1 was called to order by Mr. McEvoy.

Declaration of Quorum: Mr. McEvoy noted that a quorum was present, with three out of five Trustees in attendance.

Approval of Agenda: The Board considered the approval of the agenda. Following review and discussion, upon a motion duly made by Mr. Hardy, seconded by Mr. Nicoll, and upon vote, unanimously carried, it was

**RESOLVED** to approve the agenda, as presented.

#### PUBLIC COMMENT

There was no public comment to come before the Board.

## RECORD OF PROCEEDINGS

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### ACTION ITEMS

Minutes – September 18, 2025, Regular Meeting: Mr. McEvoy presented the Minutes of the September 18, 2025, Regular Meeting to the Board. Upon a motion duly made by Mr. Clegg, seconded by Mr. Hardy, and upon vote, unanimously carried, it was

**RESOLVED** to approve the Minutes of the September 18, 2025, Regular Meeting, as presented.

Proposal for Structural Engineering Services with Dunn Associates, Inc: Ms. Murphy presented the Proposal for Structural Engineering Services with Dunn Associates, Inc., to the Board and answered questions. Following review and discussion, upon a motion duly made by Mr. Hardy, seconded by Mr. Nicoll, and upon vote, unanimously carried, it was

**RESOLVED** to approve the Proposal for Structural Engineering Services with Dunn Associates, Inc., as presented.

Service Proposal #06 with Rios for Structural Design Services [Promenade]: Ms. Murphy presented the Service Proposal #06 with Rios for Structural Design Services [Promenade] to the Board and answered questions. Following review and discussion, upon a motion duly made by Mr. Nicoll, seconded by Mr. Hardy, and upon vote, unanimously carried, it was

**RESOLVED** to approve the Service Proposal #06 with Rios for Structural Design Services [Promenade], subject to final review by Aric Yarberry of Lincoln Property Company.

Second Additional Services Addendum with Kimley-Horn and Associates, Inc: Ms. Murphy presented the Second Additional Services Addendum with Kimley-Horn and Associates, Inc., to the Board and answered questions. Following review and discussion, upon a motion duly made by Mr. Hardy, seconded by Mr. Nicoll, and upon vote, unanimously carried, it was

**RESOLVED** to approve the Second Additional Services Addendum with Kimley-Horn and Associates, Inc, as presented.

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## RECORD OF PROCEEDINGS

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### ADMINISTRATIVE NON-ACTION ITEMS

Mr. Hardy discussed with the Board the District's current RFP and RFQ processes and expressed his concerns that the District did not have processes that aligned with the processes of the State of Utah. Mr. Recommended that the District focus its emphasis on mirroring the State's process going forward. The Board and Ms. Murphy acknowledged the concerns and agreed to mirror the States RFP and RFQ processes where applicable. Mr. Hardy noted Mr. Ambre's experience in the State's process as a resource to the District.

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### DISCUSSION ITEMS

Mr. McEvoy discussed with the Board the 2025 budget amendment and 2026 budget timeline and process as it aligns with the District's meeting schedule.

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### ADJOURNMENT

There being no further business to come before the Board, upon a motion duly made by Mr. Hardy, seconded by Mr. Nicoll, and upon vote, unanimously carried, the meeting was adjourned.

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The foregoing constitutes a true and correct copy of the minutes of the above-referenced meeting.

Respectfully Submitted,

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Jake Downing, Recording Secretary for the Meeting.

## FIRST ADDITIONAL SERVICES ADDENDUM

**THIS FIRST ADDITIONAL SERVICES ADDENDUM** (this “Addendum”) is entered into as of \_\_\_\_\_, 2025 (“Addendum Effective Date”), by and between POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Utah (“Client”), and ARCADIS INC., a Delaware corporation (“Architect”), with reference to the following recitals:

A. WHEREAS, CLW POINT PARTNERS, LLC, a Delaware limited liability company (“CLW”) and Architect entered into that certain Standard Form of Agreement Between Owner and Architect for a Complex Project (AIA Document B103- 2017) dated as of August 26, 2024 (the “Agreement”) relating to that certain real property commonly known as The Point – Pavilions (the “Property”). All initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

B. WHEREAS, CLW, the Client, and Architect entered into that certain Assignment and Assumption of Architect Agreement dated July 29, 2025 whereby CLW assigned its interest in the Agreement to the Client.

C. WHEREAS, pursuant to Article 4 of the Agreement, Client desires that Architect provide certain additional services at the Property, and Architect desires to provide such additional services pursuant to this Addendum.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to amend the Agreement as follows:

1. **Term.** The term of this Addendum (“Addendum Term”) shall commence upon the Addendum Effective Date and automatically expire upon the earlier of: (i) the completion of the Additional Services (as defined below), or (ii) the termination of either the Agreement or this Addendum by Client. Client may terminate this Addendum without cause, and at no additional cost, upon thirty (30) days prior written notice to Architect.

2. **Additional Services.** Beginning on the Addendum Effective Date and continuing through the Addendum Term, Architect agrees to provide the additional services as described in Exhibit A attached hereto (“Additional Services”). In consideration for the Additional Services, Client agrees to pay Architect the sum set forth in Exhibit A. The terms and conditions of this Addendum shall prevail over any conflicts with Exhibit A.

3. **Effect of this Addendum.** The parties acknowledge and agree that except to the extent specified above, the terms and conditions of the Agreement generally are intended to apply to the Additional Services and this Addendum. Except as amended and/or modified by this Addendum, the Agreement is hereby ratified and confirmed and all other terms of the Agreement shall remain in full force and effect, unaltered and unchanged by this Addendum.

4. **Counterparts.** This Addendum may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom

without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this Addendum attached thereto.

*[Signatures on following page]*

**IN WITNESS WHEREOF**, Client and Architect have caused their duly authorized representatives to execute this Addendum as of the date first above written.

CLIENT:

POINT PHASE 1 PUBLIC INFRASTRUCTURE  
DISTRICT NO. 1

a quasi-municipal corporation and political subdivision of the  
State of Utah

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ARCHITECT:

ARCADIS INC., a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**Exhibit A**

## AUTHORIZATION FOR ADDITIONAL SERVICES

**CLIENT:** CLW Point Partners LLC  
c/o Lincoln Property Company  
390 N Pacific Coast Hwy  
Suite 3100  
El Segundo, CA 90245

**AAS NO:** Pavilions 001

**DATE INITIATED:** 9/15/2025

**BASE PROJECT NO:** 30254979  
**PROJECT:** The Point – Pavilions

Arcadis Inc.  
333 South Hope Street, C200  
Los Angeles, CA 90071  
United States  
Phone: 213 633 1100  
Fax: 888 492 2762  
[www.arcadis.com](http://www.arcadis.com)

This Authorization for Additional Services (“AAS”) constitutes an approval for Arcadis Inc. to perform the additional services as set forth below and, when applicable, serves as a scope and fee amendment to our agreement dated 4/11/2025 for the above referenced project (“Agreement”).

### Exhibit A

#### Additional Services Proposal Pavilions #01 – Spectrum Additional Work

#### SERVICES

- Spectrum has provided lump sum services noted in attached consultant proposal, including the following:
  1. R&O Related Work – Previous page turns, incorporating previous R&O comments,
  2. additional control information requested by R&O
- Spectrum will provide the following services at an hourly note to exceed basis as noted below:
  1. Incorporating latest R&O comments & permit comments \$3,450
  2. Finalizing R&O comments \$2,500
  3. Incorporating plan check corrections \$3,900

#### SCHEDULE

Lump sum work noted above as been complete. Hourly Work to be completed following authorization of AAS 001.

#### COMPENSATION

Client agrees to the following fee: \$5,960 Lump Sum + \$9,850 HNTE + reimbursable expenses per the terms of the above referenced Agreement.

Except as set forth herein, the services performed under this AAS are governed by the terms and conditions of the Agreement.

Attachments: Spectrum Proposal


CLW Point Partners LLC

9/15/25

Agreed to and accepted by:

Arcadis Inc.

CLW Point Partners

  
\_\_\_\_\_  
Signature\_\_\_\_\_  
SignatureJames Mellor, Principal  
\_\_\_\_\_  
Printed Name and Title\_\_\_\_\_  
Printed Name and Title9/15/25  
\_\_\_\_\_  
Date\_\_\_\_\_  
Date  
\_\_\_\_\_  
SignatureHouman Attarha, Associate Principal  
\_\_\_\_\_  
Printed Name and Title9/15/25  
\_\_\_\_\_  
Date

Date

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**Additional Service Fee Proposal For:****THE POINT - PAVILIONS**

ARCADIS  
Grace Lennon, AIA, Senior Associate  
333 South Hope Street C200, Los Angeles, CA 90071  
213-633-1100  
grace.lennon@arcadis.com

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**October 6, 2025****Design Agreement between Spectrum and “the ARCADIS**, hereinafter called the “Client”.

Upon Client’s acceptance, this proposal shall be incorporated into and amend the original design Agreement dated 8/20/2024.

The original fee proposal Sum was: **\$30,280**.

The original and add scope fee proposal sum was: **\$42,280**.

The fee will be **increased** by this Additional Service in the amount of **\$5,960 (without hourly NTE work)** as shown in the table below.

The fee may be **increased** by this Additional Service in the amount of **\$9,850** as shown in the table below.

**Additional Service Fee:**

Engineering Service	Fee
R&O Related Work – Previous page turns, incorporating previous R&O comments, additional control information requested by R&O	<b>\$5,960</b>
Hourly Not to Exceed – Incorporating latest R&O comments & permit comments	<b>\$3,450</b>
Hourly Not to Exceed – Finalizing R&O comments	<b>\$2,500</b>
Hourly Not to Exceed – Incorporating plan check corrections	<b>\$3,900</b>
<b>Total Proposed Fee</b>	<b>\$15,810</b>

The new fee proposal fixed fee Sum including this Additional Service will be **\$48,240**

The new fee proposal fixed fee Sum including this Additional Service will be **\$58,090 (If entire hourly NTE is billed)**

The time will be **increased** by ZERO (0) days.

## POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT NO. 1 CONTRACT

**Name of Contractor/Provider/Consultant:** Chapman Parking

**Title of Agreement/Contract:** Parking Consulting & Peer Review

**Agreement/Contract Date:** October 15, 2025

This Contract (this “Agreement”) is made by and between Point Phase 1 Public Infrastructure District No. 1, a quasi-municipal corporation and political subdivision of the State of Utah (the “District”) and the above-referenced contractor, provider, or other consultant (the “Contractor”).

Introduction. The District and the Contractor desire to enter into this Contract to be effective as of the date above.

1. Scope of Services. The Contractor shall perform the services set forth in **Exhibit A** (the “Services”): (a) in a first-class manner, to the satisfaction of the District, using the degree of skill and knowledge customarily employed by other professionals performing similar services; (b) within the time period specified in this Agreement; (c) in such a manner as to minimize any annoyance, interference, or disruption to the residents, tenants, occupants, and invitees within the District; and (d) in compliance with all applicable federal, state, county, and local or municipal statutes, ordinances, and regulations.

2. Compensation of Services. The District shall provide compensation for the Services provided under this Agreement in accordance with the compensation schedule attached hereto as **Exhibit A**. The Contractor shall be responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as provided herein, unless said reimbursement or compensation is approved in writing by the District in advance of such expenses being incurred. Exhibit A may take any form. In the event of any conflict between terms set forth in the body of this Agreement and terms set forth in Exhibit A, the terms in the body of this Agreement shall govern.

3. Repairs/Claims. The Contractor shall immediately notify the District in writing of any and all damage caused by the Contractor to District property and that of third parties. The Contractor shall promptly repair or, at the District’s option, reimburse the District for the repair of any damage to District property caused by the Contractor or its employees, agents, or equipment.

4. Independent Contractor. The Contractor is an independent contractor, and nothing herein shall constitute or designate the Contractor or any of its employees or agents as employees or agents of the District. **The Contractor is not entitled to receive workers’ compensation benefits or unemployment insurance benefits from the District and the District will not provide any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, contractors, agents, or representatives. The Contractor is obligated to pay federal and state income tax on any moneys paid pursuant to this Agreement.** The Contractor shall have full power and authority to select the means, manner, and method of performing its duties under this Agreement, without detailed control or direction from the District, and shall be responsible for supervising its own employees or subcontractors.

5. Warranty and Permits. The Contractor guarantees and warrants that all workmanship, materials, and equipment furnished, installed, or performed for the accomplishment of the Services (collectively, the “Work”) will be of good quality and new, unless otherwise required or permitted by this Agreement. The Contractor further warrants that the Work will conform to all requirements of this Agreement and the applicable building code and all other applicable laws, ordinances, codes, rules, and regulations of any governmental authorities having jurisdiction over the Work. The Contractor hereby warrants the Work for a period of one (1) year from the date of completion and initial acceptance of the Work. The Contractor will immediately correct or replace any Work that is defective or not conforming to this Agreement, at its sole expense, to the reasonable satisfaction of the District. The Contractor’s guarantees and warranties shall in all

cases survive termination of this Agreement. This warranty shall be enforceable by the District and its successors and assigns.

6. Contractor's Insurance. The Contractor shall acquire and maintain, at its sole cost and expense, during the entire term of the Agreement, the following insurance coverage: (i) Standard worker's compensation and employer's liability insurance covering all employees of Contractor involved with the performance of the Services, with policy amounts and coverage in compliance with law; (ii) Commercial General Liability Insurance with minimum limits of liability of not less than \$2,000,000 per occurrence for bodily injury and property damage liability; \$2,000,000 designated location, general aggregate; and \$1,000,000 umbrella; (iii) Comprehensive Automobile Liability Insurance covering all owned, non-owned, and hired automobiles used in connection with the performance of the Services, with limits of liability of not less than \$1,000,000 combined single limit bodily injury and property damage; and (iv) any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement. All coverage provided pursuant to this Agreement shall be written as primary policies, not contributing with and not supplemental to any coverage that the District may carry, and any insurance maintained by the District shall be considered excess. The Commercial General Liability and Comprehensive Automobile Liability Insurance policies will be endorsed to name the District as an additional insured. The Contractor's failure to purchase the required insurance shall not serve to release it from any obligations, nor shall the purchase of the required insurance serve to limit the Contractor's liability. The Contractor shall be responsible for the payment of any deductibles on issued policies.

7. Indemnification. The Contractor shall defend, indemnify, and hold harmless the District and each of its trustees, directors, officers, contractors, employees, agents, and consultants, from and against any and all claims, demands, losses, liabilities, actions, lawsuits, damages, and expenses, including legal expenses and attorneys' fees, arising [directly or indirectly] out of the errors or omissions, negligence, willful misconduct, or any criminal or tortious act or omission of the Contractor or any of its subcontractors, officers, agents, or employees. The Contractor is not obligated to indemnify the District for the District's own negligence. This indemnification obligation will not be limited in any way by any limitation on the amount or types of damages, compensation, or benefits payable by or for the Contractor under workers' compensation acts, disability acts, or other employee benefit acts. Such indemnity shall survive the expiration or termination of this Agreement. To the extent the District is or may be obligated to indemnify, defend, or hold Contractor harmless under the terms of the Agreement, any such indemnification obligation shall arise only to the extent permitted by applicable law and shall be limited solely to sums lawfully appropriated for such purpose in accordance with this Agreement.

8. Termination. Either party may terminate this Agreement for cause or for convenience upon ten (10) days' prior written notice to the other party. If the Agreement is terminated, the District shall compensate the Contractor for all Services satisfactorily performed prior to the designated termination date, including reimbursable expenses due. The District shall make this payment in the normal course of business.

9. Governing Law / Disputes. This Agreement and all claims or controversies arising out of or relating to this Agreement shall be governed and construed in accordance with the law of the State of Utah, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Utah. Venue for all actions shall be in the District Court in and for the county in which the District is located.

10. Subject to Annual Appropriation and Budget. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. Pursuant to Utah Code § 63G-6a-1204, the Parties hereby agree that this contract may not continue or be renewed for any year after the first year of the multiyear contract if adequate funds are not appropriated or otherwise available to continue or renew the contract. The obligations of the District under this Agreement are subject to annual budgeting and appropriations, and the Contractor expressly understands and agrees that the decision whether or not to budget and appropriate funds is within the discretion of the District's governing body, and the obligations of the District shall extend only to monies appropriated for the purposes of this Agreement and shall not constitute a

mandatory charge, requirement, or liability in any ensuing fiscal year beyond the then-current fiscal year. The District and Contractor understand and intend that the District's obligation to make payments and pay other amounts due under the Agreement shall constitute a current expense and shall not in any way be construed to be a debt in contravention of any applicable constitutional or statutory limitations or requirements.

11. Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the District, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the District and, in particular, governmental immunity afforded or available to the District pursuant to the Governmental Immunity Act of Utah, Utah Code §§ 63G-7-101, *et seq.*

12. Remedies. To the extent the Contractor's remedies for a District default under the Agreement include any right to accelerate amounts to become due under the Agreement, such acceleration shall be limited solely to sums lawfully appropriated for such purpose and shall further be limited to amounts to become due during the District's then-current fiscal period.

13. Negotiated Provisions. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being acknowledged that each party has contributed substantially and materially to the preparation of this Agreement.

14. Severability. If any portion of this Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid, or unenforceable provision so that the resulting reformed provision is legal, valid, and enforceable.

15. Miscellaneous. This Agreement constitutes the entire agreement between the parties with respect to the matters addressed herein, and shall supersede all prior oral or written negotiations, understandings, and commitments.

16. Counterpart Execution. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

By the signature of its representative below, each party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

<b>District:</b>  By: _____  Name: _____  Title: _____	<b>Contractor:</b>  By: _____  Name: _____  Title: _____
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**Exhibit A**  
**Scope of Services/Compensation Schedule**

**Project Team**

Owner: PID No.1

Arch: Gensler

Civil: Kimley Horn

Landscape: RIOS

**Project Background**

- The District has a proposed surface parking lot to be built north of our 5,000-seat event venue.
- The surface lot includes approximately 236 parking stalls and will serve near-term needs for venue drop-off and VIP parking, with overflow parking managed through offsite lots.
- In the long-term, the District intends to construct a four-bay, 5-6-level parking garage in the same location as the current surface lot.

**Scope of Services**

- The Contractor shall provide peer review of surface lot design and 100% Schematic Design plans for functionality, user experience, and efficiency, including analysis of:
  - Site circulation
  - Safety and accessibility for drop-off and VIP use
  - Queuing, ingress/egress, and traffic operations during events
- The Contractor will review the planned garage footprint and future development, with a focus on "future-proofing," ensuring that the current phase does not preclude or complicate the future garage construction.
- General high-level advice and recommendations on parking and mobility best practices related to both immediate and future phases.

**Compensation**

- \$X



## POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT NO. 1 CONTRACT

**Name of Contractor/Provider/Consultant:** DUNN ASSOCIATES, INC.

**Title of Agreement/Contract:** Proposal for Structural Engineering Services

**Agreement/Contract Date:** October 16, 2025

This Contract (this “Agreement”) is made by and between Point Phase 1 Public Infrastructure District No. 1, a political subdivision of the State of Utah (the “District”) and the above-referenced contractor, provider, or other consultant (the “Contractor”).

Introduction. The District and the Contractor desire to enter into this Contract to be effective as of the date above.

1. Scope of Services. The Contractor shall perform the services set forth in **Exhibit A** (the “Services”): (a) in a first-class manner, to the satisfaction of the District, using the degree of skill and knowledge customarily employed by other professionals performing similar services; (b) within the time period specified in this Agreement; (c) in such a manner as to minimize any annoyance, interference, or disruption to the residents, tenants, occupants, and invitees within the District; and (d) in compliance with all applicable federal, state, county, and local or municipal statutes, ordinances, and regulations.

2. Compensation of Services. The District shall provide compensation for the Services provided under this Agreement in accordance with the compensation schedule attached hereto as **Exhibit A**. The Contractor shall be responsible for all expenses it incurs in performance of this Agreement and shall not be entitled to any reimbursement or compensation except as provided herein, unless said reimbursement or compensation is approved in writing by the District in advance of such expenses being incurred. Exhibit A may take any form. In the event of any conflict between terms set forth in the body of this Agreement and terms set forth in Exhibit A, the terms in the body of this Agreement shall govern.

3. Repairs/Claims. The Contractor shall immediately notify the District in writing of any and all damage caused by the Contractor to District property and that of third parties. The Contractor shall promptly repair or, at the District’s option, reimburse the District for the repair of any damage to District property caused by the Contractor or its employees, agents, or equipment.

4. Independent Contractor. The Contractor is an independent contractor, and nothing herein shall constitute or designate the Contractor or any of its employees or agents as employees or agents of the District. **The Contractor is not entitled to receive workers’ compensation benefits or unemployment insurance benefits from the District and the District will not provide any insurance coverage or employment benefits of any kind or type to or for the Contractor or its employees, sub-consultants, contractors, agents, or representatives. The Contractor is obligated to pay federal and state income tax on any moneys paid pursuant to this Agreement.** The Contractor shall have full power and authority to select the means, manner, and method of performing its duties under this Agreement, without detailed control or direction from the District, and shall be responsible for supervising its own employees or subcontractors.

5. Warranty and Permits. The Contractor guarantees and warrants that all workmanship, materials, and equipment furnished, installed, or performed for the accomplishment of the Services (collectively, the “Work”) will be of good quality and new, unless otherwise required or permitted by this Agreement. The Contractor further warrants that the Work will conform to all requirements of this Agreement and the applicable building code and all other applicable laws, ordinances, codes, rules, and regulations of any governmental authorities having jurisdiction over the Work. The Contractor hereby warrants the Work for a period of one (1) year from the date of completion and initial acceptance of the Work. The Contractor will immediately correct or replace any Work that is defective or not conforming to this Agreement, at its sole expense, to the reasonable satisfaction of the District. The Contractor’s guarantees and warranties shall in all

cases survive termination of this Agreement. This warranty shall be enforceable by the District and its successors and assigns.

6. Contractor's Insurance. The Contractor shall acquire and maintain, at its sole cost and expense, during the entire term of the Agreement, the following insurance coverage: (i) Standard worker's compensation and employer's liability insurance covering all employees of Contractor involved with the performance of the Services, with policy amounts and coverage in compliance with law; (ii) Commercial General Liability Insurance with minimum limits of liability of not less than \$2,000,000 per occurrence for bodily injury and property damage liability; \$2,000,000 designated location, general aggregate; and \$1,000,000 umbrella; (iii) Comprehensive Automobile Liability Insurance covering all owned, non-owned, and hired automobiles used in connection with the performance of the Services, with limits of liability of not less than \$1,000,000 combined single limit bodily injury and property damage; and (iv) any other insurance commonly used by contractors for services of the type to be performed pursuant to this Agreement. All coverage provided pursuant to this Agreement shall be written as primary policies, not contributing with and not supplemental to any coverage that the District may carry, and any insurance maintained by the District shall be considered excess. The Commercial General Liability and Comprehensive Automobile Liability Insurance policies will be endorsed to name the District as an additional insured. The Contractor's failure to purchase the required insurance shall not serve to release it from any obligations, nor shall the purchase of the required insurance serve to limit the Contractor's liability. The Contractor shall be responsible for the payment of any deductibles on issued policies.

7. Indemnification. The Contractor shall defend, indemnify, and hold harmless the District and each of its trustees, directors, officers, contractors, employees, agents, and consultants, from and against any and all claims, demands, losses, liabilities, actions, lawsuits, damages, and expenses, including legal expenses and attorneys' fees, arising [directly or indirectly] out of the errors or omissions, negligence, willful misconduct, or any criminal or tortious act or omission of the Contractor or any of its subcontractors, officers, agents, or employees. The Contractor is not obligated to indemnify the District for the District's own negligence. This indemnification obligation will not be limited in any way by any limitation on the amount or types of damages, compensation, or benefits payable by or for the Contractor under workers' compensation acts, disability acts, or other employee benefit acts. Such indemnity shall survive the expiration or termination of this Agreement. To the extent the District is or may be obligated to indemnify, defend, or hold Contractor harmless under the terms of the Agreement, any such indemnification obligation shall arise only to the extent permitted by applicable law and shall be limited solely to sums lawfully appropriated for such purpose in accordance with this Agreement.

8. Termination. Either party may terminate this Agreement for cause or for convenience upon ten (10) days' prior written notice to the other party. If the Agreement is terminated, the District shall compensate the Contractor for all Services satisfactorily performed prior to the designated termination date, including reimbursable expenses due. The District shall make this payment in the normal course of business.

9. Governing Law / Disputes. This Agreement and all claims or controversies arising out of or relating to this Agreement shall be governed and construed in accordance with the law of the State of Utah, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Utah. Venue for all actions shall be in the District Court in and for the county in which the District is located.

10. Subject to Annual Appropriation and Budget. The District does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. Pursuant to Utah Code § 63G-6a-1204, the Parties hereby agree that this contract may not continue or be renewed for any year after the first year of the multiyear contract if adequate funds are not appropriated or otherwise available to continue or renew the contract. The obligations of the District under this Agreement are subject to annual budgeting and appropriations, and the Contractor expressly understands and agrees that the decision whether or not to budget and appropriate funds is within the discretion of the District's governing body, and the obligations of the District shall extend only to monies appropriated for the purposes of this Agreement and shall not constitute a

mandatory charge, requirement, or liability in any ensuing fiscal year beyond the then-current fiscal year. The District and Contractor understand and intend that the District's obligation to make payments and pay other amounts due under the Agreement shall constitute a current expense and shall not in any way be construed to be a debt in contravention of any applicable constitutional or statutory limitations or requirements.

11. Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the District, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the District and, in particular, governmental immunity afforded or available to the District pursuant to the Governmental Immunity Act of Utah, Utah Code §§ 63G-7-101, *et seq.*

12. Remedies. To the extent the Contractor's remedies for a District default under the Agreement include any right to accelerate amounts to become due under the Agreement, such acceleration shall be limited solely to sums lawfully appropriated for such purpose and shall further be limited to amounts to become due during the District's then-current fiscal period.

13. Negotiated Provisions. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being acknowledged that each party has contributed substantially and materially to the preparation of this Agreement.

14. Severability. If any portion of this Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid, or unenforceable provision so that the resulting reformed provision is legal, valid, and enforceable.

15. Miscellaneous. This Agreement constitutes the entire agreement between the parties with respect to the matters addressed herein, and shall supersede all prior oral or written negotiations, understandings, and commitments.

16. Counterpart Execution. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

By the signature of its representative below, each party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

<b>District:</b>  By: _____  Name: _____  Title: _____	<b>Contractor:</b>  By: _____  Name: _____  Title: _____
--	--

**Exhibit A**  
Scope of Services/Compensation Schedule



**DUNN ASSOCIATES, INC**  
Consulting Structural Engineers

September 3, 2025

RIOS Boulder  
1980 8th Street  
Boulder, CO 80302

## PROPOSAL FOR STRUCTURAL ENGINEERING SERVICES

Project: 250277 – The Point Promenade – Landscape Site Elements  
Draper, Utah

Dear Ryan:

We appreciate the opportunity to assist with the structural design of the architectural site elements outlined in the referenced project. Based on our previous discussions, we understand that our structural input will focus on the sizing and reinforcement of concrete elements identified in the drawings attached to the end of this proposal.

### Scope of Work

We propose to provide structural engineering services for the design of the following architectural site elements. Our scope includes providing redlines of structural requirements on architectural details, preparation of drawings (where indicated), and any required calculations to support the design intent. Design Elements Included:

1. **Custom Bench Seating Walls**
  - Structural design of seat walls
  - Foundation design
2. **Feature Bench Slabs**
  - Slab reinforcing layout and detailing
3. **Feature Fire Feature**
  - Structural support and integration with architectural design
4. **Fire Pit**
  - Structural detailing and foundation design
5. **Feature Boulder Footing**
  - Design of footing to support architectural boulders
6. **Boulder Bollard Footing**
  - Structural design of footings for boulder-style bollards
7. **Water Feature Vault**
  - Coordination with water feature designer and structural design of a subgrade vault for water feature equipment.
  - Preparation of structural drawings for the water feature vault, including notes, plans, sections, and details necessary for construction

### Fee Structure

This proposal is based on a **time and expense** agreement with the following terms:

- **Minimum Fee:** \$3,500
- **Not-to-Exceed Amount:** \$6,000
- **Hourly Rate:** See rate table Appendix A.
- Additional services beyond the base scope (e.g., further rounds of city comments or design revisions) will be billed hourly and coordinated with the client prior to commencement.



#### Assumptions

- Architectural drawings provided are final or near-final and accurately reflect design intent.
- Geotechnical information (e.g., soil bearing capacity) will be provided by others and is assumed to be sufficient for standard shallow foundations.
- Coordination with other disciplines (e.g., MEP, Civil, Water Feature Designer) will be handled by the client or architect.
- Review and response to one round of comments from the client or permitting authority is included.

#### Exclusions

The following items are **excluded** from this proposal unless specifically requested and agreed upon in writing:

- Civil or geotechnical engineering services, including soil reports or site grading.
- Structural design of elements not listed in the scope above including aluminum frames for bench seating area and attachments.
- Construction administration services (e.g., site visits, RFIs, submittal reviews) unless specifically requested and authorized.
- Design of utilities, drainage, or civil engineering components.
- Seismic analysis or design beyond standard code requirements.
- Any redesign required due to changes in architectural layout after structural design has commenced.

We thank you for the opportunity to provide you with this proposal. We have made our best attempt to determine our scope for this project. However, if we have misinterpreted this scope in any way, please let us know so adjustments can be made. Direction to proceed will constitute acceptance of this proposal. A formal contract will follow as the structural fee is finalized. Thank you very much for your consideration.

Respectfully yours,

DUNN ASSOCIATES, INC.

Tait A. Ketcham, SE  
Principal, President

DUNN ASSOCIATES, INC.

David R. Dunn, SE  
Principal, CEO

#### Appendix A – Hourly Rate Schedule

The following hourly rates apply to services provided under this agreement for any work performed outside the base scope or beyond the not-to-exceed minimum amount:

Depositions & Court Appearances .....	\$250/hr.
Principal/Chief Engineer/Director .....	\$195/hr.
Senior Associate.....	\$185/hr.
Associate .....	\$170/hr.
Project Manager .....	\$150/hr.
Project Engineer.....	\$125/hr.
Engineer-in-Training .....	\$110/hr.
Senior Drafter .....	\$100/hr.
Drafter .....	\$70/hr.
Intern .....	\$70/hr.
Administration.....	\$50/hr.



1° = 1'-0" **6**

- 



- 1" = 1'-0" (3)

- 1" = 1'-0" (2)

- 1" = 1'-0"







NOTE: IMAGE FOR CONCEPTUAL REFERENCE ONLY, TO ILLUSTRATIVE DESIGN INTENT



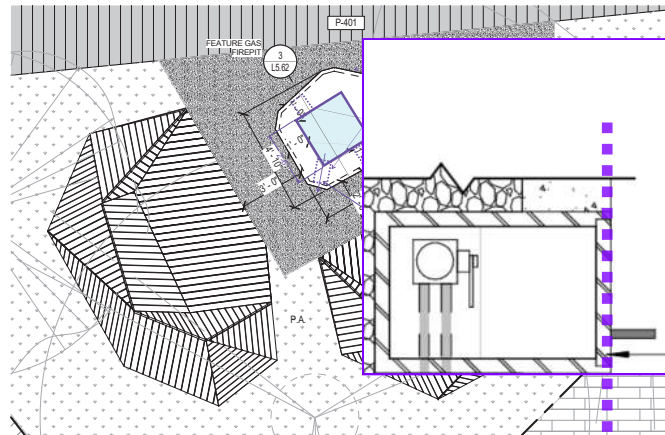
DASH IN THE SECTINO OF THE GROVE  
BENCH, PUT TRANSFORMER +  
IN-GRADE VAULT IN SLAB

: IMAGE FOR CONCEPTUAL REFERENCE ONLY, TO ILLUSTRATIVE DESIGN INTENT



will the rep provide additional information for this?

software + controls

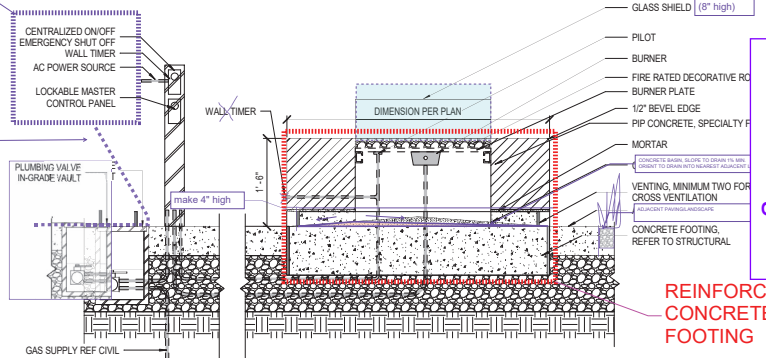
A person with grey hair, wearing a dark jacket and blue jeans, is sitting on a white, curved bench. To their right is a large, glowing orange sphere with a textured, flame-like surface. The background is a bright, overexposed outdoor area with a white fence and some greenery.

PLUMBING VALVE  
IN-GRADE VAULT

FEATURE GAS FIREPIT  $36" = 10'$  4

will the rep provide additional information for this?

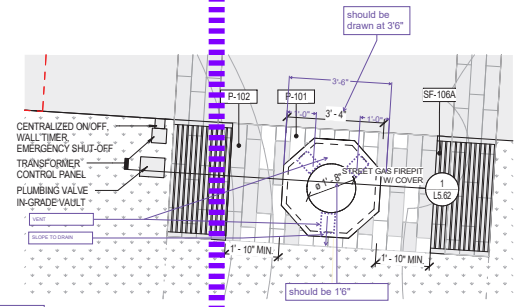
software + controls



make 4" high

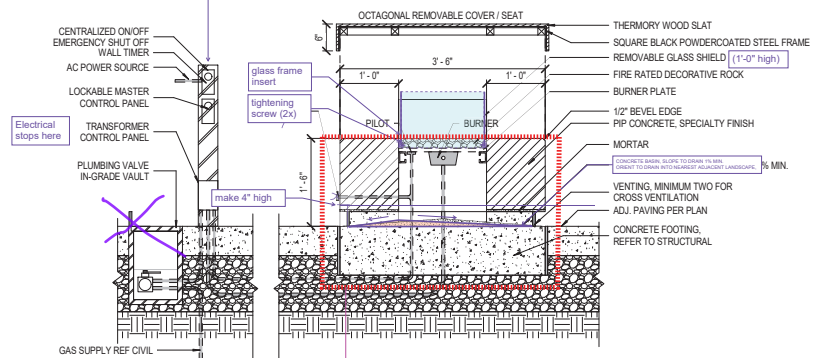
## REINFORCING / SIZING OF CONCRETE FIXTURE AND FOOTING

FEATURE GAS FIREPIT



STREET GAS FIREPIT W/ COVER

Owned/Installed/Managed by PID  
Control system.  
Preferred.  
Regional control system.  
Control system.



## REINFORCING / SIZING OF CONCRETE FIXTURE AND FOOTING

STREET GAS FIREPIT W/ COVER

PROJECT:

## POINT OF THE MOUNTAIN PROMENADE

SUBMITTAL TYPE: PERMIT SET  
SUBMITTAL DATE: 03/14/25

REVISION SCHEDULE

[illegible]

DRAWN BY:		

CHK'D BY:

COPYRIGHT:

SHEET TITLE:

## CUSTOM FIRE FEATURE DETAILS

SHEET:

**L5.62**

## L5.80

## SECOND ADDITIONAL SERVICES ADDENDUM

**THIS SECOND ADDITIONAL SERVICES ADDENDUM** (this “Addendum”) is entered into as of October 16, 2025 (“Addendum Effective Date”), by and between POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Utah (“Client”), and RIOS, INC., a California corporation (“Consultant”), with reference to the following recitals:

A. WHEREAS, CLW POINT PARTNERS, LLC, a Delaware limited liability company (“CLW”) and Consultant entered into that certain Short Form Professional Services Agreement dated as of May 24, 2024 (the “Agreement”) relating to that certain real property commonly known as Point of the Mountain located at 14425 Bitterbrush Lane, Draper, Utah 84020 (the “Property”). All initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

B. WHEREAS, CLW, the Client, and Consultant entered into that certain Assignment and Assumption of Professional Services Agreement dated July 29, 2025 whereby CLW assigned its interest in the Agreement to the Client.

C. WHEREAS, the Client and Consultant entered into that certain First Additional Services Addendum dated August 18, 2025.

D. WHEREAS, pursuant to Article 3 of the Agreement, Client desires that Consultant provide certain additional services at the Property, and Consultant desires to provide such additional services.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to amend the Agreement as follows:

1. **Term.** The term of this Addendum (“Addendum Term”) shall commence upon the Addendum Effective Date and automatically expire upon the earlier of: (i) the completion of the Additional Services (as defined below), or (ii) the termination of either the Agreement or this Addendum by Client. Client may terminate this Addendum without cause, and at no additional cost, upon thirty (30) days prior written notice to Consultant.

2. **Additional Services.** Beginning on the Addendum Effective Date and continuing through the Addendum Term, Consultant agrees to provide the additional services as described in Exhibit A attached hereto (“Additional Services”). In consideration for the Additional Services, Client agrees to pay Consultant the sum set forth in Exhibit A. The terms and conditions of this Addendum shall prevail over any conflicts with Exhibit A.

3. **Effect of this Addendum.** The parties acknowledge and agree that except to the extent specified above, the terms and conditions of the Agreement generally are intended to apply to the Additional Services and this Addendum. Except as amended and/or modified by this Addendum, the Agreement is hereby ratified and confirmed and all other terms of the Agreement shall remain in full force and effect, unaltered and unchanged by this Addendum.

4. **Counterparts.** This Addendum may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by other parties to this Addendum attached thereto.

*[Signatures on following page]*

**IN WITNESS WHEREOF**, Client and Consultant have caused their duly authorized representatives to execute this Addendum as of the date first above written.

CLIENT:

POINT PHASE 1 PUBLIC INFRASTRUCTURE  
DISTRICT NO. 1

a quasi-municipal corporation and political subdivision of the  
State of Utah

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CONSULTANT:

RIOS, INC., a California corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit A**



September 4, 2025

Aric Yarberry  
Lincoln Property Company  
4041 MacArthur Blvd. | Suite 500  
Newport Beach, CA 92660

Sent via email: ayarberry@lpc.com

**Additional Service Proposal # 06**  
**Structural Design – Site and Vault**  
**The Point Promenade / RIOS Proj. No. 24029**

Dear Aric and team,

We are pleased to provide you with this additional service proposal for consultant services for The Point Promenade project located in Draper, Utah.

**SCOPE OF WORK**

RIOS will be servicing the attached consultant proposal for the scope of services provided, covering structural design of site elements including water feature vault.

**FEE SUMMARY**

Consultant Fee (see Exhibit A, attached).....	\$ 6,000.00
<u>RIOS Administrative Fee (10% of consultant fee).....</u>	<u>\$ 600.00</u>
<b>Total for Additional Services.....</b>	<b>\$ 6,600.00</b>

**TERMS & CONDITIONS**

1. This proposal is conditioned by the existing PROFESSIONAL SERVICES AGREEMENT between Rios, Inc. (RIOS) and CLW POINT PARTNERS, LLC, dated May 24, 2024. The terms and conditions of that agreement are incorporated into this agreement by reference.

Please call if you have any questions regarding this proposal. To authorize us to proceed with this work, please return a signed copy of this proposal.

Sincerely,

RIOS



Mark Motonaga  
Creative Director

[Signature Page to Follow]



CLIENT: CLW POINT PARTNERS, LLC  
c/o Lincoln Property Company

Accepted By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_



**DUNN ASSOCIATES, INC**  
Consulting Structural Engineers

September 3, 2025

RIOS Boulder  
1980 8th Street  
Boulder, CO 80302

## PROPOSAL FOR STRUCTURAL ENGINEERING SERVICES

Project: 250277 – The Point Promenade – Landscape Site Elements  
Draper, Utah

Dear Ryan:

We appreciate the opportunity to assist with the structural design of the architectural site elements outlined in the referenced project. Based on our previous discussions, we understand that our structural input will focus on the sizing and reinforcement of concrete elements identified in the drawings attached to the end of this proposal.

### Scope of Work

We propose to provide structural engineering services for the design of the following architectural site elements. Our scope includes providing redlines of structural requirements on architectural details, preparation of drawings (where indicated), and any required calculations to support the design intent. Design Elements Included:

1. **Custom Bench Seating Walls**
  - Structural design of seat walls
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  - Coordination with water feature designer and structural design of a subgrade vault for water feature equipment.
  - Preparation of structural drawings for the water feature vault, including notes, plans, sections, and details necessary for construction

### Fee Structure

This proposal is based on a **time and expense** agreement with the following terms:

- **Minimum Fee:** \$3,500
- **Not-to-Exceed Amount:** \$6,000
- **Hourly Rate:** See rate table Appendix A.
- Additional services beyond the base scope (e.g., further rounds of city comments or design revisions) will be billed hourly and coordinated with the client prior to commencement.



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- Architectural drawings provided are final or near-final and accurately reflect design intent.
- Geotechnical information (e.g., soil bearing capacity) will be provided by others and is assumed to be sufficient for standard shallow foundations.
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#### Exclusions

The following items are **excluded** from this proposal unless specifically requested and agreed upon in writing:

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- Any redesign required due to changes in architectural layout after structural design has commenced.

We thank you for the opportunity to provide you with this proposal. We have made our best attempt to determine our scope for this project. However, if we have misinterpreted this scope in any way, please let us know so adjustments can be made. Direction to proceed will constitute acceptance of this proposal. A formal contract will follow as the structural fee is finalized. Thank you very much for your consideration.

Respectfully yours,

DUNN ASSOCIATES, INC.

Tait A. Ketcham, SE  
Principal, President

DUNN ASSOCIATES, INC.

David R. Dunn, SE  
Principal, CEO

#### Appendix A – Hourly Rate Schedule

The following hourly rates apply to services provided under this agreement for any work performed outside the base scope or beyond the not-to-exceed minimum amount:

Depositions & Court Appearances .....	\$250/hr.
Principal/Chief Engineer/Director .....	\$195/hr.
Senior Associate.....	\$185/hr.
Associate .....	\$170/hr.
Project Manager .....	\$150/hr.
Project Engineer.....	\$125/hr.
Engineer-in-Training .....	\$110/hr.
Senior Drafter .....	\$100/hr.
Drafter .....	\$70/hr.
Intern .....	\$70/hr.
Administration.....	\$50/hr.











FEATURE BOULDER PLANTING SECTION 3



**PRE-OPENING SERVICES AND MANAGEMENT AGREEMENT**

**between**

**POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT NO. 1**

**and**

**GLOBAL SPECTRUM, L.P.  
d/b/a Oak View Group**

**Dated: As of March 1, 2025**

## PRE-OPENING SERVICES AND MANAGEMENT AGREEMENT

**Effective Date:** March 1, 2025

This Pre-Opening Services and Management Agreement is made effective as of the Effective Date by and between Point Phase 1 Public Infrastructure District No. 1, a quasi-municipal corporation and political subdivision of the State of Utah with an address at 550 W. Eisenhower Blvd. Loveland, CO 80537 Attn: Brendan Campbell ("**Owner**"), and Global Spectrum, L.P., a Delaware limited partnership d/b/a Oak View Group ("**OVG**"). Owner and OVG are sometimes referred to herein as the "**Parties**".

### RECITALS

WHEREAS, CLW POINT PARTNERS LLC, a Delaware limited liability company dba The Point Partners ("**TPP**"), owns the development rights to approximately 100 acres within The Point Development in Draper, UT ("**The Point Development**") and has worked with the Point of the Mountain State Land Authority to establish the Owner and Point Phase 1 Public Infrastructure District Nos. 2-9; and

WHEREAS, Owner is constructing and will own a new event center (the "**Facility**"), to be situated on 5+/- acres of The Point Development, which Facility is anticipated to open on or around March 2028 (the date on which the Facility opens for business is referred to herein as the "**Opening Date**");

WHEREAS, Owner desires to engage OVG to provide certain pre-opening consulting services, and following the Opening Date to manage and operate the Facility, as agent on behalf and for the benefit of Owner, and OVG desires to accept such engagement, pursuant to the terms and conditions contained herein; and

NOW, THEREFORE, for and in consideration of the foregoing, the mutual covenants and promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

### ARTICLE 1 DEFINITIONS

Section 1.1. Definitions. For purposes of this Agreement, the following terms have the meanings referred to in this Section:

**Advanced Funds:** shall have the meaning given to such term in Section 10.2 of this Agreement.

**Affiliate:** A person or company that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person or company.

**Agreement:** This Pre-Opening Services and Management Agreement, together with all schedules and exhibits attached hereto, each of which are incorporated herein as an integral part of this Agreement.

**Base Management Fee:** The fixed fee Owner shall pay to OVG under this Agreement, as more fully described in Section 3.2 of this Agreement.

**Buyout Amount:** shall have the meaning given to such term in Section 12.4 of this Agreement.

**Capital Expenditures:** All expenditures for building additions, alterations, repairs or improvements and for purchases of additional or replacement furniture, machinery, or equipment, where the cost of such expenditure is greater than \$5,000 and the depreciable life of the applicable item is, according to generally accepted accounting principles, is in excess of one year.

**Commencement Date:** shall have the meaning given to such term in Section 4.1 of this Agreement.

**Commercial Rights:** Naming rights, sub-naming rights, entitlement rights, pouring rights, branding rights, advertising, sponsorships, premium seating (including luxury suites, club seats, loge boxes and party suites, as applicable) and similar commercial rights at or with respect to the Facility.

**Commercial Rights Fee:** shall have the meaning given to such term in Section 3.4 of this Agreement.

**Commercial Rights Revenue:** shall mean all revenue (including Operating Revenue and Non-Operating Revenue) derived from the sale of Commercial Rights.

**CPI:** “Consumer Price Index” for the local Salt Lake City, Utah area, as published by the United States Department of Labor, Bureau of Labor Statistics or such other successor or similar index.

**Effective Date:** shall have the meaning given to such term on the top of page 1 in the opening paragraph of this Agreement.

**Emergency Repair:** The repair of a condition which, if not performed immediately, creates an imminent danger to persons or property and/or an unsafe condition at the Facility threatening persons or property.

**Event Account:** A separate interest-bearing account in the name of Owner and under Owner’s Federal ID number in a local qualified public depository, to be designated by Owner, where advance ticket sale revenue and rental deposits are deposited by OVG.

**Event of Force Majeure:** An act of God, fire, earthquake, hurricane, flood, riot, civil commotion, terrorist act, terrorist threat, storm, washout, wind, lightning, landslide, explosion, accident to machinery or equipment, pandemic or epidemic, any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, war or hostilities, a labor dispute which results in a strike or work stoppage affecting the Facility or services described in this Agreement, or any other cause or occurrence outside the reasonable control of the party claiming an inability to perform and which by the exercise of due diligence could not be reasonably prevented or overcome.

**Existing Contracts:** Service Contracts, Revenue Generating Contracts, and other agreements relating to the day-to-day operation of the Facility existing as of the Commencement Date, as set forth on Schedule 14.1, attached hereto, which shall be updated by Owner prior to the Commencement Date.

**Facility:** shall have the meaning given to such term in the Recitals to this Agreement, and shall be deemed to include the entire arena complex, including but not limited to the arena, suites, locker rooms, meeting rooms, box office, common areas, lobby areas, executive and other offices, storage and utility

facilities, as well as the entrances, ground, sidewalks, and plazas immediately surrounding the Facility and adjacent thereto, as identified on Schedule 1.1, attached hereto.

**Facility FF&E:** Furniture, fixtures, and equipment to be procured for use at the Facility.

**Food and Beverage Fee:** has the meaning given to such term in Section 3.5 of this Agreement.

**Food and Beverage Income:** all gross Revenue generated from the Food and Beverage Services less (a) sales taxes, as shown on the monthly and annual financial statements for the Facility, and (b) credit card transaction fees.

**Food and Beverage Services:** shall have the meaning given to such term in Section 2.1(c) of this Agreement.

**General Manager:** The employee of OVG acting as the full-time on-site general manager of the Facility.

**Incentive Fee:** The contingent fee Owner shall pay to OVG under this Agreement, if earned, as more fully described in Section 3.3 of this Agreement.

**Investment:** shall have the meaning given to such term in Section 11.3 of this Agreement.

**Laws:** federal, state, local and municipal laws, statutes, rules, regulations and ordinances including, but not limited to, Sections 63G-6a-101, *et seq.*, Utah Code Annotated 1953 (the "Utah Procurement Code").

**Management-Level Employees:** The General Manager, Assistant General Manager, Business Manager (or employees with different titles performing similar functions), and any department head employed by OVG to perform services at the Facility (including, if applicable, employees performing the function of the Director of Operations, Director of Sales and Marketing, Director of Security, Finance Director, Event Manager and Director of Food and Beverage).

**Marketing Plan:** A plan for the advertising and promotion of the Facility.

**Monthly Accounting Period:** shall mean each calendar month during the Term.

**Opening Date:** shall have the meaning given such term in the Recitals to this Agreement.

**Operating Account:** A separate interest-bearing account in the name of Owner and under Owner's Federal ID number in a local qualified public depository, to be designated by Owner, where Revenue is deposited and from which Operating Expenses are paid.

**Operating Budget:** A line-item budget for the Facility that includes a projection of Revenues and Operating Expenses, presented on a monthly and annual basis.

**Operating Expenses:** All direct expenses incurred by OVG in connection with its operation, management, staffing, promotion and maintenance of the Facility and the Food and Beverage Services, including but not limited to the following: (i) employee payroll, benefits, relocation costs, severance costs,

bonus and related costs, (ii) cost of operating supplies, including general office supplies, (iii) advertising, marketing, group sales, and public relations costs, (iv) cleaning expenses, (v) data processing costs, (vi) dues, subscriptions and membership costs, (vii) printing and stationary costs, (viii) postage and freight costs, (ix) equipment rental costs, (x) repairs, maintenance, and equipment servicing, (xi) security expenses, (xii) telephone and communication charges, (xiii) travel and entertainment expenses of OVG employees, (xiv) cost of employee uniforms and identification, (xv) exterminator, snow and trash removal costs (xvi) computer, software, hardware and training costs, (xviii) utility expenses, (xix) office expenses, (xx) audit and accounting fees, (xxi) legal fees and costs, (xxii) all bond and insurance costs (including but not limited to personal property, liability, and worker's compensation insurance, as well as the other insurance coverages required hereunder), including, without limitation, the cost of any coverage deductibles, coinsurance penalties, or self-insured retention under insurance policies, (xxiii) commissions and all other fees payable to third parties (e.g. commissions relating to food, beverage, and merchandise concessions services and Commercial Rights sales), (xxiv) cost of complying with any Laws, (xxv) costs incurred by OVG to settle or defend any claims asserted against OVG arising out of its operations at the Facility on behalf of Owner; (xxvi) costs incurred under Service Contracts and other agreements relating to Facility operations, (xxvii) Taxes, (xxviii) the Base Management Fee, (xxx) cost to OVG for managing and/or performing the Food and Beverage Services, and (xxix) cost incurred in connection with the marketing and sale of Commercial Rights (including without limitation the costs of dedicated staff responsible for marketing and selling the Commercial Rights).

The term "Operating Expenses" does not include debt service on the Facility, Capital Expenditures, Pre-Opening Expenses, property taxes, property insurance on the Facility itself or the contents within the Facility owned by Owner, or the Incentive Fees, all of which costs shall be borne by Owner and, if incurred by OVG, shall be promptly reimbursed to OVG by Owner.

**Operating Term:** the period beginning on the Opening Date and ending at the end of the Term.

**Operating Year:** Each 12-month period during the Operating Term, commencing on January 1 and continuing through December 31 of the same year; provided that for purposes of this Agreement there shall be a "**Stub Operating Year**" defined as the Opening Date through December 31 of the calendar year in which the Opening Date occurs. For the sake of clarity, the Stub Operating Year is also an Operating Year.

**Operations Manual:** Document to be developed by OVG which contains detailed terms regarding the management and operation of the Facility, including detailed policies and procedures to be implemented in operating the Facility, as agreed upon by both Owner and the OVG.

**OVG:** shall have the meaning given to such term in the opening paragraph to this Agreement.

**Owner:** shall have the meaning given to such term in the opening paragraph to this Agreement.

**Pre-Opening Consulting Fee:** shall have the meaning given to such term in Section 3.1 of this Agreement.

**Pre-Opening Expense Account:** A separate interest-bearing account in the name of the Owner and under the Owner's Federal ID number in a local qualified public depository, to be designated by the Owner, into which the Owner deposits funds in advance for the payment of Pre-Opening Expenses, and from which OVG may draw to pay such Pre-Opening Expenses.

**Pre-Opening Expense Budget:** The budget for the Pre-Opening Period to be prepared by OVG pursuant to Section 7.1 herein which shall include, without limitation, all anticipated Pre-Opening Expenses and the Pre-Opening Consulting Fee.

**Pre-Opening Expenses:** The actual labor expense (including without limitation salary, benefits, 401(k) employer matching contributions, relocation, bonus and related costs), insurance costs, and other operating costs and expenses of OVG, as well as all out-of-pocket travel costs (airfare, ground transportation, meals and lodging) of OVG's corporate personnel, in connection with its obligations hereunder during the Pre-Opening Period.

**Pre-Opening Period:** Period of time beginning on the Commencement Date and ending on the Opening Date.

**Reserve Account:** shall have the meaning given to such term in Section 8.4 herein.

**Revenue:** All gross revenues generated by OVG's operation of the Facility, including but not limited to event ticket proceeds income, rental and license fee income, merchandise income, gross food and beverage income, gross income from any sale of Commercial Rights, gross service income, equipment rental fees, box office income, and miscellaneous operating income, but shall not include event ticket proceeds held by OVG in trust for a third party and paid to such third party.

**Revenue Generating Contracts:** Vendor, concessions and merchandising agreements, user/rental agreements, booking commitments, licenses, and all other contracts or agreements generating revenue for the Facility and entered into in the ordinary course of operating the Facility.

**Service Contracts:** Agreements for services to be provided in connection with the operation of the Facility, including without limitation agreements for ticketing, web development and maintenance, computer support services, Facility FF&E purchasing services, engineering services, electricity, steam, gas, fuel, general maintenance, HVAC maintenance, telephone, staffing personnel including guards, ushers and ticket-takers, extermination, elevators, stage equipment, fire control panel and other safety equipment, snow removal and other services which are deemed by OVG to be either necessary or useful in operating the Facility.

**Taxes:** Any and all governmental assessments, franchise fees, excises, license and permit fees, levies, charges and taxes, of every kind and nature whatsoever, which at any time during the Term may be assessed, levied, or imposed on, or become due and payable out of or in respect of **(i)** activities conducted on behalf of Owner at the Facility, including without limitation the sale of concessions, the sale of tickets, and the performance of events (such as any applicable sales and/or admissions taxes, use taxes, excise taxes, occupancy taxes, employment taxes, and withholding taxes), or **(ii)** any payments received from any holders of a leasehold interest or license in or to the Facility, from any guests, or from any others using or occupying all or any part of the Facility.

**Term:** shall have the meaning given to such term in Section 4.1 of this Agreement.

## ARTICLE 2 SCOPE OF SERVICES

## Section 2.1 Engagement.

(a) Owner hereby engages OVG during the Pre-Opening Period to perform the pre-opening services described in Schedule 2.1(a), attached hereto.

(b) Owner hereby engages OVG during the Operating Term to act as the sole and exclusive manager and operator of the Facility, subject to and as more fully described in this Agreement, and, in connection therewith, to perform the services described in Schedule 2.1 (b), attached hereto.

(c) Owner hereby engages OVG (or its designee) during the Operating Term to act as the sole and exclusive food and beverage provider of the Facility, subject to and as more fully described in this Agreement, and in connection therewith, to perform the services described in Schedule 2.1 (c) (collectively, the **"Food and Beverage Services"**), attached hereto. Owner specifically agrees that pursuant to Section 5.5, OVG shall be permitted to subcontract or otherwise sublicense all or any portion of their rights and obligations in respect of the provision of such Food and Beverage Services, including, without limitation, to an Affiliate.

(d) OVG hereby accepts such engagement, and shall perform the services described herein, subject to the limitations expressly set forth in this Agreement and in the Operations Manual to be approved by OVG and Owner.

Section 2.2 Commercial Rights Sales. In addition to OVG's other rights and duties hereunder, OVG shall act as the sole and exclusive third-party representative for marketing of the Commercial Rights. OVG will keep Owner apprised of its sales prospects and the status of any potential sales of Commercial Rights, which shall be subject to Owner's prior approval in each instance. Owner hereby acknowledges and agrees that OVG is not guaranteeing any level of purchase of, or the receipt of payment for, any Commercial Rights marketed by OVG pursuant to this Agreement.

Section 2.3 Limitations on OVG's Duties. OVG's obligations under this Agreement are contingent upon and subject to Owner making available, in a timely fashion, the funds budgeted for and/or reasonably required by OVG to carry out such obligations during the Term. OVG shall not be considered to be in breach or default of this Agreement and shall have no liability to Owner or any other party, in the event OVG does not perform any of its obligations hereunder due to failure by Owner to timely provide such funds.

## ARTICLE 3 COMPENSATION

Section 3.1 Pre-Opening Consulting Fee. During the Pre-Opening Period, Owner shall pay OVG a monthly fee of Five Thousand Dollars (\$5,000) per month (the **"Pre-Opening Consulting Fee"**). The Pre-Opening Consulting Fee shall be included in the Pre-Opening Expenses Budget and shall be due on the first day of each month during the Pre-Opening Period.

Section 3.2 Base Management Fee. In consideration of OVG's performance of its management services during the Operating Term, including the Food and Beverage Services, hereunder, Owner shall pay OVG a **"Base Management Fee"** as follows. Beginning on the Opening Date and continuing through the end of the Stub Operating Year (*i.e.*, through December 31, 2028), the Base

Management Fee shall be equal to Two Hundred Thousand Dollars (\$200,000) per year, payable in equal monthly installments of \$16,666.67. Beginning in the second full Operating Year (ie. starting January 1, 2029), and continuing for all subsequent Operating Years, the Base Management Fee shall be increased over the Base Management Fee from the previous Operating Year in accordance with the percentage increase in the CPI over such Operating Year (*i.e.*, the difference, expressed as a percentage, between the value of the CPI published most recently prior to the commencement of the preceding Operating Year and the value of the CPI published most recently prior to the commencement of the Operating Year for which the CPI adjustment will apply). The Base Management Fee shall be payable to OVG in advance, beginning on the Opening Date, and payable on the first day of each month thereafter (prorated as necessary for any partial months). For avoidance of doubt, the Base Management Fee shall constitute an Operating Expense which may be deducted from the Operating Account, in accordance with the foregoing.

### Section 3.3 Incentive Fee.

Section 3.3.1 Incentive Fee Calculation. In addition to the Base Management Fee, OVG shall be entitled to receive an Incentive Fee each full or partial Operating Year of the Term. The Incentive Fee shall be a tiered incentive payment of Revenue over a mutually agreed upon Revenue benchmark as shown below.

Hurdle	Benchmark	Incentive Fee paid to OVG
Tier 1 Revenue Benchmark:	Revenue *	20% of Revenue Above Tier 1 Revenue Benchmark
Tier 2 Revenue Benchmark:	Revenue *	25% of Revenue Above Tier 2 Revenue Benchmark
Tier 3 Revenue Benchmark:	Revenue *	30% of Revenue Above Tier 3 Revenue Benchmark

\*The Revenue benchmarks for each of the above tiers shall be mutually agreed by the parties no later than six (6) months prior to the Opening Date. The parties shall, in good faith and acting reasonably, commence discussions on the establishment of such benchmarks no later than eight (8) months prior to the Opening Date. The parties acknowledge that the Incentive Fees are anticipated to be a material component of OVG's compensation under this Agreement, and that their mutual expectation is that the benchmarks will be set at figures that will provide OVG with a reasonable opportunity, assuming a high level of performance by OVG, to earn Incentive Fees each year in an amount at least equal to the Base Management Fee for such year. Once the Revenue benchmarks are established, they shall be documented in writing by the parties through an addendum to this Agreement, and such benchmarks shall remain unchanged for the Term unless otherwise mutually agreed by the parties in writing. The benchmark tiers shall be applied incrementally, so that only the incremental Revenue in each tier is paid at the higher percentage (as opposed to the higher percentages begin applied back to dollar 1). For purposes of calculating the Incentive Fee, Commercial Rights Revenue and Food and Beverage Income shall be excluded from both the Revenue benchmarks and the actual Revenue generated that is measured against such Revenue benchmarks, the parties acknowledging that OVG is separately eligible to earn compensation for Commercial Rights Revenues under Section 3.4 and for Food and Beverage Income under Section 3.5.

Section 3.3.2 Customer Service Incentive. OVG shall be required to conduct quarterly customer service and satisfaction surveys to venue attendees and other key stakeholders ("**Quarterly Survey**"). The form and substance of the Quarterly Survey shall be approved by Owner, acting reasonably, prior to the



distribution of such Quarterly Survey. Should OVG fail to achieve an average positive satisfaction rating above 80% in an Operating Year on such Quarterly Surveys, then OVG's earned Incentive Fee for such Operating Year shall be reduced by 10%. Should OVG fail to achieve an average positive satisfaction rating above 50% on in an Operating Year on such Quarterly Surveys, then OVG's earned Incentive Fee for such Operating Year shall be reduced by 25%.

The Incentive Fee earned by OVG (as may be reduced pursuant to Section 3.3.1 above) shall be paid to OVG within 30 days of the end of each Operating Year.

Section 3.4 Commercial Rights Fee. In consideration for OVG's marketing of the Commercial Rights as described in Section 2.2, OVG shall receive **(i)** fifteen percent (15%) of all Commercial Rights Revenue (including cash and trade, with such trade valued at its retail price in an arms-length transaction) generated from the sale of Commercial Rights (the "**Commercial Rights Fee**"). The Commercial Rights Fee shall be paid to OVG for all years of each Commercial Rights agreement secured by OVG, including any years that extend beyond the end of the Term of this Agreement. The Commercial Rights Fee due to OVG following the conclusion of the Term is referred to herein as the "**Trailing Commercial Rights Commissions**". The Commercial Rights Fee shall be paid to OVG on a bi-annual basis, on or about the last day of June and December each calendar year, and OVG shall be entitled to pay itself such amount from the Operating Account upon providing documentation of such Commercial Rights Fee to Owner. The parties shall also hold a settlement at the conclusion of the Term, at which time Owner shall pay to OVG any portion of the Commercial Rights Fee due to OVG but not yet paid to OVG as of such date (other than Trailing Commercial Rights Commissions). Following the conclusion of the Term, Trailing Commercial Rights Commissions shall be paid to OVG within 30 days of receipt by Owner of the corresponding Commercial Rights Revenue arising from any Commercial Rights agreements which were secured by OVG. In connection with the Commercial Rights Fee and Trailing Commercial Rights Commissions, Owner agrees **(i)** to maintain books and records in accordance with generally accepted accounting practices, and **(ii)** to permit OVG to audit and inspect such books and records during normal business hours and on reasonable advance notice, to confirm amounts due hereunder, including, following the conclusion of the Term (as it relates to Trailing Commercial Rights Commissions). To the extent any such audit reveals an underpayment, Owner shall promptly pay OVG the amount of the underpayment, and if such underpayment to OVG is greater than two percent (2%) of amounts owed to OVG, Owner shall reimburse OVG for the reasonable costs of such audit. Conversely, to the extent any such audit reveals an overpayment, OVG shall promptly refund Owner the amount of the overpayment. The terms in this Section 3.3 shall survive termination or expiration of this Agreement. For the sake of clarity, the cost of any dedicated staff responsible for marketing and selling the Commercial Rights shall be an Operating Expense.

Section 3.5 Food and Beverage Fee. In consideration for OVG's provision of the Food and Beverage Services, OVG shall be entitled to receive a "**Food and Beverage Fee**" equal to five percent (5%) of Food and Beverage Income. The Food and Beverage Fee shall be paid to OVG fifteen (15) days after the end of each Monthly Accounting Period.

Section 3.6 Monthly Payment Terms. On or about the 15<sup>th</sup> business day following the end of each Monthly Accounting Period, OVG shall remit to Owner any Revenue remaining following deduction by OVG of Operating Expenses, the Base Management Fee, the Food and Beverage Fee, the Incentive Fee (if applicable), any Advanced Funds, amounts to be deposited in the Reserve Account (as mutually agreed), any other amounts due to OVG hereunder from such Monthly Accounting Period, and any amounts necessary to pay anticipated Operating Expenses for the next sixty (60) day period pursuant to the

Operating Budget (which amounts shall remain in the Operating Account for such purpose, as more fully described in Section 8.5 below). To the extent insufficient funds exist in the Operating Account for such purpose, Owner shall deposit such funds into the Operating Account pursuant to Section 10.1 below.

Section 3.7 Late Payments. OVG shall have the right to assess interest on any payments of the fees described in this Section that are not made when due. Such interest shall accrue at the rate of 12% per annum.

## ARTICLE 4 TERM; TERMINATION

Section 4.1 Term. The term of this Agreement (“**Term**”) shall begin as of March 1, 2025 (the “**Commencement Date**”), and, unless sooner terminated pursuant to the provisions of Section 4.2 below, shall expire on the tenth (10<sup>th</sup>) anniversary of the Opening Date. Pursuant to Utah Code § 63G-6a-1204, the Parties hereby agree that this contract may not continue or be renewed for any year after the first year of the multiyear contract if adequate funds are not appropriated or otherwise available to continue or renew the contract. If adequate funds are not appropriate or otherwise available to continue or renew this Agreement, Owner may terminate this Agreement on no less than ninety (90) days’ prior written notice to OVG, provided that in such case (i) Owner shall pay all amounts due to OVG pursuant to Section 4.3 below (including without limitation the Buyout Amount) no later than the effective date of termination, and (ii) during the period of what would have been the remaining Term of this Agreement had such early termination not occurred, Owner and its Affiliates shall be prohibited from operating the Facility as a public event venue without first giving OVG the right to be re-engaged as the manager thereof under the terms of this Agreement.

Section 4.2 Termination. This Agreement may be terminated:

(a) by either party upon 30 days written notice, if the other party fails to perform or comply with any of the material terms, covenants, agreements or conditions hereof, and such failure is not cured during such 30-day notification period, provided, however, if such failure cannot reasonably be cured within such 30-day period, then a longer period of time shall be afforded to cure such breach, up to a total of 90 days, provided that the party in default is diligently seeking a cure and the non-defaulting party is not irreparably harmed by the extension of the cure period; or

(b) by either party immediately by written notice upon the other party being judged bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of the other party shall be appointed and shall not be discharged within 120 days after appointment, or if either party shall make an assignment of its property for the benefit of creditors or shall file a voluntary petition in bankruptcy or insolvency, or shall apply for bankruptcy under the bankruptcy or insolvency Laws now in force or hereinafter enacted, Federal, State or otherwise, or if such petition shall be filed against either party and shall not be dismissed within 120 days after such filing; or

(c) by either party immediately by written notice if the other party: (i) is convicted of fraud or any criminal or illegal act involving moral turpitude in connection with this Agreement or the performance of its obligations hereunder; or (ii) is conclusively determined to have willfully engaged in any act of dishonesty, misrepresentation, or bad faith that materially impacts the relationship between the Parties or the purpose of this Agreement.

Section 4.3 Effect of Termination. Upon expiration or termination of this Agreement, the following shall apply:

(a) OVG shall promptly, but within a reasonable amount of time that allows for any transitions to be completed, discontinue the performance of all services hereunder, and make available to Owner all data, electronic files, documents, procedures, reports, estimates, summaries, and other such information and materials with respect to the Facility as may have been accumulated by OVG in performing its obligations hereunder, provided that **(i)** OVG shall own and may retain all employment files/records relating to employees of OVG during the Term, and **(ii)** OVG may retain copies of all materials pertinent to its operation of the Facility during the Term, such as materials documenting its performance and those relating to claims or potential claims that have been or may be asserted related to OVG's operation of the Facility, including contracts and event incident reports.

(b) Owner shall promptly, within thirty (30) days of the date of termination or expiration, pay OVG **(i)** all fees due OVG up to the date of termination or expiration, including a pro-rated portion of the Incentive Fees for the last Operating Year if not a full 12-months, **(ii)** the Buyout Amount, and **(iii)** all Operating Expenses incurred by OVG through the end of the Term that have not previously been paid by Owner or reimbursed to OVG, including the cost of accrued but unused vacation time to the extent due under OVG's policies to any employees whose employment is ceasing with OVG as a result of expiration or termination of this Agreement.

(c) Except in the case of a termination by the Owner pursuant to Section 4.2(c) of this Agreement, in which this Section 4.3(c) will not apply, Owner shall reimburse OVG for any actual ordinary and necessary expenses incurred by OVG in withdrawing from the provision of services hereunder following such termination. Such ordinary and necessary expenses shall include costs associated with **(i)** to the extent any Management-Level Employee's employment with OVG will cease as a result of the termination or expiration of this Agreement, Owner shall reimburse OVG for any severance paid to such employees, not to exceed 6 months' salary for each Management-Level Employee, **(ii)** reasonable household relocation expenses for OVG's Management-Level Employees, to the extent any such individuals had previously relocated to the Facility (or its surrounding areas) in connection with this Agreement, and **(iii)** other reasonable costs actually incurred by OVG in withdrawing from the provision of services hereunder, such as those incurred in connection with the termination and/or assignment of Service Contracts, Revenue Generating Contracts, or other contracts or leases entered into by OVG pursuant to this Agreement. Owner's payment of such expenses will occur only after OVG has provided reasonable evidence of the incurrence of such expenses.

(d) Without any further action on the part of OVG or Owner, Owner shall, or shall cause the successor Facility manager to, assume all obligations arising after the date of such termination or expiration, under any Service Contracts, Revenue Generating Contracts, booking commitments and any other Facility agreements entered into by OVG in furtherance of its duties hereunder.

(e) Any obligations of the parties that are specifically intended to survive expiration or termination of this Agreement shall survive expiration or termination hereof.

## ARTICLE 5

### OWNERSHIP; USE OF THE FACILITY; CONCESSION AREAS

Section 5.1 Ownership of Facility, Data, Equipment and Materials. Owner will at all times retain ownership of the Facility and all Facility FF&E. Any data, equipment, supplies, and materials furnished by Owner to OVG or acquired by OVG as an Operating Expense shall remain the property of Owner and shall be returned to Owner when no longer needed by OVG to perform under this Agreement. Notwithstanding the above, Owner recognizes that OVG intends to license certain third-party software for use with respect to OVG's obligations at the Facility, the costs of which are paid on a monthly basis, and upon expiration or termination of the Term such software licenses shall remain with OVG. Furthermore, Owner recognizes that the Operations Manual to be developed and used by OVG hereunder is proprietary to, and shall be owned by, OVG, but Owner may retain a copy thereof for its own use following the end of the Term.

Section 5.2 Right of Use by OVG. Owner hereby gives OVG the right and license to use the Facility, and OVG accepts such right of use, for the purpose of performing the services herein specified, including the operation and maintenance of all physical and mechanical facilities necessary for, and related to, the operation, maintenance, and management of the Facility. Owner shall provide OVG, at no cost to OVG, a sufficient amount of suitable office space in the Facility and with such office equipment as is reasonably necessary to enable OVG to perform its obligations under this Agreement. In addition, Owner shall make available to OVG staff, at no cost, parking spaces in a location that is mutually agreed upon by the Owner and OVG.

Section 5.3 Observance of Agreements. Owner agrees to pay, keep, observe, and perform all payments, terms, covenants, conditions and obligations under any leases, use agreements, bonds, debentures, loans and other financing and security agreements to which Owner is bound in connection with its ownership of the Facility.

Section 5.4 Use by Owner. Owner shall have the right to use the Facility or any part thereof rent-free for meetings or other internal non-commercial uses, provided that Owner shall promptly reimburse OVG or deposit into the Operating Account, any out-of-pocket expenses incurred by OVG in connection with such use (such as the cost of ushers, ticket-takers, set-up and take-down personnel, security expenses, and other expenses). Such non-commercial use of the Facility by Owner shall (i) not compete with or conflict with the dates previously booked by OVG for paying events, and (ii) be booked in advance upon reasonable notice to OVG pursuant to the Facility's approved booking policies and subject to availability. Upon request of Owner, OVG shall provide to Owner a list of available dates for Owner's use of the Facility. To the extent that OVG has an opportunity to book a revenue-producing event on a date which is otherwise reserved for use by Owner, OVG may propose alternative dates for Owner's event, and Owner shall use best efforts to reschedule its event to allow OVG to book the revenue-producing event.

Section 5.5 Subcontractors; Concession Areas. OVG may engage sub-contractors to perform the Food and Beverage Services as set forth herein. OVG shall have the exclusive right to use (or permit a third party to use, as applicable) the concession stands, novelty stands, customer serving locations, food preparation areas, vendor commissaries, kitchen and warehouse facilities, and other food service related areas of the Facility, together with the improvements, equipment and personal property upon or within such areas, for the purpose of providing the Food and Beverage Services (and providing other duties required of OVG hereunder). Prior to the Opening Date, Owner shall, at no cost to OVG, provide for use by OVG a turnkey operation for the provision of Food and Beverage Services, equipped with equipment,

small wares, and other tools of the trade reasonably required by OVG to provide the Food and Beverage Services at the level required by this Agreement.

## **ARTICLE 6 PERSONNEL**

Section 6.1 Generally. All Facility staff and other personnel shall be engaged or hired by OVG, and shall be employees, agents, or independent contractors of OVG (or an Affiliate thereof), and not of Owner. OVG shall select, in its sole discretion but subject to the approved Operating Budget, the number, function, qualifications, and compensation, including salary and benefits, of its employees and shall control the terms and conditions of employment (including without limitation termination thereof) relating to such employees. OVG shall ensure that all salaries and benefits provided to such personnel and staff are consistent with market-rate compensation metrics within both the industry and the geographic location of the Facility. OVG agrees to use reasonable and prudent judgment in the selection and supervision of such personnel. Owner specifically agrees that OVG shall be entitled to pay its employees, as an Operating Expense, bonuses, and benefits in accordance with OVG's then current employee policies, which may be modified by OVG from time to time in its sole discretion. A copy of OVG's current employee policies related to bonus and benefits shall be provided to Owner upon request.

Section 6.2 General Manager. Personnel engaged by OVG will include a qualified individual to serve as a General Manager of the Facility. Hiring of the General Manager shall require the prior approval of Owner, which approval shall not be unreasonably withheld or delayed; provided, however, in the event of a vacancy in the General Manager position, OVG may temporarily fill such position with an interim General Manager for up to 90 days without the necessity of obtaining Owner's approval. The General Manager will have general supervisory responsibility for OVG and will be responsible for day-to-day operations of the Facility, supervision of employees, and management and coordination of all activities associated with events taking place at the Facility.

Section 6.3 Non-Solicitation/Non-Hiring. Except in the case of a termination by the Owner pursuant to Section 4.2(c) of this Agreement, in which this Section 6.3 will not apply, during the Term and for a period of one year after the end of the Term, neither Owner nor any of its Affiliates shall solicit for employment, or hire, any of OVG's Management-Level Employees, without OVG's prior consent and approval. Owner acknowledges that OVG will spend a considerable amount of time identifying, hiring, and training individuals to work in such positions, and that OVG will suffer substantial damages, the exact amount of which would be difficult to quantify, if Owner were to breach the terms of this Section by hiring, or soliciting for employment, any of such individuals. Accordingly, in the event of a breach or anticipated breach of this Section by Owner, OVG shall be entitled (in addition to any other rights and remedies which OVG may have at law or in equity, including money damages) to equitable relief, including an injunction to enjoin and restrain Owner from continuing such breach, without the necessity of posting a bond.

## **ARTICLE 7 PRE-OPENING EXPENSES AND EXPENSE BUDGET**

Section 7.1 Establishment of Pre-Opening Expense Budget. No later than December 31, 2025, OVG shall prepare the Pre-Opening Expense Budget, which shall detail the projected Pre-Opening Expenses to be incurred by OVG during the Pre-Opening Period, including the Pre-Opening Consulting Fee.

The Pre-Opening Expense Budget shall be subject to the prior approval of Owner, not to be unreasonably withheld, conditioned or delayed. Such Pre-Opening Budget may be adjusted by OVG from time to time during the Pre-Opening Period, subject to the approval of the Owner, not to be unreasonably withheld, conditioned, or delayed.

Section 7.2. Funding of Expenses During Pre-Opening Period. Owner shall pay for all Pre-Opening Expenses incurred by OVG in connection with the performance of its obligations under this Agreement during the Pre-Opening Period, as follows. At least 30 days prior to the Commencement Date, Owner shall establish the Pre-Opening Expense Account, and transfer to such account an amount equal to the projected Pre-Opening Expenses and Pre-Opening Consulting Fee, for the first two months of the Pre-Opening Period, as set forth in the Pre-Opening Expense Budget. On or before the first day of each succeeding month during the Pre-Opening Period, the Owner shall transfer to the Pre-Opening Expense Account an amount equal to the projected Pre-Opening Expenses and Pre-Opening Consulting Fee for the subsequent two months, as set forth in the Pre-Opening Expense Budget through the conclusion of the Pre-Opening Period. OVG may access such account periodically, as needed, for the purpose of withdrawing funds to pay Pre-Opening Expenses and the Pre-Opening Consulting Fee.

## **ARTICLE 8 OPERATING BUDGET**

Section 8.1 Establishment of Operating Budget. OVG agrees that at least 90 days prior to the Opening Date in respect of the Stub Operating Year, and no less than 90 days prior to the commencement of each subsequent Operating Year in respect of such Operating Year, it will prepare and submit to the Owner its proposed Operating Budget for such Operating Year. Each Operating Budget shall include OVG's good faith projection of Revenues and Operating Expenses, presented on a monthly and annual basis, for the upcoming Operating Year, or Stub Operating Year, as applicable. Owner agrees to provide OVG with all information in its possession necessary to enable OVG to prepare each Operating Budget.

Section 8.2 Approval of Operating Budget. Each Operating Budget shall be subject to the review and approval of Owner, which approval shall not be unreasonably withheld or delayed. In order for Owner to fully evaluate and analyze such budgets or any other request by OVG relating to income and expenses, OVG agrees to provide to Owner such reasonable financial information relating to the Facility as may be requested by Owner from time to time. If events occur during any Operating Year that could not reasonably be contemplated at the time the corresponding Operating Budget was prepared, OVG may submit an amendment to such budget for review and approval by Owner, which approval shall not be unreasonably withheld or delayed. If Owner fails to approve any Operating Budget (or any proposed amendment thereto), Owner shall promptly provide OVG the specific reasons therefor and its suggested modifications to OVG's proposed Operating Budget or amendment in order to make it acceptable. The parties shall then engage in good faith discussions and use reasonable commercial efforts to attempt to resolve the matter to the mutual satisfaction of the parties.

Section 8.3 Adherence to Operating Budget. OVG shall use all reasonable efforts to manage and operate the Facility in accordance with the Operating Budget. However, Owner acknowledges that notwithstanding OVG's experience and expertise in relation to the operation of facilities similar to the Facility, the projections contained in each Operating Budget are subject to and may be affected by changes in financial, economic, and other conditions and circumstances beyond OVG's control, and that OVG shall have no liability if the numbers within the Operating Budget are not achieved. OVG

agrees to notify Owner within thirty (30) days of any material negative variance in the bottom-line figure in the Operating Budget ("**Negative Profit Variance**") or any material increase in total indirect Facility expenses from that provided for in the Operating Budget ("**Indirect Expense Variance**"). For purposes of this Section 8.3, an Indirect Expense Variance shall mean an increase of more than 10% in the aggregate indirect expenses in the Operating Budget. If OVG determines or anticipates the occurrence of a Negative Profit Variance or an Indirect Expense Variance, OVG shall discuss with Owner, as soon as possible following notification, how to proceed given the anticipated impact on the Operating Budget. In either case, and if requested by Owner, OVG agrees to work with Owner to develop and implement a plan (or changes to the then current plan) to limit Operating Expenses to be incurred in the remaining months of such Operating Year with the goal of achieving the Operating Budget.

Section 8.4 Establishment of Reserve Account. No later than the Opening Date, OVG agrees that it will prepare and submit to the Owner its proposed funding of a reserve account ("Reserve Account"). Such proposal shall include OVG's good faith projection of the funds to be maintained in the Reserve Account as are necessary for the purpose of covering unforeseen Operating Expenses, capital improvements, and other financial obligations related to the Facility. The parties shall mutually agree on the amount of funding to be set aside for the Reserve Account, and the parties' rights to access and use such funds for such purposes.

Section 8.5 Bridge Funding. To ensure the Facility has sufficient funding to operate at all times, the Parties agree that commencing on the Opening Date, and continuing at all times during the Term, OVG may withhold and retain in the Operating Account and any amounts necessary to ensure it has sufficient funds available to pay anticipated Operating Expenses for the next sixty (60) day period.

## ARTICLE 9 PROCEDURE FOR HANDLING INCOME

Section 9.1 Event Account. To the extent the Facility hosts a ticketed event and collects advance ticket sale revenue and/or admissions tax, OVG shall deposit as soon as practicable following receipt, in the Event Account, all revenue received from ticket sales and similar event-related revenues which OVG receives in contemplation of, or arising from, an event, pending completion of the event. Such monies will be held in escrow for the protection of ticket purchasers, Owner and OVG, to provide a source of funds as required for payments to performers and for payments of direct incidental expenses in connection with the presentation of events that must be paid prior to or contemporaneously with such events. Promptly following completion and settlement of such events, OVG shall transfer all funds remaining in the Event Account, including any interest accrued thereon, into the Operating Account. Bank service charges, if any, on such account(s) shall be deducted first from interest earned.

Section 9.2 Operating Account. Except as provided in Section 9.1, all Revenue derived from operation of the Facility shall be deposited by OVG into the Operating Account as soon as practicable upon receipt (but not less often than once each business day). The specific procedures (and authorized individuals) for making deposits to and withdrawals from such account shall be set forth in the Operations Manual, but the parties specifically agree that OVG shall have authority to sign checks and make withdrawals from such account, subject to the limitations of this Agreement, without needing to obtain the co-signature of an Owner employee or representative.

Section 9.3 Food and Beverage Revenue and Expenses. All Food and Beverage Revenue shall be calculated separately during each Monthly Accounting Period solely for purposes of payment of the

Food and Beverage Incentive Fee, and shall be deposited by OVG into the Operating Account thereafter. All expenses incurred in connection with the provision of the Food and Beverage Services shall be Operating Expenses, payable by OVG with funds from the Operating Account.

Section 9.4 Public Improvement Fees. OVG acknowledges that the real property underlying the Facility is subject to that certain Declaration of Covenants Imposing and Implementing the Event Center Sales and Parking Add On Public Improvement Fee, dated June 27, 2025, and recorded in the Salt Lake County Recorder's Office on July 8, 2025, as Entry No. 14406987 (the "**PIF Covenant**"). In accordance with the PIF Covenant and this Agreement, OVG shall be responsible for instructing all Retailers (as defined in the PIF Covenant) operating within the Facility to comply with the requirements to assess, collect, and remit the Sales PIF (as defined in the PIF Covenant). OVG shall take all necessary and reasonable actions to enforce the terms of the PIF Covenant with respect to the Sales PIF, including but not limited to, instructing each Retailer operating within the Facility to separately state the Sales PIF on all receipts, invoices, tickets, or other evidence of transaction, and to collect the Sales PIF from each Purchaser (as defined in the PIF Covenant). OVG shall promptly remit, or cause to be remitted, all Sales PIF amounts collected to the designated PIF Collection Agent (as defined in the PIF Covenant) in accordance with the procedures and timelines set forth in the PIF Covenant. OVG is further authorized and obligated to implement and maintain procedures to monitor compliance by all Retailers, to require timely and accurate reporting and remittance of the Sales PIF, and to take such enforcement actions as may be necessary to address any failure by a Retailer to comply with the PIF Covenant (provided that all costs related to such actions shall be funded in advance by Owner). OVG shall cooperate fully with Owner and the PIF Collection Agent in all matters relating to the administration, collection, and enforcement of the Sales PIF, and shall provide such reports, records, and documentation as may be reasonably requested to verify compliance with the PIF Covenant, in each case with respect to activities taking place within the Facility.

## **ARTICLE 10 FUNDING**

Section 10.1 Source of Funding. OVG shall pay all items of expense for the operation, maintenance, supervision, and management of the Facility from the funds in the Operating Account, which OVG may access periodically for this purpose. The Operating Account shall be funded with amounts generated by operation of the Facility (as described in Article 8 above), or otherwise made available by Owner. To ensure sufficient funds are available in the Operating Account, Owner will deposit in the Operating Account, on or before the Commencement Date, the budgeted expenses for the Initial Stub Period. Owner shall thereafter, on or before the first day of each succeeding month following the Commencement Date, deposit (or allow to remain) in the Operating Account the budgeted or otherwise approved expenses for each such month and the following month, at all times maintaining sufficient funds in the Operating Account to pay the anticipated expenses for the then-upcoming month plus the immediately following month. OVG shall have no liability to Owner or any third party in the event OVG is unable to perform its obligations hereunder, or under any third-party contract entered into pursuant to the terms hereof, due to the fact that sufficient funds are not made available to OVG to pay such expenses in a timely manner.

Section 10.2 Advancement of Funds. Under no circumstances shall OVG be required to pay for or advance any of its own funds to pay for any Operating Expenses. In the event that, notwithstanding the foregoing, OVG agrees to advance its own funds to pay Operating Expenses, Owner shall promptly



reimburse OVG for the full amount of such advanced funds (the “**Advanced Funds**”), plus interest at the rate of 12% or the highest rate permitted by law, whichever is less.

## **ARTICLE 11**

### **FISCAL RESPONSIBILITY; REPORTING**

Section 11.1 Records. OVG agrees to keep and maintain, at its office in the Facility, separate and independent records, in accordance with generally accepted accounting principles, devoted exclusively to its operations in connection with its management of the Facility. Such records (including books, ledgers, journals, and accounts) shall contain all entries reflecting the business operations of OVG and the Facility under this Agreement. Operator acknowledges that Owner is a public entity, and Owner shall be allowed to review and/or audit the Operating Expenses to ensure that all expenses are appropriate and in accordance with the Agreement, and Utah law. Further, pursuant to Utah Code § 63G-6a-1206.3, the Owner shall have the right to audit, with reasonable notice, any of OVG’s or OVG’s subcontractors’ books and records solely as are related to this Agreement (including, but not limited to, invoices, receipts, time sheets, payroll, other payments, and personnel records). OVG agrees to maintain adequate books and records for such purposes during the term of this Agreement and for a period of six (6) years after the day on which OVG receives the final payment under this Agreement and to make the same available to the Owner at all reasonable times and places and for so long thereafter as there may remain any unresolved question or dispute regarding any item pertaining thereto. Notwithstanding the foregoing, OVG shall not be required to maintain any books and records pertaining to Facility operations to the extent such books and records have been turned over to Owner upon expiration or termination of the Agreement; in such case, Owner shall maintain such books and records for the foregoing six (6) year period.

Section 11.2 Monthly Financial Reports. OVG agrees to provide to Owner, within 30 days after the end of Monthly Accounting Period, financial reports for the Facility including a balance sheet, aging report on accounts receivable, and statement of revenues and expenditures (budget to actual) for such month and year to date in accordance with generally accepted accounting principles, provided however the first financial statement OVG shall provide shall be within 30 days following the second month of the Term, and shall cover the first 2 months of the Term. In addition, starting with the second month of the Term, OVG agrees to provide to Owner a summary of bookings for each such month, and separate cash receipts and disbursements reports for each event held at the Facility during such month. Additionally, OVG shall submit to Owner, or shall cause the applicable public depository utilized by OVG to submit to Owner, on a monthly basis, copies of all bank statements concerning the Event Account and the Operating Account.

Section 11.3 Audit. OVG agrees to arrange to provide to Owner, within 120 days following the end of each Operating Year, a certified audit report on the accounts and records as kept by OVG for the Facility. Costs associated with obtaining such certified audit report shall be an Operating Expense of the Facility. Such audit shall be performed by an external auditor approved by Owner and shall be conducted in accordance with generally accepted auditing standards. Operator acknowledges that Owner is a public entity, and OVG agrees to provide documentation and information as needed and in accordance with the Agreement, and Utah law, in support of any audits performed by an external audit of the Owner.

## **ARTICLE 12**

## **DELIVERY OF FACILITY AND OVG APPROVAL RIGHTS; CAPITAL IMPROVEMENTS; OVG CONTRIBUTION**

Section 12.1 Delivery of Facility and OVG Approval Rights. The Owner covenants and agrees to develop, construct and deliver to OVG on the Opening Date, the Facility, and that the Facility will meet, on the Opening Date, the minimum requirements set forth on Schedule II hereof. Without limiting any of the requirements on Schedule II, OVG shall have the right to review and provide meaningful input into (i) all design plans (including any changes thereto) for the Facility, and (ii) the Facility FF&E Budget and list of Facility FF&E. All design and construction costs, including the cost of Facility FF&E and Capital Expenditures for the Facility, shall be paid for by the Owner and OVG shall have no responsibility for such costs, subject to OVG's obligation to make the Investment as described in Section 12.4 below. OVG shall have the right to participate in all construction meetings including all meetings with the project manager for the construction and be included in all material correspondence relating to the construction of the Facility (including reports of any construction monitor appointed in connection with the Facility project, if any).

Section 12.2 Schedule of Capital Expenditures. OVG shall annually, at the time of submission of the annual Operating Budget to Owner, provide to Owner a schedule of proposed capital improvements to be made at the Facility, for the purpose of allowing Owner to consider such projects and to prepare and update a long-range Capital Expenditure budget.

Section 12.3 Responsibility for Capital Expenditures. Owner shall be solely responsible for all Capital Expenditures at the Facility; provided, however, Owner shall be under no obligation to make any Capital Expenditures proposed by OVG and provided further that OVG shall have no liability for any claims, costs or damages arising out of a failure by Owner to make any Capital Expenditures. Notwithstanding the foregoing, OVG shall have the right (but not the obligation), upon notice to Owner, to make Capital Expenditures at the Facility for Emergency Repairs. In such event, Owner shall promptly reimburse OVG for the cost of such Capital Expenditure.

Section 12.4 OVG Contribution. OVG shall make a capital contribution of up to Two Million Five Hundred Thousand Dollars (\$2,500,000) (the "**Investment**") towards mutually agreed leasehold improvements and/or capital equipment dedicated to the Facility (collectively, the "**Improvements and Equipment**"). Such contribution shall be made no later than the Opening Date. Owner and OVG shall mutually agree upon the specific Improvements and Equipment to be purchased or made with the Investment, as well as the location for such improvements or installation of such equipment. Once identified, the specific Improvements and Equipment to be purchased with the Investment shall be set forth in a writing to be signed by the parties and updated by the parties from time to time as necessary to reflect any replacements or substitutions thereof. All Improvements and Equipment, including any replacements or substitutions thereof, shall be owned by OVG until payment of the Buyout Amount (as described below), and Owner agrees to execute such documents as OVG shall reasonably request evidencing OVG's ownership interest in such Improvements and Equipment, including financing statements. For the sake of clarity, nothing in this paragraph shall be construed as requiring OVG to replace any equipment or other personal property at its own cost.

Prior to OVG funding each portion of the Investment, each of the following conditions must be fully satisfied, as certified by the Owner in writing and supported by evidence satisfactory to OVG, in OVG's reasonable discretion:

(a) The plan of finance and construction budget for the Facility have been approved by the Owner and OVG and approved by Owner's bond counsel and PID counsel.

(b) The Owner has (i) legal entitlement to the site for the Facility project and final approval of all entitlements (i.e., any discretionary permit, approval, consent or agreement from any applicable governmental authority as may be required by applicable law) necessary to construct the Facility, (ii) secured all required financing sources for the Facility project and such sources have committed in an aggregate amount (when including OVG's Investment) sufficient to fund the project costs under the Facility construction budget and to achieve substantial completion of the Facility project, and (iii) secured a Guaranteed Maximum Price (GMP) for construction of the Facility project and payment and performance bonds in respect of the contractor's obligations under the construction agreement(s) for the Facility project.

(c) At the time any portion of the Investment is being made, (i) there is no default existing under the financing agreements for the Facility project or this Agreement, and (ii) no material adverse change with respect to the Facility project has occurred.

Section 12.5 Buyout Amount. The Investment shall be amortized monthly on a straight-line basis over a ten (10)-year period (at a rate of 1/120 per month), commencing on the Opening Date. Within 5 days of the expiration or early termination of this Agreement (for any reason whatsoever, including without limitation, if due to a breach, default, or bankruptcy event by or affecting OVG), Owner shall immediately pay to OVG the unamortized amount of the Investment (the "**Buyout Amount**"). In the event that Owner fails to pay OVG the Buyout Amount when due, the Buyout Amount shall accrue interest at the rate of 1.5% per month, or the highest rate permitted by law, whichever is less. In such event, and without limiting any other rights or remedies available to it, OVG may reenter the Facility, with or without process of law, and remove in a commercially reasonable manner the Improvements and Equipment purchased with the Investment and retain or dispose of such Improvements and Equipment as OVG sees fit. In such event, OVG shall retain its right to receive the Buyout Amount, but any proceeds from the sale of such Improvements and Equipment, less the cost to OVG of removing, storing, and selling such Improvements and Equipment, shall reduce the Buyout Amount.

Section 12.6 Title to Improvements and Equipment. Owner covenants and agrees not to permit any liens or encumbrances to attach to the leasehold Improvements and Equipment purchased with the Investment, and hereby waives any right to attach any claim, lien, or attachment to such Improvements and Equipment. Once the Investment is fully amortized or the Buyout Amount is paid in full to OVG, title to the Improvements and Equipment purchased with the Investment will become vested in Owner, and OVG agrees to execute all necessary documents to evidence same. The rights of OVG set forth in this Section shall be in addition to any other rights of OVG at law or in equity.

## **ARTICLE 13**

### **LICENSES; ALCHOLIC BEVERAGES; TAXES**

Section 13.1 Permits and Licenses. OVG (or its Affiliates, as applicable) shall use reasonable commercial efforts to secure and maintain throughout the Term all licenses and permits necessary for the operation of the Food and Beverage Services, including those required for the sale of alcoholic beverages at the Facility. Owner shall cooperate with OVG in connection with filing applications for, and securing and maintaining in good standing, any and all licenses and permits and renewals thereof needed by OVG

to fulfill its obligations hereunder. In the event that OVG (or its Affiliate, as applicable) is unable to secure or maintain the necessary licenses or permits to sell alcoholic beverages at the Facility for any reason, or if OVG is prevented or limited from selling alcoholic beverages at the Facility for any reason, at OVG's request the parties shall renegotiate in good faith the economic terms of this Agreement so that the economic benefits provided to OVG hereunder are maintained. If, despite such good faith negotiations, the parties are unable to come to agreement on the revised economic terms of this Agreement, OVG may terminate this Agreement, without liability to OVG, upon 30 days written notice to Owner.

Section 13.2 Alcoholic Beverages. In connection with the sale of alcoholic beverages hereunder by OVG, OVG agrees to strictly comply with the laws of the State of Utah including the sale of such beverages to minors. OVG agrees to adopt an identification policy to verify the age of potential purchasers of alcoholic beverages. OVG further agrees that it will endeavor not to sell alcoholic beverages to customers who are visibly intoxicated. OVG will institute and conduct training programs for OVG employees at the Facility on the proper standards to use to avoid selling alcoholic beverages to customers who are or who appear to be intoxicated.

Section 13.3 Taxes. OVG shall collect and pay all Taxes (and Public Improvement Fees as further described in Section 9.4) imposed upon the sale of concession, tickets, and merchandise items hereunder, as required by Federal, State or local law. OVG shall be responsible for and pay all social security, unemployment insurance, old age retirement and other federal and state taxes that are measured by the wages, salaries, or other remuneration paid to persons employed by OVG. Owner shall be responsible for and hold OVG harmless from any and all possessory interest or leasehold taxes which may be levied or are in effect during the Term.

## **ARTICLE 14**

### **FACILITY CONTRACTS; TRANSACTIONS WITH AFFILIATES**

Section 14.1 Existing Contracts. Owner shall provide to OVG, on or before the Commencement Date, copies of all Existing Contracts (if any), a list of which is included as Schedule 14.1, attached hereto. OVG shall administer and use commercially reasonable efforts to assure compliance with such Existing Contracts.

Section 14.2 Execution of Contracts. OVG shall have the right to enter into Service Contracts, Revenue Generating Contracts and other contracts related to the operation of the Facility as agent on Owner's behalf and all such contracts shall be entered into by OVG, as agent on behalf of Owner, all subject to and in compliance with the Laws. Any material contract shall contain indemnification and insurance obligations on the part of each vendor, licensee, or service provider, as is customary for the type of services or obligations being provided or performed by such parties, naming each of OVG and Owner as indemnified parties and additional insureds, respectively. OVG shall obtain the prior approval of Owner (which approval shall not be unreasonably withheld or delayed) before entering into any such contract with a term that expires after the Term of this Agreement, unless such contract, by its express terms, can (i) be assigned by OVG to Owner or any subsequent manager of the Facility, or (ii) be terminated by OVG or Owner following expiration of the Term without any penalty. In the case of any Service Contract that requires an expenditure of Operating Expenses in an amount greater than \$25,000 per year, OVG shall obtain the prior approval of Owner (which approval shall not be unreasonably withheld or delayed) before entering into any such contract.

Section 14.3 Transactions with Affiliates. In connection with its obligations hereunder relating to the purchase or procurement of services for the Facility (including without limitation the Food and Beverage Services, ticketing services, Commercial Rights sales, web design services and graphic design services), OVG may purchase or procure such services, or otherwise transact business with, an Affiliate of OVG, provided that the prices charged and services rendered by such Affiliate are competitive with those obtainable from any unrelated parties rendering comparable services all subject to and in compliance with the Laws. OVG shall, at the request of Owner, provide reasonable evidence establishing the competitive nature of such prices and services, including, if appropriate, competitive bids from other persons seeking to render such services at the Facility.

## ARTICLE 15 AGREEMENT MONITORING

Section 15.1 Contract Administrator. Each party shall appoint a contract administrator who shall monitor such party's compliance with the terms of this Agreement. OVG's contract administrator shall be its General Manager at the Facility, unless OVG notifies Owner of a substitute contract administrator in writing. Owner's contract administrator shall be Jay Hardy unless Owner notifies OVG of a substitute contract administrator in writing. Any and all references in this Agreement requiring OVG or Owner participation or approval shall mean the participation or approval of such party's contract administrator.

Section 15.2 Compliance with Laws. OVG is familiar with and shall comply with all such applicable Laws in the performance of its obligations under this Agreement. Subject to OVG's prior approval (not to be unreasonably withheld), the Owner anticipates appointing OVG as a qualified procurement official as defined under Utah Code Section 63G-6a-303 (the "Procurement Official"), to ensure the efficient, transparent, and compliant management of procurement activities related to the Facility and Food and Beverage Services. If so appointed, OVG, as the Procurement Official, shall report to the Owner's Board of Trustees on procurement activities, contract compliance, and project milestones, ensuring accountability and oversight in the performance of its obligations under this Agreement.

## ARTICLE 16 INDEMNIFICATION

Section 16.1 Indemnification by OVG. OVG agrees to defend, indemnify and hold harmless Owner, its Affiliates, and each of their respective trustees, directors, officers, employees, agents, successors and assigns (collectively, "**Owner Indemnified Parties**") against any third-party claims or causes of action, and all costs, expenses (including reasonable attorneys' fees) liabilities, or damages relating to such third-party claims (collectively, "**Losses**") suffered by any of the Owner Indemnified Parties, arising out of or in connection with (i) negligent act or omission, or intentional misconduct, on the part of OVG or any of its employees or agents in the performance of its obligations under this Agreement, or (ii) breach by OVG of any of its representations, covenants or agreements made herein, except to the extent such Losses are claimed to arise from the act or omission of an Owner Indemnified Party. OVG's indemnity obligations as described in this paragraph shall be limited to the extent the Losses are matters for which Owner must indemnify OVG for under Section 16.2 below.

Section 16.2 Indemnification by Owner. Owner agrees to defend, indemnify and hold harmless OVG, its Affiliates, and each of their respective directors, officers, employees, agents, successors

and assigns (collectively, “**OVG Indemnified Parties**”), against any third-party Losses suffered by any of the OVG Indemnified Parties, arising out of or in connection with (i) any negligent act or omission, or intentional misconduct, on the part of Owner or any of its employees or agents in the performance of its obligations under this Agreement, or failure to comply with Laws (ii) a breach by Owner of any of its representations, covenants or agreements made herein, including without limitation Owner’s obligation to pay any budgeted or otherwise approved expenses in a timely manner, (iii) failure by Owner to pay any amounts legally due or required to be funded by Owner hereunder; (iv) any environmental condition at the Facility or on or under the premises on which the Facility is located not caused by OVG, its employees or agents, (v) any structural defect with respect to the Facility, (vi) the fact that any time prior to, as of, or after the date hereof the Facility is not or has not been in compliance with all Laws, including, but not limited to, the Americans With Disabilities Act as it now exists and as it may be amended in the future by statute or judicial interpretation, (vii) any act or omission carried out by OVG at or pursuant to the direction or instruction of Owner, its agents or employees, and (viii) any claims relating to the Facility or its operations accruing or caused by occurrences prior to the Effective Date or following termination or expiration of this Agreement. Owner’s indemnity obligations as described in this paragraph shall be limited to the extent the Losses are matters for which OVG must indemnify Owner for under Section 16.1 above.

Section 16.3 Conditions to Indemnification. With respect to each separate matter brought by any third-party against which a party hereto (“**Indemnitee**”) is indemnified by the other party (“**Indemnitor**”) under this Article 16, the Indemnitor shall be responsible, at its sole cost and expense, for controlling, litigating, defending and/or otherwise attempting to resolve, through counsel of its choice, any proceeding, claim, or cause of action underlying such matter, except that (i) the Indemnitee may, at its option, participate in such defense or resolution at its expense and through counsel of its choice; (ii) the Indemnitee may, at its option, assume control of such defense or resolution if the Indemnitor does not promptly and diligently pursue such defense or resolution, provided that the Indemnitor shall continue to be obligated to indemnify the Indemnitee hereunder in connection therewith; and (iii) neither Indemnitor nor Indemnitee shall agree to any settlement without the other’s prior written consent (which shall not be unreasonably withheld or delayed). In any event, Indemnitor and Indemnitee shall in good faith cooperate with each other and their respective counsel with respect to all such actions or proceedings, at the Indemnitor’s expense. With respect to each and every matter with respect to which any indemnification may be sought hereunder, upon receiving notice pertaining to such matter, Indemnitee shall promptly give reasonably detailed written notice to the Indemnitor of the nature of such matter and the amount demanded or claimed in connection therewith.

Section 16.4 Survival. The obligations of the parties contained in this Article 16 shall survive the termination or expiration of this Agreement.

## **ARTICLE 17 INSURANCE**

Section 17.1 Types and Amount of Coverage. OVG agrees to obtain insurance coverage in the manner and amounts as set forth in Schedule 17.1, attached hereto, and shall provide to Owner promptly following the Commencement Date a certificate of certificates of insurance evidencing such coverage. OVG shall maintain such referenced insurance coverage at all times during the Term and will not make any material modification or change from these specifications without the prior approval of Owner. The

cost of all such insurance, including, without limitation, the cost of any coverage deductibles, coinsurance penalties, or self-insured retention under insurance policies, shall be an Operating Expense.

Section 17.2 Rating; Additional Insureds. All insurance policies shall be issued by insurance companies rated no less than A VIII in the most recent "Bests" insurance guide and licensed in the State of Utah, or as otherwise agreed by the parties. All such policies shall be in such form and contain such provisions as are generally considered standard for the type of insurance involved. The commercial general liability policy, automobile liability insurance policy and umbrella or excess liability policy to be obtained by OVG hereunder shall name Owner as an additional insured. The workers compensation policy to be obtained by OVG hereunder shall contain a waiver of all rights of subrogation against Owner. OVG shall require that all third-party users of the Facility, including without limitation third-party licensees, ushers, security personnel and concessionaires, provide certificates of insurance evidencing insurance appropriate for the types of activities in which such user is engaged. If OVG subcontracts any of its obligations under this Agreement, OVG shall require each such subcontractor to secure insurance that will protect against applicable hazards or risks of loss as and in the minimum amounts designated herein, and name OVG and Owner as additional insureds.

Section 17.3 Owner Insurance. Owner agrees to obtain insurance coverage in the manner and amounts as set forth in Schedule 17.3, attached hereto, and shall provide to OVG promptly following the Effective Date a certificate of certificates of insurance evidencing such coverage. Owner shall maintain such referenced insurance coverage at all times during the Term and will not make any material modification or change from these specifications without prior notification to the OVG. The Owner shall provide to the OVG at least thirty (30) days written notice of cancellation or material change in the terms and provisions of the applicable policy.

## **ARTICLE 18**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 18.1 OVG Representations and Warranties. OVG hereby represents, warrants, and covenants to Owner as follows:

(a) that it has the full legal right, power, and authority to enter into this Agreement and to grant the rights and perform the obligations of OVG herein, and that no third-party consent or approval is required to grant such rights or perform such obligations hereunder; and

(b) that this Agreement has been duly executed and delivered by OVG and constitutes a valid and binding obligation of OVG, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, or similar Laws affecting creditors' rights generally or by general equitable principles.

Section 18.2 Owner Representations, Warranties and Covenants. Owner represents, warrants, and covenants to OVG as follows:

(a) that it has the full legal right, power, and authority to enter into this Agreement and to grant the rights and perform the obligations of Owner herein, and that no other third-party consent or approval is required to grant such rights or perform such obligations hereunder;

(b) that this Agreement has been duly executed and delivered by Owner and constitutes a valid and binding obligation of Owner, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, or similar laws affecting creditors' rights generally or by general equitable principles; and

(c) that the Facility will be, as of the Opening Date, in compliance in all respects with all applicable Laws relating to the construction, use and operation of the Facility (including, without limitation, Title III of the American with Disabilities Act), and that there exist no structural defects or unsound operating conditions at the Facility.

## **ARTICLE 19**

### **RIGHTS RESERVED TO THE OWNER; TAX POSITION; RISK OF LOSS**

Section 19.1 Owner Approval Rights. Without limiting any other rights of the Owner as described herein, the parties agree that the Owner shall have the right to approve (a) the annual Operating Budget, (b) major Capital Expenditures, (c) any disposition of Facility assets, and (d) the general rates charged at the Facility for users of the Facility

Section 19.2 Tax Position. OVG agrees that it is not entitled to, and will not take, any tax position that is inconsistent with OVG being a service provider to the Owner for the Facility.

Section 19.3 Risk of Loss. Owner shall bear the risk of loss upon damage or destruction to the Facility. Owner shall be responsible for any operating losses, and Manager shall have no liability for any such operating losses.

## **ARTICLE 20**

### **MISCELLANEOUS**

Section 20.1 PCI Compliance. OVG agrees to comply with all current Payment Card Industry Data Security Standards ("**PCI Standards**") and guidelines that may be published from time to time by Visa, MasterCard or other associations as they relate to the physical storage of credit card data. For PCI Standards compliance purposes, Owner will provide on a segmented network, an appropriate number of wired data connections to the Internet for point of sale devices to be used by OVG and any contractors at the Facility. Owner shall be responsible for the security of its network, including, without limitation, applicable PCI-DSS compliance, and for procuring and installing point of sale (POS) payment systems that are compliant with the latest PCI-DSS requirements. If at any time either party determines that card account number or other information has been compromised, such party will notify the other immediately and assist in providing notification to the proper parties as deemed necessary.

Section 20.2 No Discrimination. OVG agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, religion, color, sex, disability, national origin, ancestry, physical handicap, or age, and will take affirmative steps to ensure that applicants are employed, and employees are treated during employment, without regard to race, religion, color, sex, disability, national origin, ancestry, physical handicap, or age.

Section 20.3 Use of Facility Names and Logos. OVG shall have the right to use throughout the Term (and permit others to use in furtherance of OVG's obligations hereunder), for no charge, the name and all logos of the Facility, on OVG's stationary, in its advertising of the Facility, and whenever conducting



business of the Facility; provided, that OVG shall take all prudent and appropriate measures to protect the intellectual property rights of Owner relating to such logos. All intellectual property rights in any Facility logos developed by the OVG or Owner shall be and at all times remain the sole and exclusive property of Owner. OVG agrees to execute any documentation requested by Owner from time to time to establish, protect or convey any such intellectual property rights.

Section 20.4 Facility Advertisements. Owner agrees that in all advertisements placed by Owner for the Facility or events at the Facility, whether such advertisements are in print, on radio, television, the internet or otherwise, it shall include a designation that the Facility is a “Managed by Oak View Group.”

Section 20.5 Force Majeure; Casualty Loss.

(a) Neither party shall be liable or responsible to the other party for any delay, loss, damage, failure or inability to perform under this Agreement due to an Event of Force Majeure, provided that the party claiming failure or inability to perform provides written notice to the other party within thirty (30) days of the date on which such party gains actual knowledge of such Event of Force Majeure. Notwithstanding the foregoing, in no event shall a party’s failure to make payments due hereunder be excusable due to an Event of Force Majeure.

(b) In the event of damage or destruction to a material portion of the Facility by reason of fire, storm or other casualty loss that renders the Facility (or a material portion thereof) untenable, Owner shall use reasonable efforts to remedy such situation. If notwithstanding such efforts, such damage or destruction is expected to render the Facility (or a material portion thereof) untenable for a period estimated by an architect selected by Owner at OVG’s request, of at least 180 days from the date of such fire, storm or other casualty loss, either party may terminate this Agreement upon written notice to the other, provided that (i) Owner shall pay to OVG its costs of withdrawing from services hereunder, as described in Section 4.3 above, and (ii) in the event the Owner (or an Affiliate thereof) reopens the Facility at any time during the Term to operate as a public event venue, Owner shall give OVG the right and option to operate the Facility under the terms hereof, except that the Term shall be extended for a period of time in which the Facility was closed.

Section 20.6 Assignment; Binding on Successors and Assigns. Neither party may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed, except that either party may, without the prior written consent of the other party but upon at least 30 days’ written notice to the other party, assign this Agreement in connection with a sale, merger or other business combination involving all or substantially all of its assets or equity interests, and OVG may further assign this Agreement to an Affiliate where such assignment is intended to accomplish an internal corporate purpose of OVG as opposed to materially and substantially altering the method of delivery of services to Owner. Any purported assignment in contravention of this Section shall be void. This Agreement is binding on successors and permitted assigns of the parties.

Section 20.7 Notices. All notices required or permitted to be given pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, or by generally recognized, prepaid, overnight air courier services, to the address and individual set forth below. All such notices to either party shall be deemed to have been provided when delivered, if delivered personally, 3 days after mailed, if sent by registered or certified mail, or the next

business day, if sent by generally recognized, prepaid, overnight air courier services. A courtesy copy of notices shall be sent electronically to the email addresses included below.

<p>If to Owner:</p> <p>WBA Local Government Law 350 E 400 S, #2301 Salt Lake City, UT 84111 Attn: Blair M. Dickhoner Email: bdickhoner@wbapc.com</p>	<p>If to OVG:</p> <p>Oak View Group 5050 S. Syracuse St., Suite 800 Denver, CO 80237 Attn: CEO</p>
<p><i>With a copy to:</i></p> <p>Pinnacle Consulting Group, Inc. 550 W. Eisenhower Blvd Loveland, CO 80537 Attn: Brendan Campbell Email: bcampbell@pcgi.com</p>	<p><i>With a copy to:</i></p> <p>Oak View Group 5050 S. Syracuse St., Suite 800 Denver, CO 80237 Attn: OVG360 Legal Department Email: OVG360Legal@oakviewgroup.com</p>

The designation of the individuals to be so notified and the addresses of such parties set forth above may be changed from time to time by written notice to the other party in the manner set forth above.

Section 20.8 Severability. If a court of competent jurisdiction determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement (and the application of this Agreement to other circumstances) shall not be affected thereby, and each remaining term shall be valid and enforceable to the fullest extent permitted by law.

Section 20.9 Entire Agreement. This Agreement (including the exhibits attached hereto) contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior negotiations, correspondence, conversations, agreements, and understandings concerning the subject matter hereof. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations, agreements or understandings, whether oral or written.

Section 20.10 Governing Law. The Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Utah, without regard to its conflict of laws principles.

Section 20.11 Governmental Entity. The Parties acknowledge that the Owner is a governmental entity that is subject to the **Government Records Access and Management Act (GRAMA)**, Utah Code Annotated § 63G-2-101 et seq., and all records related to this Agreement, including but not limited to financial reports, communications, and performance metrics, may be subject to public disclosure under Utah law. Notwithstanding any confidentiality provisions in this Agreement, the Owner shall comply with its legal obligations to disclose public records as required under GRAMA. OVG agrees to cooperate with the Owner in providing any necessary records or documentation requested under GRAMA and will assist in identifying any records that OVG believes may be exempt from public disclosure. If OVG believes any

records are exempt from disclosure under GRAMA, OVG must provide a written request to Owner, specifying the records and the grounds for exemption. In the event that Owner receives a request for records related to this Agreement that OVG believes contains confidential or proprietary information, Owner will make reasonable efforts to notify OVG of the request prior to disclosure. Owner may then assert the need for an exemption under GRAMA or seek a protective order from a court, which if approved by OVG in advance shall be at OVG's sole expense. However, Owner shall make the final determination as to whether the records are subject to disclosure under applicable law. Notwithstanding anything to the contrary in this Section 20.11, communications solely between OVG employees and representatives (excluding the Owner or its employees or representatives) are not subject to public disclosure.

Section 20.12 Amendments. This Agreement may not be amended except by an instrument in writing signed by an authorized representative of each of the Parties.

Section 20.13 Waiver; Remedies. No failure or delay by a party hereto to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent to a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder shall affect or alter the remaining terms of this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity.

Section 20.14 Relationship of Parties. OVG and Owner acknowledge and agree that they are not joint venturers, partners, or joint owners with respect to the Facility, and nothing contained in this Agreement shall be construed as creating a partnership, joint venture or similar relationship between Owner and OVG. In operating the Facility, entering into contracts, accepting reservations for use of the Facility, and conducting financial transactions for the Facility, OVG acts on behalf of and as agent for Owner (but subject to the limitations on OVG's authority as set out in this Agreement), with the fiduciary duties required by law of a party acting in such capacity.

Section 20.15 No Third-Party Beneficiaries. Other than the indemnitees listed in Sections 16.1 and 16.2 hereof (who are third party beneficiaries solely with respect to the indemnification provisions in such sections), there are no intended third-party beneficiaries under this Agreement, and no third-party shall have any rights or make any claims hereunder, it being intended that solely the parties hereto (and the aforementioned indemnitees with respect to the indemnification provisions hereof) shall have rights and may make claims hereunder.

Section 20.16 Attorneys' Fees. If any suit or action is instituted by either party hereunder, including all appeals, the prevailing party in such suit or action shall be entitled to recover reasonable attorneys' fees and expenses from the non-prevailing party, in addition to any other amounts to which it may be entitled.


Section 20.17 Limitation on Damages. Except with respect to any indemnification obligations hereunder, in no event shall either party be liable or responsible for any consequential, indirect, incidental, punitive, or special damages (including, without limitation, lost profits) whether based upon breach of contract or warranty, negligence, strict tort liability or otherwise, and each party's liability for damages or losses hereunder shall be strictly limited to direct damages that are actually incurred by the other party; provided that the foregoing shall not limit or restrict any claim by OVG for the fees described herein upon a breach or default of this Agreement by Owner; the parties expressly agree that, upon a

breach or default hereunder by Owner, any claim by OVG for the remaining fees through the original expiration date of this Agreement shall be deemed to be a claim for direct damages.

Section 20.18 Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document. This Agreement may be executed by the parties and transmitted by electronic transmission, and if so executed and transmitted, shall be effective as if the parties had delivered an executed original of this Agreement.

**ACCEPTED AND AGREED** as of the Effective Date:

**POINT PHASE 1 PUBLIC  
INFRASTRUCTURE DISTRICT NO. 1**


By:   
Name: Jay Hardy  
President of the Board of Trustees

Attest:

Jared Hardy  
\_\_\_\_\_

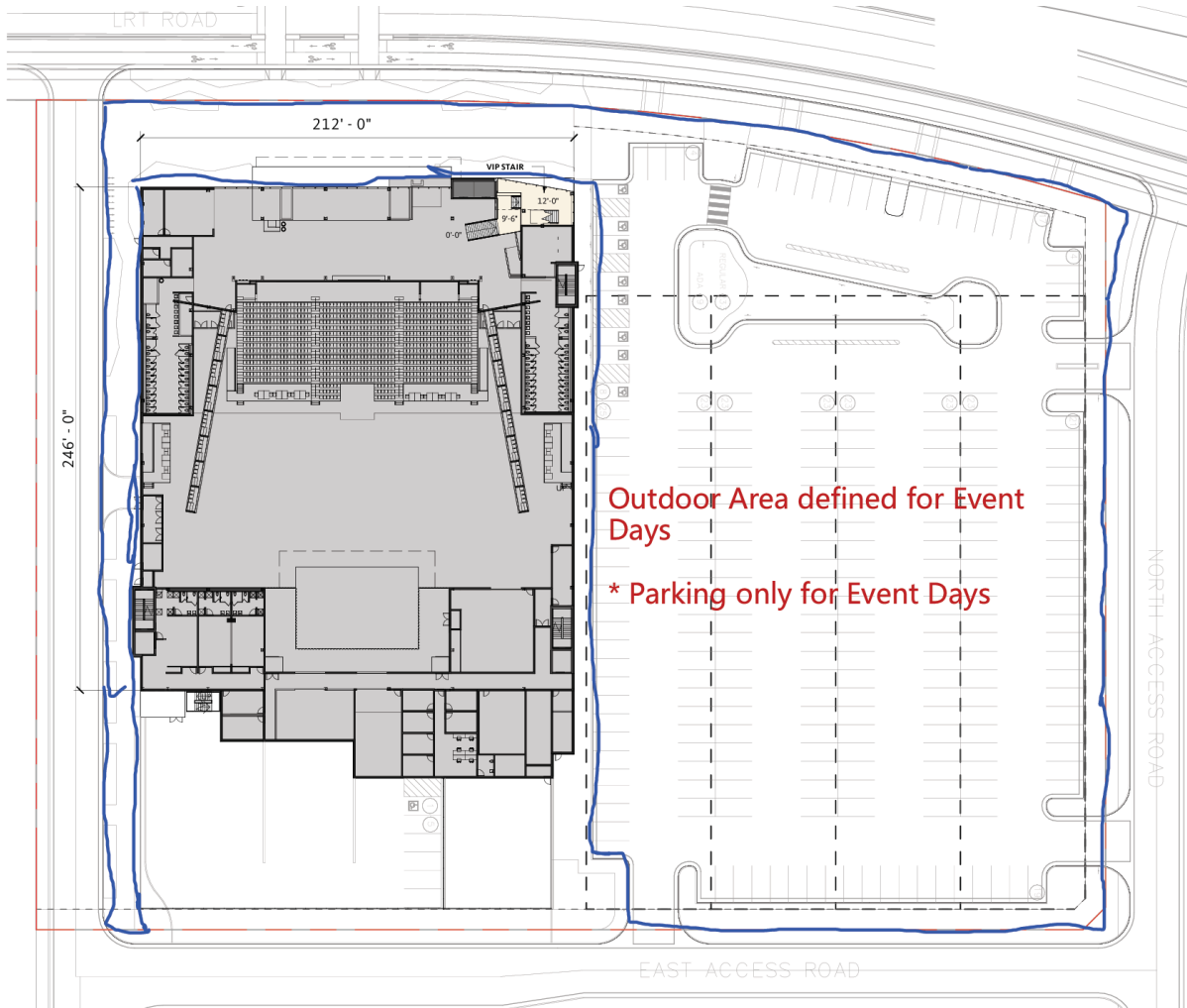
**GLOBAL SPECTRUM, L.P.,  
d/b/a Oak View Group**

By: Global Spectrum, LLC,  
its general partner

By:   
Brian Rothenberg  
President

## SCHEDULE 1.1

## OUTDOOR AREAS OF FACILITY DEFINED



**SCHEDULE 2.1 (A)**  
**PRE-OPENING CONSULTING AND MANAGEMENT DUTIES**

**I. Pre-Opening Consulting.**

During the Pre-Opening Period, OVG shall perform the following duties:

- (a) Assist Owner with its review of the design of the Facility and make recommendations to Owner with respect to such design.
- (b) Advise Owner on any construction and operational issues with respect to the Facility that may arise during the Pre-Opening Period.
- (c) Advise Owner on risk management and insurance needs in connection with the operation of the Facility.
- (d) Assist Owner in developing and implementing a telecommunications plan for the Facility.
- (e) Develop and recommend a proposed inventory of Facility FF&E, including those relating to food and beverage services; provided that OVG's involvement in the purchase of Facility FF&E shall be subject to an additional mutually agreed fee.
- (f) Prepare and submit to Owner a list of operating supplies necessary for the start-up of the Facility.
- (g) Prepare and submit to Owner food and beverage budget, menu concepts (including proposed pricing) and food and beverage designs, including layouts for kitchens and concession stands.
- (h) Work with Owner to secure appropriate license as described in Section 13.1.
- (i) Prepare and submit to Owner pre-opening and operational sales, marketing, public relations, advertising, promotion, and revenue-generating event booking strategies and plans for maximizing revenues from the Facility.
- (j) Parking and traffic strategy review and recommendations
- (k) Initial proforma and proposed schedule of events targeted
- (l) Market conditions review and recommendations for Operating Years 1-3 events

OWNER ACKNOWLEDGES THAT NEITHER OVG NOR ITS EMPLOYEES, AGENTS, PARTNERS, OR AFFILIATES, ARE ARCHITECTS, GENERAL CONTRACTORS, ENGINEERS OR FINANCIAL ADVISORS, AND THEIR CONSULTING SERVICES PROVIDED UNDER THIS AGREEMENT ARE BASED ON THEIR OPERATIONAL KNOWLEDGE OF SPORTS AND ENTERTAINMENT COMPLEXES, ARENAS, STADIUMS AND OTHER SIMILAR FACILITIES AND SHOULD NOT BE CONSTRUED AS A REPRESENTATION OF ARCHITECTURAL, CONSTRUCTION, ENGINEERING OR FINANCIAL PRACTICES. NEITHER OWNER NOR ANY OF ITS RESPECTIVE AGENTS, CONSULTANTS, CONTRACTORS, OR REPRESENTATIVES, WILL RELY UPON OVG OR ITS PARTNERS AS HAVING ARCHITECTURAL, CONSTRUCTION, ENGINEERING OR FINANCIAL EXPERTISE.

## II. Pre-Opening Management

During the Pre-Opening Period and the Stub Operating Year, OVG shall perform the following additional duties:

(a) Develop an Operations Manual for the Facility. OVG shall deliver a “template” of the Operations Manual to Owner within 60 days of the Commencement Date and shall customize such template to apply to the Facility no less than 180 days following the Opening Date. The final version of the Operations Manual shall be mutually agreed upon by the parties.

(b) In conjunction with the Owner, Establish prices, rates and rate schedules for user, license, concessions, occupancy, and advertising agreements, and booking commitments, at the Facility. OVG may deviate from the established rate schedule when entering into any such agreements if determined by OVG, using its reasonable business judgment, to be necessary or appropriate with respect to the specific situation but will do so in a legally compliant manner given the Facility is publicly owned.

(c) Procure, negotiate, execute (as agent for Owner), administer, and assure compliance with Service Contracts. All such agreements shall provide for termination in the event the Facility is not constructed or completed for any reason.

(d) Procure, negotiate, execute (as agent for Owner), administer, and assure compliance with Revenue Generating Contracts.

(e) Arrange for and otherwise book revenue-generating events at the Facility in accordance with a booking schedule to be developed by OVG, in consultation with Owner.

(f) Plan, promote and execute, in conjunction with the Owner, a “grand opening” event or events at the Facility.

(g) Engage, supervise, and direct all personnel at the Facility that OVG deems necessary to perform the pre-opening services described herein, and conduct staff planning, retention and training programs with respect to such personnel as determined to be necessary by OVG in its sole discretion.

(h) Maintain detailed, accurate and complete financial and other records of all its activities under this Agreement in accordance with generally accepted accounting principles.

(i) Cause such other acts and things to be done with respect to the Facility, as determined by OVG in its reasonable discretion to be necessary for the management and operation of the Facility prior to the Opening Date.

**SCHEDULE 2.1 (B)**  
**POST-OPENING DATE MANAGEMENT SERVICES**

Following the Pre-Opening Period, OVG's management obligations under the Agreement shall consist of the following obligations, all of which are subject to the terms hereof and the controls and restrictions in the Operations Manual:

(a) Manage all aspects of the Facility in accordance with the Operations Manual and the terms of this Agreement, including but not limited to managing purchasing, payroll, fire prevention, security, crowd control, routine repairs, preventative maintenance, janitorial services, promotions, advertising, energy conservation, security, box office, admission procedures, and general user services. The parties acknowledge and agree that OVG's services under this Agreement shall not include the management of any parking lots.

(b) Establish and adjust prices, rates and rate schedules for user, license, concessions, occupancy, and advertising agreements, and booking commitments. OVG may deviate from the established rate schedule when entering into any such agreements if determined by OVG, using its reasonable business judgment, to be necessary or appropriate with respect to the specific situation.

(c) Procure, negotiate, execute, administer and assure compliance with Service Contracts, Revenue Generating Contracts, and other contracts related to the operation of the Facility.

(d) Require that all material vendors and licensees of the Facility execute vendor/license agreements containing standard indemnification and insurance obligations on the part of each such vendor/licensee.

(e) Provide standard form advertising and sponsorship contracts and user/rental agreements for use at or with respect to the Facility. OVG shall submit such form agreements to Owner for review and comment, and the parties shall work together to finalize such forms. Once finalized, OVG shall use such forms in furtherance of its duties hereunder, and shall not materially deviate from the terms contained in such forms without obtaining the prior approval of Owner (which shall not be unreasonably withheld). OVG's sole responsibility with regard to providing legal advice or assistance hereunder shall be to provide such standard form contracts.

(f) Operate and maintain the Facility, including the equipment utilized in connection with its operation and any improvements made during the term of this Agreement, in the condition received, normal wear and tear excepted.

(g) Arrange for and otherwise book events at the Facility in accordance with a booking schedule to be developed by OVG.

(h) Hire or otherwise engage, pay, supervise, and direct all personnel OVG deems necessary for the operation of the Facility in accordance with Article 6 of the Agreement, and conduct staff planning, retention and training programs as determined to be necessary by OVG in its sole discretion.



(i) Maintain detailed, accurate and complete financial and other records of all its activities under this Agreement in accordance with generally accepted accounting principles, which records shall be made available to Owner upon request, in accordance with Section 11.1 of the Agreement.

(j) Submit to Owner in a timely manner financial and other reports detailing OVG's activities in connection with the Facility, as set forth in Section 11.2 of the Agreement.

(k) Prepare a proposed annual Operating Budget and submit such proposed budget to Owner, both in accordance with Article 8 of the Agreement.

(l) Pay all Operating Expenses and other expenses incurred in connection with the operation, maintenance, supervision and management of the Facility from the Operating Account or with funds otherwise made available by Owner.

(m) Secure, or assist Owner (or any other third party, as applicable) to secure, all licenses and permits necessary for the operation and use of the Facility for the specific events to be held therein, and for the general occupancy of the Facility, including without limitation all necessary food and liquor licenses, and renewals thereof. Owner shall cooperate in this process to the extent reasonably required. All costs associated with this process shall be Operating Expenses.

(n) Collect, deposit and hold in escrow in the Event Account any ticket sale revenues which it receives in the contemplation of or arising from an event pending the completion of the event, as more fully described in Section 9.1 of the Agreement.

(o) Collect in a timely manner and deposit in the Operating Account all Revenue, as more fully described in Section 9.2 of the Agreement

(p) Subject to Owner making available sufficient funds in a timely manner, pay all Taxes.

(q) Assist in the preparation, maintenance, and implementation of a marketing plan for the Facility, as requested and subject to Owner's approval.

(r) Assist in the planning, preparation, and implementation of all public relations and other promotional programs for the Facility, as requested.

(s) Market and attempt to sell Commercial Rights, including naming rights, at or in connection with the Facility.

(t) On an annual basis, cause a written inventory to be taken of all Facility FF&E, supplies, tools and vehicles at the Facility, and deliver a written report of the foregoing to Owner. OVG shall document all major damage to, or loss in, such inventory during the Term as soon as such damage or loss is discovered by OVG, and OVG shall promptly notify Owner of any such damage or loss.

(u) Purchase, on behalf of Owner and with Owner funds, and maintain during the Term, all materials, tools, machinery, equipment and supplies necessary for the operation of the Facility.

(v) As agent for Owner, manage risk management and Facility insurance needs, as more fully described in Article 17 of the Agreement.

(w) Make and be responsible for all routine and minor repairs, maintenance, preventative maintenance, and equipment servicing. OVG shall be responsible for ensuring that all repairs, replacements, and maintenance shall be of a quality and class at least equal to that of the item being repaired, replaced, or maintained. Any replacement of an item in inventory, or any new item added to the inventory, which is paid for by Owner, shall be deemed the property of Owner.

(x) Cause such other acts and things to be done with respect to the Facility, as determined by OVG in its reasonable discretion to be necessary for the management and operation of the Facility following the Opening Date.

**SCHEDULE 2.1(C)**  
**POST OPENING DATE OVG FOOD AND BEVERAGE SERVICES**

OVG's food and beverage obligations under the Agreement shall consist of the following obligations, all of which are subject to the terms hereof and the controls and restrictions in the Operations Manual:

- (a) Develop and implement all necessary policies and procedures for the food and beverage services;
- (b) Engage and oversee employees necessary to perform the food and beverage services at the Facility;
- (c) Manage the food and beverage services in compliance with and subject to all federal, state and local laws, ordinances and regulations (including, without limitation, health and sanitation codes and regulations with respect to the sanitation and purity of the food and beverage products for sale);
- (d) Arrange for all minor repairs and routine maintenance to the equipment used in the operation of the food and beverage services;
- (e) Keep the food and beverage facilities and equipment neat, clean and in a sanitary condition;
- (f) Undertake appropriate advertising, marketing and promotion of the food and beverage offerings at the Facility;
- (g) Develop menus, portions, brands, prices, themes and marketing approaches. OVG (or its designee concessionaire, as applicable) shall be entitled to set the prices for such items for sale; and
- (h) Order, stock, prepare, pay for (as an Operating Expense) and sell appropriate foods and beverages.

**SCHEDULE 14.1  
EXISTING CONTRACTS**

As of the effective date of this Agreement, no such contracts exist.

### SCHEDULE 17.1 INSURANCE

At all times during this Agreement, OVG shall maintain the following insurance coverage:

- (a) commercial general liability insurance, including products and completed operations, bodily injury and property damage liability, contractual liability, independent contractors' liability, and personal and advertising injury liability against claims occurring on, in, or about the Facility, or otherwise arising under this Agreement;
- (b) umbrella or excess liability insurance;
- (c) commercial automobile liability insurance, including coverage for the operation of owned, leased, hired and non-owned vehicles;
- (d) workers compensation and employer's liability insurance as shall be required by and be in conformance with the laws of the State of Utah;
- (e) professional liability insurance and self-insured employment practices liability coverage;
- (f) employment practices liability insurance;
- (g) pollution liability; and
- (h) crime coverage.

Such liability insurance shall be maintained in the following minimum amounts throughout the Term:

Commercial General Liability

\$1,000,000 per occurrence

\$1,000,000 personal and advertising injury

\$1,000,000 products-completed operations aggregate

Umbrella or Excess Liability

\$5,000,000 per occurrence and aggregate

Automobile Liability

\$1,000,000 per accident (PI and PD combined single limit)

\$1,000,000 uninsured/underinsured motorist

Workers Compensation

Workers Compensation: Statutory

Employer's Liability: \$100,000 each accident-bodily injury by accident

\$500,000 policy limit-bodily injury by disease

\$100,000 each employee-bodily injury by disease

Professional Liability/Errors & Omissions (Claims Made basis)

\$1,000,000 each occurrence/aggregate

Employment Practices Liability Insurance (Claims Made basis)

\$1,000,000

Pollution Liability (Claims Made basis)

\$1,000,000

Crime Insurance

Coverage on all on-site OVG employees. Limit: \$500,000

**SCHEDULE 17.3**  
**OWNER INSURANCE**

At all times during this Agreement, Owner shall maintain the following insurance coverage:

(a) Commercial Property Insurance

- i. All-risk property insurance on the Facility and the Owner's business property and equipment providing coverage to a limit of not less than the full replacement cost, including explosion, collapse and underground, earthquake and flood. Such insurance will be written to include replacement cost value. All premium, deductibles, taxes and fees and/or self-insured retentions are the responsibility of the Owner.

(b) To the extent applicable, Worker's Compensation and Employer's Liability Insurance as shall be required by and be in conformance with the laws of the State of Utah.

- i. Workers Compensation: Statutory
- ii. Employer's Liability: \$1,000,000 each accident-bodily injury by accident; \$1,000,000 policy limit-bodily injury by disease; \$1,000,000 each employee-bodily injury by disease

**Additional Terms:**

- All policies shall be issued by insurance companies authorized by the state or commonwealth where the Facility is located and have an A.M. Best rating of at least A VIII or better for the duration of the contract and any extensions thereof.
- All policies shall include a waiver of subrogation in favor of the OVG and be primary and non-contributory with any available insurance policies and programs of self-insurance of the OVG.

## SCHEDULE II MINIMUM FACILITY REQUIREMENTS

Minimum Facility Requirements for the Facility include:

- 5,068 Capacity with approximately 1,748 fixed seats
- Concourses that allow for ease of circulation, electrical/power access and activation for a wide variety of events and services including concession and merchandise stands, and portable service locations
- Square Footage
  - EVENT LEVEL: 59,195 SF
  - MEZZANINE LEVEL: 895 SF
  - SUITE LEVEL: 26,000 SF
  - UPPER Level: 17,900 SF
  - TOTAL: 104,310 SF
- 64 Club Seats with access to a Club Lounge
- 16 Luxury Suites with 12 seats in each
- 12 Loge Boxes with 8 seats in each
- Concessions, Restrooms, & Ticket Office Space
- Office space to support FacilityArena operations including Venue Management and Hospitality
- Back of House space including locker/dressing rooms, storage, and mechanical space
- Green Room
- Loading dock area that allows for at least two tractor trailer trucks to load and unload simultaneously
- A variety of LED/Digital signage including video boards, ribbon boards and other concourse and exterior marquee signs
- Adequate show power to accommodate a wide variety of Facility uses including concerts

In addition to the foregoing, the quantity of available parking at the Facility and the design of the parking facilities shall be mutually agreed between Owner and OVG during the Pre-Opening Period and once agreed shall constitute a Minimum Facility Requirement for purposes of this Agreement.