



**Maryland Stadium Authority**

**Request for Proposals**

**Construction Management Services**

**Phase III - Ocean City Convention Center Expansion and Improvements**

**Issue Date:  
Friday, July 14, 2017**

**KEY INFORMATION SUMMARY SHEET  
MARYLAND STADIUM AUTHORITY**

**Phase III - Ocean City Convention Center Expansion and Improvements**

**Request for Proposals**

**Construction Management Services**

<b>RFP Issue Date:</b>	<b>Friday, July 14, 2017</b>
<b>Procurement Officer:</b>	<b>Al Tyler Maryland Stadium Authority 351 West Camden Street, Suite 500 Baltimore, Maryland 21201 Phone: (410) 223-4141 E-mail: <a href="mailto:atyl@mdstad.com">atyl@mdstad.com</a></b>
<b>Procurement Method:</b>	<b>Competitive Sealed Proposals</b>
<b>Pre-Proposal Conference:</b>	<b>Wednesday, July 26, 2017 @ 10:00 am Roland E. Powell Convention Center 4001 Coastal Highway Ocean City, Maryland 21842</b>
<b>Closing Date and Time (Local Time):</b>	
<b>Technical Proposal:</b>	<b>Thursday, August 10, 2017 at 11:00 am</b>
<b>Financial Proposal:</b>	<b>TBD</b>

## **TABLE OF CONTENTS**

<b>SECTION 1</b>	<b>GENERAL INFORMATION</b>
<b>SECTION 2</b>	<b>OFFEROR'S QUALIFICATIONS</b>
<b>SECTION 3</b>	<b>PURPOSE AND SCOPE OF WORK</b>
<b>SECTION 4</b>	<b>PROPOSAL SUBMISSION AND REQUIREMENTS</b>
<b>SECTION 5</b>	<b>EVALUATION CRITERIA AND SELECTION PROCEDURE</b>

## **ATTACHMENTS**

- A. BID/PROPOSAL AFFIDAVIT**
- B. CONFLICT OF INTEREST INFORMATION/AFFIDAVIT AND DISCLOSURE**
- C. MARKET & ECONOMIC ANALYSIS ASSOCIATED WITH EXPANSION OF THE OCEAN CITY CONVENTION CENTER DATED JANUARY 2017 PREPARED BY CROSSROADS CONSULTING SERVICES, LLC.**
- D. MBE INSTRUCTIONS AND FORMS**
- E. CORPORATE PROFILE**
- F. PROJECT EXPERIENCE FORM**
- G. STAFFING PLAN**
- H. KEY PERSONNEL PROJECT EXPERIENCE MATRIX**
- I. FINANCIAL PROPOSAL FORM**
- J. BID / PROPOSAL BOND FORM**
- K. PERFORMANCE BOND FORM**
- L. LABOR AND MATERIAL PAYMENT BOND FORM**
- M. SAMPLE CONTRACT: PRECONSTRUCTION AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES**
- N. SAMPLE CONTRACT: CONSTRUCTION MANAGEMENT AGREEMENT**
- O. SAMPLE CONTRACT: ARCHITECT AGREEMENT FOR DESIGN SERVICES**
- P. CONTRACT AFFIDAVIT**

## Section 1

### GENERAL INFORMATION

#### 1.1 Summary Statement

The Maryland Stadium Authority (“MSA”) is soliciting proposals from qualified Construction Management (CM) firms to provide pre-construction services related to the Phase III – Ocean City Convention Center Expansion and Improvements project at the Roland E. Powell Convention Center in Ocean City, Maryland (the “Project”). The scope of the project will be primarily based on the recommendations contained in the Market & Economic Analysis Associated with Expansion of the Ocean City Convention Center (the “Report”) dated January 2017 prepared by Crossroads Consulting Services (Crossroads). The Report is attached here to as **Attachment C** and available for review on MSA’s website using this link: <http://www.mdstad.com/images/pdf/OCCCCFinalReportJan2017.pdf>

Among other things, the Report outlines the recommended building program of expanding the existing exhibit hall space by 30,000 square feet, constructing new support space to accommodate the expansion of the exhibit hall, making improvements to existing spaces within the facility and addressing the parking needs for the expanded facility.

The Project will be designed and built under a guaranteed maximum price via the Construction Manager at Risk method as fully set forth in the RFP.

#### 1.2 Abbreviations and Definitions

For purposes of this RFP, the following abbreviations and terms have the meanings indicated below:

- a) **A/E** – A third party engaged by the Owner to provide design and construction administration services.
- b) **COMAR** - Code of Maryland Regulations (available at [www.dsd.state.md.us](http://www.dsd.state.md.us)).
- c) **Construction Manager (CM)** – The Offeror selected under the requirements and procedures contained in this RFP.
- d) **Contract** - The contract or agreement entered into between MSA and the selected Offeror responding to the RFP. The Contract will include all general MSA terms and conditions and will incorporate the entire RFP, including any amendments/addenda and all or indicated portions of the selected Offeror’s proposal. A sample contract is attached hereto as **Attachment M**.
- e) **Contract Administrator (CA)** – The MSA representative for this Contract that is primarily responsible for Contract administration functions, including issuing written direction, compliance with terms and conditions, monitoring this Contract to ensure compliance with terms and conditions, monitoring

this Contract to ensure compliance with the terms and conditions of the Contract and to assist the consultant in achieving on/budget on/ time target (e.g., within scope) completion of the Contract requirements. MSA may change the CA at any time by written notice to the Consultant.

- f) **eMM - eMaryland Marketplace** (<https://emaryland.buyspeed.com>).
- g) **Local Time** - Time in the Eastern Time Zone as observed by the State.
- h) **MBE** - Minority Business Enterprise certified by the Maryland Department of Transportation (MDOT).
- i) **MSA** - Maryland Stadium Authority ([www.mdstad.com](http://www.mdstad.com)).
- j) **MSA Business Hours** - 8:30 A.M. to 5:00 P.M., local time, Monday through Friday, excluding State holidays.
- k) **MSA Procurement Policies** - MSA procurement policies and procedures (available at [www.mdstad.com/contracting](http://www.mdstad.com/contracting)).
- l) **Notice to Proceed (NTP)** – A formal notification issued by the Procurement Officer that directs the Consultant to perform work and establishes the date on which the work is to commence on a Project.
- m) **Offeror** - An entity that submits a Proposal in response to this RFP.
- n) **Procurement Officer (PO)** - The MSA representative responsible for this RFP. MSA may change the Procurement Officer at any time and will provide written notice to the Offerors of any such change.
- o) **Project** – Phase III – Ocean City Convention Center Expansion and Improvements at the Roland E. Powell Convention Center in Ocean City, Maryland. The work includes expanding the existing exhibit hall space by 30,000 square feet, constructing new support space to accommodate the expansion of the exhibit hall, making improvements to existing spaces within the facility and addressing the parking needs for the expanded facility as generally depicted in the Concept Design and Program Documents included in **Attachment C**.
- p) **Project Manager (PM)** - The MSA representative that is primarily responsible for monitoring the daily activities of the Contract and for providing technical assistance to the Consultant.
- q) **Project Team** – The MSA, the TOC, and any other consultant/entity the MSA may engage to participate in the project.
- r) **Proposal** - The technical and financial responses to the RFP.
- s) **Report** – Market & Economic Analysis Associated with Expansion of the

Ocean City Convention Center dated January 2017 prepared by Crossroads Consulting Services, LLC. attached hereto as **Attachment C** and available via MSA's website using this link: <http://www.mdstad.com/images/pdf/OCCCFinalReportJan2017.pdf>

- t) **Selection Committee** - The representatives responsible for evaluating the Proposals as described in Section 5 of the RFP.
- u) **TOC** – The Town of Ocean City.

### **1.3 Contract Type**

The contract that results from this RFP will be a professional services agreement. A sample copy of the Pre-Construction Agreement for Construction Management Services is attached hereto as **Attachment M**.

If the project moves into the construction phase and a negotiated GMP can be achieved, an at-risk GMP contract for Construction Management Services will be issued for the construction of the project. A sample copy of the contract for Construction Management Services is attached hereto as **Attachment N**.

### **1.4 Contract Duration**

The term of the Contract will be for a period necessary to complete the scope of work and as agreed upon by MSA and the CM.

### **1.5 Procurement Officer**

The sole point-of-contact for purposes of this RFP is the Procurement Officer listed below:

Al Tyler  
Maryland Stadium Authority  
351 West Camden Street, Suite 500  
Baltimore, Maryland 21201  
Telephone: 410-223-4141  
Email: [atyler@mdstad.com](mailto:atyler@mdstad.com)

MSA may change the Procurement Officer at any time and will provide written notice to the Offerors.

### **1.6 Pre-Proposal Conference**

A Pre-Proposal Conference will be held on **Wednesday, July 26, 2017 at 10:00 a.m.** (Local Time) at the location identified on the Key Information sheet.

**Interested Offerors must pre-register at <https://phaseiii-occc-cm-rfp.eventbrite.com> by Monday, July 24, 2017 in order to participate.**

## **1.7 e-Maryland Marketplace**

In order to receive a contract award, a firm must be registered on eMM. Registration is free. The link to register can be found at <http://emaryland.buyspeed.com>.

## **1.8 Questions**

Questions may be submitted electronically in Word or PDF formats via email to the Procurement Officer no later than **12:00 pm (Local Time) on Wednesday, August 2, 2017**. Submissions must include information regarding the name of the firm, representative's name, and contact information. Based on the availability of time to research and communicate an answer, the Procurement Officer will decide whether an answer can be given before the proposal closing date. Answers to all substantive questions that have not previously been answered, and are not clearly specific to the requestor, will be responded via addendum.

## **1.9 Technical Proposals - Closing Date and Time**

Proposals must be received by the Procurement Officer at the address listed in Section 1.5 and the Key Information Summary Sheet, no later than **11:00 am (Local Time) on Thursday, August 10, 2017** in order to be considered.

Requests for extension of this date or time will not be granted. Offerors mailing Proposals should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Proposals received by the Procurement Officer after the deadline will not be considered. Proposals may not be submitted by e-mail or facsimile. Proposals will not be reviewed publicly.

## **1.10 Oral Presentations**

Offerors may be required to make oral presentations to the Selection Committee. Significant representations made by an Offeror during the oral presentation must be confirmed in writing. All such representations will become part of the Offeror's Proposal and are binding if a Contract is awarded. Oral presentations, if necessary, will be held after the Proposal Closing Date on a date to be determined between the Proposer and the Selection Committee.

The Procurement Officer will notify the Offeror with details and instructions prior to the presentations. The oral presentation will be an interactive discussion specific to the project and limited to one (1) hour. The agenda is generally as follows:

- Discuss/review the contents of the proposal;
- Highlight the experience and capabilities of key personnel and the team's experience executing similar projects;
- Describe the team's approach to executing the work required by the RFP including a description of roles/responsibilities of the

- individuals/companies identified in the firm's organizational chart;
- Clarification and justification of any exceptions that may be noted in the submission.
- Other topics deemed appropriate by the Procurement Officer.

If deemed necessary, MSA anticipates conducting oral presentations on or about **Monday, August 21, 2017**.

### **1.11 Duration of Offer**

Proposals submitted in response to this RFP are irrevocable for **120 days** following the closing date for proposals. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

### **1.12 Proposal Affidavit**

A completed Bid/Proposal Affidavit must accompany the Proposal submitted by an Offeror. A copy of this Affidavit is included as **Attachment A** of this RFP.

### **1.13 Contract Affidavit**

All Offerors are advised that if a contract is awarded pursuant to this RFP, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes only as **Attachment P** of this RFP. This Affidavit must be provided within 5 business days after notification of proposed contract award.

### **1.14 Procurement Method**

The Contract resulting from this RFP will be awarded in accordance with the Competitive Sealed Proposals process under Section 3 (C) of MSA's Procurement Policies. MSA's Procurement Policies are available for review on MSA's website at [www.mdstad.com/contracting](http://www.mdstad.com/contracting) or may be obtained by contacting the Procurement Officer.

### **1.15 Arrearages**

By submitting a response to this RFP, an Offeror represents that it is not in arrears in the payment of any obligations due and owing the State of Maryland, including, by way of example only, the payment of taxes and employee benefits, and that it will not become so in arrears during the term of the Contract if selected for contract award.

### **1.16 Revisions to the RFP**

If it becomes necessary to revise this RFP before the closing date for proposals, amendments will be posted on MSA's website and eMM. Amendments made after the closing date for proposals will be sent only to those Offerors who submitted a



responsive and timely proposal.

Acknowledgment of the receipt of all amendments to this RFP issued before the proposal closing date must accompany the Offeror's Technical Proposal as identified in Section 4. Acknowledgement of the receipt of amendments to the RFP issued after the proposal closing date shall be in the manner specified in the amendment notice. Failure to acknowledge receipt of amendments does not relieve the Offeror from complying with all terms of any such amendment.

#### **1.17 Cancellations; Discussions**

MSA reserves the right to cancel this RFP, to accept or reject any and all proposals, in whole or in part, received in response to this RFP, to waive or permit cure of minor irregularities, and to conduct discussions with any or all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of MSA and the TOC. This may be followed by submission of Offeror-revised Proposals and best and final offers (BAFO). MSA also reserves the right, in its sole discretion, to award a contract based upon written proposals received, without prior discussions or negotiations.

#### **1.18 False Statement**

MSA incorporates by reference the provisions of Section 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland regarding truthfulness in the information included in the contract documents. Offerors shall comply with the obligations set forth therein, including, without limitation, the following:

- a) In connection with a procurement contract, a person may not willfully:
  1. Falsify, conceal, or suppress a material fact by any scheme or device;
  2. Make a false or fraudulent statement or representation of a material fact; or,
  3. Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- b) A person may not aid or conspire with another person to commit an act under subsection of this section.
- c) A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five years or both.

#### **1.19 Minority Business Enterprise**

The State of Maryland's current MBE participation goal for this RFP is as follows:

1. Pre-Construction Services: An overall MBE subcontract participation goal has not been established for this procurement item.
2. Construction Services: MSA will establish the overall MBE subcontract participation goal and associated sub-goals prior to the CM initiating the

Bidding Phase. The CM shall assemble the GMP in a manner that meets the overall goal and sub-goals established for the project.

The Governor's Office of Minority Affairs has issued guidance regarding MBE participation sub-goals (refer to <http://goma.maryland.gov/Pages/Reporting-Tool-MBE.aspx>). For each of the RFPs, MSA will establish MBE participation goals taking into consideration the facts and circumstances of the specific Project. **For purposes of this RFP, the Offerors shall not identify any subcontractors or MBE subcontractors.** As part of the subsequent RFP responses, Offerors will have to identify any MBE subcontractors used in the Project, including their MDOT certification number as well as the NAICS description of the services to be performed. All MBE subcontractors must be certified with the Maryland Department of Transportation (MDOT).

The forms (with instructions) that are required for submissions in response to subsequent RFPs are attached hereto as **Attachment D**. For information on certified MBE firms, the directory is available at <http://mdot.state.md.us>. Select the MBE Program label at the left side of the website. The most current and up-to-date information on MBEs is available at this website. The Governor's Office of Minority Affairs has issued a Q&A regarding counting participation by MBE primes. Information is available on GOMA's website (<http://goma.maryland.gov/Pages/Reporting-Tool-MBE.aspx>).

## **1.20 Outreach Events**

MSA anticipates holding a series of outreach events promoting procurement opportunities for various MSA projects. The CM will be required to attend and actively participate in these events to promote this project if requested to do so.

## **1.21 Incurred Expenses; Economy of Preparation**

MSA and/or TOC will not be responsible for any costs incurred by an Offeror in preparing and submitting a proposal, in making an oral presentation, in providing a demonstration or in performing any other activities relative to this RFP. Proposals should be prepared simply and economically, providing a straightforward, concise description of how the Offeror proposes to meet the requirements of this RFP.

## **1.22 Protests/Disputes**

Any protest or dispute related to this RFP or a resulting Contract will be subject to Section 10 of MSA's Procurement Policies and Procedures and the relevant provisions of the Contract. MSA's Procurement Policies are available for review on MSA's website at [www.mdstad.com/contracting](http://www.mdstad.com/contracting) or may be obtained by contacting the Procurement Officer.

## **1.23 Access to Public Records Act Notice**

An Offeror should give specific attention to the clear identification of those portions of the Proposal that it considers confidential, proprietary commercial information or trade secrets, and provide written justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Title 4 of the General Provisions Article of the Annotated Code of Maryland.

Offerors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information may be disclosed.

#### **1.24 Offeror Responsibilities**

For the RFPs, the CM shall be responsible for all products and services as required therein. Subcontractors must be identified in the RFPs, and a complete description of their roles relative to the Proposal must be included in the corresponding Technical Proposal. The CM will retain responsibility for all work to be performed by and any deliverable submitted by subcontractors. If an Offeror that seeks to perform or provide the services required by an RFP is the subsidiary of another entity, all information submitted by the Offeror such as, but not limited to, references and financial reports, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror's proposal must contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

#### **1.25 Patents, Copyrights, and Intellectual Property**

- a) If the CM furnishes any design, device, material, process or other item that is covered by a patent or copyright or that is proprietary to or a trade secret of another, it shall obtain the necessary permission or license to permit MSA and/or the TOC to use such item.
- b) The CM will defend or settle, at its own expense, any claim or suit against MSA and/or the TOC alleging that any such item furnished by the CM infringes any patent, trademark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, copyright or trade secret, the CM will defend MSA and/or the TOC against that claim at the CM's expense and will pay all damages, costs, and attorneys fees that a court finally awards, provided MSA and/or the TOC: (i) promptly notifies the CM in writing of the claim; and (ii) allows the CM to control and cooperates with the CM in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in the next paragraph.
- c) If any products furnished by the CM become, or in the CM's opinion are likely to become, the subject of a claim of infringement, the CM will, at its option

and expense: (i) procure for MSA and/or the TOC the right to continue using the applicable item; (ii) replace the product with a non- infringing product substantially complying with the item's specifications; or (iii) modify the item so that it becomes non- infringing and performs in a substantially similar manner to the original item.

#### **1.26 Non-Availability of Funding**

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of a contract succeeding the first fiscal period, the contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect the rights of the CM, MSA, and the TOC under any termination clause in the contract. The effect of termination of the contract hereunder will be to discharge the CM, MSA, and the TOC from future performance of the contract, but not from their rights and obligations existing at the time of termination. The CM shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the contract. MSA and/or the TOC shall notify the CM as soon as it has knowledge that funds may not be available for the continuation of the contract for each succeeding fiscal period beyond the first.

#### **1.27 Financial Disclosure**

The CM shall comply with Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall, within 30 days after the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

#### **1.28 Non-Exclusive Use**

Neither this RFP nor any resulting Contract from an RFP shall be construed to require MSA or the TOC to use any Offeror or exclusively use the CM for the services described in this RFP. MSA and the TOC reserve the right to obtain services of any nature from other sources when it is in the best interest of MSA and the TOC to do so and without notice to any party. MSA and the TOC make no guarantees that it will purchase any products or services from the CM resulting from this RFP.

#### **1.29 Sustainability Policies**

MSA is committed to procuring all supplies, services, maintenance, construction, and architect-engineer services in a manner consistent with the promotion of sound environmental practices. All goods and services provided in response to

this solicitation shall conform to those environmental standards.

### **1.30 Payments by Electronic Fund Transfer**

By submitting a response to this RFP, the Offeror agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$200,000.

The selected Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at: [http://comptroller.marylandtaxes.com/Government\\_Services/State\\_Accounting\\_Information/Static\\_Files/APM/gadx-10.pdf](http://comptroller.marylandtaxes.com/Government_Services/State_Accounting_Information/Static_Files/APM/gadx-10.pdf) After award, the form must be submitted directly to the Comptroller's Office. Please do not submit these forms to MSA.

### **1.31 Confidentiality**

Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party to a Contract resulting from this RFP (including without limitation any information or data stored within the CM's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under the Contract, provided that the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of the Contract; (c) was already in the possession of such party; (d) was supplied to such party by a third-party lawfully in possession thereof and legally permitted to further disclose the information; or (e) such party is required to disclose by law.

### **1.32 Loss of Data**

In the event of loss of any MSA and/or Project related data or records where such loss is due to the intentional act or omission or negligence of the CM or any of its subcontractors or agents, the CM shall be responsible for recreating such lost data in the manner and on the schedule set by the Procurement Officer. The CM shall ensure that all data is backed up and recoverable by the CM.

### **1.33 Non-Hiring of Employees**

No official or employee of the State, as defined in State Government Article, § 15-102, Annotated Code of Maryland, whose duties as such official or employee

include matters relating to or affecting the subject matter of this procurement, shall, during the pendency and term of a resulting Contract, and while serving as an official or employee of the State, become or be an employee of the CM or any entity that is a subcontractor on said Contract.

#### **1.34 Nondiscrimination in Employment**

The CM agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, sexual orientation, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a) above in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post, and to cause subcontractors to post, in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

#### **1.35 Contingent Fee Prohibition**

The CM warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson or commercial selling agency working for the CM, to solicit or secure a Contract, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson or commercial selling agency any fee or other consideration contingent on the making of a Contract.

#### **1.36 Political Contribution Disclosure**

The CM shall comply with Election Law Article, §§14-101 to 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

#### **1.37 Verification of Registration and Tax Payment**

Before a corporation can do business in the State, it must be registered with the Department of Assessments and Taxation, State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. It is strongly

recommended that any potential Offeror complete registration prior to the issuance date of this RFP. An Offeror's failure to complete registration with the Department of Assessments and Taxation may disqualify an otherwise successful Offeror from final consideration and recommendation for Contract award under this RFP. Prior to contract award under this RFP, the selected firm, including the joint ventures, must provide a Certificate of Good Standing from the Maryland State Department of Assessments and Taxation.

### **1.38 Maryland Law**

This RFP shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

### **1.39 MBE and Prevailing Wage Compliance System**

As part of MSA's commitment to assist firms in complying with legal and contractual requirements, MSA maintains a web-based MBE and prevailing wage compliance system. The system was designed to provide various work-flow automation features that improve the project reporting process. This system will monitor contract compliance for all Program contracts. The Prime firm, its first tier consultants and all MBE participation sub-consultants awarded contracts will be required to use the web-based system to submit project information including, but not limited to, certification of payments made and received and certified payroll records (if the contract includes prevailing wage and/or workforce development requirements). MSA may require additional information related to the contract to be provided electronically through the system at any time before, during, or after contract award.

### **1.40 Proposal Security**

- a) At the time of presentation of each GMP for each Phase of the work, the Construction Manager (CM) will be required to furnish a *Bid/Proposal Bond* form issued by a surety company licensed to issue bonds in the State of Maryland. The bond must be in an amount not less than five percent (5%) of the total amount of the proposed GMP amount and shall be in the form specified in **Attachment J** of this RFP.
- b) A certified check or cash escrow may be accepted in lieu of a proposal bond. If approved by the Attorney General, a proposer may furnish a personal bond, property bond, or bank or savings & loan associations' letter of credit on certain designated funds in the face amount required for the proposal bond. Approval shall be granted only upon a determination that the alternative form of security offered affords protection to the MSA, equivalent to a corporate surety bond.
- c) Should the Proposer to whom the Contract is awarded fail or be unable to execute the Contract, for any reason, within ten (10) days after notification of award, then an amount equal to the difference between the accepted price, and that of the Proposer to whom the award subsequently is made shall be paid to

the MSA not as a penalty but as liquidated damages.

- d) Performance and Payment Bonds, each in the amount of one hundred percent (100%) of the Guaranteed Maximum Price (GMP), shall be furnished, in the forms specified in **Attachments K and L** of this RFP, upon acceptance of the GMP by the MSA.

#### **1.41 Prevailing Wage Rates**

The Work will be subject to the prevailing wage rates applicable at the time of contract award.

#### **1.42 Novation or Change of Name**

- a) No Assignment. A MSA contract is not transferable, or otherwise assignable, without the written consent of the Procurement Officer and approval of both the Chief of Procurement and Legal Counsel, provided, however, that a Contractor may assign monies receivable under a contract after due notice to the MSA.
- b) Recognition of a Successor in Interest Novation. When in the best interest of the MSA, a successor in interest may be recognized in a Novation agreement in which the transferor and the transferee shall agree that:
  - 1. The transferee assumes all of the transferor's obligations;
  - 2. The transferor waives all rights under the Contract as against the MSA; and
  - 3. Unless the transferor guarantees performance of the Contract by the transferee, the transferee shall, if required, furnish a satisfactory Performance Bond.
- c) Change of Name. When a Contractor requests to change the name in which it holds a contract with the MSA, the Procurement Officer, upon receipt of a document indicating the change of name (for example, an Amendment to the articles of incorporation of the corporation) may enter into an agreement with the requesting Contractor to effect the change of name contingent upon the approval of the Chief of Procurement and Legal Counsel. The agreement changing the name specifically shall indicate that no other terms and conditions of the contract are changed.

#### **1.43 General Insurance Requirements**

- a) The amount of insurance coverage specified herein shall be the minimum amount of insurance available to satisfy claims. The CM shall purchase and maintain such insurance with a minimum of the limits of liability as specified herein, as otherwise specified by the Procurement Officer with respect to a particular Project, or as required by law, whichever is greatest. 3A policy is not acceptable if it allows the costs associated with investigating, managing, or defending against any claim or any other costs incurred by the insured or the insurer to be deducted from the policy limits.
- b) Required insurance shall be purchased from and maintained with a company



or companies lawfully authorized to do business in the State of Maryland. Insurance companies providing coverage as required herein shall have an AM Best rating of A-VII or better. All policies must be on a primary basis. All policies, except Workers' Compensation, shall name MSA and the TOC as "Additional Insured."

- c) CM shall be responsible for the maintenance of this insurance regardless of whether the work is performed directly by the CM, by any sub-consultant, by any person employed by the CM or any sub-consultant, or by anyone for whose acts the CM may be liable.
- d) Tort Claims Acts. The CM agrees, for itself and for its insurers, that neither CM nor its insurers may raise or use in the adjustment of claims or in the defense of suits against MSA and/or the TOC, any immunity from or limitation of liability for torts (including under the Maryland Tort Claims Act and/or the Maryland Local Government Tort Claims Act) unless requested by the MSA.
- e) The MSA prefers that all liability insurance policies (whether for professional liability, commercial general liability, business automobile liability, excess and/or umbrella liability, employer liability, or otherwise) be written on an "occurrence basis." However, if any liability insurance policy is on a "claims made" basis, the insurance must be maintained for a period of no less than ten (10) years after the end of the term of the Contract and the retroactive date must be listed as prior to or on the date on which the Contract is executed. If the policy is scheduled to be cancelled, not renewed, or not replaced prior to the expiration of such ten (10) year period, then prior to such cancellation, nonrenewal, or non-replacement, the CM must purchase an Extended Reporting Coverage (Tail) to cover the exposures past the cancellation, termination, or expiration date, as applicable.
- f) No acceptance and/or approval of any insurance by the MSA shall be construed as relieving the CM, or the surety or bond, if any, from any liability or obligation imposed upon any of them by the Contract.

#### **1.44 Project Specific Insurance Requirements**

- a) Commercial General Liability (CGL) Insurance. The CM shall obtain and maintain, from and after the date of the Contract, insurance coverage for general liability claims (including, but not limited to, claims for bodily injury and property damage, including loss of use) arising from the operations of the CM, sub-consultants, and suppliers that satisfies the following requirements:
  - 1. Commercial General Liability (CGL) insurance is to be provided through the use of ISO Coverage Form CG-00-01-1001 or its equivalent.
  - 2. Minimum coverage limits of: \$2,000,000 as a per occurrence limit;
    - i. \$4,000,000 as a general aggregate limit (applied separately to claims arising from the CM's performance under the Contract); and
  - 3. \$4,000,000 as a products/completed operations limit.

3. Both the MSA and the TOC shall be added as Additional Insured's by additional insured endorsements ISO CG-20-10 and CG-20-37 or their equivalents.
  4. The CGL insurance policy shall include waivers of subrogation in favor of MSA and the TOC.
  5. The CGL insurance policy shall be primary and noncontributory with respect to the coverage afforded to MSA and the TOC.
  6. The CGL insurance policy shall not contain any exclusion for: X, C and/or U hazards; third party actions over claims; or punitive damages.
  7. The CGL insurance policy shall include Blanket Written Contractual Liability covering all contractual liabilities and indemnities assumed by the CM pursuant to the Contract.
  8. The CGL insurance policy shall also include the following extensions:
    - i. The general aggregate limit shall apply separately to the Contract;
    - ii. Premises/Operations;
    - iii. Actions of independent consultants;
    - iv. Products/Completed Operations to be maintained for at least two (2) years after the expiration or termination of the Contract;
    - v. Personal injury liability including coverage for offenses related to employment and for offenses assumed under the Contract (including deletion of any standard employment and/or contractual exclusions if contained in the personal injury coverage section); and
    - vi. If a Project encroaches within fifty (50) feet of the centerline of a railroad, the CGL insurance policy shall include ISO Endorsement CG-24-17 or its equivalent prior to the CM beginning any work on such Project.
- b) Automobile Liability. The CM shall obtain and maintain, from and after the date of the Contract, insurance coverage for third party legal liability claims arising from bodily injury and/or damage to property of others resulting from the ownership, maintenance, or use of any motor vehicle (whether owned, hired, or not owned), both on-site and off-site. Such Business Automobile Liability (BAL) insurance shall also include coverage against uninsured motorists and automobile contractual liability. The BAL insurance shall satisfy the following requirements:
1. Minimum \$1,000,000 combined single limit on coverage.
  2. The BAL insurance policy shall include waivers of subrogation in favor of MSA.
  3. The BAL insurance policy shall name both MSA and the TOC as Additional Insured's.
  4. If a Project encroaches within fifty (50) feet of the centerline of a railroad, the BAL insurance policy shall include ISO Endorsement CA-20-70 or its equivalent prior to the CM beginning any work on such Project.
- c) Workers Compensation and Employers Liability. The CM shall obtain and maintain, from and after the date of the Contract, insurance coverage for claims arising from Workers Compensation statutes and from Employer's

Liability or other third party legal liability claims arising from bodily injury, disease, or death of the CM's employees. Such insurance shall satisfy the following requirements:

1. The CM shall provide Workers Compensation coverage for all employees and require that their sub-consultants provide Workers Compensation coverage for all their employees in accordance with the statutory requirements of the jurisdiction in which the work is being performed.
  2. The policy shall provide for both Workers Compensation coverage ("Part A") and Employers Liability coverage ("Part B").
  3. The minimum limits of coverage for Part A (Workers Compensation) shall be in accordance with the statutory requirements of the jurisdiction in which the work is being performed. The minimum limits of coverage for Part B (Employers Liability) shall be \$1,000,000 for each accident, \$1,000,000 for each employee, and a \$1,000,000 aggregate policy limit for disease.
  4. Part B (Employers Liability) of such insurance policy shall include waivers of subrogation in favor of MSA and The TOC. Both MSA and the TOC shall be named as Additional Insured's with respect to Part B (Employers Liability).
- d) Excess Liability / Umbrella Liability. The CM shall obtain and maintain, from and after the date of the Contract, insurance coverage for third party legal liability claims against the CM that exceed the per occurrence or general aggregate limits of the CGL insurance policy, the BAL insurance policy, and Part B (Employer's Liability) of the Workers' Compensation and Employer's Liability insurance policy. Such excess/umbrella insurance shall satisfy the following requirements:
1. Unless otherwise specified by the Procurement Officer, the required minimum coverage limits for such insurance is \$5,000,000.
  2. Both MSA and the TOC shall be named as Additional Insured's with respect to such excess/umbrella liability insurance.
  3. The excess/umbrella liability insurance policy shall include waivers of subrogation in favor of MSA and the TOC.
  4. The excess/umbrella liability insurance shall be primary and noncontributory with respect to the coverage afforded to both MSA and the TOC.

#### **1.45 Property Insurance**

The CM shall purchase and maintain property insurance covering the project, including improvements to real property and goods and materials on site to be incorporated into the project. The policy shall be written on a builder's risk, "all risk" or equivalent policy for the full insurable value of the property in accordance with the terms and conditions set forth in the Construction Management Agreement. The CM shall also provide Terrorism Risk Insurance. Evidence of such insurances must be provided prior to issuance of NTP on the Project.

## **Section 2**

### **OFFEROR QUALIFICATIONS**

#### **2.1. Qualifications**

At a minimum the Offeror shall meet the following qualifications to be considered for award:

- a) Has been in business for at least 5 years;
- b) Is a firm licensed to operate in the State of Maryland;
- c) Has experience providing the following services during both pre-construction and construction phases: quality assurance/quality control, estimating and budget control, CPM scheduling, value engineering, and evaluation and implementation of innovative construction techniques;
- d) Has experience completing projects of similar size and scope;
- e) Has experience completing projects that utilized the Construction Manager at Risk, or similar, delivery method;
- f) Has proven experience completing phased construction projects that require working in occupied building environments.

## **Section 3**

### **PURPOSE AND SCOPE OF WORK**

#### **3.1 Purpose**

The MSA is issuing this RFP to contract with a qualified Construction Management (CM) firm to provide Pre-Construction services related to the Phase III – Ocean City Convention Center Expansion and Improvements project (the “Project”) at the Roland E. Powell Convention Center in Ocean City, Maryland.

#### **3.2 Scope Overview**

The CM shall provide Pre-Construction services as outlined in this RFP.

The Project, as defined in Section 1.2.O, includes expanding the existing exhibit hall by 30,000 square feet, constructing new support space to accommodate the expansion of the exhibit hall, making improvements to existing spaces within the facility and addressing the parking needs for the expanded facility.

The Project will be designed and built under a guaranteed maximum price via the Construction Manager at Risk method as fully set out in the RFP.

The MSA will engage an Architectural/Engineering (A/E) firm to provide design and engineering services on the project. A sample copy of the agreement that the MSA expects to enter into with the A/E is attached hereto as **Attachment O**.

The Construction Cost Amount, as defined in Article 6 of the Architect Agreement for Design Services included in **Attachment O**, is estimated to be approximately **\$25,500,000**.

Work on this Contract will start in fall 2017.

#### **3.3 Scope of Work**

Pre-Construction services are to be provided in accordance with the Preconstruction Agreement for Construction Management Services included in **Attachment L**. Services include, but not limited to, the following.

- a) Meetings: Participation in the following meetings.
  - 1. Design progress meetings will occur every two (2) weeks.
  - 2. Design review meetings after each design submission.
  - 3. Other meetings involving the design team, MSA, and TOC to review the design of civil, mechanical, electrical, fire alarm, telecommunications,

security, and other systems. A minimum of five (5) meetings are anticipated.

4. Estimate review meetings after the submission of each cost estimate.
- b) Cost Estimating and Budgeting. Developing project cost estimates and budgets at the completion of all design phase submissions (i.e. concept, schematic design, design development, bid/construction document).
1. A base cost model shall be developed and submitted to the MSA within thirty (30) days from the date of notice to proceed. The base cost model is to be based on the available Project Documents included in **Attachment C**.
  2. Due to the changing economic climate, cost models are to be construction based, not data based; that is, the CM shall obtain pricing of trade work based directly on its experience in the market.
  3. The format of the cost model and all subsequent construction cost estimates are to be arranged by CSI format and include line items identifying proposed alternates, General Conditions, fees, and Contingency. The CM is expected to coordinate with the design team to clearly understand the design intent and to pre-establish estimating assumptions at each phase.
  4. The CM is to provide a detailed cost estimate at the conclusion of each design phase. Estimates are to be in conformance with Chapter I of the Department of General Services Procedure Manual for Professional Services. The cost estimate(s) are to be submitted within ten (10) business days of receipt of the Schematic Design (SD), and within fifteen (15) business days of the Design Document (DD) and Construction Document (CD) submissions.
  5. The base cost model and each of the subsequent cost estimate submissions to the MSA are to include a written description of the CM's methodology for developing the specific estimate submitted.
  6. In the event that the Construction Cost Estimate exceeds the Project Construction Cost Limit at any Design Phase, the Construction Manager shall work in conjunction with the Design Team to redesign the facility as necessary to maintain the Project Program and meet the Construction Cost amount without additional compensation to the CM.
  7. The MSA reserves the right to retain the services of an independent estimator to provide independent estimates of any or all design submissions. The CM's cost model and subsequent detailed Construction Cost Estimates will be reviewed by the design team and the MSA for reasonableness and compatibility with the Project Construction Cost Limit. The CM is responsible for managing the process of reconciling the two estimates, including meetings and negotiations with the MSA and

design team that are necessary to explain and resolve questions and differences that may occur in any of the CSI divisions or trade packages expeditiously. In the event of disparity between the two estimates, the CM shall work with the MSA and the design team to reach a mutually agreed upon and acceptable Construction Cost Estimate. Upon conclusion of this process, the two estimates shall be reconciled and a revised CM cost model shall be submitted to the MSA.

- c) **Scheduling.** Develop and maintain a detailed CPM schedule for use during the design/pre-construction phase. The schedule is to incorporate the Architect's design schedule, the MSA reviews and approvals, milestones, and all activities required to complete the design phase of the project. Activities in the schedule shall represent the full list of the scope of work from notice to proceed through the submission and approval of the GMP.
  - 1. The schedule is to be developed using a computer based scheduling system approved by the MSA.
  - 2. The initial schedule shall be submitted within fourteen (14) days of notice to proceed.
  - 3. The CM shall update and monitor the schedule during the entire pre-construction/design phase to ensure that the schedule is maintained. The CM shall advise the MSA immediately in writing of any deficiencies in adhering to the schedule by any party.
  - 4. An updated schedule is to be submitted immediately following each Design Phase submission.
- d) **Project Phasing and Site Logistics.** Establish the project phasing and site logistics plan for the project.
- e) **Constructability Review.** Provide organized constructability reviews of design submissions for the purpose of identifying errors and deficiencies, omissions, coordination, and interdisciplinary design conflicts in the design, and for the purpose of improving the design, minimizing RFIs, achieving the most cost effective construction, eliminating added costs and negative effects on the quality of construction.
  - 1. The CM shall review the design documents produced by the design team at the conclusion of each Design Phase.
  - 2. Provide the following at the completion of each Constructability Review:
    - a. A complete report identifying the constructability issue(s); a description of why the issue is being identified; and the recommended approach to address/resolve the issue.
    - b. Marked up drawings and specifications as necessary to clearly convey the review comments and recommendations.

- c. A statement verifying that the constructability comments and recommendations have been implemented or addressed in the Design Phase following each review.
- f) Value Management/Engineering. Participate in Value Engineering efforts as required for the Project to be designed and constructed within the Project's Construction Cost Limit. A minimum of one (1) work session is anticipated during each phase of the design. The CM's Cost Estimator shall provide timely cost estimating services for of the Value Engineering items identified.
- g) Quality Assurance. Actively participate in the review and coordination of drawings and specifications as they are prepared to identify areas/items that may appear ambiguous, confusing, conflicting or erroneous. Provide a report with each design phase submission identifying any such items and provide a recommendation of alternative solutions whenever design details affect the cost of construction and/or the project schedule.
- h) Scope Definition. Coordinate and assign the Work or any Owner purchased material to the Trade Contractor capable of performing the Work in the most economical and efficient way. Arrange and package scopes of work in a manner that will ensure fulfillment of the project's procurement goals and requirements.
- i) Bid Packaging, Bidding and GMP Preparation. Prepare bid packages and advertise/solicit proposals from Trade Contractors.
  - 1. MSA and the TOC intend to be involved in the bidding process, which includes, but is not limited to, being present when the bids are opened, participating in scope review sessions with the bidders, etc.
  - 2. A minimum of three (3) bids shall be received for each and every bid package.
  - 3. At the conclusion of the bidding period, the CM shall provide the MSA with a detailed report of each of the bids which compares the bids for each element of the Work with the Project Budget. The report shall indicate the expected "buy" amount for each bid item, and shall be regularly updated and provided to the MSA.
  - 4. MSA and the TOC may elect to continue to work with the CM firm selected for the pre-construction phase by entering into a Guaranteed Maximum Price (GMP) contract for the construction of the project. This decision will be based on, in part, but not limited to, the CM's performance during the pre-construction phase and the ability to negotiate an acceptable GMP. Construction services will be provided in accordance with the Construction Management Agreement included in **Attachment N**.
  - 5. If the CM is engaged to provide Construction Management Services, a copy of each Trade Contract shall be provided to the MSA together with all subsequent amendments, modifications and changes thereto upon



execution. The CM shall provide any and all supporting information concerning credits or other financial adjustments with Trade Contractors, which are not expressly set forth in the Trade Contracts.

## Section 4

### **PROPOSAL SUBMISSION AND REQUIREMENTS**

#### **4.1 Two Part Submission Required**

Offerors must submit proposals in two separate volumes, which will be separately evaluated:

- Volume I - TECHNICAL PROPOSAL
- Volume II - FINANCIAL PROPOSAL

Upon receipt of submissions, the Selection Committee will review the Offerors' Proposals. Offerors must respond to all requirements identified in the RFP. Offerors that fail to do so will be deemed not reasonably susceptible of being selected for award.

#### **4.2 Instruction for Submission of Proposals— General Requirements**

Offerors must submit a separate sealed package for each "Volume." Each Volume and each separately sealed package are to be titled "**Phase III - Ocean City Convention Center Expansion and Improvements Request for Proposals – Construction Management Services –**" and labeled either "**Volume I-Technical Proposal**" or "**Volume II-Financial Proposal**".

Offerors shall submit Proposals by the due date and time set forth in Key Information Summary Sheet, as revised by any addendum.

Submit one electronic original (.pdf only), and six (6) bound copies of each Proposal volume. Sheet size shall be 8-1/2" X 11" or 11" X 17" maximum, folded. Supplemental information may be submitted as an appendix. Technical Proposals shall be organized and tabbed according to the Technical Proposal Criteria listed below. All pages of each proposal volume must be consecutively numbered from beginning (Page 1) to end (Page "x"). The final page shall state "Final Page". Proposals and all required forms shall be completed in ink or typed; erasures and/or alterations shall be initialed in ink by the signer. **The original of each proposal shall be clearly marked as the original.**

### **4.3 Volume I - Technical Proposal**

This section provides specific instructions for submission of the Offeror's Technical Proposal. The Technical Proposal shall follow the format provided below.

#### **a) Transmittal Letter**

A transmittal letter must accompany the Technical Proposal. The purpose of this letter is to transmit the proposal to the Procurement Officer. The transmittal letter should be brief, and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP.

#### **b) Title and Table of Contents**

The Technical Proposal shall begin with a title page bearing the name and address of the Offeror, point of contact information for two (2) people (including e-mail address), and the name of this RFP. A table of contents for the Proposal should follow the title page. Information that is claimed to be confidential shall be clearly identified. Unless there is a compelling case, an entire proposal should not be labeled confidential; only those portions that can reasonably be shown to be proprietary or confidential should be so labeled.

#### **c) Executive Summary**

The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled "Executive Summary." The summary shall identify any exceptions the Offeror has taken to the requirements of this RFP and any attachments, acknowledge the receipt of any amendments or addenda associated with this RFP, identify its tax identification number and provide the firm's current EMR rating. The Executive Summary shall not exceed two (2) pages.

**Warning: Exceptions to terms and conditions may result in having the proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award. If an Offeror takes no exception, the Executive Summary should so state.**

#### **d) Experience and Qualifications (Tab 1)**

Section 2 (Offeror Qualifications) and Section 3 (Purpose and Scope of Work) of this RFP, provide Offerors with information on the desired outcome of this solicitation.

At a minimum the following is to be included in this section:

## **1. Corporate Qualifications**

- a. Provide a completed Corporate Profile Form included in **Attachment E**.
  1. A current Dun & Bradstreet Report inclusive of Rating and/or recent Financial Statement shall be included as an attachment to this section.
- b. Insurance: Provide proof of insurance certifying the Offeror's ability to comply with the insurance requirements contained in Sections 1.43 and 1.44 as well as the Contracts attached hereto in **Attachment M** and **Attachment N**.
- c. Bonding: Provide a letter from the Offeror's Bonding Company certifying the Offeror's ability to comply with the bonding requirements contained in Section 1.40 as well as the Contract attached hereto in **Attachment N**.

Joint Ventures: Offerors shall also identify any joint ventures at the time of submission, if any, and the roles these relationships will have in the performance of a Contract. Upon MSA's request, Offerors shall make available within 24 hours the joint venture scope of work documents and/or agreement. Offerors shall not submit any information regarding sub-consultants.

## **2. Experience And Past Performance**

- a. Submit information on relevant projects that have achieved Substantial Completion within the past ten (10) years and which demonstrate the Offeror's experience with projects that exemplify the following Main Characteristics similar to this Project:
  1. Construction Cost: Greater than \$15 million
  2. Delivery Method: CM at Risk or Design/Build with GMP
  3. Project Type: Renovation/expansion of an operating facility.
- b. Submit five (5) project examples that demonstrate the Offeror's relevant experience. The project examples shall include a clear and concise project description including a statement on the project's relevance to this project, the role of the Offeror, the project construction cost, the project size (SF), the project delivery method, the project completion date, any of the proposed Key Personnel who were involved in the project including their role and responsibilities; and contact information for a representative of the Owner of the project. Highlight projects that the firm has provided pre-construction services and then construction services.

1. The project description should include:
  - a) Identification of project, project location, project gross square footage, project type, and building type.
  - b) Method of delivery such as: D/B with GMP, D/B, CM at Risk, GC, CM agency.
  - c) Original project construction cost at time of award, final project cost and percentage change, explain variance.
  - d) Original completion date at time of award and actual completion date, explain variances.
  - e) Similarities of the reference project to this Project.
  - f) Project owner's name, address, and telephone number.
  - g) Project Executive, Project Manager, and Field Superintendent for the Project.
  - h) Provide project photograph(s) in color on a minimum of 8.5" x 11" paper on the opposing page for each project submitted.
- c. Provide a summary of the projects submitted using the Project Experience Form included in **Attachment F**.
- d. Higher consideration will be given for:
  1. Projects most similar to this Project in method of delivery, type, size, scope and complexity.
  - b. The ability to meet completion deadlines within a specified time frame.
  - c. Demonstrated ability to deliver projects without unreasonable cost growth.

### **3. Key Personnel**

- a. Organizational Chart
  1. Provide an Organization Chart identifying Key Personnel that will be assigned to the Project should the Proposer be selected as the successful CM.
  2. Clearly identify the team member(s) that will attend design meetings and serve as the day-to-day contact for the project team.

3. Provide a brief narrative outlining the anticipated roles and responsibilities of each member during the pre-construction and construction phases.
4. Key Personnel are subject to the provisions of Section 12 of the Preconstruction Agreement and Article 2.8 of the CM Agreement.

a. Resumes

1. Provide a detailed but concise resume for each Key Personnel proposed to be assigned to the preconstruction and construction phases.
2. Include all information required regarding Key Personnel with each individual's resume. Information included elsewhere in the Proposal may not be considered in the evaluation of the Key Personnel.
3. Within the resume, include the following information about each individual:
  - a) Educational background, including degree(s) received.
  - b) Work experience with the Offeror, including duration of employment, with dates, and position(s) held.
  - c) Work experience with prior employers, including duration of employment, with dates, and position(s) held.
  - d) Project experience, preferably on one or more of the projects submitted in response to the "Experience and Past Performance" paragraph in this section, with emphasis on projects similar in size and nature to this Project. Indicate if project experience is with the Offeror or with a prior employer. Provide a brief description of each project, including the project delivery method, project type, building type, building size, and project construction cost. Include project design start and completion dates (month and year), and construction start and Substantial Completion dates (month and year) for each project. Indicate the individual's specific role in both the design/pre-construction and the construction phases of each project listed in the resume. Include the exact period the individual performed the specific role in the design/pre-construction phase (month and year) and in construction phase (month and year), even if the role was performed for the entire design and/or construction phases. If the specific role was performed for a particular part or aspect of the project, provide details.
  - e) LEED Experience: Indicate if the proposed Key Personnel has

previous experience with Sustainable or “Green” Building design and construction practices.

f) Minimum Qualifications for Key Personnel

- 1) Project Executive: Served in a similar role on three (3) projects; one of which shall be over fifteen million dollars (\$15,000,000.00) in construction cost.
- 2) Project Manager: Served in a similar role on three (3) projects; one of which shall be over fifteen million dollars (\$15,000,000.00) in construction cost.
- 3) Project Superintendent: Served in a similar role on three (3) projects; one of which shall be over fifteen million dollars (\$15,000,000.00) in construction cost.
- 4) Cost Estimator: Served in a similar role during the Pre-Construction/Design Phase on five (5) Construction Management at Risk or Design Build projects; three (3) of which shall be over fifteen million dollars (\$15,000,000.00) in construction cost. Explain specific experience estimating early design concepts and options, and Value Engineering.
- 5) Scheduler: The Scheduler or Scheduling Consultant shall have five (5) years minimum experience in CPM schedules for design, preparation of GMP's and construction work of a complexity comparable to this Project, and shall have use of computer facilities capable of delivering detailed graphic and tabular printouts, and electronic transfers of data. The CM may substitute an internal scheduler for the Schedule Consultant, only if the above conditions are met. Identify this individual on the personnel organizational chart. It is preferable that this individual not have any other duties on the Project.

g) Evaluation of Key Personnel: Highest consideration for key personnel will be given as follows:

- 1) CM's personnel for demonstrating successful experience with CM at Risk, Design/ Build with GMP or Design/Build projects of similar size and type to this Project, and similar to the Main Characteristics of this Project as indicated in the Experience and Past Performance portion of this section.

- 2) CM's personnel for demonstrating successful experience on projects similar to the Main Characteristics of this Project and serving in the same role as to be performed on this Project. Lower consideration will be given for other types of projects.

**e) Work Plan (Tab 2)**

**1. Management Plan**

- a. Provide a *Staffing Plan* in the format included in **Attachment G**, for the Pre-Construction/Design and Construction Phases. Include the minimum amount of time that each team member will dedicate to the Project.
- b. Key Personnel Previous Working Relationships Matrix
  1. Include information that identifies the experience of Key Personnel working together on the *Key Personnel Project Experience Matrix* form included with **Attachment H**.
  2. Higher consideration will be given to teams with individuals that have demonstrated success working together on the projects submitted in response to Experience and Past Performance paragraph of this section. However, key personnel's experience on similar projects is more important than previous working relationships.
  3. Proposals that offer the same Project Manager for the pre-construction and construction phases shall be given preference.

**2. Project Plan**

- a. Provide a descriptive summary of the Offeror's approach to the items indicated below. Provide this information in the exact order listed and using the headings indicated. This information shall clearly demonstrate what the Offeror has done in the past or what is being proposed for this Project.
- b. Project Organization and Management: Provide a brief, overall description of how the Offeror intends to complete the scope of work outlined in the RFP. Discuss the pre-construction and construction phases in separate paragraphs.
- c. Cooperation: Describe the Offeror's approach to working collaboratively with the Project Team to help guide the overall program and design of the Project. Highlight any unique skills or abilities that the Offeror can/will provide in the execution of the project.



d. Project Challenges to Renovate/Expand the OCCC: Identify the three (3) most significant challenges to renovating/expanding the OCCC in order of importance based on the information made available in this RFP and site visit(s). Provide a brief description of the Proposer's approach to addressing each, including specific experience resolving similar challenges.

e. CPM Schedule

1. Provide a CPM identifying activities and proposed durations for the preconstruction and construction phases.
2. At a minimum, the schedule shall include activities and/or milestones for the Preconstruction/Design Phase; Bidding and GMP Phase; Construction Phase; and the Closeout and Post Construction Phases. Identify any recommended Early Package(s).
3. The schedule shall assume to start on the date indicated in Section 3.

f. Construction Cost Amount

1. Comment on the adequacy of the Construction Cost amount identified in Section 3.2 to meet the goals of the Program provided in the RFP.

g. Economic Benefit

1. Provide a narrative describing the economic benefit that will accrue to the Maryland economy as a direct or indirect result of the performance of the Contracts. Do not include any details of the Offeror's Financial Proposal in this section. The Construction Cost Amount identified in this RFP shall be used as the basis. Ten percent (10%) of the Construction Cost Amount shall be used as the basis for calculations of the estimated benefits associated with Pre-Construction Services. Proposals will be evaluated to assess the benefit to Maryland's economy.
2. The following factors are to be considered. The estimated percentage of contract dollars to be recycled into Maryland's economy in support of the Contract(s) through the use of Maryland sub-contractors, suppliers and Joint Venture partners. Be as specific as possible. Include a breakdown of expenditures in this category.

**Note: MSA reserves the right to require, during proposal evaluation, that the Offeror provide a copy of its most current Annual Report or audited Statement of Financial**

**Condition to include a Balance Sheet, Income Statement and Cash Flow Statement or other acceptable financial information. These documents may be relied upon in any selection determination.**

**f) Work Samples (Tab 3)**

Provide a sample of the following. Higher consideration will be given for Work Samples prepared by the applicable Key Personnel being proposed and which are from one of the example projects provided in response to the “Experience and Past Performance” paragraph in this section.

1. Conceptual Estimate
2. 100% DD Estimate
3. Constructability Review
4. Value Engineering Report

**g) Required Submissions**

Offerors must submit the following items in the Technical Proposal:

1. A completed Bid/Proposal Affidavit (**Attachment A**);
2. A completed Conflict of Interest Information/Affidavit (**Attachment B**)

**4.4 Volume II - Financial Proposal**

Short-listed Offerors will be requested to respond to a Request for Financial Proposal.

- a) A draft copy of the anticipated Request for Financial Proposal including pricing forms is included with this RFP as **Attachment I**.

## **Section 5**

### **EVALUATION CRITERIA AND SELECTIONPROCEDURE**

#### **5.1 Evaluation Criteria**

Evaluation of the Proposals will be performed by the Selection Committee and will be based on the criteria set forth below. Technical criteria shall be given more weight than financial criteria. The Technical Proposal will be worth seventy percent (70%) of the overall score. The Financial Proposal will be worth thirty percent (30%) of the overall score.

#### **5.2 Technical Criteria**

Criteria used to rate the Technical Proposal includes, without limitation, the following:

- a) Experience and qualifications of the Offeror and its key management personnel (staffing plan), with specific emphasis on similar projects;
- b) Adequacy of the Work Plan to provide the proposed services;
- c) Capacity and Past Performance/References;
- d) Quality of Submission.

#### **5.3 Financial Criteria**

Qualified short-listed Offerors will be given a score based on their evaluated financial proposal. Financial proposals will be evaluated based on the combined amounts provided for Pre-Construction Services (Line Item 1.0), General Conditions Fee for the Construction Phase (Line Item 2.0) and Construction and Post Construction Services Fee (Line Item 3.0). The lowest evaluated financial proposal will receive the maximum score. The score for each other financial proposal will be determined on a pro-rata basis compared to the lowest evaluated financial proposal.

#### **5.4 Debriefing of Unsuccessful Proposers**

Unsuccessful Proposers will be offered a debriefing upon submission of a written request to the Procurement Officer. The requests must be received within ten (10) calendar days of the date which the Proposer knew, or should have known, its proposal was deemed unsuccessful. The oral debriefing will be limited to discussing the unsuccessful Proposer's Proposal only and to provide information on areas in which the Proposal was deemed weak or deficient. The debriefing will NOT include a discussion about a competing Proposer's Proposal nor will it include discussions, thoughts, notes or ranking information from an individual evaluation committee member.

## **5.5 Reciprocal Preference**

Although Maryland law does not authorize procuring agencies to favor resident Offeror's in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. Therefore, as described in COMAR 21.05.01.04, a resident business preference may be given if: a responsible Offeror whose headquarters, principal base of operations, or principal site that will primarily provide the services required by this RFP is in another state submits the most advantageous offer; the other state gives a preference to its residents through law, policy, or practice; and the preference does not conflict with a federal law or grant affecting the Contract. The preference given will be identical to the preference that the other state, through law, policy, or practice gives to its residents.

## **5.6 General Selection Process**

- a) Submissions will be reviewed by the Selection Committee comprised of representatives of MSA and the TOC.
- b) The Contract will be awarded in accordance with the competitive sealed proposals process under Section 3(C) of MSA's Procurement Policies.
- c) Prior to award of a contract pursuant to this RFP, MSA may require any or all Offerors to submit such additional information bearing upon the Offeror's ability to perform the contract as MSA may deem appropriate. MSA may also consider any information otherwise available concerning the financial, technical and other qualifications or abilities of the Offeror.
- d) MSA may hold discussions with any or all Offerors judged reasonably susceptible of being selected for award, or potentially so. MSA also reserves the right to develop a short-list of Offerors deemed most qualified based upon their Technical Proposals and conduct discussions with only the short-listed Offerors. However, MSA also reserves the right to make an award without holding discussions. Whether or not discussions are held, MSA may determine an Offeror to be not responsible or not reasonably susceptible of being selected for award, in its sole and absolute discretion, at any time after the initial closing date for receipt of proposals and the review of those proposals.

## **5.7 Award Determination**

Upon completion of all evaluations, discussions and negotiations, and reference checks, the Procurement Officer will recommend award of the contract to the responsible Offeror(s) whose proposal is determined to be the most advantageous to MSA and the TOC considering technical evaluation factors and price factors as set forth in this RFP.

The award is subject to approval by the MSA Board of Directors, the TOC and the Board of Public Works.

MSA may hold discussions with any or all Offerors judged reasonably susceptible of being selected for award, or potentially so. MSA also reserves the right to develop a short-list of Offerors deemed most qualified based upon their Technical Proposals and conduct discussions with only the short-listed Offerors. However, MSA also reserves the right to make an award without holding discussions. Whether or not discussions are held, MSA may determine an Offeror to be not reasonably susceptible of being selected for award, in its sole and absolute discretion, at any time after the initial closing date for receipt of proposals and the review of those proposals.

**ATTACHMENT A**

**BID/PROPOSAL AFFIDAVIT**

## ATTACHMENT - Bid/Proposal Affidavit

### A. AUTHORIZED

REPRESENTATIVE I

HEREBY AFFIRM THAT:

I am the (title)\_\_\_\_\_and the duly authorized representative of (business)\_\_\_\_\_and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

### B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in §19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

#### B-1. Certification Regarding Minority Business Enterprises.

The undersigned bidder hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, §14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a Contractor may not identify a certified minority business enterprise in a bid or proposal and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the bid or proposal;

- (3) Fail to use the certified minority business enterprise in the performance of the contract; or
- (4) Pay the certified minority business enterprise solely for the use of its name in the bid or proposal.

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid.

C. AFFIRMATION REGARDING BRIBERY

CONVICTIONS I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, §6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

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D. AFFIRMATION REGARDING OTHER

CONVICTIONS I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

(1) Been convicted under state or federal statute of:

(a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or

(b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;



- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or
- (9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and C and subsections D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):
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**E. AFFIRMATION REGARDING**

**DEBARMENT I FURTHER AFFIRM**

**THAT:**

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

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F. AFFIRMATION REGARDING DEBARMENT OF RELATED

ENTITIES I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

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G. SUB-CONTRACT

AFFIRMATION I FURTHER

AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

H. AFFIRMATION REGARDING

COLLUSION I FURTHER AFFIRM

THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

I. FINANCIAL DISCLOSURE

**AFFIRMATION I FURTHER AFFIRM**

**THAT:**

I am aware of, and the above business will comply with, the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

**J. POLITICAL CONTRIBUTION DISCLOSURE**

**AFFIRMATION I FURTHER AFFIRM THAT:**

I am aware of, and the above business will comply with, Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

**K. DRUG AND ALCOHOL FREE WORKPLACE**

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

**I CERTIFY THAT:**

(1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.

(2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

(a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;

(b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;

(c) Prohibit its employees from working under the influence of drugs or alcohol;

(d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
- (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
  - (i) The dangers of drug and alcohol abuse in the workplace;
  - (ii) The business' policy of maintaining a drug and alcohol free workplace;
  - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
  - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §K(2)(b), above;
- (h) Notify its employees in the statement required by §K(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
  - (i) Abide by the terms of the statement; and
  - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
- (i) Notify the procurement officer within 10 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
- (j) Within 30 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
  - (i) Take appropriate personnel action against an employee, up to and including termination; or
  - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
- (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §K(2)(a)—(j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in §K(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
  - (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this

certification;

(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

L. CERTIFICATION OF CORPORATION REGISTRATION AND TAX

PAYMENT I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic ) (foreign ) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name: \_\_\_\_\_ Address: \_\_\_\_\_  
(If not applicable, so state).

(2) Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

M. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

N. Repealed.

O. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the

obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit,  
(2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: \_\_\_\_\_ By: \_\_\_\_\_  
(Authorized Representative and Affiant)

**ATTACHMENT B**

**CONFLICT OF INTEREST INFORMATION/AFFIDAVIT AND  
DISCLOSURE**

## **CONFLICT OF INTEREST AFFIDAVIT/DISCLOSURE**

- A. "Conflict of Interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage."
- B. "Person" has the meaning stated in COMAR 21.01.02.01B (64) and includes a Bidder, Contractor, consultant, or subcontractor or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.
- C. The Bidder warrants that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.
- D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail—attach additional sheets if necessary).
- E. The Bidder agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Bidder shall immediately make a full disclosure in writing to the Procurement Officer of all relevant facts and circumstances. This disclosure shall include a description of actions, which the Bidder has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the Contract has been awarded and performance of the Contract has begun, the Contractor shall continue performance until notified by the Procurement Officer of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: \_\_\_\_\_ By: \_\_\_\_\_  
(Authorized Representative and Affiant)



**ATTACHMENT C**

**MARKET & ECONOMIC ANALYSIS ASSOCIATED WITH EXPANSION  
OF THE OCEAN CITY CONVENTION CENTER DATED JANUARY 2017  
PREPARED BY CROSSROADS CONSULTING SERVICES, LLC.**

# **Market & Economic Analysis Associated with Expansion of the Ocean City Convention Center**



**Presented to:**

**Maryland Stadium Authority**

**Presented by:**



**Final Report – January 2017**



January 2017

Mr. Al Tyler, Senior Project Manager  
Maryland Stadium Authority  
The Warehouse at Camden Yards - South Warehouse  
351 West Camden St., Ste. 500  
Baltimore, MD 21201

Dear Mr. Tyler:

Crossroads Consulting Services LLC has completed its market and economic analysis associated with the proposed expansion of the Ocean City Convention Center. This report summarizes our research and analysis. The majority of the research associated with this market and economic analysis was completed in early 2016.

The information contained in the report is based on estimates, assumptions, and information developed from market research; knowledge of the convention and meeting industries; as well as data provided by management at the Ocean City Convention Center and the Town of Ocean City. We have utilized sources that are deemed to be reliable but cannot guarantee their accuracy. All information provided to us by others was not audited or verified and was assumed to be correct. Moreover, estimates and analysis are based on trends and assumptions and, therefore, there will usually be differences between the projected and actual results because events and circumstances frequently do not occur as expected, and those differences may be material. We have no obligation, unless subsequently engaged, to update this report or revise the information contained therein to reflect events and transactions occurring after the date of this report.

In accordance with the terms of our engagement letter, the accompanying report is restricted to internal use by the Maryland Stadium Authority and the Town of Ocean City and may not be relied upon by any third party for any purpose including financing. Notwithstanding these limitations, it is understood that this document may be subject to public information laws and, as such, can be made available to the public upon request.

Although you have authorized reports to be sent electronically for your convenience, only the final hard copy report should be viewed as our work product. We have enjoyed our relationship with the Maryland Stadium Authority and the Town of Ocean City and look forward to providing you with continued services in the future.

Sincerely,

*Crossroads Consulting Services LLC*

## TABLE OF CONTENTS

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<b>1.</b>	<b>Introduction and Executive Summary</b>	<b>1</b>
<b>2.</b>	<b>General Market Overview</b>	<b>6</b>
<b>3.</b>	<b>Key Industry Trends</b>	<b>18</b>
<b>4.</b>	<b>Historical OCCC Operations</b>	<b>24</b>
<b>5.</b>	<b>Potential Demand Generators</b>	<b>34</b>
<b>6.</b>	<b>Competitive/Comparable Facility Analysis</b>	<b>45</b>
<b>7.</b>	<b>Financial Analysis</b>	<b>60</b>
<b>8.</b>	<b>Economic and Fiscal Impact Analysis</b>	<b>68</b>
<b>9.</b>	<b>Limiting Conditions and Assumptions</b>	<b>80</b>
<b>A.</b>	<b>Appendix</b>	<b>82</b>
	– Conceptual Design Documents	
	– Project Cost Estimate Summary	

## INTRODUCTION

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Ocean City is located along the eastern shore of Maryland in Worcester County and is one of the most popular, year-round vacation destinations on the East Coast providing a safe, clean and fun environment for visitors. The community offers 10 miles of beach as well as many amenities including approximately 9,300 hotel rooms and 21,000 oceanfront and bay view condominiums for rental. Ocean City attracted approximately 6.6 million visitors in 2014.

In an effort to expand its visitor markets to include group business as well as to accommodate local needs, the Town of Ocean City (TOC) developed the Ocean City Convention Center (OCCC) in 1970. The facility included 40,000 square feet of exhibit space on two levels, seven meeting/breakout rooms, three board rooms, lobby and prefunction space and 666 parking spaces.

In 1990, Economic Research Associates completed a market and economic study that assessed the feasibility of expanding the OCCC. The study found that the OCCC captured a significant amount of convention activity within the State and the Mid-Atlantic region and that event attendance was higher than the average for competitive facilities in the region. Challenges cited in that study were 1) the size and configuration of the OCCC's exhibit and meeting facilities were inadequate, inflexible and outdated, 2) air access to Ocean City was limited and distance to a major airport was a deterrent, and 3) lodging facilities were not located within close proximity. The study recommended expansion of the OCCC's exhibit and meeting facilities to maintain and potentially increase convention market activity and to remain competitive. The study recommended the following 'ideal' facility program which could be achieved through a combination of both new construction and renovation: a total of 80,000 square feet of exhibit space; 30,000 square feet of meeting/breakout space; and 20,000 to 25,000 square feet of ballroom/swing space.

The OCCC was renovated and expanded in 1997 with the addition of exhibition and meeting space and the conversion of an exhibit hall into a ballroom.

In December 2007, the TOC asked the Maryland Stadium Authority (MSA) to conduct a feasibility study for another expansion of the OCCC. At that time, Crossroads Consulting Services LLC (Crossroads Consulting) was retained to evaluate the existing building, the current convention market, options for capital improvements, and the proposed addition of a performing arts center. Based on many factors, the study recommended a moderate expansion and remodeling of the OCCC to update audio-visual and technical amenities, provide more function space to accommodate multiple events, increase prime exhibit space that was, at the time, limited by obstructions in the existing exhibit hall C, and build a parking garage to replace lost surface space. The study was completed in 2008.

Since that time and based on the recommendations of that study effort, the TOC has completed a two-phased expansion/renovation including the addition of a second-story 19,126 square-foot ballroom in November 2012 and a 1,200-seat Performing Arts Center in January 2015. The new Performing Arts Center replaced exhibit hall C which reduced the amount of exhibit space.

The OCCC serves as the primary venue in the area for conventions, tradeshow, public shows, meetings and sports competitions and currently offers approximately 60,000 square feet of exhibit space in three halls; 19,126 square feet of ballroom space; and 23 fully divisible meeting rooms. Many of the OCCC's annual users, including State and regional conventions/tradeshow and sporting competitions, are constrained by the amount of exhibit space. Additional groups have expressed interest in utilizing the facility that cannot currently be accommodated due to date and/or exhibit space availability.

Given this background, the TOC and the MSA retained Crossroads Consulting to conduct a market and economic analysis associated with the addition of a maximum of 30,000 square feet of exhibit space along the north side of the existing exhibition space.

Specific research tasks conducted for this analysis include, but are not limited to, the following:

- Conducted interviews and/or work sessions with a variety of stakeholders including, but not limited to, representatives from the MSA, TOC, facility management, Centerplate, CVB, Hotel/Motel Restaurant Association, Ocean City Development Corporation, and Greater Ocean City Chamber of Commerce.
- Profiled market attributes in terms of demographics, employment, highway and air accessibility, existing hotel supply and planned additions, area meeting hotels, attractions, and tourism/visitor statistics.
- Summarized key industry trends that may impact future operations of an expanded OCCC.
- Analyzed historical event activity and financial operations for the existing OCCC.
- Conducted surveys with State and regional professional/trade association meeting planners and sporting event organizers to obtain their input on the potential market demand for an expanded OCCC.
- Analyzed competitive and comparable facilities in terms of owner/operator, building program elements, destination characteristics, utilization, and financial operations.
- Commented on the proposed expansion program's ability to address the needs of potential target markets.
- Estimated the potential incremental new impact to utilization and financial operations associated with an expanded OCCC.
- Estimated the potential incremental new economic/fiscal impacts in terms of spending, employment, earnings, and tax revenues associated with an expanded OCCC.

## EXECUTIVE SUMMARY

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Crossroads Consulting was retained by the TOC and the MSA to conduct a market and economic analysis to evaluate the merits of adding a maximum of 30,000 square feet of exhibit space along the north side of the existing exhibition space in order to maximize its marketability, competitiveness and economic impact to the community.

Market research suggests that the expansion would allow the OCCC to better accommodate existing users as well as attract incremental new business in niches that are well-suited to Ocean City's strengths. These niches include State/regional conventions/tradeshows and sports competitions that more commonly attract overnight attendees that drive to/from the destination, are held in family-friendly destinations, and seek affordable options. In addition, the proposed exhibit hall expansion could better accommodate long-term users that serve the local community such as the Seaside Boat Show and the Stephen Decatur High School graduation.

The existing OCCC currently offers the second smallest amount of exhibit space relative to its competitive set. The proposed addition of a maximum of 30,000 square feet of contiguous exhibit space would place the OCCC in a better competitive position to host larger and/or more simultaneous events. If the OCCC's exhibit space is not expanded, the community could lose market share to other State/regional competitors. This recommended increase in exhibit space is generally consistent with the findings in previous studies.

Based on the research and analysis conducted for this study, the following table summarizes key elements of the market/economic analysis for the recommended expansion in terms of its impact to the facility's usage, financial operations and economic/fiscal benefits. This type of project is one of the few that allow the local government to positively impact the economy through its investment. As shown, although the OCCC realizes an operating deficit, this can be viewed as an investment that generates significant economic impacts (e.g., spending, jobs and earnings) and tax revenues to the community.

Overall Summary of the OCCC Expansion Analysis						
Category	Historical Five-Year Average	Expanded OCCC (Stabilized Year)			Incremental New (Stabilized Year)	
<b>Usage/Event Activity</b>						
Number of Events	82	104	-	113	22	- 31
Event Days	216	272	-	294	56	- 78
Total Attendee Days	406,600	563,800	-	606,800	157,200	- 200,200
High Impact Attendee Days	245,100	351,200	-	380,100	106,100	- 135,000
<b>Financial Operations</b>						
Operating Revenues	\$1,721,000	\$2,455,000	-	\$2,581,000	\$734,000	- \$860,000
Operating Expenses	4,373,000	5,063,000	-	5,157,000	690,000	- 784,000
Operating Gain/(Loss)	(\$2,652,000)	(\$2,608,000)	-	(\$2,576,000)	\$44,000	- \$76,000
<b>Economic Impacts - Worcester County</b>						
Direct Spending	\$106,155,000	\$134,504,000	-	\$144,935,000	\$28,349,000	- \$38,780,000
Indirect/Induced Spending	41,535,000	57,314,000	-	61,764,000	15,779,000	- 20,229,000
Total Spending	\$147,690,000	\$191,818,000	-	\$206,699,000	\$44,128,000	- \$59,009,000
Total Earnings	\$49,116,000	\$69,250,000	-	\$74,652,000	\$20,134,000	- \$25,536,000
Total Jobs	1,650	2,100	-	2,200	450	- 550
<b>Economic Impacts - State of Maryland</b>						
Direct Spending	\$112,887,000	\$142,956,000	-	\$153,985,000	\$30,069,000	- \$41,098,000
Indirect/Induced Spending	82,556,000	100,257,000	-	107,948,000	17,701,000	- 25,392,000
Total Spending	\$195,443,000	\$243,213,000	-	\$261,933,000	\$47,770,000	- \$66,490,000
Total Earnings	\$73,778,000	\$95,081,000	-	\$102,361,000	\$21,303,000	- \$28,583,000
Total Jobs	1,830	2,300	-	2,500	470	- 670
<b>Fiscal Impacts</b>						
Worcester County	\$2,477,000	\$3,213,000	-	\$3,483,000	\$736,000	- \$1,006,000
State of Maryland	9,144,000	11,710,000	-	12,623,000	2,566,000	- 3,479,000
Total	\$11,621,000	\$14,923,000	-	\$16,106,000	\$3,302,000	- \$4,485,000

A market/economic assessment is an initial step in any planning process. Expanding the OCCC will require additional strategic planning efforts. Consequently, the TOC and the MSA proceeded with subsequent phases of the study effort. Becker Morgan Group, Inc. (Becker Morgan) was hired to perform site, parking and architectural planning studies related to the recommended OCCC expansion program. In addition, MSA and Johnson Mirmiran & Thompson (JMT) jointly provided cost estimating services based on the designs prepared by Becker Morgan. As a point of reference, the total base project cost is estimated to be approximately \$34 million. Appendix A includes the conceptual design documents prepared by Becker Morgan as well as the project cost estimate summary. Collectively, the information provided by the project team is intended to serve as a resource for the TOC and the State in their future planning decisions for this project.

Because the information presented in the executive summary is extracted from the more detailed report, it is important for the reader to review the report in its entirety in order to gain a better understanding of the research, methodology and assumptions used.



## TABLE OF CONTENTS

---

<b>1.</b>	<b>Introduction and Executive Summary</b>	<b>1</b>
<b>2.</b>	<b>General Market Overview</b>	<b>6</b>
<b>3.</b>	<b>Key Industry Trends</b>	<b>18</b>
<b>4.</b>	<b>Historical OCCC Operations</b>	<b>24</b>
<b>5.</b>	<b>Potential Demand Generators</b>	<b>34</b>
<b>6.</b>	<b>Competitive/Comparable Facility Analysis</b>	<b>45</b>
<b>7.</b>	<b>Financial Analysis</b>	<b>60</b>
<b>8.</b>	<b>Economic and Fiscal Impact Analysis</b>	<b>68</b>
<b>9.</b>	<b>Limiting Conditions and Assumptions</b>	<b>80</b>
<b>A.</b>	<b>Appendix</b>	<b>82</b>
	– Conceptual Design Documents	
	– Project Cost Estimate Summary	

## GENERAL MARKET OVERVIEW

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General market conditions impact the marketability and operations of convention/meeting facilities. As such, this section of the report profiles select market characteristics including:

- Demographic/economic statistics
- Area employment
- Accessibility
- Hotel market
- Attractions
- Tourism statistics

### Demographic and Economic Statistics

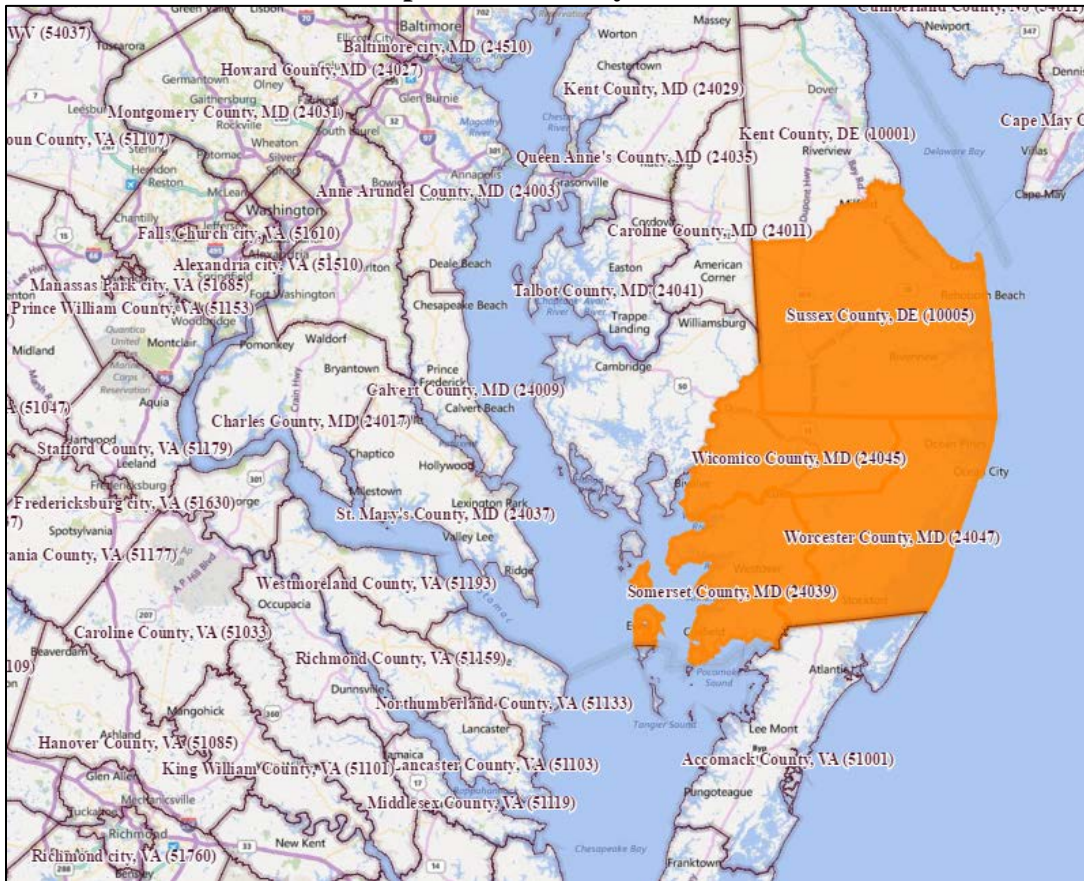
Factors such as demographic/economic conditions, the vibrancy of the area immediately surrounding a facility, and overall destination appeal to both event planners/promoters and attendees can all impact a facility's overall competitiveness within the broader marketplace.

Depending on the scope and nature of the event, convention centers draw from both area residents and out-of-town attendees. As such, a facility's location contributes to its marketability to convention/meeting and competitive sporting events. Consumer shows and local, civic-based events tend to draw from a relatively close geographic area while convention/meeting and competitive sporting events can draw from a larger radius.

When choosing a location, event planners/producers typically view several characteristics of a destination as important to the success of their event. The importance that event planners/producers place on these factors differs depending on the type of event. For instance, local events may place more importance on the accessibility of the venue to exhibitors and attendees from the surrounding communities. Whereas, convention/meeting planners may consider attributes such as accessibility via air and/or highway, hotel room inventory, and/or the relative travel costs most important. A consistent desire from both professional and trade associations is the number of convention quality hotel rooms proximate to the facility. Offering hotels in close proximity to the facility allows attendees to move freely between meetings and can decrease the overall cost of hosting the event if shuttle service is not required. For certain activities like sports competitions, factors such as highway accessibility and attractions are important considerations when selecting markets.

For purposes of this analysis, the primary market is defined as the Salisbury Metropolitan Statistical Area (Metro Area), which includes Somerset, Wicomico, and Worcester Counties in Maryland and Sussex County in Delaware. According to the U.S. Census Bureau, the term Metropolitan Statistical Area is defined as a metro area that contains a core urban area of 50,000 or more population. Each metro area consists of one or more counties and includes the counties containing the core urban area as well as any adjacent counties that have a high degree of social and economic integration (as measured by commuting to work) with the urban core.

## Map of the Primary Market



Source: Nielsen Pop-Facts Demographics.

Demographic statistics are provided by Claritas; a Nielsen company that provides current and projected U.S. demographics based on U.S. census figures.

### Population

Population serves as a base from which events at convention centers draw attendance and other forms of support. In 2015, the population of the primary market is estimated to be 390,800. According to Nielsen, the population within the primary market is projected to increase by 5% between 2015 and 2020.

### Age Distribution

Analysis by age group is useful since certain events at convention centers are targeted toward consumers who fall within specific age categories. Approximately 40% of the primary market are within the ages of 21 and 54 which represents a popular target market for consumer shows and other entertainment events. Nearly one-quarter of the population (24%) in the primary market is under 21 years old, a popular age range for sports tournaments/competitions. The median age is 43.6 years old in the primary market.

## Income

Income offers a broad measurement of spending potential for a specific population because it indicates the general ability of individuals or households to purchase a variety of goods. The median household income for the primary market is \$53,400. As a point of reference, this figure is lower than that for the State of Maryland (\$74,600) and comparable to that for the U.S. (\$53,700). Approximately 21% of the households in the primary market have income levels of at least \$100,000.

The table below summarizes key demographic/economic characteristics of the TOC, Worcester County and the primary market.

Summary of Key Demographic/Economic Characteristics			
Category	Geographic Area		
	Town of Ocean City	Worcester County	Metro Area (Primary Market)
<b>Population</b>			
2000 Population	7,100	46,500	312,600
2010 Population	7,100	51,500	373,800
2015 Population	7,700	51,700	390,800
2020 Projection	8,200	52,500	408,700
Growth 2000-2010	0%	11%	20%
Growth 2010-2015	8%	1%	5%
Projected Growth 2015-2020	6%	11%	5%
<b>Age Distribution</b>			
Under 21 Years Old	10%	21%	24%
21 - 44 Years Old	25%	24%	27%
45 - 54 Years Old	13%	14%	13%
55+ Years Old	52%	42%	36%
<b>Median Age</b>	55.8	49.1	43.6
<b>Household Income Distribution</b>			
Less than \$25,000	22%	17%	23%
\$25,000 to \$49,999	24%	23%	25%
\$50,000 to \$74,999	22%	18%	19%
\$75,000 to \$99,999	7%	14%	13%
\$100,000 to \$149,999	10%	15%	13%
\$150,000 or more	16%	13%	8%
<b>Median Household Income</b>	\$55,000	\$63,100	\$53,400
<b>Average Household Income</b>	\$86,600	\$83,800	\$69,400
<b>Population by Single Race Classification</b>			
White	87%	80%	71%
Black/African American	3%	14%	18%
Hispanic or Latino	7%	4%	7%
Other Races	3%	3%	4%

Note: Not all amounts add up to 100% due to rounding.

Source: Claritas.

## Area Employment

A broad workforce distribution helps lessen a community's dependency on support from any single industry segment. Industry diversification also helps a local economy withstand economic downturns due to dependency upon one industry; should one industry fail, there are others upon which the local economy can rely.

The distribution of an area's employment by industry is a consideration when targeting various events and/or seeking advertising and sponsorship opportunities. For instance, a large services sector is typically a positive indicator for the number of corporate events being held in the area. The services sector usually has significant financial resources to host activities such as conferences, seminars, banquets, receptions and other special events. In addition, employers may be members of professional/trade associations and can be instrumental in attracting State or regional conventions/tradeshows to the TOC. A significant leisure/hospitality sector is indicative of an established visitor market that includes out-of-town attendees for sports competitions, corporate meetings, conferences, and convention/tradeshows.

While Worcester County offers employment in various industries, employment data shown in the following table indicates that the workforce is primarily concentrated in leisure/hospitality, trade/transportation/utilities, and education/health services.

<b>Worcester County Private Sector Employment by Place of Work - 2015</b>		
<b>Industry</b>	<b>Total Jobs</b>	<b>% of Total</b>
Leisure and Hospitality	9,100	44%
Trade, Transportation, and Utilities	4,100	20%
Education and Health Services	2,200	11%
Professional and Business Services	1,400	7%
Financial Activities	1,200	6%
Construction	1,100	5%
Other Services	700	3%
Manufacturing	700	3%
Information	200	1%
Natural Resources and Mining	100	0%
<b>Total</b>	<b>20,800</b>	<b>100%</b>

Notes: Sorted in descending order by total jobs.

Includes civilian employment only; Excludes government employment.

Total jobs are rounded to the nearest hundred.

Source: Maryland Department of Labor, Licensing and Regulation, Office of Workforce Information and Performance.

The non-seasonally adjusted unemployment rate for Worcester County was approximately 13.7% in December 2015 which was significantly higher than that for the Salisbury Metro Area (6.9%), the State of Maryland (4.7%) and the U.S. (4.8%) during the same month.

With nearly 1,100 employees, Harrison Group, which is a hotel and restaurant management company, is the largest employer in Worcester County. As shown in the following table, other major employers include Atlantic General Hospital, Walmart, O.C. Seacrets, and Dough Roller.

<b>Major Employers in Worcester County - 2015</b>		
<b>Company</b>	<b>Industry</b>	<b>Employees</b>
Harrison Group*	Accommodation/Food Services	1,100
Atlantic General Hospital	Health Care	800
Walmart	Retail Trade	500
O.C. Seacrets*	Accommodation/Food Services	400
Dough Roller*	Accommodation/Food Services	400
Phillips Seafood Restaurants*	Accommodation/Food Services	300
Carousel Resort Hotel & Condominiums*	Accommodation/Food Services	300
Clarion Resort Fontainebleau*	Accommodation/Food Services	300
Fager's Island*	Accommodation/Food Services	200
Ocean Enterprise 589/Casino at Ocean Downs	Arts/Entertainment/Recreation	200
Ocean Pines Association	Other Services	200
91st Street Joint Venture/Princess Royale*	Accommodation/Food Services	200
Trimper's Rides*	Arts/Entertainment/Recreation	200
Berlin Nursing and Rehabilitation Center	Health Care	200
Bel-Art Products	Manufacturing	200

Notes: Sorted in descending order by total employees.  
 Excludes post offices, State and local governments.  
 \* Reflects summer employment levels.  
 Number of employees is rounded to the nearest hundred.

Sources: Worcester County Department of Economic Development; Maryland Department of Commerce.

## Accessibility

The method event promoters/producers use to select venues to host their event is partially based on ease of access to a market for attendees. As such, the location and accessibility of a facility relative to the population base can impact its marketability for certain types of events.

Ocean City is located along the eastern shore of Maryland. As shown in the following map, this region of the State is separated by the Chesapeake Bay and does not have direct interstate access. Maryland Route 528 and U.S. Route 113 provide north-south access and U.S. Route 50 and U.S. Route 90 provide east-west access to and from Ocean City.



## Highway Access



The Salisbury-Ocean City-Wicomico Regional Airport provides commercial air access to Ocean City. This airport, which is located approximately 30 miles from the OCCC, is serviced by American Airlines. In 2015, the Salisbury-Ocean City-Wicomico Regional Airport had approximately 61,800 passenger enplanements. The Federal Aviation Administration (FAA) defines enplanements as domestic, territorial and international passengers who board an aircraft in scheduled and non-scheduled service of aircraft. While most of the OCCC's attendees drive in, the airport's relative proximity to the facility is advantageous for certain attendees or VIPs who wish to fly in. The OCCC is also serviced by the Baltimore-Washington International Airport and the Philadelphia International Airport, both of which are located approximately 140 miles from Ocean City.

## Hotel Market

The diversity and supply of hotel rooms proximate to the OCCC can play a role in attracting certain events that draw overnight attendees such as conventions/meetings and/or sports competitions/tournaments.

## Hotel Supply

As shown in the adjacent table, there are approximately 9,300 hotel rooms in Ocean City. These properties include chain-affiliated hotels, all-suite, boutique and independent properties. Over the last several years, five new hotels have been developed in the Ocean City area. These properties have a total of 422 rooms and offer relatively affordable rates which has enhanced the OCCC's marketability for group business. There are nine proposed new properties scheduled to be developed in the Ocean City area over the next several years which are anticipated to add more than 840 additional rooms to the existing supply.

According to the Ocean City Hotel/Motel Association, there are approximately 2,900 hotel rooms within walking distance of the OCCC. New property additions or replacements are anticipated to add more than 440 rooms within walking distance of the OCCC in the next several years including a new Residence Inn which is anticipated to open in 2017.

Summary of Hotel Supply in Ocean City, MD		
Property	Location	Number of Rooms
Carousel Resort Hotel & Condominiums	91st - 146th Street	340
Princess Royale Family Resort & Condominiums	91st - 146th Street	340
Clarion Resort Fontainebleau Hotel	91st - 146th Street	323
Grand Hotel & Spa	Inlet - 27th Street	251
Francis Scott Key Family	West OC	232
Hilton Hotel & Suites	28th - 90th Street	225
Holiday Inn Oceanfront	28th - 90th Street	216
Holiday Inn Hotel & Suites	Inlet - 27th Street	210
Fenwick Inn	91st - 146th Street	201
Comfort Inn Goldcoast	91st - 146th Street	201
Princess Bayside Hotel	28th - 90th Street	194
Castle in the Sand	28th - 90th Street	184
Plim Plaza Hotel	Inlet - 27th Street	181
Quality Inn Boardwalk	Inlet - 27th Street	179
Days Inn Ocean Front	Inlet - 27th Street	176
Dunes Manor Hotel	28th - 90th Street	170
Sahara Motel	Inlet - 27th Street	161
Sea Bay Hotel	28th - 90th Street	157
Tidelands Caribbean	Inlet - 27th Street	133
Quality Inn Oceanfront	28th - 90th Street	130
Holiday Inn Express	91st - 146th Street	122
Hampton Inn Hotel & Suites	28th - 90th Street	113
Flamingo Motel	28th - 90th Street	112
Dunes Motel	Inlet - 27th Street	111
Admiral Motel	Inlet - 27th Street	111
Commander Hotel	Inlet - 27th Street	109
Quality Inn & Suites Beachfront	28th - 90th Street	109
La Quinta Inn & Suites	28th - 90th Street	101
Pinnaker Motel	Inlet - 27th Street	100
Bonita Beach Hotel	28th - 90th Street	100
All Other Hotels		4,010
<b>Total</b>		<b>9,302</b>

Notes: Sorted in descending order by number of rooms.

"All Other Hotels" include properties with under 100 rooms.

Source: Ocean City Department of Tourism.

In addition to hotel rooms, overnight visitors can stay in one of approximately 21,000 condominiums or rental accommodations in Ocean City. Overall, the number of hotel rooms and rental accommodations is favorable for attracting overnight business to the OCCC.

There are relatively few hotels in the immediate area that offer a minimum of 10,000 square feet of total function space. On average, these profiled hotels offer approximately 19,000 square feet of total function space, approximately 11,100 square feet of which is dedicated ballroom space. The maximum banquet seating capacity at these facilities ranges from 400 to 850. In addition, these hotels offer an average of 330 on-site sleeping rooms. The amount and type of function space combined with on-site hotel rooms and various resort-type amenities such as the beach, golf and tennis make these properties particularly attractive for smaller groups that prefer to meet under one roof and desire high-end function space for their convention/meeting activity. The OCCC's building program is particularly marketable to group business that requires all three types of function space (i.e., exhibit, ballroom, and meeting) under one roof.



Facility	Location	Total Function Space SF	Total Ballroom SF	Largest Banquet Capacity	Total Meeting Room SF	Meeting Rooms	Sleeping Rooms
Princess Royale Family Resort & Condominiums	Ocean City	30,000	9,900	600	1,200	1	340
Hyatt Regency Chesapeake Bay	Cambridge	24,000	16,100	850	7,900	13	400
Clarion Resort Fountainebleau	Ocean City	21,000	14,400	560	6,200	7	320
Grand Hotel & Spa	Ocean City	10,000	8,200	400	1,700	2	250
Carousel Resort Hotel & Condominiums	Ocean City	10,000	7,000	650	2,700	2	340
<b>Average</b>		<b>19,000</b>	<b>11,100</b>	<b>610</b>	<b>3,900</b>	<b>5</b>	<b>330</b>

Notes: Sorted in descending order by total function space.

Profiled hotels are located in Maryland's Eastern Shore and offer a minimum of 10,000 SF of meeting/ballroom space.

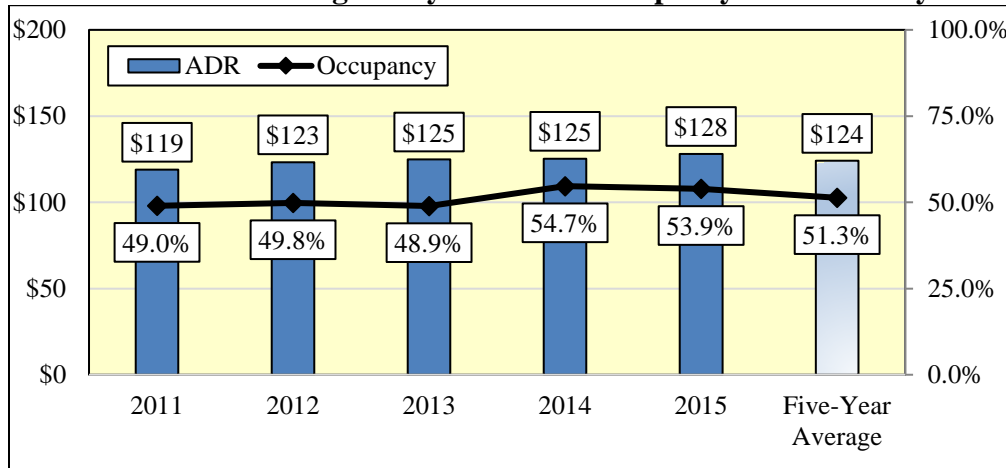
Source: Individual hotel properties; secondary research.

In addition to the above properties, there are several meeting hotels in the region offering more than 10,000 square feet of meeting/ballroom space. These include, but are not limited to, the Gaylord National Resort & Convention Center, Hilton Baltimore, and Embassy Suites Baltimore Hotel. These properties are also attractive to groups wishing to contain their events under one roof.

### Hotel Demand

The ability for the OCCC to attract events that generate overnight stays is partially impacted by the availability and affordability of area hotels. Annual occupancy and average daily rate (ADR) statistics for Ocean City hotels is illustrated in the following graph. ADR remained steady between 2011 and 2015. Occupancy rates were also relatively consistent between 2011 and 2013 before experiencing nearly a six point increase in 2014. Between 2011 and 2015, occupancy rates averaged 51.3% and ADR averaged \$124. Because the TOC's peak visitation season occurs in the summer, many independent properties close for the winter months which negatively impacts annual occupancy rates.

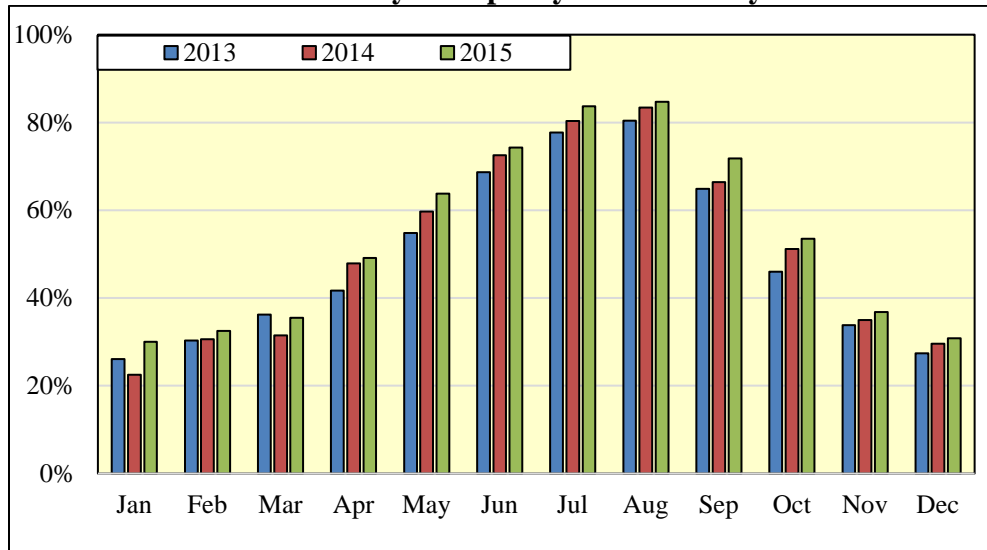
**Trends in Annual Average Daily Rate and Occupancy at Ocean City Hotels**



Source: Smith Travel Research.

The following graph summarizes trends in monthly occupancy rates at Ocean City hotels from 2013 to 2015. As shown, occupancy rates in 2014 increased in all but two months (January and March) as compared to 2013. This trend continued into calendar year 2015 where it increased each month in comparison to 2014.

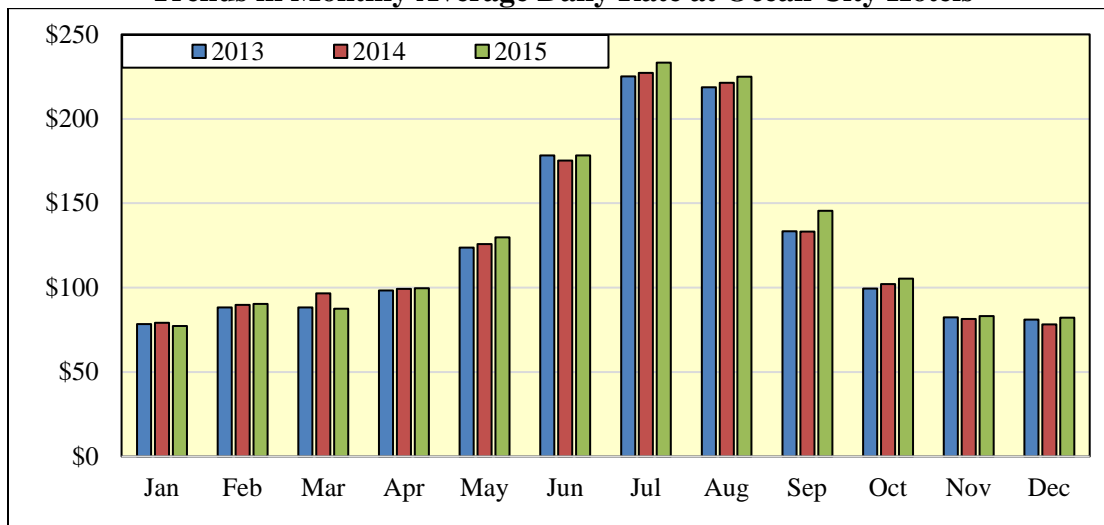
### Trends in Monthly Occupancy at Ocean City Hotels



Source: TOC Department of Tourism.

The ADR at Ocean City hotels peaks during the summer months and tends to remain fairly constant throughout the rest of the year. Affordability of hotel rooms is advantageous when marketing to events that draw out-of-town attendees, particularly given event planners' desires to minimize overall facility and travel-related costs. Attracting business to the OCCC during the off-peak season could serve to augment the TOC's slower months and draw additional year-round visitors.

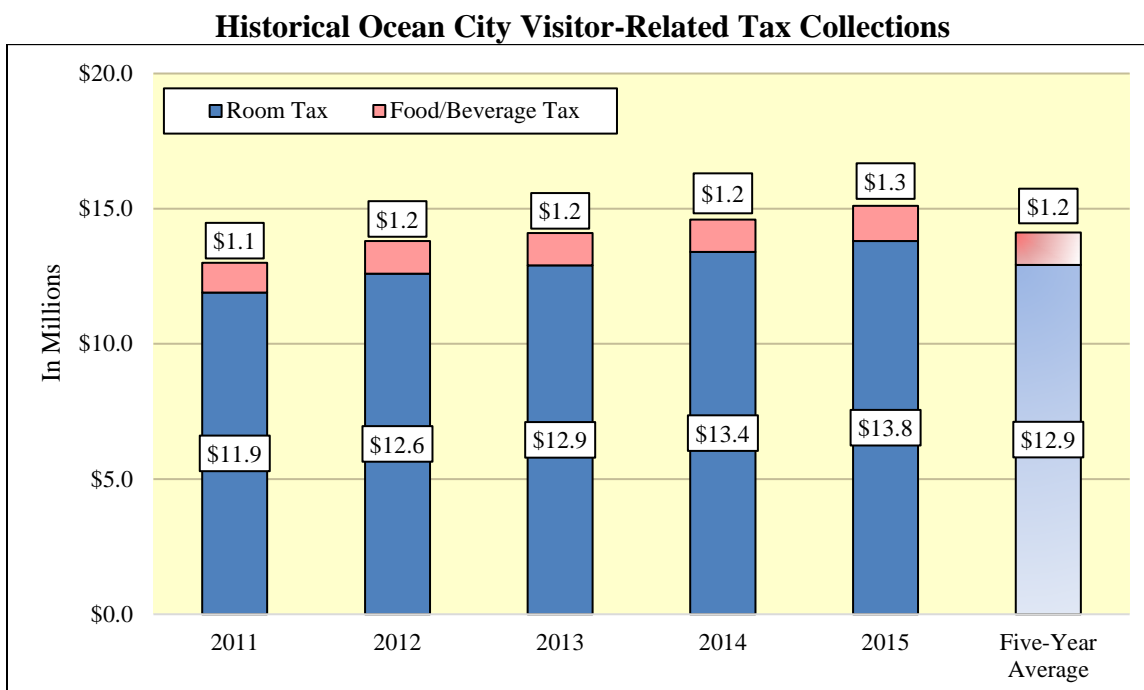
### Trends in Monthly Average Daily Rate at Ocean City Hotels



Source: TOC Department of Tourism.

## Tax Collections

Worcester County imposes a 4.5% tax on hotel/motel rooms, apartments, condominiums, cottages, mobile homes, and any other sleeping accommodation and a 0.5% tax on food and beverage sales. Overall, collections from both of these tax sources have increased between 2011 and 2015. The five-year average for room and food/beverage tax collections were \$12.9 million and \$1.2 million, respectively.



Source: TOC.

## **Tourism Statistics**

Visitors traveling to Ocean City represent an important component of the TOC's economy. Visitor spending on items such as lodging, retail, eating/drinking and entertainment/recreation supplements local resident spending at area businesses and increases tax revenues to both local and State governments.

Ocean City is one of the top two destinations visited in Maryland. According to a study conducted by D.K. Shifflet and Associates, the number of annual visitors averaged approximately 5.9 million during the profiled five-year period. Total visitors increased by 17% from 5.8 million in 2012 to 6.8 million in 2013 before decreasing by 3% to 6.6 million in 2014. Average travel party size also increased between 2012 and 2013 before decreasing in 2014. According to the study, average spending per person per day fluctuated between 2012 and 2014 and spending in Maryland per group stay decreased each year since 2012. The following table summarizes an annual breakdown of Ocean City tourism statistics.

Ocean City Travelers Summary						
Category	2010	2011	2012	2013	2014	Five-Year Average
Estimated number of visitors (millions)	4.2	6.0	5.8	6.8	6.6	5.9
Average travel party size	2.7	2.7	2.4	2.8	2.4	2.6
Average length of trip (days)	2.7	2.4	2.7	2.2	2.2	2.4
Average spending per person per day	\$99	\$104	\$138	\$127	\$132	\$120
Spending in Maryland per group stay	\$705	\$674	\$894	\$782	\$701	\$749

Note: Amounts for spending in Maryland per group stay may not add due to rounding.

Sources: D.K. Shifflet and Associates; Maryland Office of Tourism.

As a point of reference, the top three places of origin for tourists visiting Ocean City during 2014 were Baltimore (28%), Washington, D.C. (18%), and Philadelphia (14%).

## Attractions

The availability of cultural, recreational, retail and entertainment options is another factor that event planners/producers take into account when selecting a destination for their event and is important for periods when attendees are not at event-related functions. The variety of attractions is also an important consideration for attendees when deciding whether to bring additional family/friends and how long to stay. Popular attractions include, but are not limited to, the following:

- 10 miles of beach
- Casino at Ocean Downs
- Jolly Roger Amusement Park
- Bike World
- Miniature Golf
- Holly Ridge Equestrian Center
- Ocean City Boardwalk
- OC Magic Show
- Marty's Playland
- Frontier Town Western Park
- Baja Amusements
- Ripley's Believe It or Not!

Given its proximity to the coast, there is also a wide variety of water-related activities in Ocean City such as parasailing, boat rentals, jet-ski rentals as well as other watersports.

The next section provides an analysis of key industry trends.

## TABLE OF CONTENTS

---

<b>1.</b>	<b>Introduction and Executive Summary</b>	<b>1</b>
<b>2.</b>	<b>General Market Overview</b>	<b>6</b>
<b>3.</b>	<b>Key Industry Trends</b>	<b>18</b>
<b>4.</b>	<b>Historical OCCC Operations</b>	<b>24</b>
<b>5.</b>	<b>Potential Demand Generators</b>	<b>34</b>
<b>6.</b>	<b>Competitive/Comparable Facility Analysis</b>	<b>45</b>
<b>7.</b>	<b>Financial Analysis</b>	<b>60</b>
<b>8.</b>	<b>Economic and Fiscal Impact Analysis</b>	<b>68</b>
<b>9.</b>	<b>Limiting Conditions and Assumptions</b>	<b>80</b>
<b>A.</b>	<b>Appendix</b>	<b>82</b>
	– Conceptual Design Documents	
	– Project Cost Estimate Summary	

## KEY INDUSTRY TRENDS

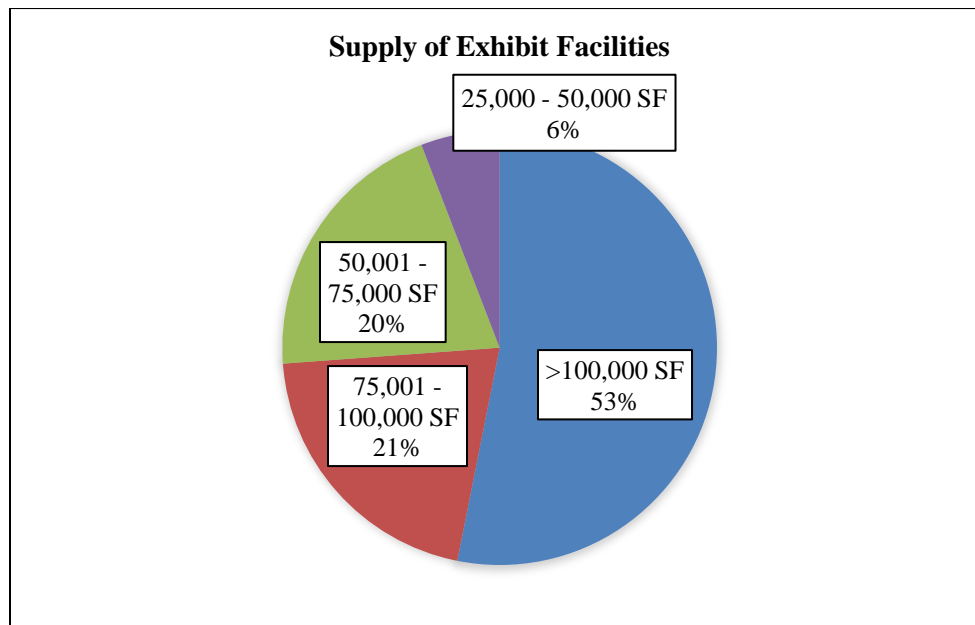
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The OCCC's success is somewhat dependent on the attributes of the industry(s). This analysis is based on information provided by secondary sources including, but not limited to, Center for Exhibition Industry Research (CEIR), Meeting Professionals International (MPI), *Trade Show Executive*, Destination Marketing Association International (DMAI), Pollstar, IBISWorld, and the Sports and Fitness Industry Association. This section outlines key trends in the convention/meeting and sports industries that may impact future operations of an expanded OCCC.

### Convention/Meetings Business

The following summarizes key trends in the convention/meetings industry:

- The convention/meetings market has experienced tremendous growth in the supply of space over the past two decades.
- This growth coupled with an economic downturn created a gap in the supply of space and demand for space that led to a more competitive buyer's market.
  - Numerous facilities can accommodate meeting planners' needs strictly in terms of required space.
  - Hotels and larger convention centers are also vying for more moderately sized group business.
- Hotels with exhibit and/or ballroom/meeting space can have an advantage over stand-alone meeting facilities because they control all major components of an event (i.e., function space, lodging and food/beverage) under one roof. Since the hotel is the primary beneficiary of all revenue streams, it can negotiate packages as it sees fit in any or all areas to attract business.
  - Some privately-operated hotels offer entertainment (i.e., a headliner act for a banquet) as part of their overall package to entice meeting planners. Some of these properties, such as those adjacent to casinos, are situated in suburban locations, remote from other businesses that might attract some of the attendee spending away from the hotel's internal revenue generators.
- The pie chart that follows represents the supply of exhibit facilities within the U.S. based on information from *Trade Show Executive*. Of the 250+ facilities located in the U.S., 53% offer greater than 100,000 square feet while only 6% offer between 25,000 and 50,000 square feet.



Source: *Trade Show Executive*.

- While supply growth has slowed significantly, new space has recently been developed and/or is being contemplated. For instance, the Baltimore Convention Center is currently exploring the merits of expansion.
- More convention centers are constructing or re-purposing existing space into multi-purpose, flex space that can be used as exhibit, meeting, or ballroom space to provide more flexibility and accommodate changing trends.
- Facilities located in destinations offering an attractive package in terms of overall appeal, hotel supply, accessibility, and facility/travel-related costs have been better able to maintain, grow and diversify their business in challenging economic times.
- While the supply of exhibition and meeting space has experienced significant growth over the past decade, demand has been less aggressive. The following table summarizes industry data provided by CEIR which tracks annual changes in several industry metrics: net square feet used for exhibitions; total number of exhibitors and attendees; and industry revenues. As shown, the industry experienced negative growth between 2008 and 2010. In 2015, the total index increased by 3.7% and was 1.8 points higher than in 2014. All four profiled metrics increased in 2015. Attendees trended upward since the end of the recent recession and at 33.4 million, exceeded its 2007 peak of 32.4 million. The strengthening job market helped attendee numbers and, as a leading indicator of the exhibition industry, bodes well for business in the coming years.

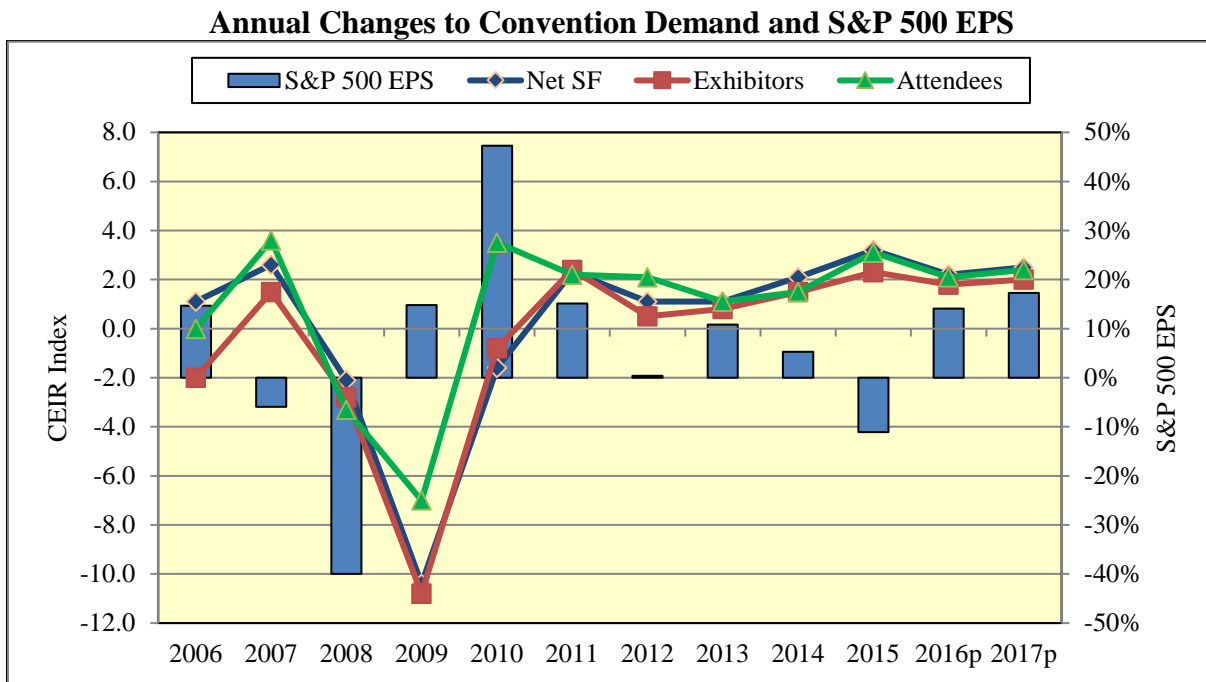
Year-On-Year Percent Change of the Metrics and CEIR Index														CAGR, 2000-2015
Metric	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016p	2017p	2018p	
Net SF	1.1	2.6	-2.1	-10.4	-1.6	2.3	1.1	1.1	2.1	3.2	2.2	2.5	2.9	0.1
Exhibitors	-2.0	1.5	-2.8	-10.8	-0.8	2.4	0.5	0.8	1.5	2.3	1.8	2.0	2.2	-0.7
Attendees	0.0	3.6	-3.3	-7.0	3.5	2.2	2.1	1.1	1.5	3.1	2.1	2.4	2.7	0.3
Real Revenues <sup>1</sup>	-0.8	5.2	-3.7	-11.7	-6.3	2.5	2.1	1.7	2.3	6.2	3.4	3.8	4.2	0.0
Total	-0.4	3.2	-3.0	-10.0	-1.4	2.3	1.5	1.2	1.9	3.7	2.4	2.7	3.0	-0.1

Notes: <sup>1</sup>Inflation adjusted revenues, adjusted for CPI for all urban consumers.

p = Projected.

Source: CEIR 2016.

- Convention/meeting/exhibition industry trends generally mirror broader U.S. economic trends. The following graph illustrates annual changes for key industry measures alongside the S&P 500 earnings-per-share (EPS) which further illustrates the relationship between the convention industry and overall economic conditions.



Note: p = projected.

Sources: CEIR; Standard & Poors.

Negative S&P EPS precedes periods of decreases in the number of exhibitors and similarly, periods of positive economic and industry growth, as measured by EPS, are followed by a growth in the convention and meeting industry with a substantive lag period. Of note, S&P earnings began to experience growth in 2009, whereas the convention and meetings industry lagged 12 to 18 months behind the broader economy as many conventions/meetings are planned years in advance. As measured by S&P earnings, overall economic conditions decreased in 2015 but are expected to increase by 14.1% in 2016 over reported 2015 earnings. Despite the S&P earnings decrease in 2015, the convention industry conditions are projected to continue to increase through 2017.



- The following table illustrates the destination and venue selection criteria that meeting planners considered most important and their relative ranking according to a survey conducted by MPI. Overall cost, space requirements, location and overall value rank high in terms of both the site and venue selection.

Most Important Decision Factors When Choosing a Destination		Most Important Decision Factors When Choosing a Venue	
Factor	%	Factor	%
Overall cost	42%	Meeting space requirements	45%
Available venues which meet space requirements	42%	Overall cost	41%
Ease of access/travel	39%	Location	38%
Overall value	33%	Condition and quality of venue	37%
Attractive location to attendees	32%	Overall value	31%
Proximity to members/delegates	29%	Flexible contracts	26%
Travel cost to destination	29%	Attractive location to attendees	24%
Area hotel rates	22%	Customer service	24%
Distance between airport and venue	20%	Meeting room rates	19%
Public perception	14%	Flexible and dedicated staff	16%
Attractions and activities	11%	Incentives and concessions	15%
Availability of airlift	11%	Amenities and services offered	11%

Note: Respondents could choose more than one factor, as such percentages do not add to 100%.

Source: MPI Business Barometer.

- MPI conducts surveys (*Meetings Outlook*) to gather key facts and comment on meeting industry trends. Several metrics project positive economic and industry growth that should bode well for the convention/meetings market:
  - The meetings industry is projected to experience steady, positive growth.
  - Approximately 58% of meeting planners predict an increase in live meeting attendance.
  - Per *Meetings Outlook*, 70% of respondents projected that business conditions over the coming year will be favorable.
  - The largest growth is expected to occur with domestic corporate meetings followed by domestic association meetings. By contrast, government meetings are anticipated to experience the largest decline.
- Technology continues to be an important issue. Many meeting professionals are experimenting with technology to bring more productivity, value, cost savings, accuracy, and revenue to their meetings and events.
- Per *Meetings Outlook*, approximately 16% of respondents cited “more valuable technology” as a top issue. The flood of new technological capabilities into the market has meeting planners facing difficult decisions on which solutions are best for their events.
- Convention centers of all sizes are enhancing their technology infrastructure to provide more bandwidth and faster Wi-Fi as the demand for 24/7 connectivity among event organizers and attendees continues to increase. Specialized video boards and digital display areas as well as outdoor video boards are also becoming more common at convention centers.

## Competitive Sports

The OCCC's exhibit hall provides a flexible room for a variety of indoor sports including basketball, cheerleading, gymnastics, volleyball, wrestling, badminton, mixed martial arts, and table tennis. In addition, OCCC's Performing Arts Center also provides a good setting for staged sports competitions including cheerleading and dance.

The following summarizes key trends in the competitive sports industry:

- More communities are realizing the value of sports tourism as an economic generator.
- The competitive youth and adult amateur sports industry has continued to be a significant market opportunity with multiple sports/age groups/demand segments.
- Demand is less impacted by economic fluctuations as participants and family/friends are willing to travel significant distances for their preferred sport.
- More communities are developing specialized sports complexes to accommodate multiple games/competitions due to their value as a tourism generator.
- It is important for destinations to have a strong volunteer base and elite level leagues to support and promote tournament activity that generates overnight stays.

The next section provides a summary of historical OCCC operations.

## TABLE OF CONTENTS

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<b>1.</b>	<b>Introduction and Executive Summary</b>	<b>1</b>
<b>2.</b>	<b>General Market Overview</b>	<b>6</b>
<b>3.</b>	<b>Key Industry Trends</b>	<b>18</b>
<b>4.</b>	<b>Historical OCCC Operations</b>	<b>24</b>
<b>5.</b>	<b>Potential Demand Generators</b>	<b>34</b>
<b>6.</b>	<b>Competitive/Comparable Facility Analysis</b>	<b>45</b>
<b>7.</b>	<b>Financial Analysis</b>	<b>60</b>
<b>8.</b>	<b>Economic and Fiscal Impact Analysis</b>	<b>68</b>
<b>9.</b>	<b>Limiting Conditions and Assumptions</b>	<b>80</b>
<b>A.</b>	<b>Appendix</b>	<b>82</b>
	– Conceptual Design Documents	
	– Project Cost Estimate Summary	

## HISTORICAL OCCC OPERATIONS

This section provides an overview of OCCC operations in terms of building program, utilization trends, future bookings, exhibit space usage, and financial operations.

### Building Program

As mentioned previously, the OCCC currently offers nearly 60,000 square feet of exhibit space in three halls; 19,126 square feet of ballroom space; 23 fully divisible meeting rooms; and a 1,200-seat Performing Arts Center.

Plans for each floor follow.

OCCC Building Program	
Area	Square Feet
<b>Exhibit Space</b>	
Hall A	25,070
Hall B	20,700
Dockside Hall	14,190
Total	59,960
Bayfront Ballroom	19,126
Meeting Rooms	24,000

### First Floor



## Second Floor



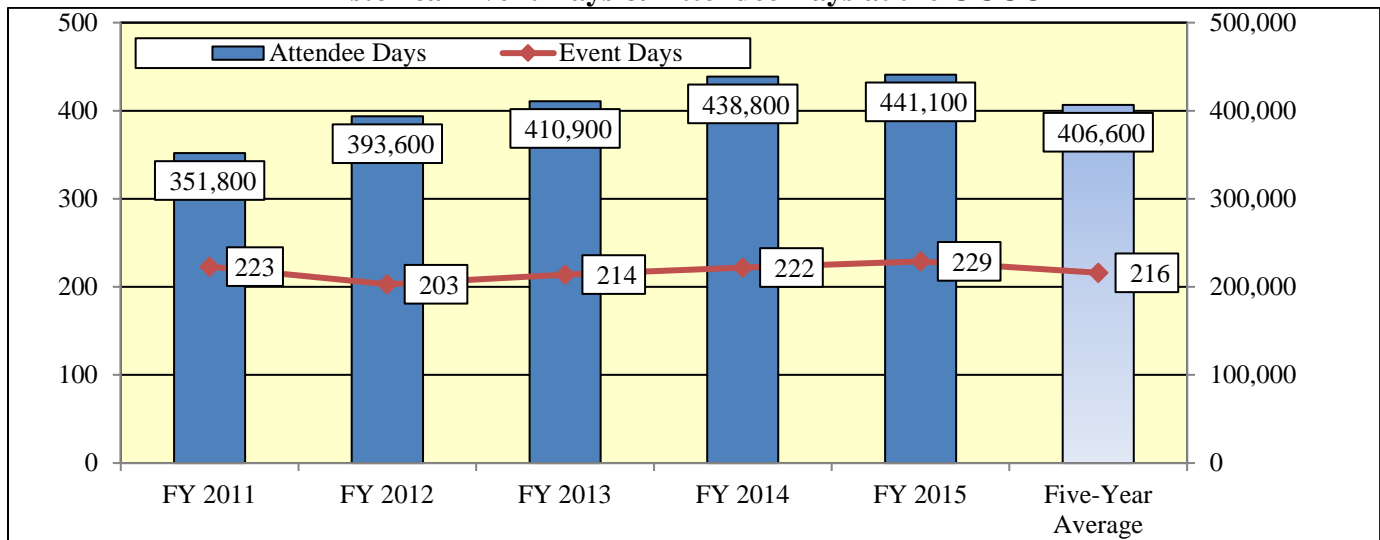
## Utilization Trends

Understanding historical utilization at the OCCC is one factor in assessing the potential need for expansion. In order to gain an understanding of the types of events that the OCCC has held as well as general event attributes, the facility's event activity was analyzed for fiscal year (FY) 2011 through FY 2015.

The following graph illustrates the number of event days and total attendee days at the OCCC for the last five fiscal years ending June 30. OCCC event days have steadily increased over the past three years and attendee days have increased each year since FY 2011. The OCCC hosted an average of 216 event days that generated approximately 406,600 attendee days over the last five years.

An attendee day is defined as total attendance multiplied by the event length. For example, a three-day convention with 200 attendees equates to 600 attendee days which reflects that the same attendees return to the event each of the three days.

### Historical Event Days & Attendee Days at the OCCC



Notes: Excludes off-site and internal use events.

Five-year average excludes concert/entertainment events as this category was only applicable for a portion of FY 2015.

Source: Facility management.

### Utilization by Event Type

Conventions/tradeshows and competitions include multi-day professional/trade association and sporting events, respectively, that generate overnight stays as attendees typically stay for the duration of the event. Consumer shows represent business-to-consumer expositions and serve the local community by bringing many dealers/providers of a particular product or service to one location for buyers' convenience. Meetings include local condo association meetings as well as several larger events that are held annually at the OCCC including the Stephen Decatur High School graduation and prom. Concerts/entertainment events include those held in the new Performing Arts Center since its opening in January 2015.

As shown in the table that follows, conventions and tradeshows have consistently accounted for the highest percentage of total attendee days at the OCCC over the last five years. These events typically attract a large number of overnight attendees and generate significant economic impact. Average attendee days for conventions and tradeshows was relatively consistent between FY 2011 and FY 2013 before experiencing a spike in 2014.

Total attendee days at consumer shows have increased each of the last four years. Consumer shows, which typically attract local residents, can be beneficial in terms of occupying a building during non-peak seasons.

The OCCC hosted an average of eight competitions over the last five years which accounted for an average of 22% of annual attendee days. These events averaged 11,100 attendee days per event, which is nearly double the average for conventions/tradeshows. Competitions include a variety of sports such as cheerleading, dance, and volleyball and are likely to attract family and/or friends who join the competitor as part of the overnight visitors. In addition, sporting competitions are likely to attract attendees who extend their stay to enjoy the host destination's amenities, therefore generating significant economic impact.

The OCCC hosted the lowest number of meetings and related attendee days in FY 2015 primarily due to fewer condo association meetings. With the addition of the OCCC Performing Arts Center, concerts and entertainment shows represent a new event category.

OCCC - Utilization by Event Type						
Total Events						Five-Year Average
Event Type	2011	2012	2013	2014	2015	
Conventions/Tradeshows	36	31	30	26	31	31
Consumer Shows	31	24	24	28	23	26
Meetings	23	17	22	14	7	17
Competitions	7	8	9	7	11	8
Concerts/Entertainment*					3	
<b>Total</b>	<b>97</b>	<b>80</b>	<b>85</b>	<b>75</b>	<b>75</b>	<b>82</b>

Total Event Days						Five-Year Average
Event Type	2011	2012	2013	2014	2015	
Conventions/Tradeshows	104	95	86	87	100	94
Consumer Shows	68	58	62	84	75	69
Meetings	32	30	39	31	10	28
Competitions	19	20	27	20	38	25
Concerts/Entertainment*					6	
<b>Total</b>	<b>223</b>	<b>203</b>	<b>214</b>	<b>222</b>	<b>229</b>	<b>216</b>

Average Number of Event Days						Five-Year Average
Event Type	2011	2012	2013	2014	2015	
Conventions/Tradeshows	2.9	3.1	2.9	3.3	3.2	3.0
Consumer Shows	2.2	2.4	2.6	3.0	3.3	2.7
Meetings	1.4	1.8	1.8	2.2	1.4	1.6
Competitions	2.7	2.5	3.0	2.9	3.5	3.1
Concerts/Entertainment*					2.0	

Total Attendee Days						Five-Year Average
Event Type	2011	2012	2013	2014	2015	
Conventions/Tradeshows	190,800	162,900	159,400	169,900	179,600	172,500
Consumer Shows	99,800	116,100	128,600	148,700	156,900	130,000
Meetings	13,500	23,600	17,200	17,000	4,700	15,200
Competitions	47,700	91,000	105,700	103,200	96,800	88,900
Concerts/Entertainment*					3,100	
<b>Total</b>	<b>351,800</b>	<b>393,600</b>	<b>410,900</b>	<b>438,800</b>	<b>441,100</b>	<b>406,600</b>

Average Attendee Days Per Event						Five-Year Average
Event Type	2011	2012	2013	2014	2015	
Conventions/Tradeshows	5,300	5,300	5,300	6,500	5,800	5,600
Consumer Shows	3,200	4,800	5,400	5,300	6,800	5,000
Meetings	600	1,400	800	1,200	700	900
Competitions	6,800	11,400	11,700	14,700	8,800	11,100
Concerts/Entertainment*					1,000	

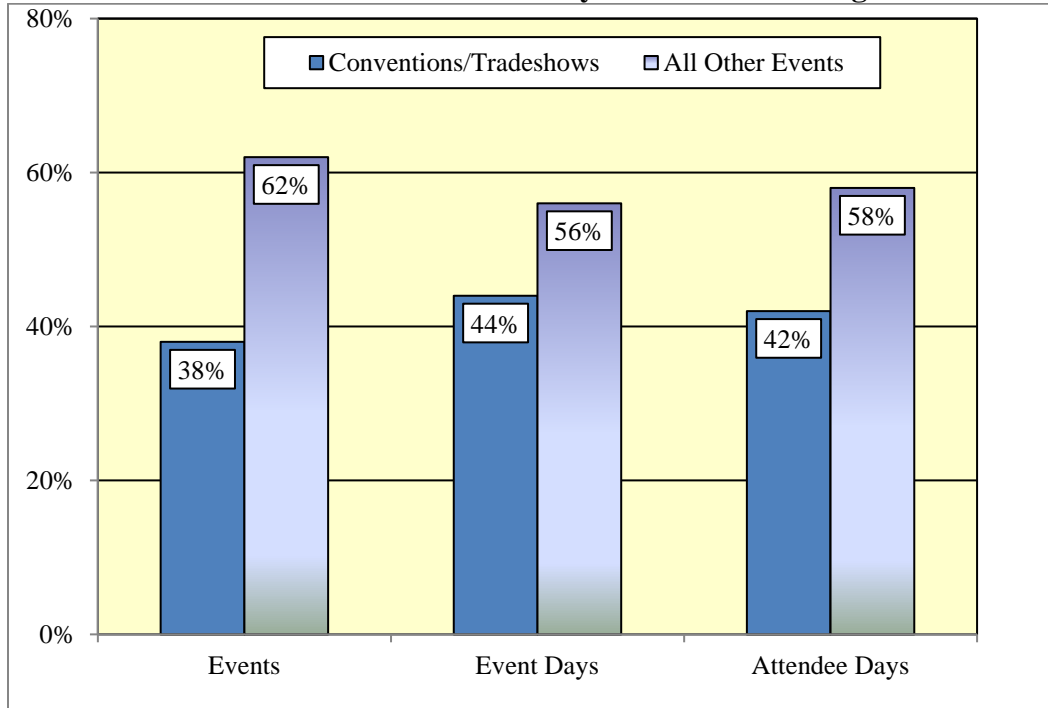
Notes: \*Concert/entertainment events are not included in the five-year average as this category is only represented in FY 2015.

The OCCC Performing Arts Center opened in January 2015.

Source: Facility management.

Over the last five fiscal years, conventions and tradeshow have represented approximately 38% of total events, 44% of total event days and 42% of total attendee days annually.

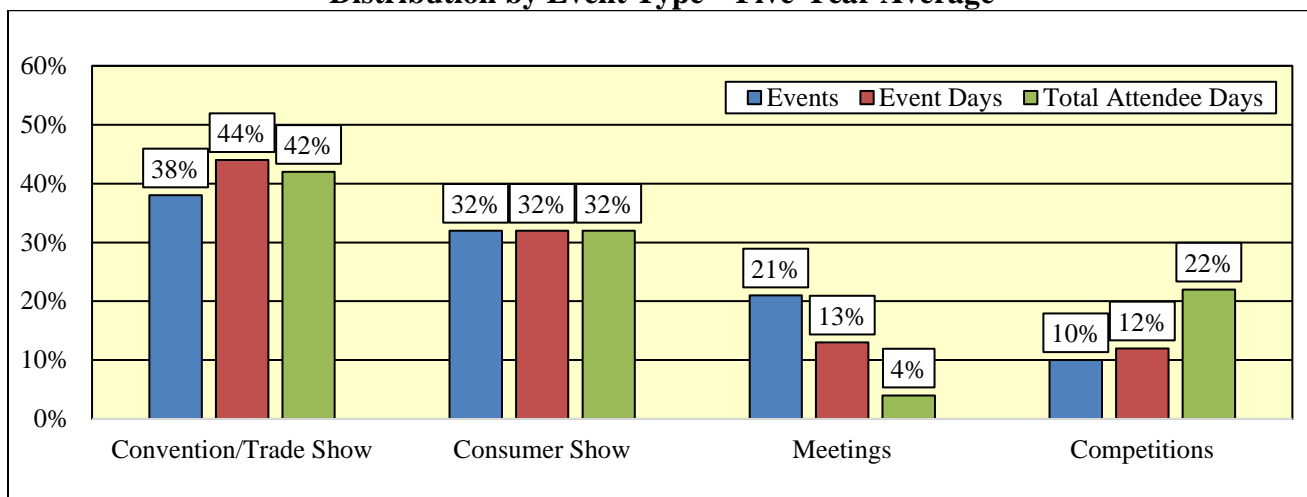
**Distribution of Event Activity - Five-Year Average**



Source: Facility management.

Over the last five years, conventions and tradeshow have comprised the largest portion of events, event days and total attendee days followed by consumer shows.

**Distribution by Event Type – Five-Year Average**



Note: Concert/entertainment events are not included in the five-year average as this category is only represented in FY 2015.

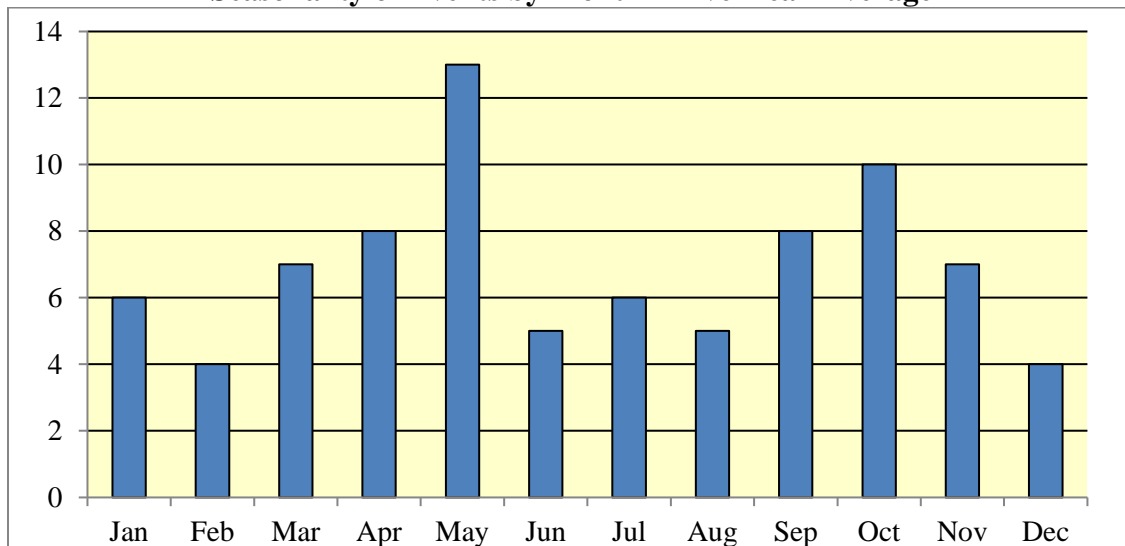
Source: Facility management.



## Seasonality

OCCC usage was analyzed by month to review seasonality. Over the last five years, the facility averaged the highest number of events in May and October. In general, spring and fall are the busiest seasons in terms of number of events and summer is the slowest period.

**Seasonality of Events by Month – Five-Year Average**

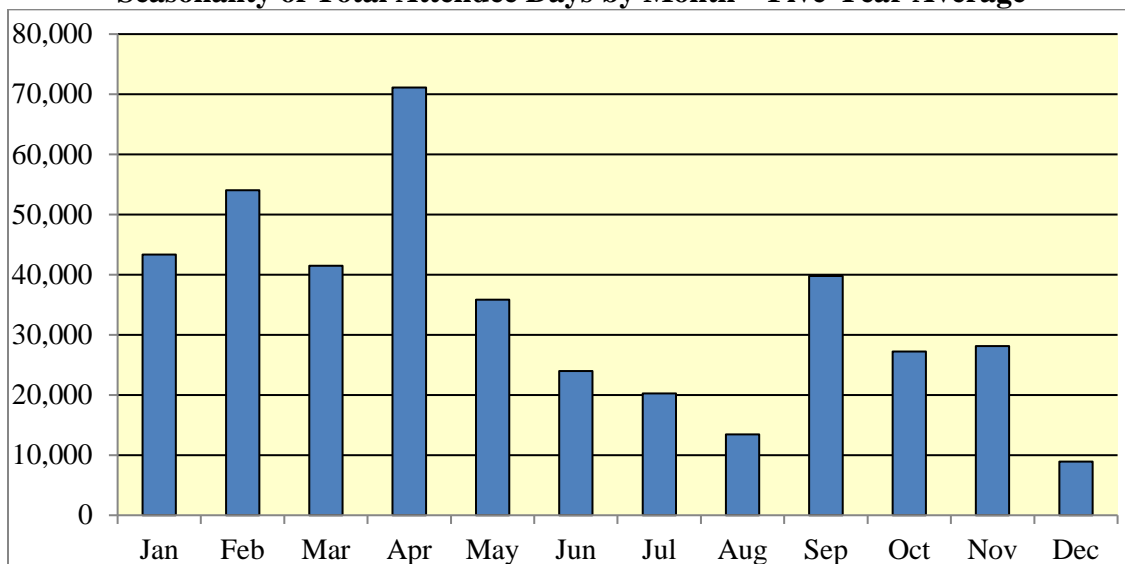


Note: Concert/entertainment events are not included in the five-year average as this category is only represented in FY 2015.

Source: Facility management.

In terms of total attendee days, the OCCC has experienced peak usage in April when the facility hosts its largest cheerleading competition. Total attendee days have also been high in January and February when several conventions and the annual Seaside Boat Show are held.

**Seasonality of Total Attendee Days by Month – Five-Year Average**



Note: Concert/entertainment events are not included in the five-year average as this category is only represented in FY 2015.

Source: Facility management.

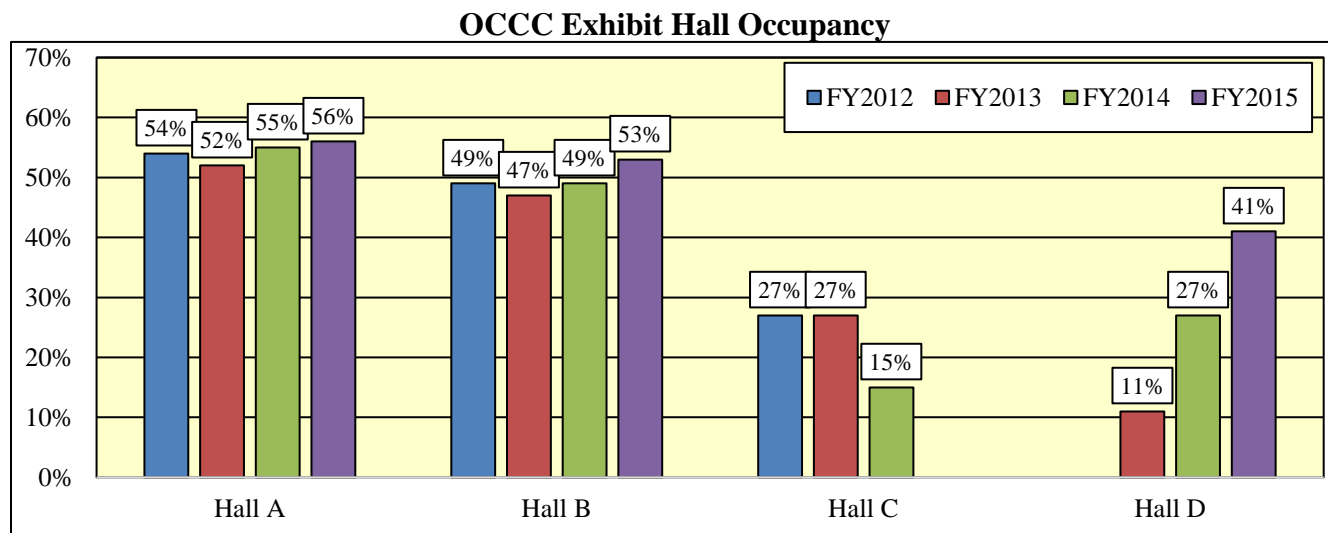
## Exhibit Space Occupancy

It is also important to assess convention center use in terms of square footage occupancy as this is a measurement of the degree to which usage of the facility has reached a maximum capacity. There are several methods of calculating convention center occupancy. Some facilities utilize a measurement of total days used divided by the days available, others only account for event days. For purposes of this analysis, occupancy is calculated based on the following formula:

$$\text{Occupancy} = \text{Total occupied square foot days} / \text{Total available square foot days in a given year}$$

Occupied square foot days include both event days and move in/out days. A convention center's practical maximum exhibit hall occupancy rate is generally considered to be approximately 70% according to industry standards. Occupancy levels above 60% generally indicate that a facility is beginning to approach full capacity. Occupancy levels less than 50% typically indicate that the facility has available dates to attract additional business. These industry guidelines reflect that occupancy levels at convention centers are impacted by the total number of days that a facility can realistically be sold and/or occupied. For instance, events often require move in/out days which can hinder a facility's ability to immediately accommodate another incoming event. Furthermore, occupancy is impacted by the number of days that are required for building maintenance and upkeep because the facility cannot be sold during this time.

Although OCCC management does not currently maintain detailed occupancy reports, they do track the number of days that the existing exhibit halls are utilized. Based on available event data provided by facility management, Crossroads calculated occupancy for each of the exhibit halls for a four-year period which is summarized in the following graph.



Note: Exhibit Hall C closed in FY 2014 and Exhibit Hall D (or Dockside Hall) opened October 2012.

Source: Facility management.

Over the profiled period, occupancy was impacted by construction of the Performing Arts Center. Exhibit Hall C closed in FY 2014. Exhibit Hall D (or Dockside Hall) opened in October 2012. Events that were scheduled to use Exhibit Hall C during FY 2015 were moved to Exhibit Hall D (or Dockside Hall).

Occupancy in Halls A and B has been fairly consistent over the profiled four-year period. While Halls C and D offer ancillary exhibit space, they are not contiguous with Halls A and B and are not considered prime exhibit space. In 2015, 23 events used all available exhibit space (Halls A, B, and D) for a total of 117 total use days.

## **Future Bookings**

Many conventions/tradeshows book their events several years in advance; other users such as public shows often book their event annually on the same weekend. Based on a facility's booking policy, meetings, banquets, and other events typically contract their event less than 12 months out. Consequently, it is not unusual for a greater number of future bookings to be within a shorter time period. Management indicated that the OCCC has limited date availability throughout the year which is primarily due to a high level of repeat bookings. At the time when the market research was conducted, facility management indicated that 43 contracted events and 26 definite bookings for CY 2016.

## **Lost Business**

Facility management does not formally track lost business. However, input from staff indicates that there are groups who want to host their event at the OCCC who cannot due to date/space availability. These groups include conventions/tradeshows and sports competitions. In addition, existing users indicated they would be able to expand the size of their events if more exhibit space were available at the OCCC.

## Financial Operations

As shown in the following table, the OCCC has averaged an operating loss of approximately \$2.7 million over the last five fiscal years excluding non-operating revenues and expenses. Both operating revenues and operating expenses have fluctuated during the profiled period. Facility rental revenue averaged 49% of total operating revenue during the last five fiscal years. During the profiled period, food/beverage revenue reached their highest levels in FY 2014 and FY 2015.

Salaries, wages and benefits averaged 65% of total operating expenses over the last five fiscal years. Repairs and maintenance expenses have peaked in the last two years. Employee benefits averaged 50% of salaries/wages expenses, which is higher than other competitive/comparable convention centers which range from 30% to 35% of salaries/wages costs. Part of this increased cost is attributable to the fact that the TOC allocates pension payments to previous OCCC employees in the facility's operating expenses not just benefits paid to current employees.

Summary of Historical OCCC Financial Operations						
Category	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	Five-Year Average
<b>Operating Revenues</b>						
Facility Rental	\$878,000	\$835,000	\$816,000	\$850,000	\$875,000	\$851,000
Food/Beverage	327,000	340,000	260,000	345,000	360,000	326,000
Special Events	101,000	86,000	91,000	61,000	83,000	84,000
Service Charges	345,000	298,000	292,000	296,000	322,000	311,000
Sales/Membership Dues	54,000	63,000	63,000	65,000	81,000	65,000
Other	38,000	37,000	33,000	225,000	81,000	84,000
<b>Total Operating Revenues</b>	<b>1,743,000</b>	<b>1,659,000</b>	<b>1,555,000</b>	<b>1,842,000</b>	<b>1,802,000</b>	<b>1,721,000</b>
<b>Operating Expenses</b>						
Salaries and Wages	2,040,000	1,847,000	1,774,000	1,881,000	1,904,000	1,889,000
Employee Benefits	929,000	992,000	914,000	979,000	928,000	948,000
Professional Services	8,000	18,000	13,000	12,000	5,000	11,000
Repairs & Maintenance	271,000	256,000	175,000	359,000	337,000	280,000
Communications	26,000	25,000	17,000	16,000	25,000	22,000
Other Purchased Services	195,000	161,000	175,000	153,000	210,000	179,000
General Supplies	147,000	167,000	198,000	153,000	184,000	170,000
Energy	558,000	428,000	514,000	563,000	651,000	543,000
Vehicle Operations	19,000	27,000	33,000	20,000	21,000	24,000
Insurance & Intragovernmental	342,000	315,000	271,000	275,000	294,000	299,000
Other Expenses	6,000	8,000	12,000	7,000	7,000	8,000
<b>Total Operating Expenses</b>	<b>4,541,000</b>	<b>4,244,000</b>	<b>4,096,000</b>	<b>4,418,000</b>	<b>4,566,000</b>	<b>4,373,000</b>
<b>Operating Revenues Over Operating Expenses</b>	<b>(\$2,798,000)</b>	<b>(\$2,585,000)</b>	<b>(\$2,541,000)</b>	<b>(\$2,576,000)</b>	<b>(\$2,764,000)</b>	<b>(\$2,652,000)</b>

Notes: Excludes non-operating revenues and expenses.

In FY 2014, there was a one-time FEMA reimbursement revenue line item totaling approximately \$39,000 included in the Other category.

In FY 2014, there was also a one-time insurance claim revenue line item totaling approximately \$163,000 included in the Other category.

Other revenue includes parking fees, monthly leases, interest and other miscellaneous revenue sources.

Source: Facility management.

The next section provides an analysis of potential demand generators for an expanded OCCC.

## TABLE OF CONTENTS

---

<b>1.</b>	<b>Introduction and Executive Summary</b>	<b>1</b>
<b>2.</b>	<b>General Market Overview</b>	<b>6</b>
<b>3.</b>	<b>Key Industry Trends</b>	<b>18</b>
<b>4.</b>	<b>Historical OCCC Operations</b>	<b>24</b>
<b>5.</b>	<b>Potential Demand Generators</b>	<b>34</b>
<b>6.</b>	<b>Competitive/Comparable Facility Analysis</b>	<b>45</b>
<b>7.</b>	<b>Financial Analysis</b>	<b>60</b>
<b>8.</b>	<b>Economic and Fiscal Impact Analysis</b>	<b>68</b>
<b>9.</b>	<b>Limiting Conditions and Assumptions</b>	<b>80</b>
<b>A.</b>	<b>Appendix</b>	<b>82</b>
	– <b>Conceptual Design Documents</b>	
	– <b>Project Cost Estimate Summary</b>	

## POTENTIAL DEMAND GENERATORS

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In order to assess the potential demand for expanded OCCC exhibit space, it is important to obtain and analyze input directly from existing and potential users as to how the OCCC and Ocean City are viewed in terms of attracting their event(s). As part of our research, representatives of professional/trade associations as well as competitive sporting event organizers were surveyed in order to assess their future needs at the OCCC and their reasons for choosing (or not choosing) Ocean City as a destination. Survey participants were selected from a variety of sources including past users of the OCCC, competitive facility event calendars, and Association Execs database. This input provides a basis for evaluating the proposed exhibit space expansion program and its ability to positively impact usage at the OCCC.

### **Convention/Meeting Business**

Understanding the macro level population of events is one factor in evaluating the potential ability to increase market share. It is important to note that there is not one single industry source that can provide a measure of the universe of demand. As such, multiple sources are presented to show the order of magnitude demand that exists in the broader convention/meeting industry. The various sources do not represent mutually exclusive demand potential.

#### Breadth of Potential Convention/Meeting Market

Access Intelligence Research & Consulting (Access Intelligence) is a privately-held business media company that publishes magazines as well as produces conferences and trade shows in the event, media and marketing industries. Access Intelligence helps leaders in the event and media industries analyze data and information to make more informed business decisions and gain a competitive advantage. It leverages their brands, industry leading data and market expertise to provide clients with insights and improve their business performance. Access Intelligence works across all of the company's industry leading magazines including Event Marketer, Chief Marketer and Folio. It also provides data and analysis as a service of the Event Marketing Institute and several conferences and numerous websites. Access Intelligence identified the market potential for events requiring various amounts of exhibit space. This research provides an estimate of the number of exhibit-centric events, mainly association conventions with exhibits and for-profit exhibitions/tradeshows, and the percentage of the market segmented by various requirements for gross square feet of exhibit space. The events covered in the data set are primarily held in convention centers and hotels with exhibition spaces.

Based on industry resources, 35% of conventions and exhibitions held in the U.S. require up to 60,000 gross square feet of exhibit space. In addition, 643 conventions and exhibitions are estimated to require between 60,001 and 90,000 gross square feet of exhibit space.

<b>Gross SF Used by Convention &amp; Exhibit Market - Industry Wide</b>		
<b>Exhibit Space Gross SF</b>	<b>Share</b>	<b>Number of Events</b>
Under 21,000	12%	635
21,001 - 46,000	14%	737
46,001 - 60,000	9%	481
60,001 - 90,000	12%	643
Over 90,000	53%	2,802
<b>Universe of Possible Events</b>	<b>100%</b>	<b>5,298</b>

Sources: Access Intelligence, Tradeshow Week, Tradeshow News Network.

The table below uses the same convention and exhibition data set but adjusts for events that are held in the Mid-Atlantic region either exclusively or on a rotational basis. Within this subset, approximately 1,100 events (or 38%) need up to 60,000 gross square feet of exhibit space. An additional 273 events (or 9%) require venues with between 60,001 and 90,000 gross square feet of exhibit space.

<b>Gross SF Used by Convention &amp; Exhibit Market - Rotate Nationally or Held in Mid-Atlantic States</b>		
<b>Exhibit Space Gross SF</b>	<b>Share</b>	<b>Number of Events</b>
Under 21,000	14%	422
21,001 - 46,000	13%	371
46,001 - 60,000	11%	332
60,001 - 90,000	9%	273
Over 90,000	52%	1,517
<b>Universe of Possible Events</b>	<b>100%</b>	<b>2,915</b>

Sources: Access Intelligence, Tradeshow Week, Tradeshow News Network.

The table below provides a similar event market breakout for events that meet in Maryland. As shown, 88 events (or 41%) in the market require up to 60,000 gross square feet of exhibit space and an additional 24 events (or 11%) utilize between 60,001 and 90,000 gross square feet of exhibit space.

<b>Gross SF Used by Convention &amp; Exhibit Market - Events Held in Maryland</b>		
<b>Exhibit Space Gross SF</b>	<b>Share</b>	<b>Number of Events</b>
Under 21,000	15%	32
21,001 - 46,000	19%	41
46,001 - 60,000	7%	15
60,001 - 90,000	11%	24
Over 90,000	48%	103
<b>Universe of Possible Events</b>	<b>100%</b>	<b>215</b>

Sources: Access Intelligence, Tradeshow Week, Tradeshow News Network.

Per Association Execs, there are 874 professional and trade associations headquartered in the region that includes Maryland, Washington, D.C., Virginia, and Delaware.

Count of State/Regional Associations Headquartered			
Area	Number	Percent Region	Percent U.S.
Virginia	357	41%	3%
<b>Maryland</b>	<b>287</b>	<b>33%</b>	<b>2%</b>
Washington D.C.	147	17%	1%
Delaware	83	9%	1%
<b>Regional Total</b>	<b>874</b>	<b>100%</b>	<b>8%</b>
<b>Total U.S.</b>	<b>11,607</b>		<b>100%</b>

Note: Sorted in descending order by number of associations.

Source: Association Execs 2015 Database.

These groups represent a target market within the State and region for annual conventions, tradeshow and other meetings.

### Survey Results

In addition to this macro level assessment of potential demand generators, direct interviews and web-based surveys were completed with meeting planners responsible for planning conventions or tradeshow for the following organizations.

Responding Organizations	
ABC Chesapeake Shores	Maryland Chiefs of Police Association
American Institute of Architects Maryland	Maryland Dental Association
Association of School Business Officials Maryland & DC	Maryland Library Association
Baltimore Teachers Union	Maryland Municipal League
Chesapeake and Potomac Association of Registrars and Admissions Officers	Maryland Society of Accounting and Tax Professionals Inc.
Community Behavioral Health Association of Maryland	Maryland Society of Professional Engineers
Funeral Consumers Alliance of Maryland and Environs	Maryland State Firemen's Association
Great Dane Club of America	MD/DC Credit Union Association
Greater Ocean City Chamber of Commerce	Metro Maryland Youth for Christ
Handbell Musicians of America Area 3	Mid-Atlantic Glass Association
Health Facilities Association of Maryland	Ocean City Community Health Fair
Market America, Inc.	Ocean City Hotel-Motel-Restaurant Association
Marketing Solutions Inc.	Peninsula-Delaware Conference of The United Methodist Church
Maryland Association of Counties	Sessions By The Sea
Maryland Association of Realtors	Washington, Maryland, Delaware Service Station and Automotive Repair Association

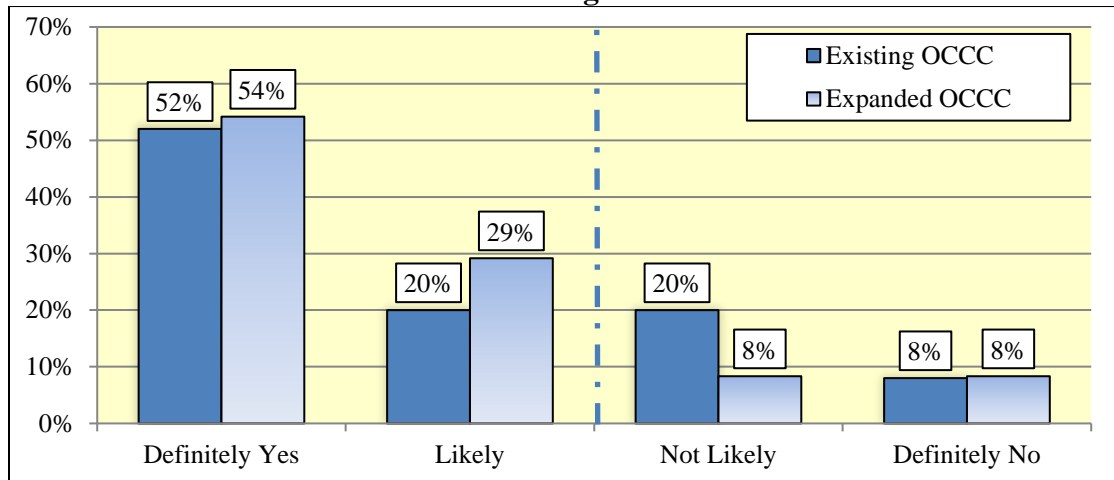
The survey process sought to gauge how the existing OCCC is positioned to meet the long-term needs of the groups from the event planners' perspective. Questions focused on event-related information (e.g., scope, seasonality of event, attendance, event length, and location where group has met in the past), space requirements (e.g., amount and type of space requirements), hotel requirements (e.g., minimum headquarter hotel room block, required peak room night block) as well as other factors influencing their decision to meet in Ocean City as well as their interest level in hosting events at the OCCC with and without expansion.

This section of the report presents a summary of findings from this analysis. Approximately 76% of groups have previously met in Ocean City. The most commonly used venues include the OCCC, Clarion Resort Fontainebleau Hotel and Carousel Resort Hotel & Condominiums. Other cities where respondents have held their events include, but are not limited to, Annapolis and Baltimore as well as Lansdowne and Roanoke, Virginia.



Meeting planners were asked if they would consider meeting at the OCCC given the existing program and with the proposed expansion, adding a maximum of 30,000 square feet of exhibit space. As shown in the following graph, 72% of meeting planners responded “Definitely Yes” or “Likely” with the existing program whereas 83% responded favorably with the proposed expansion. Although many groups surveyed would consider the existing OCCC for their events without expansion, several respondents mentioned that they have been unable to secure dates and/or space at the facility which is consistent with historical utilization trends and input from OCCC management.

**Likelihood of Hosting Events at OCCC**

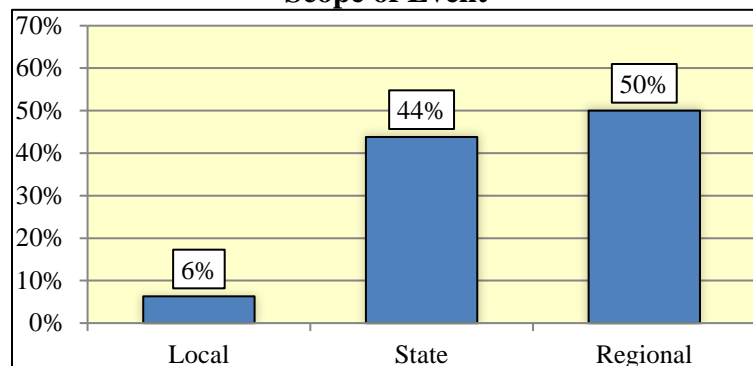


Distance from a major airport was the most common weakness and reason for groups responding “Not Likely” or “Definitely No” to hosting their event at the OCCC with or without expansion. Other weaknesses cited include hotel location, delegates not interested in Ocean City, lack of membership base, and the cost/value.

By contrast, groups who responded favorably to hosting events at the OCCC cited location/accessibility and price/value as strengths of Ocean City. Other positive attributes cited include Ocean City’s hotel supply/location, access to membership base, and proximity to the beach.

Those groups responding favorably were asked specific details regarding their event’s characteristics. The adjacent graph illustrates that the majority of groups responding favorably represent regional (multi-state) professional/trade associations.

**Scope of Event**



September, October and March are the most common months for conventions from the sample. Attracting new events during these months would augment Ocean City’s slower seasons for hotel stays.

On average, positive respondents estimated that their events attract approximately 1,490 delegates, 320 exhibitors, and 1,160 spouses/other travel party members.

Given Ocean City's destination characteristics, respondents indicated their delegates are likely to extend their length of stay by two days and bring an average of two additional travel party members. The presence of Ocean City's oceanfront & bayview condominiums as a potential housing option would positively impact 53% of respondents' decisions to host an event at the OCCC.

Respondents indicating an interest in meeting at the OCCC were also asked the amount of gross exhibit space required. Overall, positive respondents require an average of 46,300 square feet and up to a maximum of 85,000 square feet of exhibit space. While many of the groups responding can be accommodated by the OCCC's existing exhibit space, date/space availability hinders the ability for some groups to bring their events to Ocean City. Several groups responding favorably require more exhibit space than currently offered by the facility and could be accommodated by the amount of exhibit space anticipated with the proposed expansion. The majority of positive respondents indicated that the exhibit space required for their event must be contiguous. The OCCC currently offers 45,800 square feet of contiguous exhibit space which would be increased to more than 75,000 square feet with the proposed expansion.

Positive Respondents	
Space Requirements	Average
Exhibit Space (SF)	46,300
General Session (largest capacity)	1,400
Meeting Rooms (number)	7
Meeting Space (SF)	12,000
Banquet (largest capacity)	500
Banquet (SF)	9,200
Auditorium/Theater (largest capacity)	1,200
Event Length	Average
Event Days	3.1
Move In/Out Days	1.4
Total Use Days	4.4

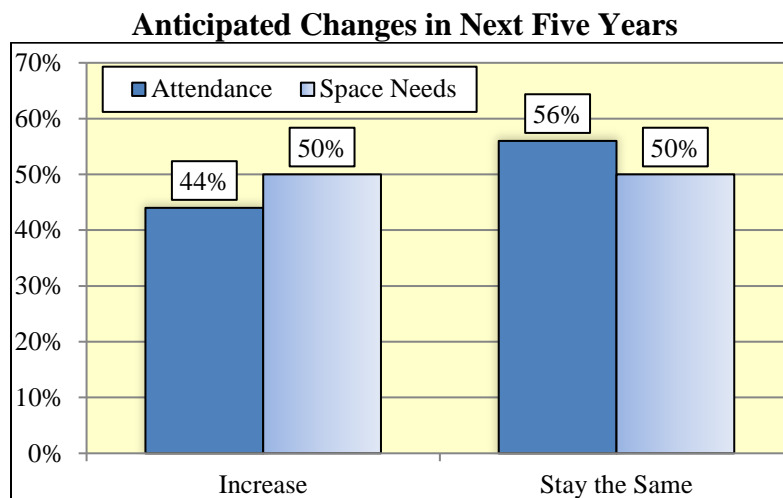
Positive respondents average more than three event days with an additional 1.4 move in/out days which is consistent with conventions/tradeshows historically held at the OCCC.

On average, positive respondents indicated that approximately 80% of attendees stay overnight and require a minimum of 230 rooms in the headquarter hotel block and a total of 510 peak rooms citywide. Respondents estimate that overnight attendees spend an average of \$116 per night on lodging. In addition, overnights average two people per hotel room.

Average Response - Positive Respondents	
Hotel Requirements	Average
Percent Overnight Attendees	80%
Peak Citywide Rooms	510
Minimum HQ Hotel(s) Block	230

Approximately 60% of respondents indicated that the availability of a shuttle service to/from hotels would positively impact their decision to utilize the facility. Although a few meeting planners/event organizers commented that they would like additional on-site parking space, none indicated that they would move their event away from the OCCC because of this factor.

Approximately 44% of respondents indicated they anticipate attendance at their event to increase over the next five years, the balance (56%) of respondents anticipate attendance will remain the same. One-half of respondents indicated they anticipate their space needs increasing in the next five years and the other 50% anticipate their space needs staying the same; no one responded that they anticipate either their attendance or space needs decreasing over the next five years.



## Competitive Sporting Events

This section summarizes statistics related to the macro level population of competitive sporting events as well as responses from survey efforts with competitive sporting event organizers.

### Breadth of Potential Competitive Sporting Event Market

Similar to the convention/meeting market, there is not one single industry source that can provide a measure of the universe of demand for sporting events. Various sports-related associations utilize survey efforts to measure the breadth of events and gauge trends in participation rates. In addition, membership in individual sports is typically tracked by a national governing body or similar organization. These participants tend to have a more vested interest in participation than the causal, recreational participant.

The Sports and Fitness Industry Association (SFIA) in conjunction with the Physical Activity Council (PAC) conduct an annual nationwide survey of individuals and households to obtain sports participation statistics. This survey titled, *2015 Sports, Fitness and Leisure Activities Topline Participation Report*, included 10,778 online interviews with a total of 5,067 individual and 5,711 household surveys. According to the survey, there are an estimated 68.7 million indoor sport participants representing a significant demand segment for competitive level tournaments that could be held at the OCCC.

The SFIA/PAC survey reports a macro level view of participation numbers and is helpful for comparative purposes among sports. However, it is important to recognize that participation trends within any given sport outlined in the SFIA/PAC report may vary from those specifically tracked by the national governing body.

The study finds that team sports are more of a Generation Z activity. Generation Z is defined as being born since the year 2000. Water and racquet sports are dominated by the Millennials, defined as being born between 1980 and 1999. Outdoor and individual sports tend to have younger participants as participation decreases with age, cites the study results.

The following tables summarize indoor sports participation from 2010 through 2014 based on the SFIA/PAC survey results for participants 6 years of age and older. Total participation in each sport is defined as the sum of both casual and CORE participants. CORE participants are those who participate in a sport or activity on a regular basis with casual participants engaging in a sport or activity on an inconsistent basis. These levels vary based on the individual sport.

Over the five-year period shown, the team sports of cheerleading and gymnastics experienced gains in participation with increases of 10% and 5%, respectively. Wrestling experienced the greatest loss in participation with a decrease of 25% followed by court volleyball (-14%) and basketball (-8%).

Indoor Sports Participation Data - Team Sports (in 000s)						
Sport	2010	2011	2012	2013	2014	Five-Year Average
<b>Team Sports</b>						
<b>Basketball</b>						
Total	25,156	24,790	23,708	23,669	23,067	24,078
Casual	8,094	8,118	7,389	6,998	7,321	7,584
CORE	17,062	16,672	16,319	16,671	15,746	16,494
<b>Cheerleading</b>						
Total	3,134	3,049	3,244	3,235	3,456	3,224
Casual	1,462	1,487	1,514	1,669	1,841	1,595
CORE	1,672	1,562	1,730	1,566	1,615	1,629
<b>Gymnastics</b>						
Total	4,418	4,823	5,115	4,972	4,621	4,790
Casual	2,734	2,991	3,252	3,209	2,932	3,024
CORE	1,684	1,832	1,863	1,763	1,689	1,766
<b>Court Volleyball</b>						
Total	7,316	6,663	6,384	6,433	6,304	6,620
Casual	3,261	2,754	2,553	2,715	2,759	2,808
CORE	4,055	3,909	3,831	3,718	3,545	3,812
<b>Wrestling</b>						
Total	2,536	1,971	1,922	1,829	1,891	2,030
Casual	1,362	915	965	948	941	1,026
CORE	1,174	1,056	957	881	950	1,004

Source: 2015 SFIA Topline Participation Report.

Relative to individual sports, mixed martial arts increased in participation by 36% while participation in table tennis and badminton decreased by 15% and 6%, respectively.

Indoor Sports Participation Data - Individual Sports (in 000s)						
Sport	2010	2011	2012	2013	2014	Five-Year Average
<b>Individual Sports</b>						
Badminton						
Total	7,645	7,135	7,277	7,150	7,176	7,277
Casual	4,973	4,687	5,092	4,834	5,049	4,927
CORE	2,672	2,448	2,185	2,316	2,127	2,350
Mixed Martial Arts						
Total	910	713	820	977	1,236	931
Casual	528	419	638	783	979	669
CORE	382	294	182	194	257	262
Table Tennis						
Total	19,374	18,561	16,823	17,080	16,385	17,645
Casual	13,245	12,963	12,041	12,364	11,832	12,489
CORE	6,129	5,598	4,782	4,716	4,553	5,156

Source: 2015 SFIA Topline Participation Report.

### Survey Results

Direct interviews and web-based surveys were completed with competitive sporting event organizers to gauge their interest in hosting events at the OCCC with and without expansion. This section summarizes their responses.

- Approximately 57% of respondents have previously held their event in Ocean City.
- All respondents who held events in Ocean City utilized the OCCC. Groups had also used Carousel Resort Hotel & Condominium, Dunes Manor Hotel, Hilton Suites Oceanfront and Princess Royale Family Resort & Condominium.
- If the OCCC remains the same, 72% of respondents answered “Definitely No” or “Not Likely” to hosting their event at the facility.
- By contrast, if the OCCC expanded its exhibit space by a maximum of 30,000 square feet, the amount of positive responses answering “Definitely Yes” or “Likely” increased to 85%.
- The most common strengths cited by positive respondents were Ocean City’s location/accessibility, attractions and proximity to the beach.
- Those that responded “Not Likely” or “Definitely No” primarily cited limited space as the reason they would not host events at the OCCC.

Positive respondents were asked more detailed questions regarding their event and attendee characteristics. Their responses are summarized below.

- Positive respondents would host a variety of sports at the OCCC including cheerleading, dance, gymnastics, wrestling and parkour (a non-combative martial art modeled after military training courses).
- Approximately 80% of positive respondents represent regional (multi-state) events and the remaining 20% represent national/international events.
- Sporting event organizers commented they think the OCCC could hold more national level events with concerted sales/marketing efforts with local sports organizations to attract their larger competitions.
- Approximately 80% of the events represented by positive respondents are held in the winter; 40% are held in the spring; 20% are held in the fall; and 20% occur year-round. Respondents could choose multiple seasons. Based on these responses, competitive sporting events could augment Ocean City's peak season of summer by drawing visitors during shoulder seasons.
- Although positive respondents host events involving a variety of age groups, all organizers indicated that their events have participants between the ages of 16 and 18.
- Positive respondents indicated that they require between one and eight regulation courts or competition areas.
- On average, positive respondents required 67,500 gross square feet of exhibit space.
- Only 20% require a banquet/general session as part of their event with an average seating capacity of approximately 125.
- Approximately 66% of positive respondents prefer to host their banquet at a convention center while 33% said either a convention center or hotel would be adequate.
- Approximately 80% of positive respondents anticipate an increase in the amount of space required to host their event in the future and the remaining 20% anticipate no change. No one responded that they anticipate their space needs decreasing over the next five years.
- Groups interested in bringing their event to the OCCC have an average of approximately 1,500 participants and 2,400 spectators. Over half of those attendees would come from outside Maryland and 55% would stay overnight in hotels or rental accommodations.
- Approximately 86% of respondents indicated attendees are "Somewhat Likely" or "Very Likely" to extend their stay in Ocean City given its visitor amenities.
- Positive respondents estimated that attendees stay an average of 2.3 days and 1.5 nights in the location that hosts the event.
- Approximately 80% of respondents indicated they anticipate attendance at their event to increase over the next five years, the balance (20%) of respondents anticipate attendance will remain the same. As with space needs, no one responded that they anticipate their attendance to decrease over the next five years.

- Survey respondents noted that approximately 3.4 people stay in each hotel/motel room, condo, or rental accommodation.
- When asked the maximum distance that the majority of attendees would be willing to drive to participate in their event, 40% responded less than 100 miles, 40% responded between 100 and 250 miles, and the remaining 20% responded more than 250 miles.
- Positive survey respondents estimate that overnight attendees spend between \$125 and \$130 per night on lodging which is consistent with Ocean City's annual ADR.
- Approximately 83% of positive survey responses indicated that their attendees are willing to use multiple property types to house their participants in Ocean City.
- One-half of respondents prefer visitor amenities such as lodging, restaurants, retail, and entertainment establishments to be located within 10 miles of the OCCC.

The next section presents a comparison of facility and destination characteristics with competitive and comparable convention centers.

## TABLE OF CONTENTS

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<b>1.</b>	<b>Introduction and Executive Summary</b>	<b>1</b>
<b>2.</b>	<b>General Market Overview</b>	<b>6</b>
<b>3.</b>	<b>Key Industry Trends</b>	<b>18</b>
<b>4.</b>	<b>Historical OCCC Operations</b>	<b>24</b>
<b>5.</b>	<b>Potential Demand Generators</b>	<b>34</b>
<b>6.</b>	<b>Competitive/Comparable Facility Analysis</b>	<b>45</b>
<b>7.</b>	<b>Financial Analysis</b>	<b>60</b>
<b>8.</b>	<b>Economic and Fiscal Impact Analysis</b>	<b>68</b>
<b>9.</b>	<b>Limiting Conditions and Assumptions</b>	<b>80</b>
<b>A.</b>	<b>Appendix</b>	<b>82</b>
	– <b>Conceptual Design Documents</b>	
	– <b>Project Cost Estimate Summary</b>	



## **COMPETITIVE/COMPARABLE FACILITY ANALYSIS**

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It is important to understand the competitive environment within which the OCCC operates as well as profile other facilities comparable in size to the proposed expanded building. This analysis will assist the TOC and the MSA in assessing Ocean City's position relative to other convention/tradeshow markets as they explore the need for expanded space.

This section profiles the following competitive convention centers based on input from facility management, surveys of event planners, and location along the East Coast:

- Baltimore Convention Center
- Charleston (SC) Area Convention Center
- Hampton Roads Convention Center
- Myrtle Beach Convention Center
- Prime F. Osborn Convention Center in Jacksonville
- Virginia Beach Convention Center
- Wildwoods Convention Center

In addition to the profiled convention centers, the OCCC also competes with larger hotel properties in Maryland and Washington, D.C. Hotels with meeting/ballroom space can have an advantage over convention centers for certain events because they control all major components of an event (i.e., function space, lodging and food/beverage) under one roof. Since the hotel is the primary beneficiary of all revenue streams, it can negotiate packages as it sees fit in any or all areas to attract business. For instance, a hotel can offer meeting and/or exhibit space for free or at a deeply discounted rate because it would still receive revenue from the rooms and food service which is often more profitable. Competitive hotels are not profiled because they are privately operated and, as such, usage and financial data is not available for comparative purposes.

The following comparable convention centers were chosen based on their facility size and/or market size:

- American Bank Convention Center in Corpus Christi
- Dayton Convention Center
- Knoxville Convention Center
- Spokane Convention Center
- Statehouse Convention Center in Little Rock
- Rushmore Plaza Civic Center in Rapid City

Crossroads Consulting obtained and analyzed ownership/operating structure, building program, destination attributes and operating data from the profiled set based on interviews with management, industry resources, published reports and our internal database. The data shown in this report is based on available information for each of the profiled facilities.

Benchmarking is a key element to short and long-term strategic planning. While providing significant data, benchmarks still only serve as a guide. Other attributes such as specific facility/market factors and industry trends are also considered when developing the conclusions and recommendations outlined in this study. Benchmarking OCCC operations to other competitive/comparable venues can be beneficial in terms of identifying various strengths, weaknesses, opportunities, and threats.

## Owner and Operator

The table below summarizes the owner and operator for the profiled facilities. Eleven (11) of the profiled facilities are City-owned. Similar to the OCCC, four of the profiled facilities are managed by a city. Six of the profiled facilities are privately managed and two are managed by their respective destination marketing organization (DMO).

Profiled Facilities - Owner/Operator			
Facility	Location	Owner	Operator
American Bank Convention Center	Corpus Christi, TX	City	Private
Baltimore Convention Center	Baltimore, MD	City	City
Charleston Area Convention Center	North Charleston, SC	City	Private
Dayton Convention Center	Dayton, OH	City	City
Hampton Roads Convention Center	Hampton, VA	City	Private
Knoxville Convention Center	Knoxville, TN	City	Private
Myrtle Beach Convention Center	Myrtle Beach, SC	City	City
<b>Ocean City Convention Center</b>	<b>Ocean City, MD</b>	<b>Town</b>	<b>Town</b>
Prime F. Osborn Convention Center	Jacksonville, FL	City	Private
Rushmore Plaza Civic Center	Rapid City, SD	City	City
Spokane Convention Center	Spokane, WA	Public Facilities District	
Statehouse Convention Center	Little Rock, AR	City	DMO
Virginia Beach Convention Center	Virginia Beach, VA	City	DMO
Wildwoods Convention Center	Wildwood, NJ	Authority	Private

Note: Sorted alphabetically by facility.

Sources: Individual facilities; secondary research.

## Building Program

The table below summarizes key building program elements for profiled facilities. The OCCC offers 35% less total function space relative to the profiled set which is primarily due to its smaller supply of exhibit space. Competitive convention centers in Baltimore, Virginia Beach, Hampton, and Myrtle Beach offer significantly more exhibit space than the OCCC which allows these facilities to accommodate small to mid-size conventions given their flexible layouts. Although the OCCC offers less ballroom space than the average of the profiled set, its ratio of meeting/ballroom space to exhibit space is significantly higher than the average of the profiled set. Six of the profiled facilities have a theater or auditorium component and the average seating capacity is comparable to that offered at the OCCC's new Performing Arts Center. The existing OCCC offers 30% fewer parking spaces than the average of the profiled set which is an important attribute given its attendees primarily drive in to the market. However, free on-site parking and the availability of a shuttle service were viewed as positives by many meeting planners/event organizers who were surveyed/interviewed as part of this study effort.

Profiled Facilities - Building Program									
Facility	City	Total Exhibit SF	Total Ballroom SF	Total Meeting Room SF	Total Function SF	Divisible Breakout Rooms	Mtg/BR to Exhibit Ratio	Theater Seating Capacity	On-Site Parking
Baltimore Convention Center	Baltimore, MD	300,000	36,700	85,000	421,700	50	41%	n/a	n/s
Virginia Beach Convention Center	Virginia Beach, VA	150,000	31,000	27,900	208,900	25	39%	n/a	2,210
Spokane Convention Center	Spokane, WA	124,600	50,800	27,300	202,700	31	63%	270	n/s
Knoxville Convention Center	Knoxville, TN	119,900	27,300	21,000	168,200	17	40%	460	0
Hampton Roads Convention Center	Hampton, VA	102,600	27,900	26,000	156,500	26	53%	n/a	4,000
American Bank Convention Center	Corpus Christi, TX	76,500	43,900	16,100	136,500	14	78%	2,526	1,700
<b>Proposed OCCC Expansion</b>	<b>Ocean City, MD</b>	<b>90,000</b>	<b>19,100</b>	<b>24,000</b>	<b>133,100</b>	<b>23</b>	<b>48%</b>	<b>1,200</b>	<b>1,320</b>
Myrtle Beach Convention Center	Myrtle Beach, SC	100,800	17,000	14,200	132,000	17	31%	n/a	2,250
Charleston Area Convention Center	North Charleston, SC	77,000	25,000	16,200	118,200	19	54%	2,332	1,235
Prime F. Osborn Convention Center	Jacksonville, FL	78,500	10,100	26,500	115,100	23	47%	n/a	1,800
Statehouse Convention Center	Little Rock, AR	82,900	18,400	8,800	110,100	12	33%	n/a	n/s
<b>Ocean City Convention Center</b>	<b>Ocean City, MD</b>	<b>60,000</b>	<b>19,100</b>	<b>24,000</b>	<b>103,100</b>	<b>23</b>	<b>72%</b>	<b>1,200</b>	<b>1,320</b>
Dayton Convention Center	Dayton, OH	68,400	20,000	12,400	100,800	16	47%	672	1,500
Wildwoods Convention Center	Wildwood, NJ	75,000	11,700	8,700	95,400	10	27%	n/a	1,500
Rushmore Plaza Civic Center	Rapid City, SD	41,400	15,300	34,100	90,800	14	119%	1,745	2,800
<b>Average (excluding OCCC)</b>		<b>107,500</b>	<b>25,800</b>	<b>24,900</b>	<b>158,200</b>	<b>21</b>	<b>47%</b>	<b>1,300</b>	<b>1,900</b>
<b>Median (excluding OCCC)</b>		<b>82,900</b>	<b>25,000</b>	<b>21,000</b>	<b>132,000</b>	<b>17</b>	<b>47%</b>	<b>1,209</b>	<b>1,750</b>

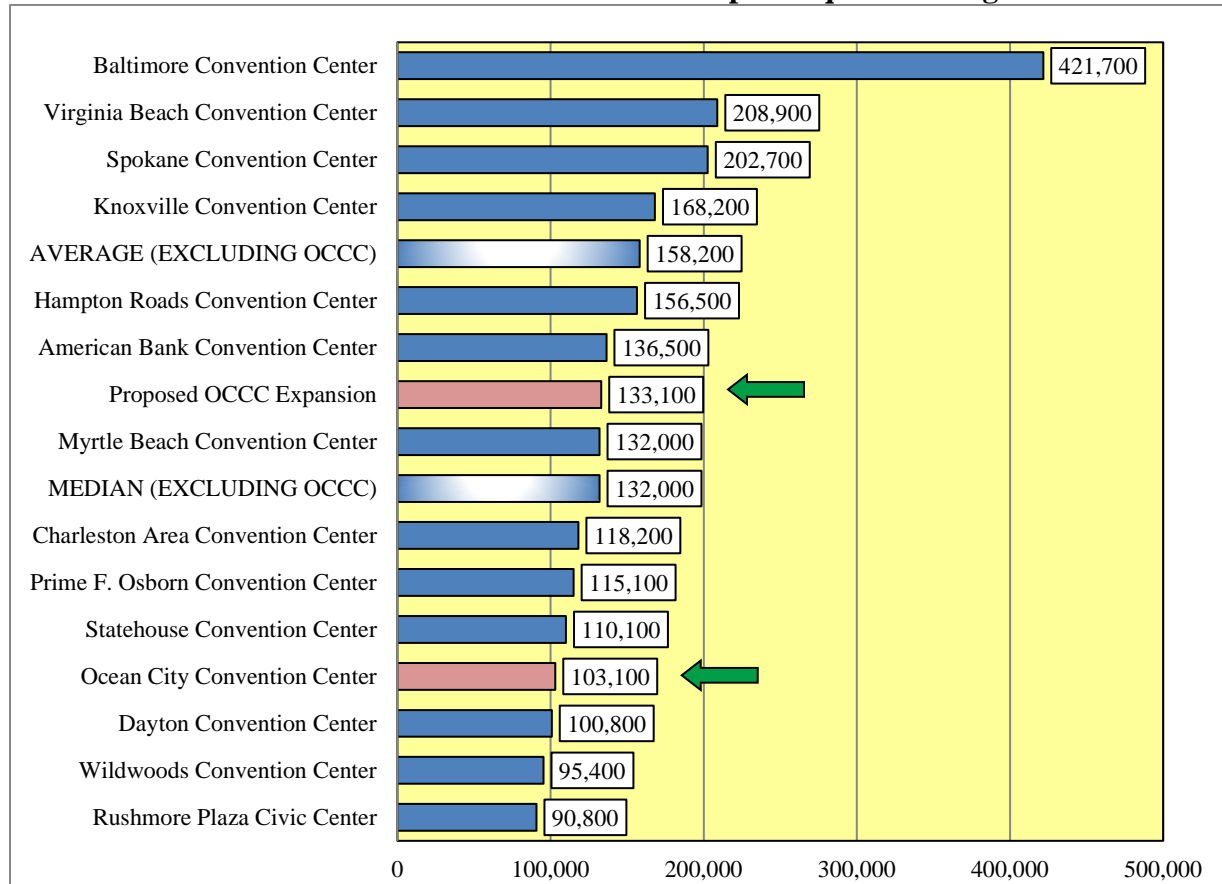
Notes: Sorted in descending order by total function space which equals the sum of exhibit, ballroom and meeting space.

n/a denotes not applicable and n/s denotes not supplied.

Sources: Individual facilities; secondary research.

As shown in the following graph, the existing OCCC offers one of the lowest amounts of total function space among the competitive set. The proposed expansion would place the OCCC in a more competitive position among its direct competitors in terms of total function space.

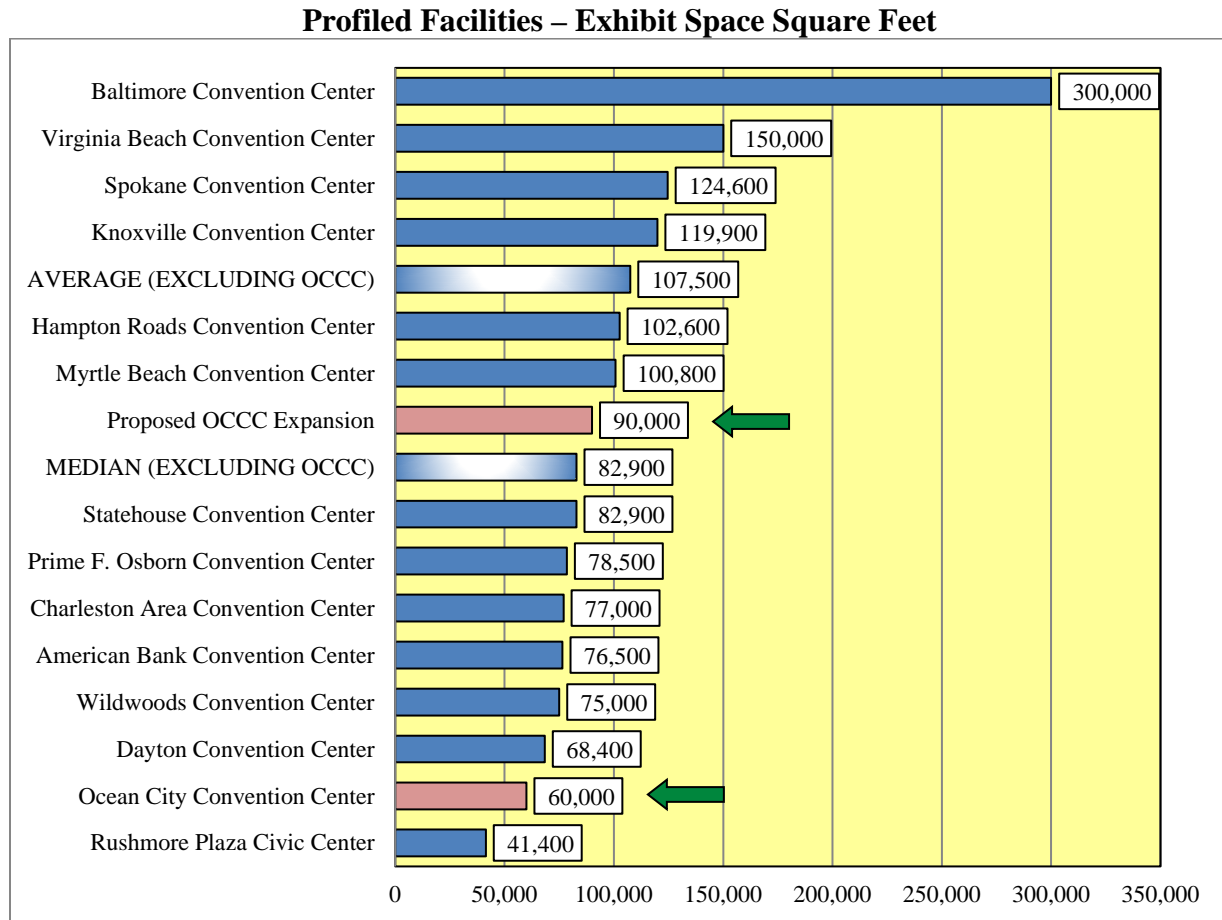
**Profiled Facilities – Total Function Space Square Footage**



Note: Total function space equals the sum of the exhibit, meeting and ballroom space.

Sources: Management at individual facilities; secondary research.

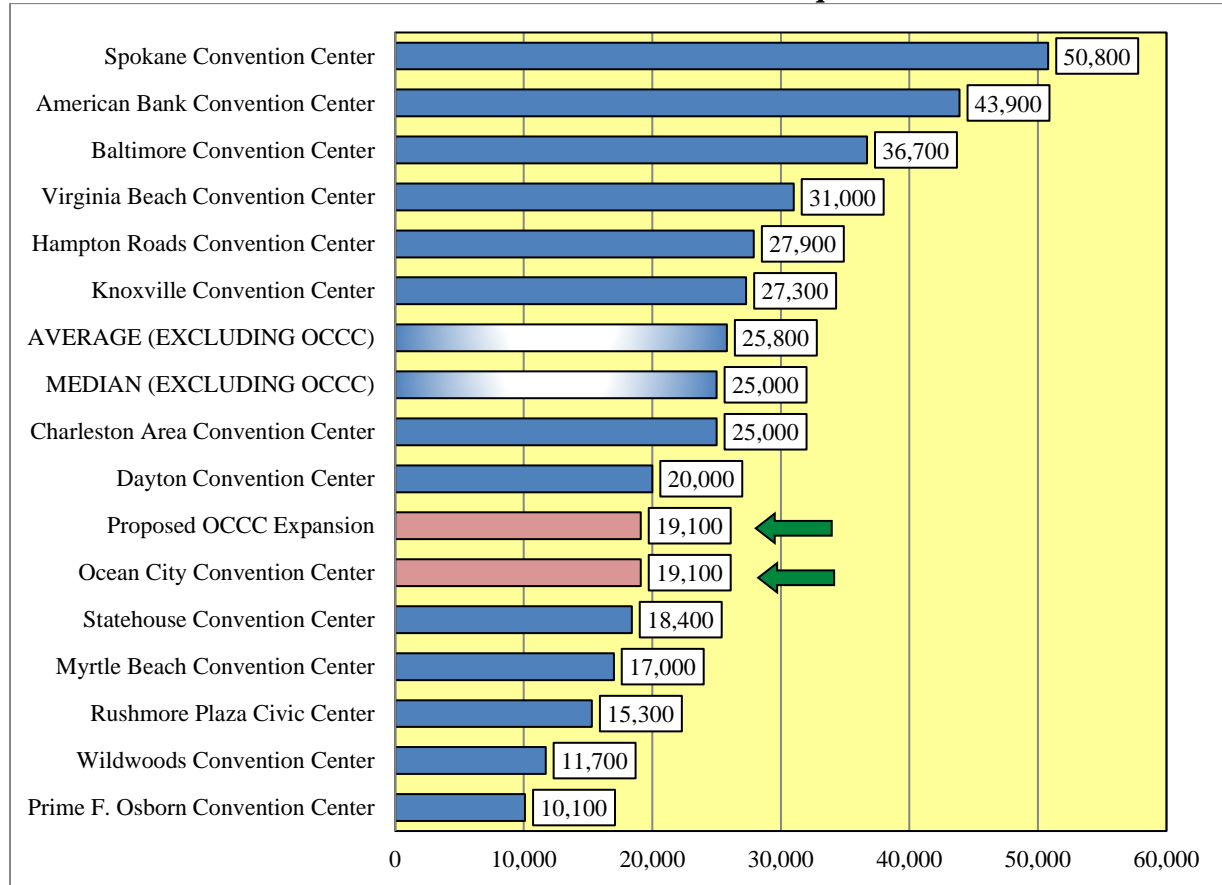
Of the profiled facilities, only Rushmore Plaza Civic Center offers less exhibit space than the existing OCCC. The proposed new exhibit hall would be contiguous with Halls A and B and offer 50% more total exhibit space than currently offered and 65% more prime exhibit space than the existing OCCC which would enhance the facility's marketability and competitive position among its direct competitors.



Sources: Management at individual facilities; secondary research.

The OCCC offers approximately 26% less ballroom space relative to the average and the median of the profiled set.

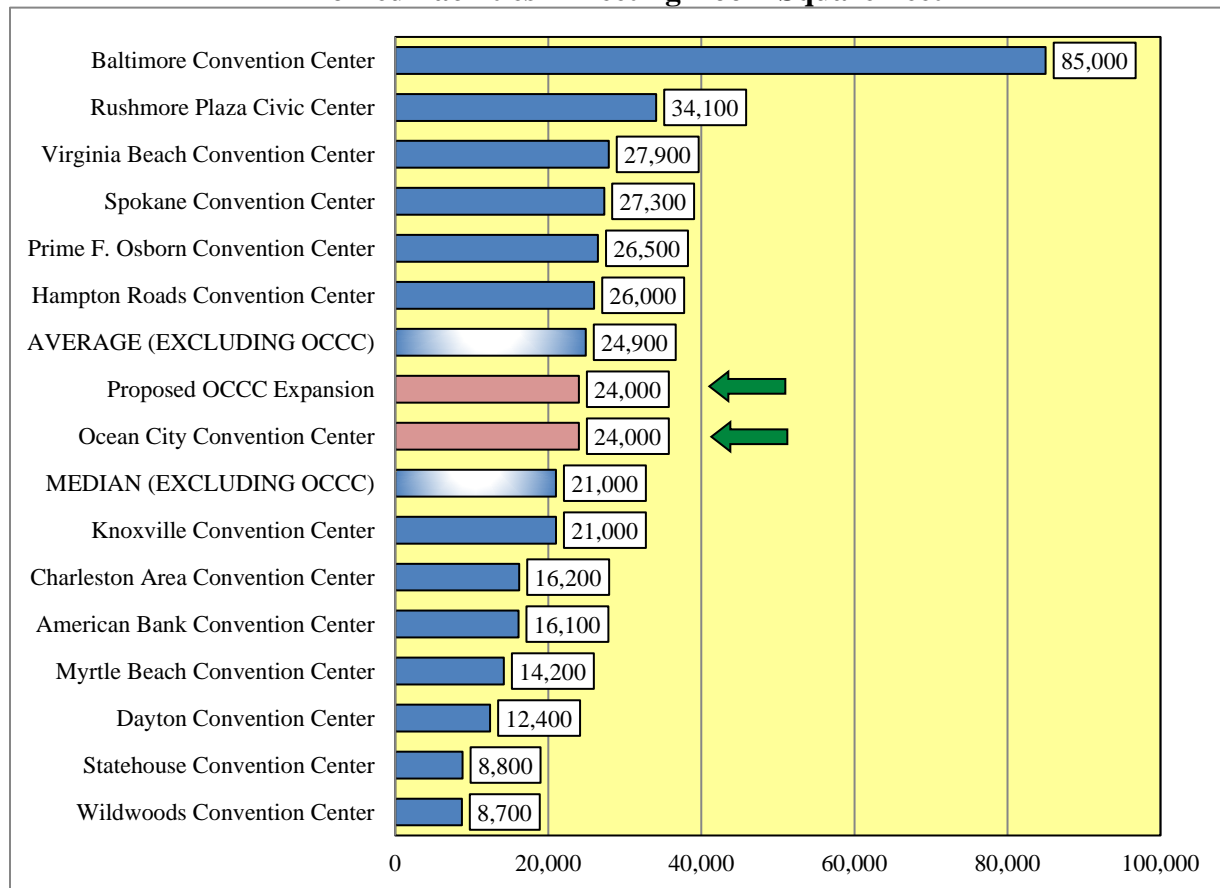
### Profiled Facilities – Ballroom Square Feet



Sources: Management at individual facilities; secondary research.

OCCC offers a comparable amount of meeting space relative to average of the profiled set.

**Profiled Facilities – Meeting Room Square Feet**



Sources: Management at individual facilities; secondary research.

## Destination Characteristics

Convention and meeting planners consider destination characteristics in their site selection process. As the exhibition/meeting industry has undergone a supply boom and a demand slump in recent years, planners are increasingly booking venues with better overall destination packages (e.g., proximate hotel rooms, nearby entertainment/restaurants, safe/secure surroundings, etc.) to support their event. In addition, the resulting buyer's market has planners considering the overall price of hosting their event in a particular city including facility, lodging, and transportation costs.

The OCCC is serviced by Salisbury Regional Airport which has the fewest number of passenger enplanements among the profiled set which is a competitive disadvantage. As mentioned previously the OCCC is also serviced by the Baltimore/Washington International Airport and the Philadelphia International Airport. Despite this disadvantage, Ocean City's visitor amenities make it attractive for group business with primarily drive-in attendance such as social, military, educational, religious, and fraternal conventions and competitive sporting events.

Profiled Facilities - Summary of Passenger Enplanements		
Facility	Air Service	
	Airport	CY 15 Passenger Enplanements <sup>1</sup>
Baltimore Convention Center	Baltimore/Washington International	11,738,800
Prime F. Osborn Convention Center	Jacksonville International	2,716,500
Charleston Area Convention Center	Charleston International	1,670,000
Spokane Convention Center	Spokane International	1,515,300
Virginia Beach Convention Center	Norfolk International	1,515,200
Hampton Roads Convention Center	Norfolk International	1,515,200
Dayton Convention Center	Dayton International	1,041,700
Statehouse Convention Center	Clinton National	985,500
Myrtle Beach Convention Center	Myrtle Beach International	899,900
Knoxville Convention Center	McGhee Tyson Airport	848,400
Wildwoods Convention Center	Atlantic City International	588,000
American Bank Convention Center	Corpus Christi International	338,300
Rushmore Plaza Civic Center	Rapid City Regional	264,200
<b>Ocean City Convention Center</b>	<b>Salisbury Regional</b>	<b>61,800</b>
<b>Average (Excluding OCCC)</b>		<b>1,972,100</b>
<b>Median (Excluding OCCC)</b>		<b>1,041,700</b>

Notes: Sorted in descending order by enplanements.

<sup>1</sup>Passenger enplanements are defined as domestic, territorial and international passengers who board an aircraft in scheduled and non-scheduled service of aircraft.

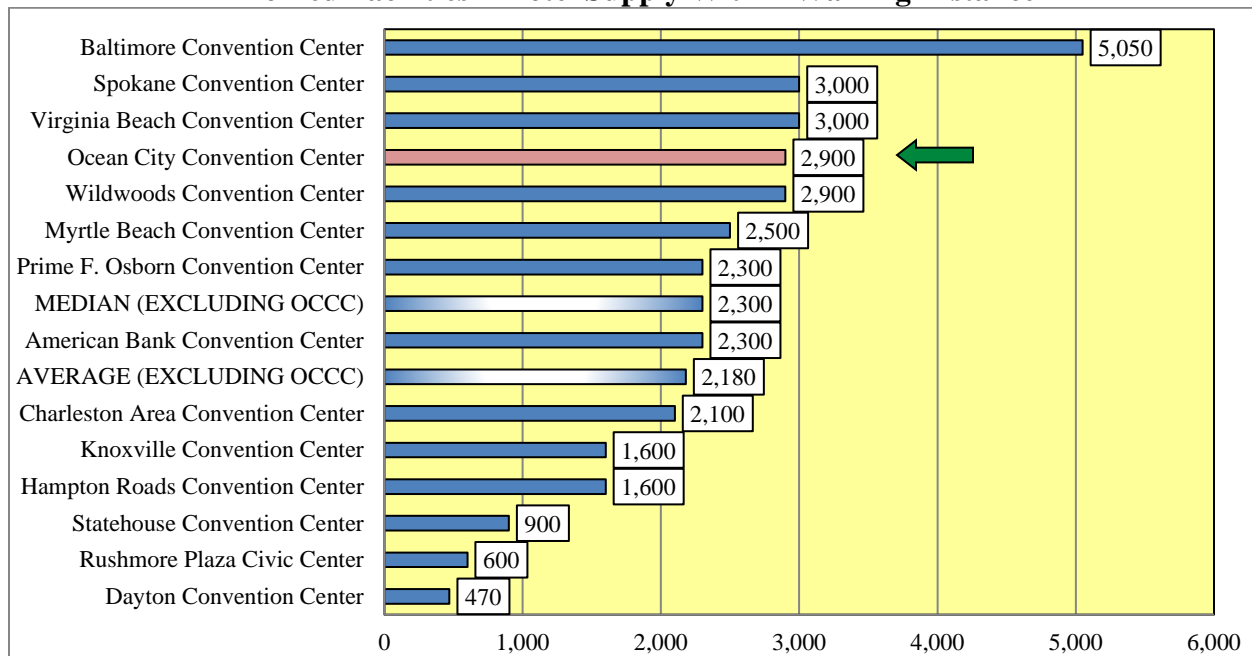
Source: Federal Aviation Administration.

The availability and affordability of hotel rooms are typically important destination selection criteria for meeting planners. Eight of the 14 profiled facilities have a headquarter hotel including competitive centers in Baltimore, Hampton, and Myrtle Beach. These headquarter hotel properties average approximately 550 rooms which is a competitive advantage for groups that want to accommodate all or most of their overnight attendees on-site.

The OCCC has 33% more hotel rooms within walking distance than the average of the profiled set. This supply excludes condominiums, houses and other available rental properties. According to the Ocean City Hotel/Motel Association, more than 440 new hotel rooms are anticipated to be added within walking distance of the OCCC in the next several years including a new Residence Inn.



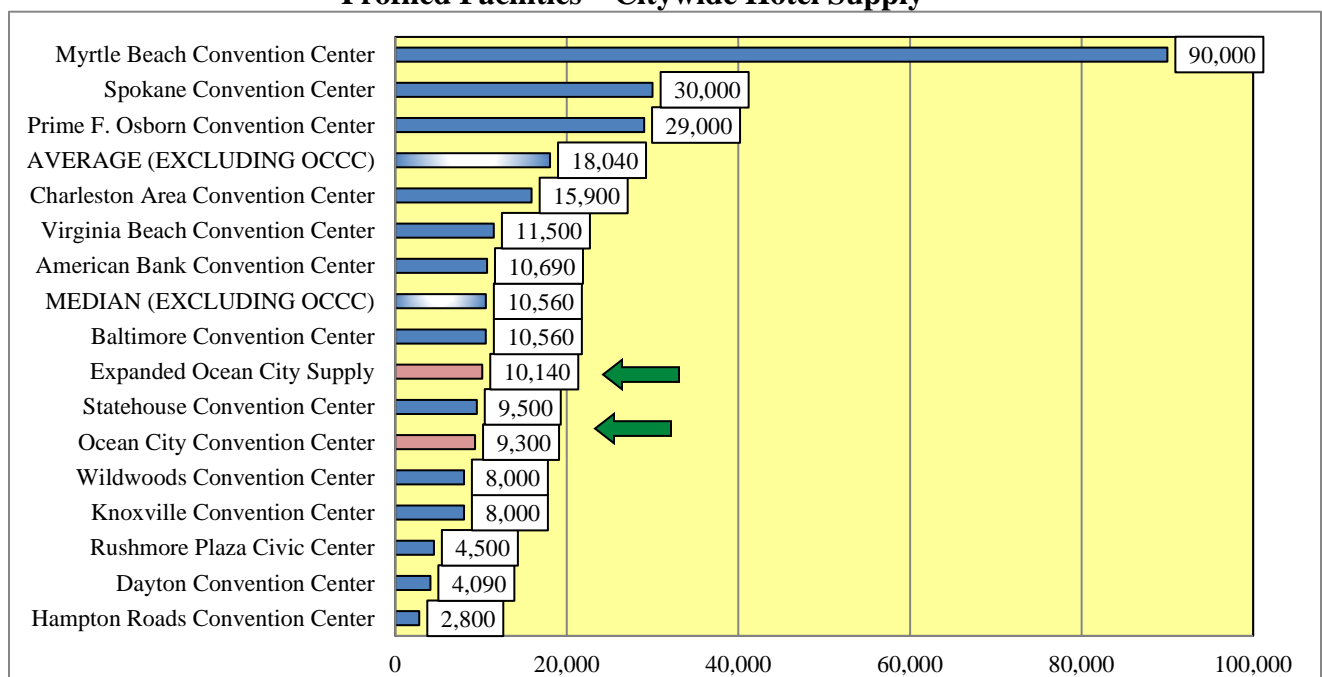
### Profiled Facilities – Hotel Supply Within Walking Distance



Sources: Management at individual facilities; destination marketing organizations; secondary research.

Excluding Myrtle Beach, Ocean City offers a comparable number of citywide hotel rooms to the median of the profiled set which will be further augmented by the planned new hotel development.

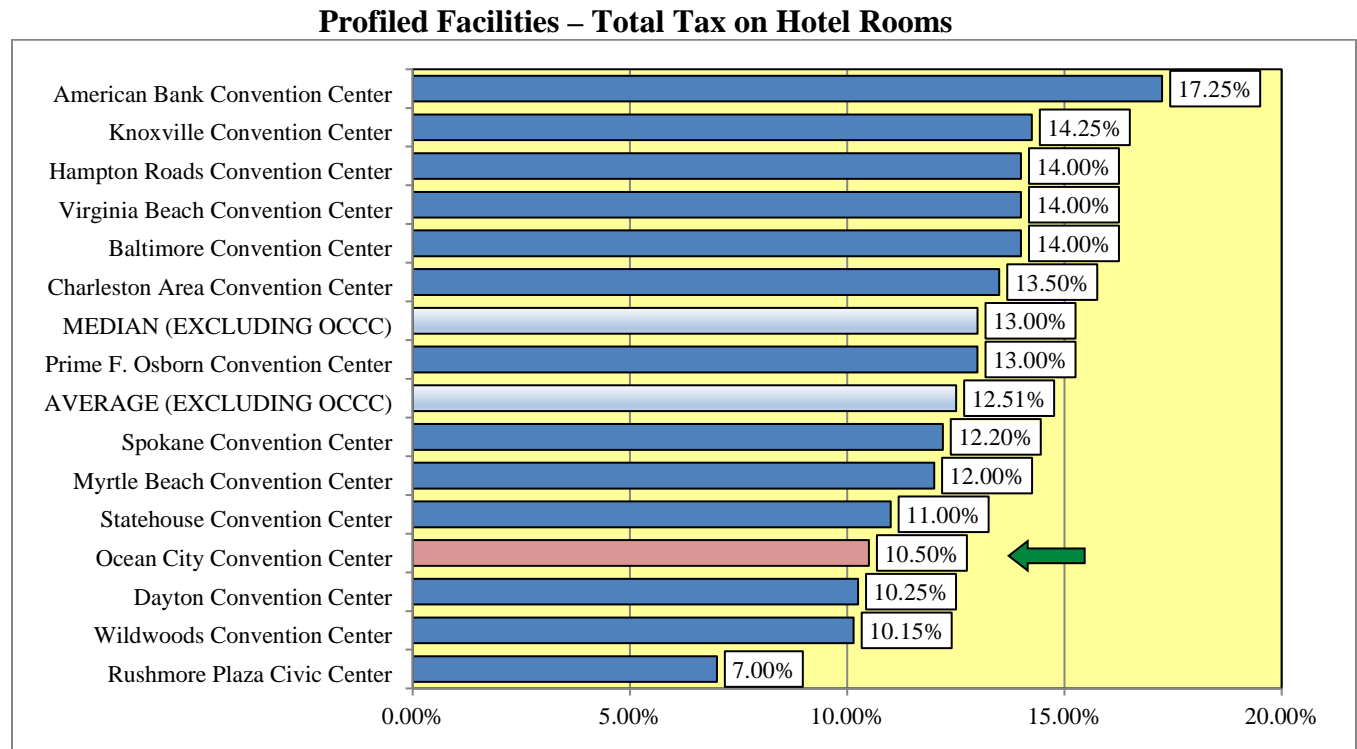
### Profiled Facilities – Citywide Hotel Supply



Note: Expanded OCCC supply includes an estimated 840 new rooms anticipated to open in the next several years.

Sources: Management at individual facilities; destination marketing organizations; secondary research.

Meeting planners rank affordability of the destination high when choosing facilities to host their events. As shown in the following graph, the OCCC has a relatively low total tax on hotel rooms (10.50%) among the profiled facilities which is a competitive advantage for group business. Taxes applied to hotel rooms include State/local sales tax and lodging taxes.



Sources: Management at individual facilities; destination marketing organizations; secondary research.

## Utilization

Utilization at convention centers is impacted by factors such as the physical product, market characteristics, accessibility, mission statement, booking policy, rental and labor rate structure, regionally competitive facilities, marketing efforts and general economic conditions. The following table illustrates total events and total attendance at profiled facilities. Individual convention centers are not identified in the comparative utilization graph because some information was provided confidentially.

As shown, the OCCC hosted significantly fewer events than the profiled facilities. Many of the profiled convention centers hold a significant number of meetings, banquets/receptions and community events. The OCCC does not currently host a significant number of meetings and community events relative to profiled facilities. In addition, the OCCC does not report stand-alone banquets which are tracked separately by Centerplate.

In general, convention centers with more exhibit space hold more conventions/tradeshows. An expanded OCCC would enhance its ability to host more conventions/tradeshows. The OCCC realized a higher percentage of its total attendance/attendee days from convention/tradeshow activity (41%) relative to the average for the profiled facilities (29%).

Profiled Facilities - Utilization						
Facility	All Events			Conventions/Tradeshows		
	Total Events	Total Attendance		Total Events	Average Attendance	Total Attendance
Facility 1	260	780,500	**	54	5,935	320,500
Facility 2	350	558,800	**	29	2,114	61,300
<b>OCCC</b>	<b>75</b>	<b>441,000</b>	<b>**</b>	<b>31</b>	<b>5,794</b>	<b>179,600</b>
Facility 3	283	341,200		31	1,887	58,500
Facility 4	682	*	302,100	76	683	51,900
Facility 5	178	295,100	**	53	3,026	160,400
Facility 6	440	*	286,400	n/s	n/s	n/s
Facility 7	220	200,300		24	3,050	73,200
Facility 8	210	183,300		n/s	n/s	n/s
Facility 9	181	158,800		7	1,029	7,200
Facility 10	131	*	75,868	35	350	12,250
<b>Average (Excluding OCCC)</b>	<b>294</b>	<b>318,200</b>		<b>39</b>		<b>93,200</b>

Notes: Sorted in descending order by total attendance.  
Facility number corresponds to that in financial operations tables that follow.  
\*denotes where a facility reports event days rather than events.  
\*\* denotes where a facility reports attendee days rather than attendance.  
n/s denotes not supplied.

Sources: Individual facilities; secondary research.

## Financial Performance

Comparing financial performance at competitive/comparable facilities can offer a good frame of reference from which to benchmark historical and projected financial operations of the existing OCCC and any potential expansion. The majority of stand-alone convention centers typically realize an operating deficit.

It is important to recognize that facilities vary in their methods of financial reporting and, as such, not all categories or line items are uniformly reported. Consequently, for purposes of this analysis, adjustments have been made to the financial information as reported by the facilities in order to make the data as consistent as possible for comparative purposes. For instance, operating revenues do not include any public funding or tax revenue such as hotel/motel collections for any of the profiled facilities. Similarly, facility operating expenses exclude depreciation expense, debt service, large asset purchases, any expenses related to capital improvements and any effect of taxes.

The following table compares operating revenues and operating expenses for the OCCC in FY 2015 to the competitive/comparable facilities for which data was available. As shown, the OCCC realized less operating revenues, more operating expenses and a higher operating deficit than the average of profiled facilities, many of which offer more total function space. One factor impacting the lower operating revenues at the OCCC relative to the profiled facilities is the lack of parking revenues. The OCCC also has the lowest expense coverage ratio.

Profiled Facilities - Financial Operating Data				
Facility	Operating Revenues	Operating Expenses	Operating Income/(Loss)	Expense Coverage Ratio
Facility 1	\$2,413,000	\$4,594,000	(\$2,181,000)	53%
Facility 2	\$3,931,000	\$6,083,000	(\$2,152,000)	65%
<b>OCCC</b>	<b>\$1,802,000</b>	<b>\$4,636,000</b>	<b>(\$2,834,000)</b>	<b>39%</b>
Facility 3	\$2,396,000	\$5,216,000	(\$2,820,000)	46%
Facility 4	\$1,904,000	\$3,214,000	(\$1,310,000)	59%
Facility 5	\$1,645,000	\$2,771,000	(\$1,126,000)	59%
Facility 6	\$2,426,000	\$3,803,000	(\$1,377,000)	64%
Facility 7	\$3,040,000	\$4,403,000	(\$1,363,000)	69%
Facility 8	\$1,277,000	\$2,126,000	(\$849,000)	60%
Facility 9	\$1,113,000	\$2,302,000	(\$1,189,000)	48%
Facility 10	n/s	n/s	n/s	n/s
<b>Average (Excluding OCCC)</b>	<b>\$2,238,000</b>	<b>\$3,835,000</b>	<b>(\$1,597,000)</b>	<b>58%</b>

Notes: Expense coverage ratio = operating revenues/operating expenses.  
 OCCC reports attendee days, not attendance.  
 Facility number corresponds to that in utilization tables.  
 n/s denotes not supplied.

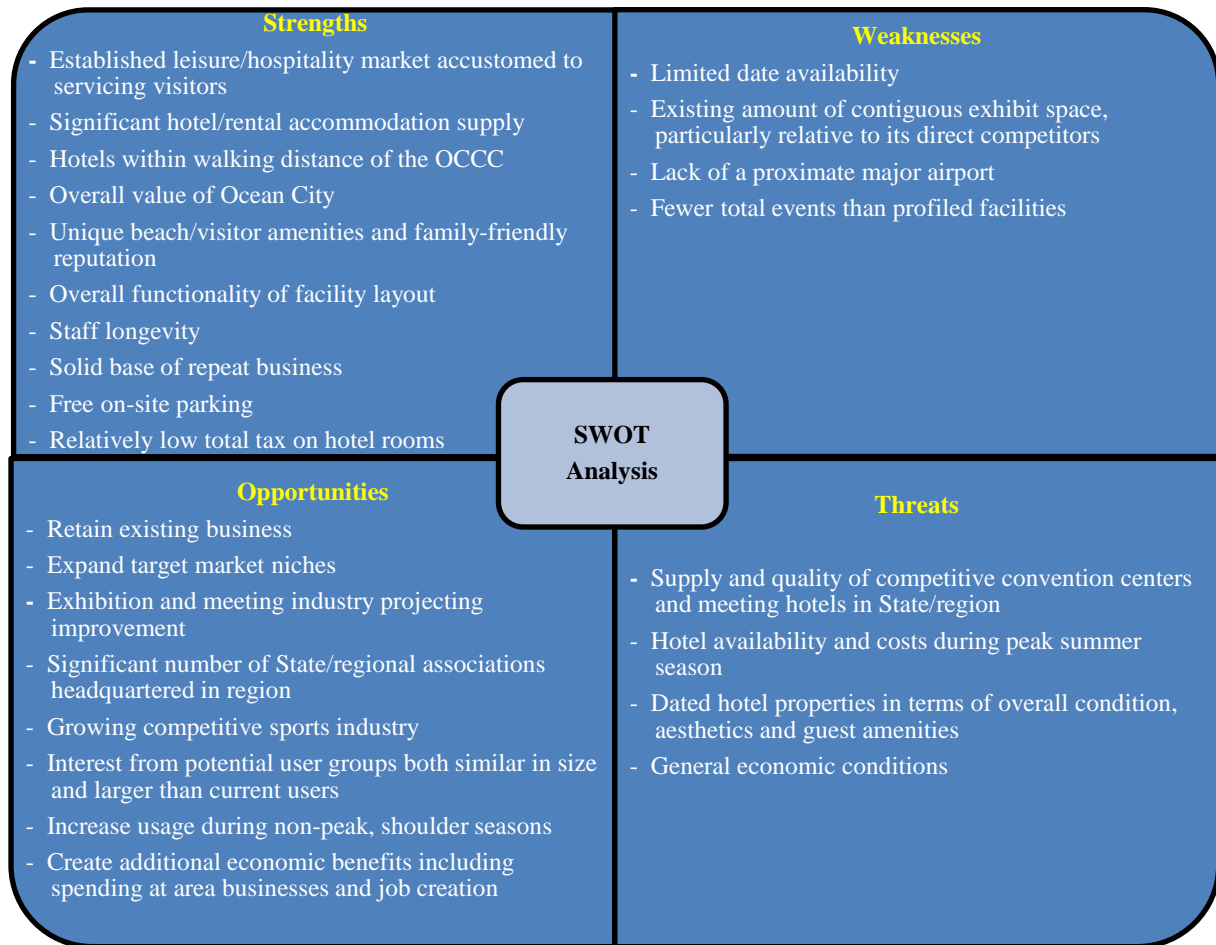
Sources: Individual facilities; secondary research.

As a point of reference, five profiled facilities that charge parking generate between \$20,000 and \$330,000 from this revenue stream or 1% to 14% of their respective operating revenues. The major expenses at most convention centers include salaries/wages, benefits, and utilities. As such, best practices in the industry include continual efforts to control these line items. Staff related benefits represent 49% of OCCC related salaries/wages. According to management, this is due, in part, to the fact that pension benefits for former OCCC staff are allocated to the facility's operating expenses. As a point of reference, benefits expenses at profiled facilities represent an average of 38% of salaries/wages.

Other best practices to maximize financial operations include continual efforts to more accurately pass along event related costs to users. For example, installing utility meter systems that track individual event usage. In addition, other facilities are instituting energy efficiency measures to maintain utility costs to mitigate the effects of increasing rates.

## Competitive Market Assessment

Based on the research conducted for this study, the following summarizes market related strengths, weaknesses, opportunities and threats associated with the OCCC.



Market research suggests that the expansion would allow the OCCC to better accommodate existing users as well as attract incremental new business in niches that are well-suited to Ocean City's strengths. These niches include State/regional conventions/tradeshows and sports competitions that more commonly attract overnight attendees that drive to/from the destination, are held in family-friendly destinations, and seek affordable options. In addition, the proposed exhibit hall expansion could better accommodate long-term users that serve the local community such as the Seaside Boat Show and the Stephen Decatur High School graduation. The existing OCCC offers the smallest amount of exhibit space relative to its competitive set. The proposed addition of a maximum of 30,000 square feet of contiguous existing space would place the OCCC in a better competitive position to host larger and/or more simultaneous events. If the OCCC's exhibit space is not expanded, the community could lose market share to other State/regional competitors.

The next section of the report outlines the estimated incremental new impact to financial operations associated with the proposed expansion of the OCCC.

## TABLE OF CONTENTS

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<b>1.</b>	<b>Introduction and Executive Summary</b>	<b>1</b>
<b>2.</b>	<b>General Market Overview</b>	<b>6</b>
<b>3.</b>	<b>Key Industry Trends</b>	<b>18</b>
<b>4.</b>	<b>Historical OCCC Operations</b>	<b>24</b>
<b>5.</b>	<b>Potential Demand Generators</b>	<b>34</b>
<b>6.</b>	<b>Competitive/Comparable Facility Analysis</b>	<b>45</b>
<b>7.</b>	<b>Financial Analysis</b>	<b>60</b>
<b>8.</b>	<b>Economic and Fiscal Impact Analysis</b>	<b>68</b>
<b>9.</b>	<b>Limiting Conditions and Assumptions</b>	<b>80</b>
<b>A.</b>	<b>Appendix</b>	<b>82</b>
	– Conceptual Design Documents	
	– Project Cost Estimate Summary	

## FINANCIAL ANALYSIS

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With respect to financial performance, it is important to understand that many similar convention centers realize an operating deficit or operate near break-even. However, one of the primary reasons for developing these types of facilities is the economic activity that they can generate in terms of spending, employment, and earnings as well as tax revenues to local and state governments. These facilities typically attract events that draw patrons from outside the immediate market area who spend money on overnight accommodations, restaurants and other related services. In many instances, these net new benefits can outweigh the operating deficit. Consequently, when evaluating the merits of these types of projects, it is important to consider all aspects of the costs and benefits including operating requirements, debt service and economic/fiscal benefits. An order-of-magnitude estimate of the economic/fiscal benefits associated with an expanded OCCC is provided later in this report.

Crossroads Consulting assisted the TOC in developing a hypothetical, order-of-magnitude estimate of operating revenues and operating expenses before depreciation and debt service for the proposed expansion of the OCCC for a stabilized year of operations. This analysis is also based on certain assumptions pertaining to operations of the facility, usage levels and other related financial assumptions agreed to by the TOC. The accompanying analysis was prepared for internal use by the TOC for its consideration of plans for the proposed expansion and should not be used or relied upon for any other purpose including financing of the project.

The analysis performed was limited in nature and, as such, Crossroads Consulting does not express an opinion or any other form of assurance on the information presented in this report. As with all estimates of this type, we cannot guarantee the results nor is any warranty intended that they can be achieved. The estimates of operating revenues and operating expenses are based on the anticipated size, quality and efficiency of the expanded OCCC. Since these estimates and assumptions are based on circumstances that have not yet transpired, they are subject to variation. Further, there will usually be differences between estimated and actual results because events and circumstances frequently do not occur as expected, and those differences may be material.

The financial operations of an expanded OCCC will be impacted by several factors including, but not limited to, its larger size in terms of gross square footage as well as its anticipated increase in event activity. For these and other reasons, it is difficult to make direct comparisons between historical facility operations and those estimated for an expanded OCCC. Discussions were conducted with facility management to consider the impact that expansion would have on individual line items. These discussions and historical analysis were the basis for various assumptions regarding the operations of an expanded OCCC.



## **General Assumptions**

Based on input from the client group, the following assumptions were used to develop estimates of event activity, financial operations and economic/fiscal impacts for the proposed expanded OCCC.

- A maximum of 30,000 square feet of contiguous exhibit space is developed.
- Given the limited historical operating data associated with the Performing Arts Center and the fact that the proposed expansion will likely have limited or no impact on stand-alone concerts/entertainment events, these event types are excluded from the financial analysis.
- The facility is managed by professional, experienced staff.
- An aggressive marketing approach is taken by the CVB and management at OCCC, particularly in attracting conventions/tradeshows and competitive sporting events.
- A high level of quality customer service continues to be provided.
- The OCCC operating subsidy continues to be funded in the same manner – one-half by the TOC and one-half by the State.
- No other similar, competitive facilities are built or expanded in the region.
- Tax rates continue at their current rates.
- Amounts are presented in current dollars and reflect a stabilized year of operations.

It should be noted these assumptions are preliminary in nature and will continue to be refined as decisions related to the building program and other operating characteristics continue to evolve.

## **Estimated Impact to Usage/Event Activity**

The financial and economic/fiscal impact analyses are based on several factors including an estimate of usage/event activity that was developed based on historical utilization at the OCCC, research previously summarized in the market analysis including input from the client group, market characteristics, industry trends, input from potential demand generators, information on competitive/comparable facilities as well as other research.

Many of the events will likely occur over multiple days and include event days (when an event occurs at the facility) as well as move-in/move-out days. Likewise, attendees often attend each event day. As mentioned previously, an attendee day is defined as total attendance multiplied by the event length.

Event activity at expanded facilities typically experiences a “ramp up” period to a stabilized level of activity which occurs for several reasons. For instance, some groups that book their event years in advance may not want to risk that a facility’s construction is delayed and not completed in time for their event. In addition, some groups may choose to let management “fine tune” its operations before meeting in the expanded facility. However, it is important to recognize that the overall utilization at any facility is typically dependent on a number of factors and is rarely consistent. As such, the estimated range of utilization shown in the following table compares an expanded OCCC to the historical five-year average for a stabilized year of operations.

Comparison of Usage/Event Activity						
Events	Historical Five-Year Average	Expanded OCCC (Stabilized Year)			Incremental New (Stabilized Year)	
Convention/Tradeshow	31	38	-	40	7	9
Consumer Show	26	28	-	29	2	3
Meetings	17	24	-	28	7	11
Competitions	8	14	-	16	6	8
<b>Total</b>	<b>82</b>	<b>104</b>	-	<b>113</b>	<b>22</b>	<b>31</b>
Total Event Days	Historical Five-Year Average	Expanded OCCC (Stabilized Year)			Incremental New (Stabilized Year)	
Convention/Tradeshow	94	114	-	120	20	26
Consumer Show	69	76	-	78	7	9
Meetings	28	39	-	46	11	18
Competitions	25	43	-	50	18	25
<b>Total</b>	<b>216</b>	<b>272</b>	-	<b>294</b>	<b>56</b>	<b>78</b>
Average Attendee Days Per Event	Historical Five-Year Average	Expanded OCCC (Stabilized Year)			Incremental New (Stabilized Year)	
Convention/Tradeshow	5,600	6,000	-	6,000	400	400
Consumer Show	5,000	5,800	-	5,800	800	800
Meetings	900	750	-	750	(150)	(150)
Competitions	11,100	11,100	-	11,100	0	0
Total Attendee Days	Historical Five-Year Average	Expanded OCCC (Stabilized Year)			Incremental New (Stabilized Year)	
Convention/Tradeshow	172,500	228,000	-	240,000	55,500	67,500
Consumer Show	130,000	162,400	-	168,200	32,400	38,200
Meetings	15,200	18,000	-	21,000	2,800	5,800
Competitions	88,900	155,400	-	177,600	66,500	88,700
<b>Total</b>	<b>406,600</b>	<b>563,800</b>	-	<b>606,800</b>	<b>157,200</b>	<b>200,200</b>

Notes: Excludes off-site and internal use events.

Historical and estimated usage/event activity excludes concert/entertainment events.

Source: Facility management.

## Estimated Impact to Financial Operations

The table that follows compares the estimates of net operating revenues over net operating expenses *before* debt service and depreciation for a stabilized year of operations to the historical five-year average for the existing OCCC. The incremental impact to net operations is estimated to reduce the annual operating deficit by approximately \$44,000 to \$76,000.

Comparison of OCCC Operating Revenues and Operating Expenses					
Category	Historical Five-Year Average	Expanded OCCC (Stabilized Year)		Incremental New (Stabilized Year)	
Operating Revenues	\$1,721,000	\$2,455,000	-	\$2,581,000	\$734,000 - \$860,000
Operating Expenses	4,373,000	5,063,000	-	5,157,000	690,000 - 784,000
Operating Revenues Over Operating Expenses Before Debt Service and Depreciation	(\$2,652,000)	(\$2,608,000)	-	(\$2,576,000)	\$44,000 - \$76,000
Town Subsidy	(\$1,326,000)	(\$1,304,000)	-	(\$1,288,000)	\$22,000 - \$38,000
State Subsidy	(\$1,326,000)	(\$1,304,000)	-	(\$1,288,000)	\$22,000 - \$38,000

### Net Operating Revenues

The following table shows the estimated net operating revenues for an expanded OCCC in a stabilized year of operations compared to the historical five-year average. The incremental impact to net operating revenues is estimated to range from \$734,000 to \$860,000 annually.

Comparison of OCCC Net Operating Revenues					
Revenue Category	Historical Five-Year Average	Expanded OCCC (Stabilized Year)		Incremental New (Stabilized Year)	
Facility Rental	\$851,000	\$1,225,000	-	\$1,295,000	\$374,000 - \$444,000
Food & Beverage	326,000	522,000	-	558,000	196,000 - 232,000
Service Charges	311,000	451,000	-	467,000	140,000 - 156,000
Special Events	84,000	91,000	-	95,000	7,000 - 11,000
Other	84,000	85,000	-	85,000	1,000 - 1,000
Sales/Membership Dues	65,000	81,000	-	81,000	16,000 - 16,000
<b>Total</b>	<b>\$1,721,000</b>	<b>\$2,455,000</b>	<b>-</b>	<b>\$2,581,000</b>	<b>\$734,000 - \$860,000</b>
<b>Incremental Impact to Operating Revenues</b>				<b>43%</b>	<b>- 50%</b>

Note: Operating revenues exclude a guaranteed annual County grant which accounted for \$45,000 in FY 2011 through FY 2014 and \$50,000 in FY 2015.

The following pages provide a description of each operating revenue line item.

*Facility Rental* includes revenue from the rental of function space at the facility. Typically, convention centers charge different rate structures for various types of events such as conventions, tradeshows, consumer shows, and other events depending on the type of space utilized (i.e., exhibit halls and meeting rooms). Although OCCC has published rental rates for various areas of the facility, effective rates realized are typically lower than published rates due to several factors including: some rates may be negotiated to attract quality, high-impact events; meeting rooms or other space may be complimentary in conjunction with rented space or food functions; move-in/move-out days are often priced at one-half the normal rate; and/or some facilities offer reduced rental rates to special groups such as local, non-profit, and charitable organizations.

*Food & Beverage* includes sales from catering, concessions, alcoholic beverages, and vending. Currently, the OCCC contracts with Centerplate for food and beverage services. Based on the recently negotiated contract, Centerplate pays the TOC a percentage of gross food/beverage revenues based on a graduated scale. Historically, the OCCC has retained approximately 25% of gross food/beverage revenues. As such, a similar percentage is assumed for an expanded OCCC for purposes of this analysis. The new agreement also requires that Centerplate pay the TOC \$600,000 as capital investment, \$500,000 in upfront cash for any use and the balance for mutually agreed upon food service capital projects.

*Service Charges* include income received for electrical, plumbing, phone and audio/visual services provided to exhibitors and event organizers.

*Special Events* include rental revenue associated with performing arts events and the annual Holiday Shoppers Fair. For purposes of this analysis, the impact to this line item is limited to increased exhibit space rental associated with the Holiday Shoppers Fair.

*Other* includes parking fees paid by buses utilizing the south parking lot, ATM fees, and Tourism Commission lease revenue.

*Sales/Membership Dues* are primarily associated with CVB membership dues and, as such, are not assumed to be impacted by the proposed expansion. The amount estimated for the proposed expansion is comparable to the amount reported in FY 2015.

As the potential expansion plans continues to evolve, other potential revenue sources that the TOC may want to consider include, but are not limited to, the following:

- *Parking* – typically includes a charge per car for all events or certain public events with significant drive-in attendees. Higher charges can sometimes be charged for spaces closest to the facility entrance or a valet service.
- *Naming rights* – through a combination of naming rights, preferential advertising treatment and event sponsorship inducements, one or more private parties may be solicited for up-front or recurring annual commitments. However, the revenue generated from naming rights is generally based on several factors, including but not limited to, the amount and type of event activity, the local corporate base, and management’s philosophy on the amount and type of naming rights sold (e.g., selling the facility as a whole, selling individual function spaces, etc.). Naming rights deals are not as common among convention centers and, as such, financial information is difficult to obtain. Conducting focus groups is one method to ascertain the potential revenue that could be generated from naming rights.
- *Pouring rights* – where a beverage manufacturer pays the facility for exclusive selling rights for a specified term.
- *Long-term sponsorships* – include the sale of advertising for particular “zones” within or outside the facility such as a private area to gather prior to and after events or an entry boulevard named for a sponsor.
- *Retail rental space* – where a portion of the facility could be leased for a compatible use such as a coffee shop or printing/shipping business.

## Net Operating Expenses

The following table shows the estimated net operating expenses for an expanded OCCC in a stabilized year of operations compared to the historical five-year average. The incremental impact to net operating expenses is estimated to range from \$690,000 to \$784,000 annually.

Comparison of OCCC Net Operating Expenses						
Expense Category	Historical Five-Year Average	Expanded OCCC (Stabilized Year)			Incremental New (Stabilized Year)	
Salaries and Wages	\$1,889,000	\$1,994,000	-	\$2,009,000	\$105,000	\$120,000
Employee Benefits	948,000	997,000	-	1,005,000	49,000	57,000
Energy	543,000	814,000	-	846,000	271,000	303,000
Insurance & Intragovernmental	299,000	373,000	-	382,000	74,000	83,000
Repairs & Maintenance	280,000	404,000	-	421,000	124,000	141,000
Other Purchased Services	179,000	221,000	-	231,000	42,000	52,000
General Supplies	170,000	190,000	-	193,000	20,000	23,000
Vehicle Operations	24,000	25,000	-	25,000	1,000	1,000
Communications	22,000	26,000	-	26,000	4,000	4,000
Professional Services	11,000	11,000	-	11,000	0	0
Other	8,000	8,000	-	8,000	0	0
<b>Total</b>	<b>\$4,373,000</b>	<b>\$5,063,000</b>	<b>-</b>	<b>\$5,157,000</b>	<b>\$690,000</b>	<b>\$784,000</b>
<b>Incremental Impact to Operating Expenses</b>					<b>16%</b>	<b>18%</b>

Note: Operating expenses exclude capital purchases.

The following pages provide a description of each operating expense line item.

*Salaries and Wages* typically represent a significant expense and vary based on permanent full-time staffing plans and other factors. One factor relates to the management philosophy of maintaining event-related personnel as full-time or part-time staff. Another factor relates to the management and physical relationship the facility might have to other facilities. For example, the staffing plan for a stand-alone facility is different than for an entire complex that can share administrative costs among several venues. In addition, the extent that contracted services are used also impacts staffing at a facility.

OCCC currently has 42 full-time equivalents (FTEs). Based on this staffing plan, the size of the proposed expansion, and its estimated impact to utilization, it is assumed that an expanded facility would require two additional FTEs for a total staffing plan of 44. These positions should include one event coordinator and one sales person.

*Benefits* include costs associated with personnel including health and retirement benefits as well as worker's compensation. As mentioned previously, employee benefits have averaged 50% of the salaries/wages expenses over the last five years which is higher than many of the profiled competitive/comparable facilities. According to management, this is due, in part, to the fact that pension and retiree health insurance actuarial fund contributions for current and former employees are allocated to the facility's operating expenses which is probably not included in the data from other profiled facilities.

*Energy* generally represents one of the highest expense items for convention centers and can vary depending upon the level of utilization, age of the building, shared spaces with other facilities and climate. For purposes of this analysis, it is assumed that management passes through to the user, to the extent possible, utility costs related to a particular event. In many facilities, these costs are handled as an expense that is fully or partially reimbursed by the event at a later date or, for civic uses, a utilities charge is assessed. Over the last two years the OCCC has experienced significant increases in utilities related expenses which, according to management, is primarily attributable to weather. The energy cost shown in this analysis represents the total non-reimbursable costs. It should be noted that actual utility expenses will depend on facility design and decisions concerning physical design/layout, energy systems and management.

*Insurance and Intragovernmental* includes an allocation to OCCC for the TOC's blanket insurance policy covering all of its assets as well as a prorated share of the TOC's services for items such as information technology and general overhead.

*Repairs and Maintenance* includes various expenses incurred related to building and equipment maintenance and generally varies based on utilization. Expense allocations for repairs and maintenance are also highly dependent upon the owner/management philosophy relative to upkeep of the facility.

*Other Purchased Services* include items such as landscaping, carpet/window cleaning, laundry and other contracted services.

*General Supplies* include costs associated with rentals, leases, office and janitorial supplies, hardware, software and other similar items necessary for the day-to-day operations of the facility.

*Vehicle Operations* include costs associated with two TOC-owned vehicles used for OCCC operations.

*Communications* include expenses associated with telephone service and two-way radios.

*Professional Services* include legal fees and medical payments.

*Other* includes miscellaneous expenses not accounted for in the above line items.

*Debt Service and Depreciation* costs are not included in this analysis.

*Reserve for Replacement Fund* is not included in this analysis. Historically, there has not been a dedicated reserve for replacement fund. Rather, facility management has requested capital improvement funds through an annual appropriation process. The TOC and the State have jointly funded capital improvements. However, it is recommended that the TOC plan for an annual payment specifically designated as a reserve for replacement fund in order to safeguard its investment. This fund is intended to cover any extraordinary annual future capital repairs or improvements to the facility.

The next section of the report outlines the estimated incremental new impact to economic/fiscal benefits associated with the proposed expansion of the OCCC.

## TABLE OF CONTENTS

---

<b>1.</b>	<b>Introduction and Executive Summary</b>	<b>1</b>
<b>2.</b>	<b>General Market Overview</b>	<b>6</b>
<b>3.</b>	<b>Key Industry Trends</b>	<b>18</b>
<b>4.</b>	<b>Historical OCCC Operations</b>	<b>24</b>
<b>5.</b>	<b>Potential Demand Generators</b>	<b>34</b>
<b>6.</b>	<b>Competitive/Comparable Facility Analysis</b>	<b>45</b>
<b>7.</b>	<b>Financial Analysis</b>	<b>60</b>
<b>8.</b>	<b>Economic and Fiscal Impact Analysis</b>	<b>68</b>
<b>9.</b>	<b>Limiting Conditions and Assumptions</b>	<b>80</b>
<b>A.</b>	<b>Appendix</b>	<b>82</b>
	<b>Conceptual Design Documents</b>	
	<b>Project Cost Estimate Summary</b>	



## **ECONOMIC AND FISCAL IMPACT ANALYSIS**

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One of the primary objectives of this study is to estimate the incremental new economic and fiscal impacts associated with expansion of the OCCC to area economies. The TOC, County and the State benefit from the facility's operations in several ways, including such tangible and intangible benefits as:

- Enhancing the area's image as a business, meeting and tourist destination;
- Receiving increased State and regional exposure through destination marketing and visitation;
- Providing a first-class meeting venue for area residents and out-of-town visitors;
- Serving as a catalyst for further development initiatives in the area; and
- Generating economic activity and fiscal revenues.

Each of these benefits is important in assessing the overall impacts of an expanded OCCC. While the value of many of these benefits is difficult to measure, the economic and fiscal impacts generated can be quantified. This analysis quantifies the direct, indirect and induced benefits associated with operations of an expanded OCCC including the associated tax revenues. Although some of the estimated event activity is occurring at the existing OCCC, an expanded facility will likely maintain and grow existing business as well as attract incremental new events that cannot currently be accommodated.

### **General Methodology Overview**

An assessment of the economic benefits that occur in Worcester County and the State of Maryland as a result of on-going operations of an expanded OCCC can be approached in several ways. The approach used in this analysis considers expenses generated from OCCC operations from items such as personnel services, contractual services, materials and supplies, equipment, and capital expenditures as well as attendees, sponsoring organizations/event producers and exhibitors as an initial measure of economic activity in the marketplace. Once the amount for direct spending is quantified, a calculated multiplier is applied to generate the indirect and induced effects. The sum of direct, indirect and induced effects equals total economic impact which is expressed in terms of spending (output), employment (jobs), and personal earnings.

This analysis also estimates the fiscal impacts generated from on-going OCCC operations. The governmental entities considered in this fiscal analysis are Worcester County and the State of Maryland. Revenues generated from the admissions and amusement tax, corporate income tax, food and beverage tax, hotel/motel tax, motor vehicle rental tax, personal income tax as well as sales and use tax were estimated.

The number of events and attendance, event mix, origin of attendees, facility financial operations, industry trends, economic conditions, direct spending categories used, per person spending amounts, distribution of spending, multipliers, and specific taxes quantified are all variables that influence the economic and fiscal impact estimates. All amounts are presented in current dollars and rounded to the nearest thousand.



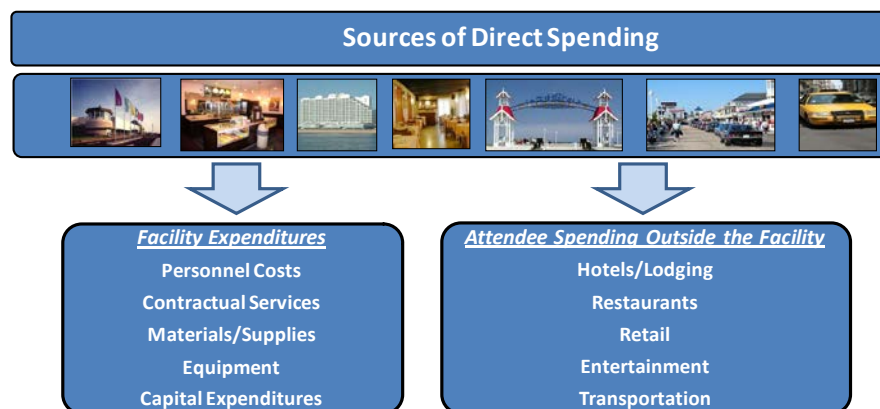


## Methodology – Economic Impact Analysis

Regional input-output models are typically used by economists as a tool to understand the flow of goods and services among regions and measure the complex interactions among them given an initial spending estimate.

### Direct Spending

Estimating direct spending is the first step in calculating economic impact. Direct spending represents the initial change in spending that occurs as a direct result of an expanded OCCC. This spending occurs both inside and outside of the convention center. Direct spending related to OCCC operations is generated from attendees, sponsoring organizations/event producers, exhibitors as well as from facility expenditures (including capital outlay). Spending related to these categories was adjusted to reflect leakage (spending which occurs outside of the local economy) and displacement (spending which would have occurred elsewhere in the Town/County/State without the presence of an expanded OCCC).



## Indirect/Induced Impacts

The economic activity generated by operations of an expanded OCCC affects more than just the facility itself. In preparation for new spending in the economy, several other economic sectors are impacted and jobs are created. Indirect effects reflect the re-spending of the initial or direct expenditures or the business-to-business transactions required to satisfy the direct effect. Induced effects reflect changes in local spending on goods and services that result from income changes in the directly and indirectly affected industry sectors. The model generates estimates of these impacts through a series of relationships using local-level average wages, prices and transportation data, taking into account commute patterns and the relative interdependence of the economy on outside regions for goods and services.

## Multiplier Effect

In an effort to quantify the inputs needed to produce the total output, economists have developed multiplier models. The estimation of multipliers relies on input-output models, a technique for quantifying interactions between firms, industries and social institutions within a local economy. This analysis uses IMPLAN software and databases which are developed under exclusive rights by the Minnesota IMPLAN Group, Inc. IMPLAN, which stands for *Impact Analysis for Planning*, is a computer software package that consists of procedures for estimating local input-output models and associated databases. The IMPLAN software package allows the estimation of the multiplier effects of changes in final demand for one industry on all other industries within a defined economic area. Its proprietary methodology includes a matrix of production and distribution data among all counties in the U.S. As such, the advantages of this model are that it is sensitive to both location and type of spending and has the ability to provide indirect/induced spending, employment and earnings information by specific industry category while taking into account the leakages associated with the purchase of certain goods and services outside the economy under consideration.

Once the direct spending amounts are assigned to a logical category, the IMPLAN model estimates the economic multiplier effects for each type of direct new spending attracted to or retained in the local area and the State resulting from operations of an expanded OCCC.

For purposes of this analysis, the following industry multipliers were used:

Summary of Multipliers						
Category	Worcester County			State of Maryland		
	Spending	Employment*	Earnings	Spending	Employment*	Earnings
Hotels	1.4004	14.2	0.4346	1.6437	14.0	0.6142
Eating & Drinking Places	1.4362	20.4	0.5618	1.6773	21.1	0.6560
Retail Trade	1.4817	15.0	0.6836	1.7844	19.9	0.7190
Entertainment	1.4666	14.6	0.4409	1.8033	21.3	0.6663
Transportation	1.4905	14.1	0.7882	1.8448	16.1	0.7700
Business Services	1.4086	13.1	0.4685	1.7355	12.0	0.7296
Utilities	1.4625	3.5	0.2332	1.6740	3.3	0.2930
New Construction	1.3693	9.7	0.4067	1.6934	10.2	0.6697

Note: \*Indicates the number of jobs per \$1 million in spending.

Source: IMPLAN

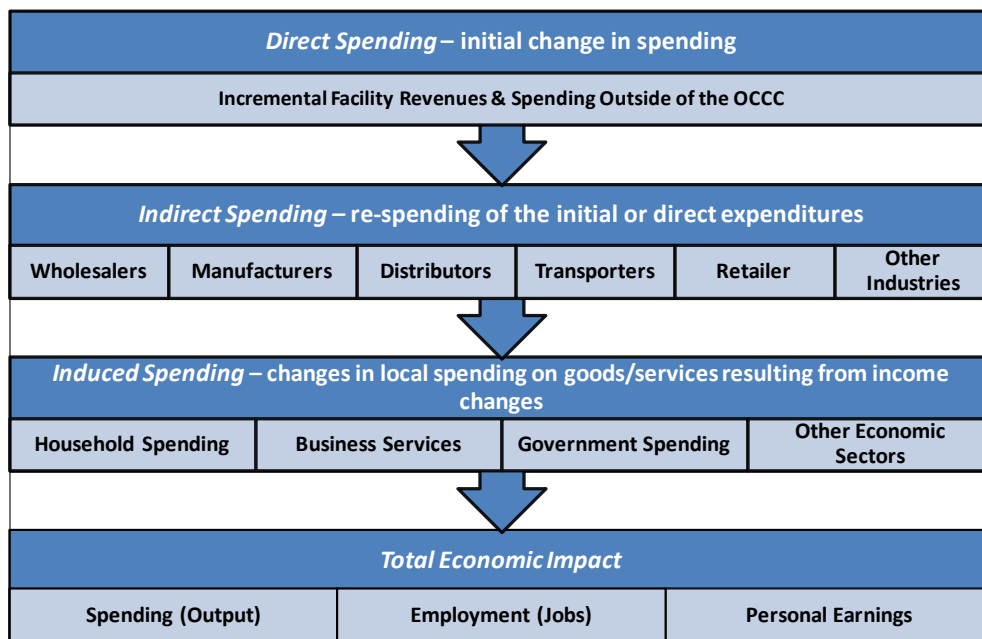
These multipliers reflect IMPLAN's latest available economic data reflecting 2013 transactions and the complex interactions among regions.

## Total Economic Impact

The calculated multiplier effect is then added to the direct impact to quantify the total economic impact in terms of spending, employment and earnings which are defined below:

- *Spending (output)* represents the total direct and indirect/induced spending effects generated by expanded OCCC operations. This calculation measures the total dollar change in spending (output) that occurs in the local economy for each dollar of output delivered to final demand.
- *Employment (jobs)* represents the number of full and part-time jobs supported by expanded OCCC operations. The employment multiplier measures the total change in the number of jobs supported in the local economy for each additional \$1.0 million of output delivered to final demand.
- *Personal earnings* represent the wages and salaries earned by employees of businesses associated with or impacted by expanded OCCC operations. In other words, the multiplier measures the total dollar change in earnings of households employed by the affected industries for each additional dollar of output delivered to final demand.

The following graphic illustrates the multiplier effects for calculating total economic impact.



## **Methodology - Fiscal Impact Analysis**

The estimated spending generated by on-going operations of an expanded OCCC creates tax revenues for the County and the State. Experience in other markets suggests that while a significant portion of the direct spending likely occurs near the facility, additional spending occurs in other areas within the State, particularly spending on items such as business services and everyday living expense of residents. Major tax sources impacted by facility operations were identified and taxable amounts to apply to each respective tax rate were estimated. Although other taxes, such as property taxes, may also be positively impacted by on-going operations of an expanded OCCC, this analysis estimates revenues generated from the following taxes based on the direct and indirect/induced spending amounts previously defined:

### **Worcester County**

- Admissions & Amusement Tax
- Food & Beverage Tax
- Hotel/Motel Tax
- Local Personal Income Tax

### **State of Maryland**

- Corporate Income Tax
- Motor Vehicle Rental Tax
- Personal Income Tax
- Sales & Use Tax

## Summary of Estimated Annual Incremental New Economic Benefits

The following table summarizes the estimated incremental new economic benefits from ongoing activities of an expanded OCCC as measured by spending, jobs and earnings. As shown, the total annual incremental new spending (i.e., direct/indirect/induced) is estimated to range between \$47.8 million and \$66.5 million at the State level, of which between \$44.1 million and \$59.0 million is estimated to occur at the County level.

Comparison of Annual Economic Impacts Generated From OCCC Operations					
Category	Worcester County Impact				
	Historical Five-Year Average	Expanded OCCC (Stabilized Year)		Incremental New (Stabilized Year)	
<b>Spending</b>					
Direct Spending	\$106,155,000	\$134,504,000	- \$144,935,000	\$28,349,000	- \$38,780,000
Indirect/Induced Spending	41,535,000	57,314,000	- 61,764,000	15,779,000	- 20,229,000
Total Spending	\$147,690,000	\$191,818,000	- \$206,699,000	\$44,128,000	- \$59,009,000
<b>Total Jobs</b>	1,650	2,100	- 2,200	450	- 550
<b>Total Earnings</b>	\$49,116,000	\$69,250,000	- \$74,652,000	\$20,134,000	- \$25,536,000
Category	State of Maryland Impact				
	Historical Five-Year Average	Expanded OCCC (Stabilized Year)		Incremental New (Stabilized Year)	
<b>Spending</b>					
Direct Spending	\$112,887,000	\$142,956,000	- \$153,985,000	\$30,069,000	- \$41,098,000
Indirect/Induced Spending	82,556,000	100,257,000	- 107,948,000	17,701,000	- 25,392,000
Total Spending	\$195,443,000	\$243,213,000	- \$261,933,000	\$47,770,000	- \$66,490,000
<b>Total Jobs</b>	1,830	2,300	- 2,500	470	- 670
<b>Total Earnings</b>	\$73,778,000	\$95,081,000	- \$102,361,000	\$21,303,000	- \$28,583,000

### Incremental New Direct Spending

As mentioned previously, the first step in calculating economic impact is estimating the direct spending. The benefits generated at the County and State levels result from the impact of direct spending both by attendees and activities that support events held at an expanded OCCC. The primary types of spending quantified in this analysis include:

- Delegate spending outside the facility including that generated from out-of-town delegates, visitors accompanying delegates and local attendees;
- Sponsoring organization/event producer spending outside the facility;
- Exhibitor spending outside the facility; and
- Budgetary spending for an expanded OCCC.

The spending amounts for each of these categories were based on data provided by several secondary sources including OCCC management as well as other industry resources such as Destination Marketing Association International (DMAI).

#### *Delegate/Visitor Spending Outside the Facility*

Estimated utilization at an expanded OCCC was used to calculate attendee spending. Daily spending factors were assigned to three types of attendees: (1) high-impact attendees who stay overnight (2) high-impact visitors who accompany overnight attendees and (3) low-impact attendees who likely originate from the area. Ocean City's destination characteristics including the beach, family-friendly environment, variety of attractions, overall affordability and proximity to a large population base make it attractive for drawing additional travel party members other than just OCCC attendees. In addition, these same demographic characteristics encourage attendees and their travel parties to extend their stay beyond the length of the event held at the OCCC. Based on previously conducted surveys with event promoters by facility management, attendees at conventions/tradeshows and competitions were assumed to bring additional travel party members and extend their stay in Ocean City, both of which are accounted for in this analysis.

#### *Sponsoring Organization/Event Producer & Exhibitor Spending Outside the Facility*

Sponsoring organizations/event producers have substantial investments in the events that they host. These organizations purchase goods and services from either the OCCC or outside sources. In addition, exhibitors often spend money outside of the facility to entertain existing and potential clients. Items such as exhibit space and equipment rental are typically provided by the facility, which are reflected as revenues for the provider. Since this spending is reflected in the budgetary spending by the OCCC, these amounts are excluded from sponsoring organization/event producer and exhibitor spending to avoid double-counting. For purposes of this analysis and based on data from secondary sources such as DMAI, an average spending amount was applied to attendees at conventions/tradeshows to reflect sponsoring organization/event producer spending and to attendees at conventions/tradeshows/consumer shows to reflect exhibitor spending.

#### *Budgetary Spending for an Expanded OCCC*

Budgetary spending refers to the expenses generated by an expanded OCCC. Regardless of the source or magnitude of the revenues the building generates, this analysis focuses on the operating expenses occurring in the local and State economies. Estimated operating expenses at an expanded OCCC for items such as salaries, wages and labor, other personnel costs, contractual services, materials and supplies, equipment, etc. were compared to the historical five-year average in order to calculate the incremental new budgetary spending.

Estimates were also made regarding the percentage of these expenditures that occurred in the local and State economies. For example, the local electric company typically provides utility services and the town or county provides water/sewer services, etc. In contrast, the percentage of living expenses for employees, which is spent in the area, may be relatively moderate. For instance, after taking into account taxes and savings, amounts which may leak outside of Maryland include home mortgage payments, car loan payments, insurance, travel spending, spending on higher education, mail-order purchases and other significant amounts.

### *Summary of Incremental New Direct Spending Inputs*

Based on this information, the incremental new direct spending related to attendees, sponsoring organizations/event producers, exhibitors and budgetary spending at an expanded OCCC is estimated to range between \$30.1 million to \$41.1 million annually at the State level, of which \$28.3 million to \$38.8 million is estimated to occur in the County. These incremental direct spending estimates were applied to the multipliers previously shown in order to calculate estimates for total spending, total jobs and total earnings.

These direct spending amounts estimated to be generated from operations of an expanded OCCC were applied to the multipliers previously shown in order to calculate estimates for total spending, total jobs and total earnings.

### Incremental New Indirect and Induced Impacts

The IMPLAN model is used to generate the indirect and induced impacts spawned from the estimated economic activities within the County and the State. The indirect impacts represent inter-industry trade from business to business. Likewise, the induced impacts represent the economic activity spurred by the household trade that occurs when employees make consumer purchases with their incomes. According to the IMPLAN model, incremental new indirect and induced spending spurred by ongoing operations of an expanded OCCC is estimated to generate between \$17.7 million and \$25.4 million annually at the State level, of which between \$15.8 million and \$20.2 million is estimated to occur in the County.

### Incremental New Total Spending

Outputs from the IMPLAN model indicate that total (i.e., direct, indirect and induced) incremental new spending from activity at an expanded OCCC is estimated to range from \$47.8 million and \$66.5 million at the State level, of which between \$44.1 million and \$59.0 million is estimated to occur in the County.

### Incremental New Total Jobs

Based on the IMPLAN model, which calculates the number of jobs per \$1.0 million in direct spending, the economic activity associated with the ongoing operations of an expanded OCCC is estimated to generate a total of between 470 and 670 incremental new jobs at the State level, of which 450 to 550 incremental new jobs are estimated to be at the County level. These jobs are created in many sectors of the economy, which both directly and indirectly support the increased level of business activity in the area on an annual basis.

### Incremental New Total Earnings

Outputs from the IMPLAN model indicate that incremental new annual earnings generated from an expanded OCCC are estimated to range from \$21.3 million to \$28.6 million at the State level of which between \$20.1 million and \$25.5 million is estimated to occur in the County.



## Summary of Estimated Annual Incremental New Fiscal Impacts (Tax Revenues)

As shown in the table below, the incremental annual tax revenues related to ongoing operations of an expanded OCCC are estimated to range from \$736,000 to \$1.0 million at the County level and \$2.6 million to \$3.5 million at the State level. Approximately 78% of estimated incremental new tax revenues occur at the State level primarily driven by sales and use tax.

Comparison of Annual Fiscal Impacts Generated From OCCC Operations						
Municipality/Tax	Historical Five-Year Average	Expanded OCCC (Stabilized Year)			Incremental New (Stabilized Year)	
<b>Worcester County</b>						
Hotel/Motel Tax <sup>1</sup>	\$2,012,000	\$2,557,000	-	\$2,775,000	\$545,000	- \$763,000
Local Personal Income Tax	226,000	325,000	-	351,000	99,000	- 125,000
Admissions & Amusement Tax <sup>1</sup>	145,000	207,000	-	223,000	62,000	- 78,000
Food & Beverage Tax <sup>1</sup>	94,000	124,000	-	134,000	30,000	- 40,000
Subtotal	\$2,477,000	\$3,213,000	-	\$3,483,000	\$736,000	- \$1,006,000
<b>State of Maryland</b>						
Sales & Use Tax	\$5,905,000	\$7,431,000	-	\$8,016,000	\$1,526,000	- \$2,111,000
Personal Income Tax	2,643,000	3,537,000	-	3,808,000	894,000	- 1,165,000
Corporate Income Tax	544,000	681,000	-	733,000	137,000	- 189,000
Motor Vehicle Rental Tax	52,000	61,000	-	66,000	9,000	- 14,000
Subtotal	\$9,144,000	\$11,710,000	-	\$12,623,000	\$2,566,000	- \$3,479,000
<b>GRAND TOTAL</b>	<b>\$11,621,000</b>	<b>\$14,923,000</b>	<b>-</b>	<b>\$16,106,000</b>	<b>\$3,302,000</b>	<b>- \$4,485,000</b>

Notes: <sup>1</sup>Tax revenues shown are Worcester County taxes that are distributed to the TOC.

The amount shown above for Food & Beverage tax only includes the tax revenues estimated to be directly generated from operations of the OCCC including budgetary spending on food & beverage at the facility and spending by OCCC attendees outside of the facility.

The incremental new tax revenues estimated to be generated from operations of an expanded OCCC compare favorably to the estimated County and State contributions towards the operating subsidy. However, a more detailed cost/benefit analysis should be completed that includes estimated debt service, a reserve for replacement fund and other related project costs.

The following outlines significant assumptions utilized in this analysis.

### Worcester County Taxes

*Hotel/Motel Tax* – Worcester County imposes a tax on accommodations at a rate of 4.5%. Proceeds from this tax are allotted to the TOC's general fund of which a portion is dedicated to the TOC's tourism advertising efforts. For purposes of this analysis, the tax rate was applied to 100% of the estimated direct hotel spending in the County.

*Local Personal Income Tax* – Worcester County imposes a personal income tax which is assessed against personal income earned in the County. For purposes of this analysis and based on information provided by the Comptroller of Maryland, an effective tax rate of 0.94% was calculated based on the federal adjusted gross income and the total personal income tax paid to the County for CY 2013 (the most recent year for which data was available). This effective tax rate was applied to County-level earnings estimated to be generated by expanded OCCC operations. Because local income tax is based on where you live, not where you work, this analysis assumed that approximately 50% of personal income taxes generated from expanded OCCC operations occur in the County.



*Admissions & Amusements Tax* – The admissions and amusements tax is a local tax collected by the State Comptroller’s Office for local municipalities. The TOC applies this tax to the admission or amusement cost for activities such as amusements, movies, athletic events, concerts, golf and the sale of refreshments at a nightclub or other similar entertainment venue. The tax on admissions differs among local municipalities in Maryland and is 3.0% in the TOC. For purposes of this analysis, the tax rate was applied to the estimated direct spending on entertainment in the County as well as an estimate of admissions revenue generated from consumer shows and competitions based on input from OCCC management.

*Food & Beverage Tax* – A 0.5% local sales tax on food and beverages is imposed in the TOC for the purpose of paying the principal and interest on bonds issued to finance the construction, reconstruction, repair, renovation and equipment of the OCCC. The tax is applicable to the majority of food and beverage sales except those for consumption off premises or vending machine sales. For purposes of this analysis, the tax rate was applied to a portion of County-level direct spending at eating/drinking establishments and estimated gross food and beverage revenues generated at an expanded OCCC.

### State of Maryland Taxes

This analysis estimates the amount of sales and use tax, personal income tax, corporate income tax and motor vehicle rental tax generated from expanded OCCC operations. While other taxes may be positively impacted by expanded OCCC operations, they are not quantified in this analysis.

In general terms, all State tax proceeds are collected in the State’s General Fund and then allocated to a variety of program areas, such as education, transportation, public safety, and others. As such, individual revenue sources, such as the sales and use tax, are not designated to fund specific programs. As a result of this process, municipalities and counties may benefit from a variety of State and locally administered programs. For purposes of this analysis, only collections have been quantified, without regard as to how these funds are ultimately spent through the individual State departments/funds.

The following describes the primary State-level taxes quantified in this analysis based on information obtained from the State Comptroller’s Office.

*Sales & Use Tax* – The State of Maryland collects 6% sales and use tax from sales and leases of tangible personal property and services throughout the State and a 9% tax on alcoholic beverage. For purposes of this analysis, the 6% tax rate is applied to estimated taxable direct and indirect/induced spending at the State level generated from expanded OCCC operations which represents a conservative estimate relative to the sale of alcoholic beverages.

*Personal Income Tax* – The State of Maryland imposes a personal income tax assessed against personal income earned in the State. The State income tax is a graduated rate ranging from 2.0% to 5.75% of taxable income. Non-residents are subject to a special nonresident tax rate of 1.75% in addition to the State income tax rate. For purposes of this analysis and based on information provided by the Comptroller of Maryland, an effective tax rate of 3.72% was calculated based on the federal adjusted gross income and the total personal income tax paid to the State in 2013 (the most recent year for which data was available). This effective tax rate was applied to total State-level earnings estimated to be generated by expanded OCCC operations.

*Corporate Income Tax* – A corporate income tax of 8.25% of corporate federal taxable income adjusted by State modifications is also levied by the State of Maryland on corporations. For purposes of this analysis and based on information provided by the Comptroller of Maryland, an effective tax rate of 0.28% was calculated based on the Gross State Product and the total corporate income tax paid to the State in 2013. This effective tax rate was applied to total State-level spending estimated to be generated by expanded OCCC operations.

*Motor Vehicle Rental Tax* – The State imposes an 11.5% tax on short-term passenger car and recreational vehicle rentals. This tax rate was applied to a portion of direct transportation spending in the State.

## **Overall Summary**

Based on the market and economic assessment, the proposed expansion of the OCCC's exhibit space appears warranted. This additional space would better accommodate existing users and provide events that are currently constrained by the amount and configuration of prime exhibit space an opportunity to grow their event. Expansion would also place the OCCC in a stronger competitive position to increase its market share in the convention/tradeshow and competitive sports industries. As such, the OCCC could attract incremental new events and attendees that would positively impact the area's economy. If the OCCC's exhibit space is not expanded, the community could lose market share to other State/regional competitors.

A market/economic assessment is an initial step in any planning process. Expanding the OCCC will require additional strategic planning efforts. Consequently, the TOC and the MSA proceeded with subsequent phases of the study effort. Becker Morgan Group, Inc. (Becker Morgan) was hired to perform site, parking and architectural planning studies related to the recommended OCCC expansion program. In addition, MSA and JMT jointly provided cost estimating services based on the designs prepared by Becker Morgan. As a point of reference, the total base project cost is estimated to be approximately \$34 million. Appendix A includes the conceptual design documents prepared by Becker Morgan as well as the project cost estimate summary. Collectively, the information provided by the project team is intended to serve as a resource for the TOC and the State in their future planning decisions for this project.

## TABLE OF CONTENTS

---

<b>1.</b>	<b>Introduction and Executive Summary</b>	<b>1</b>
<b>2.</b>	<b>General Market Overview</b>	<b>6</b>
<b>3.</b>	<b>Key Industry Trends</b>	<b>18</b>
<b>4.</b>	<b>Historical OCCC Operations</b>	<b>24</b>
<b>5.</b>	<b>Potential Demand Generators</b>	<b>34</b>
<b>6.</b>	<b>Competitive/Comparable Facility Analysis</b>	<b>45</b>
<b>7.</b>	<b>Financial Analysis</b>	<b>60</b>
<b>8.</b>	<b>Economic and Fiscal Impact Analysis</b>	<b>68</b>
<b>9.</b>	<b>Limiting Conditions and Assumptions</b>	<b>80</b>
<b>A.</b>	<b>Appendix</b>	<b>82</b>
	<b>Conceptual Design Documents</b>	
	<b>Project Cost Estimate Summary</b>	

## LIMITING CONDITIONS AND ASSUMPTIONS

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This analysis is subject to our contractual terms as well as the following limiting conditions and assumptions:

- This analysis has been prepared for the Town of Ocean City (Client) for its internal decision-making purposes associated with the proposed expansion of the OCCC and should not be used for any other purposes without the prior written consent of Crossroads Consulting Services LLC.
- The findings and assumptions contained in the report reflect analysis of primary and secondary sources. We have utilized sources that are deemed to be accurate but cannot guarantee their accuracy. No information provided to us by others was audited or verified and was assumed to be correct.
- Although the analysis includes findings and recommendations, all decisions in connection with the implementation of such findings and recommendations shall be the Client's responsibility.
- Estimates and analysis regarding the proposed expansion of the OCCC are based on trends and assumptions and, therefore, there will usually be differences between the projected and actual results because events and circumstances frequently do not occur as expected, and those differences may be material.
- This analysis does not constitute an audit, a projection of financial performance, or an opinion of value or appraisal in accordance with generally accepted audit standards. As such, we do not express an opinion or any other form of assurance. Any estimates or ranges of value were prepared to illustrate current and potential future market conditions.
- Although this analysis utilizes various mathematical calculations, the final estimates are subjective and may be influenced by our experience and other factors not specifically set forth in this report.
- We have no obligation, unless subsequently engaged, to update this report or revise this analysis as presented due to events or circumstances occurring after the date of this report.
- The quality of ownership and management of an expanded OCCC has a direct impact on its economic performance. This analysis assumes responsible and competent ownership and management. Any departure from this assumption may have a significant impact on the findings in this report.
- Current and anticipated market conditions are influenced by a large number of external factors. We have not knowingly withheld any pertinent facts, but we do not guarantee that we have knowledge of all factors which might influence the operating potential of the proposed expansion of the OCCC. Due to quick changes in the external factors, the actual results may vary significantly from estimates presented in this report.
- The analysis performed was limited in nature and, as such, Crossroads Consulting Services LLC does not express an opinion or any other form of assurance on the information presented in this report. As with all estimates of this type, we cannot guarantee the results nor is any warranty intended that they can be achieved.
- The analysis is intended to be read and used in whole and not in part. Separation of any section or page from the main body of the report is expressly forbidden and invalidates the analysis.
- In accordance with the terms of our engagement letter, the accompanying report is restricted to internal use by the Client and may not be relied upon by any third party for any purpose including any matter pertaining to financing.
- Possession of the report does not carry with it the right of publication. It should be used for its intended purpose only and by the parties to whom it is addressed.

## TABLE OF CONTENTS

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<b>1.</b>	<b>Introduction and Executive Summary</b>	<b>1</b>
<b>2.</b>	<b>General Market Overview</b>	<b>6</b>
<b>3.</b>	<b>Key Industry Trends</b>	<b>18</b>
<b>4.</b>	<b>Historical OCCC Operations</b>	<b>24</b>
<b>5.</b>	<b>Potential Demand Generators</b>	<b>34</b>
<b>6.</b>	<b>Competitive/Comparable Facility Analysis</b>	<b>45</b>
<b>7.</b>	<b>Financial Analysis</b>	<b>60</b>
<b>8.</b>	<b>Economic and Fiscal Impact Analysis</b>	<b>68</b>
<b>9.</b>	<b>Limiting Conditions and Assumptions</b>	<b>80</b>
<b>A.</b>	<b>Appendix</b>	<b>82</b>
	– Conceptual Design Documents	
	– Project Cost Estimate Summary	

6001 COASTAL HIGHWAY  
OCEAN CITY  
WORCESTER COUNTY, MD

### PHASE 3 SITE IMPROVEMENTS

PROJECT NO.	200910020
DATE	9/13/16
SCALE	1" = 50'
DRAWN BY	JAM
PROJ. MOD.	JAM

## CONCEPT 1

0000

COASTAL HIGHWAY



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## Ocean City Convention Center Phase 3

### Conceptual Design – Civil Engineering Narrative

2009100.21  
11.22.2016

#### Introduction

The Ocean City Convention Center Phase 3 Additions and Renovations project will add exhibit hall space to the building and other additions to support the new functions which will impact the existing site layout. Changes to the site will be required as a result. Parking, drive aisles, sidewalks, and roads will need to be relocated. The scale of the project disturbance will require storm water management to be installed. Compliance with Maryland's Critical Area's Law will need to be achieved through landscaping. Erosion and sediment control practices will need to be employed during construction. The Sunset room located at the end of 42<sup>nd</sup> Street will be demolished and new wetlands will be created. The following paragraphs provide details about the scope of site work required for the project.

#### Site Parking

The main exhibit hall addition on the north side of the building will remove a significant amount of parking. It is the Town's desire to replace that parking elsewhere on site so there is no net loss of parking for the convention center. Parking along 42nd street will also be lost. Two areas of the site were identified for re-arranging the site parking to provide a more efficient parking layout.

The first location is the front drop-off loop. Town officials have stated that the loop is underutilized. Examination reveals that it takes up a significant amount of land area in front of the main doors. We believed that it was important to keep the loop, but since there is not a large amount of traffic utilizing it, the loop could be decreased in size. The eastern side of the loop traveling northbound was eliminated. Access to the western side of the loop adjacent to the front doors was created from the existing main north-south circulation aisle in the parking lot. The width of the loop was maintained so that buses could still pull up and there would be room to bypass stopped vehicles. The loop now exits directly to Convention Center Drive. The exit lane will require the relocation of the ATM. Traffic can enter back into the main parking lot from Convention Center Drive. A new parking area was created in the space vacated by the portion of the loop removed. Handicap parking spaces were relocated to be closer to the front entrance. The previous layout was inefficient as each handicap parking space had its own access aisle, rather than sharing an access aisle as is industry standard. This parking area can be paved with a light duty asphalt paving section, most likely 6"-8" of GABC under 3" of paving. The parking areas will be surrounded by raised curb islands. The reconfigured sections of the loop would be paved with a heavy duty asphalt paving section. Assume 9" of GABC under 4" of asphalt paving.

Future parking is shown on the water tower parcel. At some future date this site may be available to provide additional Convention Center parking. This parking would be standard light duty asphalt paving.





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### **Loading Dock Renovations**

The loading dock will move outward to accommodate interior renovations. This will require the demolition of the two separate two-way roadways in front of the existing loading dock. A new two-way road will be constructed. New parking bays for the docks will be constructed. New 90 degree parking will be provided on the east side of the road adjacent to the senior center to add more parking for the convention center and senior center. The truck parking spaces will likely be 8" concrete paving over 9"-10" of GABC reinforced with WWF. The new roadway will be heavy duty asphalt paving. The parking spaces will be light duty asphalt paving. The egress from the new exhibit space will be adjacent to the loading docks. A wide concrete sidewalk will be required to provide egress to the street. Stairs and ramps will not be required, but a retaining wall between the sidewalk and the truck ramp will be required as the sidewalk will be 4 feet higher than the dock at the building.

### **42<sup>nd</sup> Street Plaza**

The right of way for 42<sup>nd</sup> street north of the proposed expansion will be used for a plaza. This will permit several functions. First, the existing street is several feet lower than the finished floor elevation of the building. The grade will be raised to allow for ingress and egress. The raised plaza will also be used for emergency vehicle access. The additional height will allow for stormwater management under the plaza. It is planned to construct this section similar to the plaza on the west side of the convention center that was constructed during phase 1. Since 42<sup>nd</sup> street does not currently have sheet piling, new sheet piling will be driven along the edge of the sidewalk in uplands to allow the height needed. The pavement will be removed and AASHTO #3 stone will be added as a stormwater runoff storage layer. This will provide water quality treatment and infiltration meeting State of Maryland stormwater regulations. The surface will consist of permeable (pervious) pavers set on a leveling course of #57 stone and #8 chip stone which will allow stormwater runoff to infiltrate. Lighting and benches matching the rest of the plaza areas on site will be provided.

### **Boardwalk/West Side**

In order to bring construction equipment and materials around to the west side (rear) of the site, the existing boardwalk will have to be removed. The boardwalk is currently constructed over top of the rip-rap revetment and supported by mortar and stone. It is doubtful it will support the weight of construction equipment so it will need to be removed and replaced. Uplands between the boardwalk and the building addition on the west side will be planted with trees and other plantings to meet State of Maryland Critical Areas laws. The upper portion of the paver plaza on the west side of the building will be reconstructed. It will most likely be removed to facilitate the building addition and will need to be replaced.

### **Sunset Room Demolition**

The Sunset room is a building built over the water and wetlands on pilings. The room is in disrepair and rather than repair it, the decision has been made to demolish it and restore the shoreline. The building along with associated sidewalks, stairs, pavement, utilities, etc. will be removed. Wetlands restoration will be performed restoring the land to a natural condition. Restoration will include re-grading, planting, and other activities to mitigate for the disturbance.

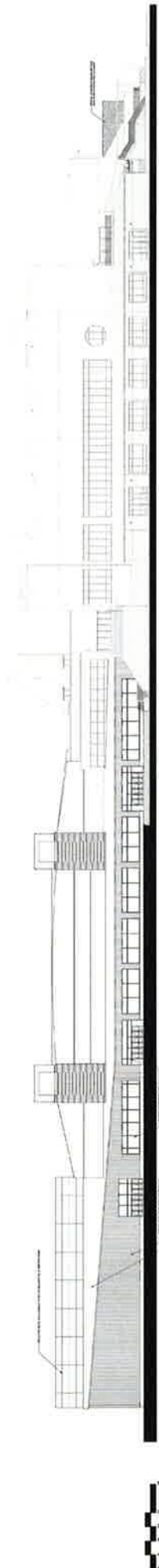




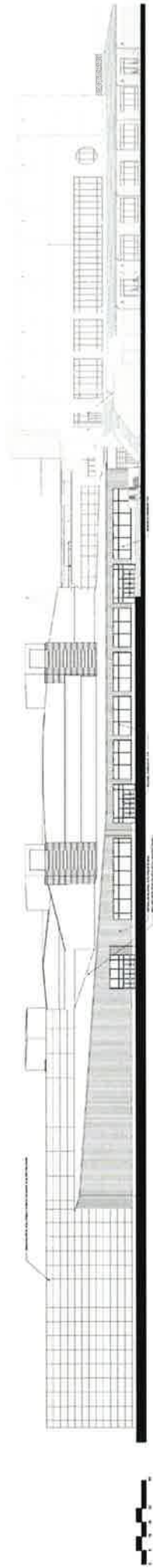
ARCHITECTURE  
ENGINEERING

### **Utility Services**

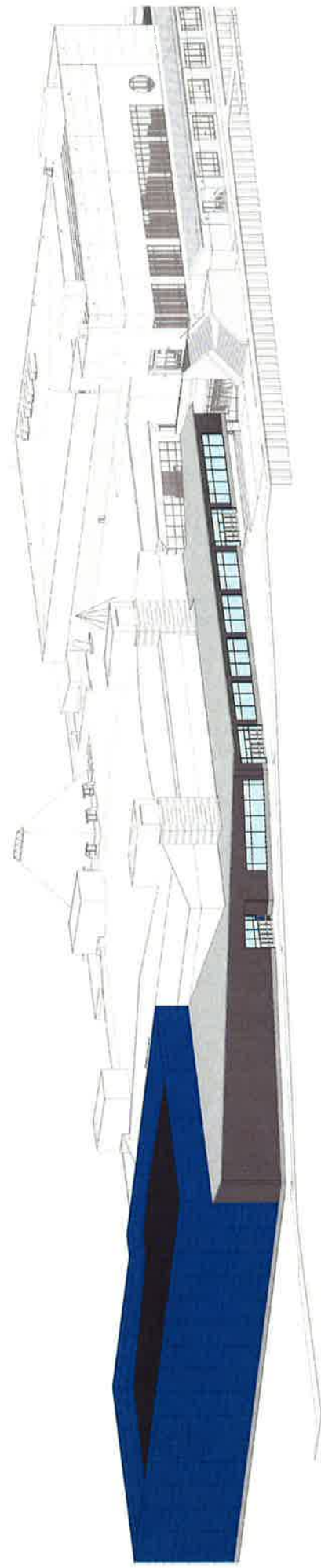
New water and sewer services will be required for the building addition. It is assumed at this time that sufficient depth for gravity sewer exists in the sewer lines in Coastal Highway. A new sewer main will be extended up 42<sup>nd</sup> street to serve the new addition. Likewise, a new water main will also be extended up the street. New natural gas lines are being brought to the Town of Ocean City (currently only propane is available) and are assumed to be ready for service for this project. Gas mains will need to be extended to the building. Storm drains will be designed as necessary to collect stormwater runoff and discharge to the bay. Some existing lines will require re-work at the loading dock and in the parking areas. Roof leaders will be taken underground whenever possible, or discharged on grade where it is necessary to infiltrate runoff for storm water quality treatment.



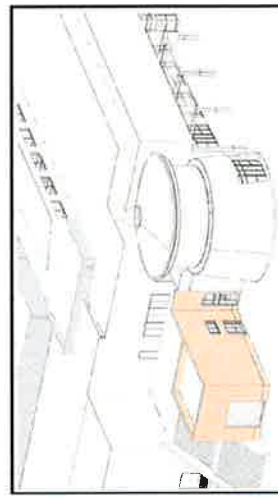
WEST ELEVATION



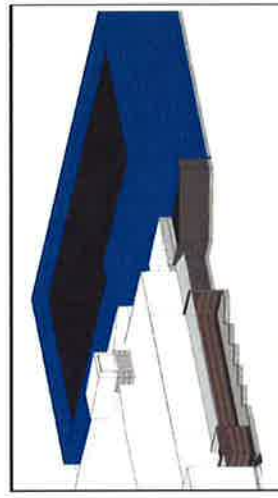
NORTHWEST ELEVATION



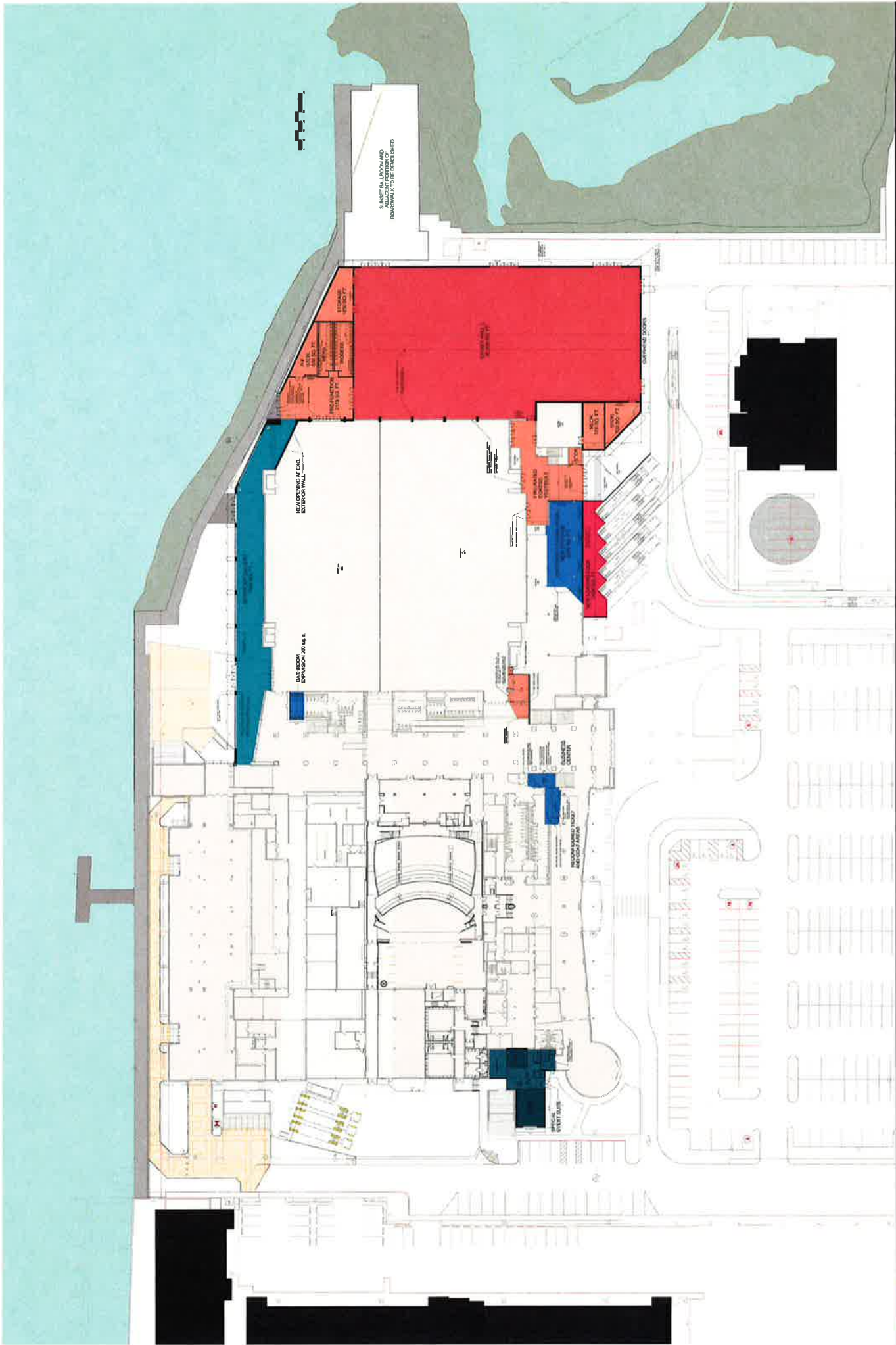
NORTH AND WEST EXHIBIT & GALLERY EXPANSIONS



SPECIAL EVENTS EXPANSION



LOADING DOCK EXPANSION

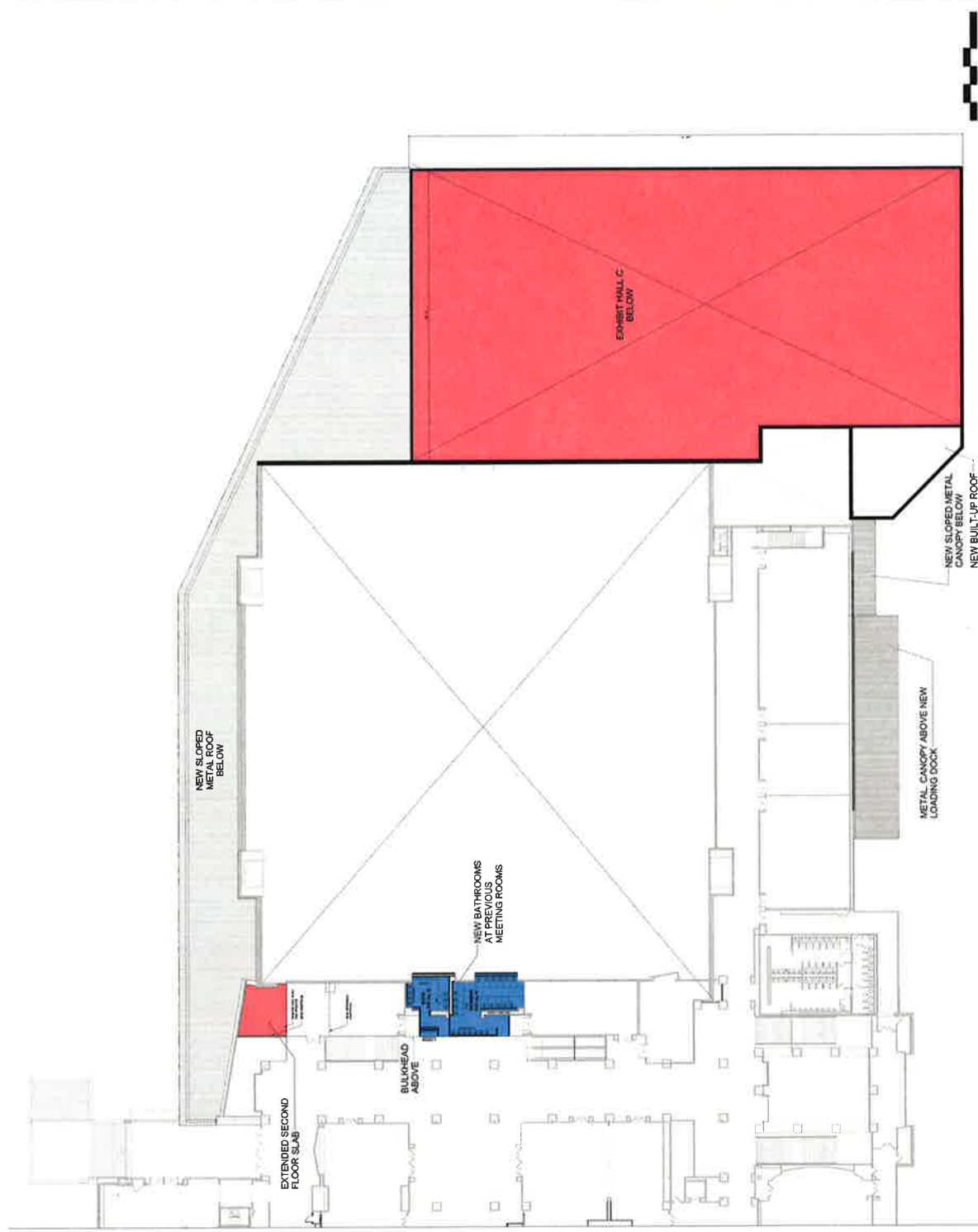


OCEAN CITY CONVENTION CENTER - PHASE 3 CONCEPTUAL - OVERALL FIRST FLOOR PLAN

09/12/16

BECKER  
ARCHITECTS

09/12/16



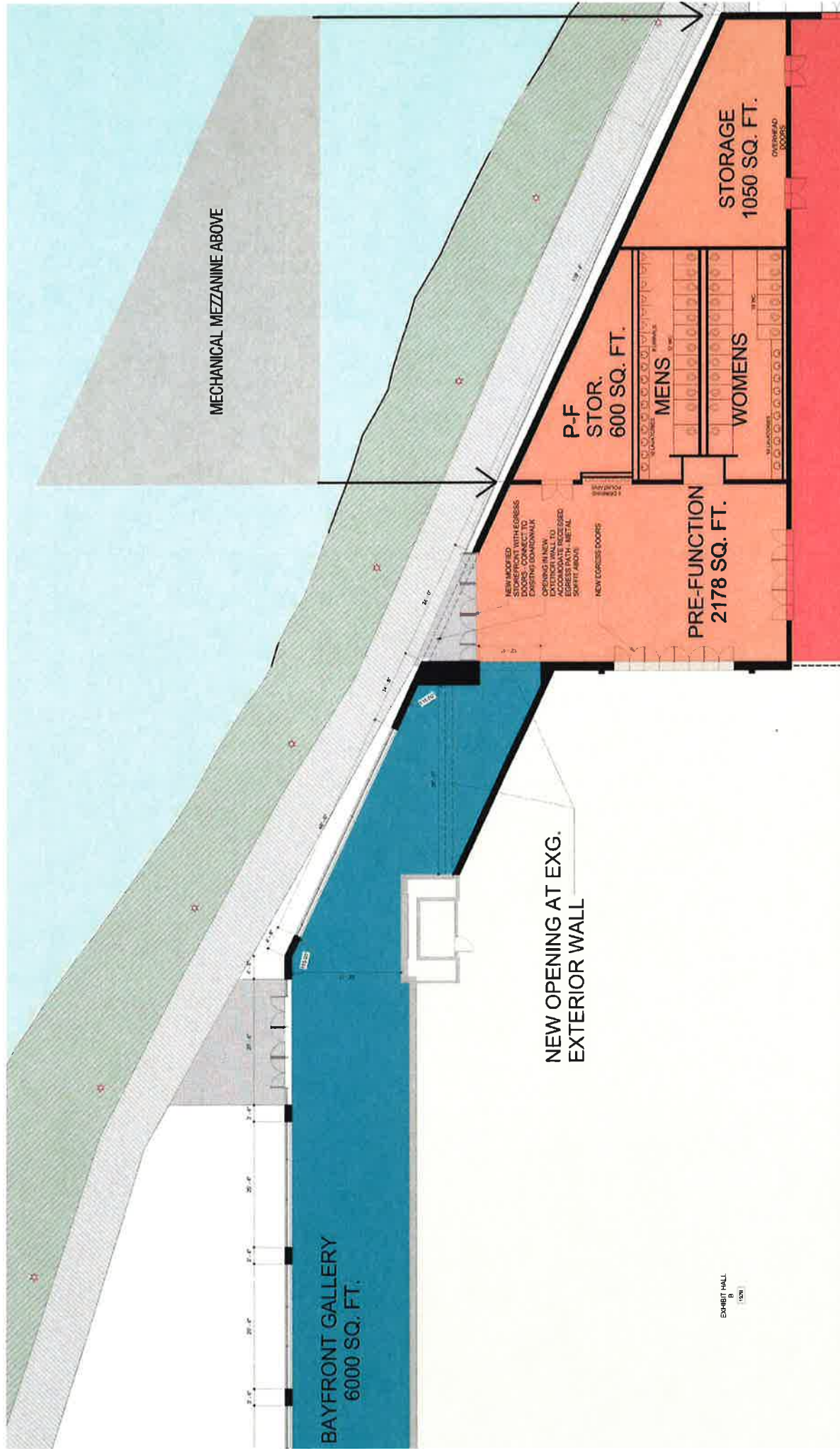
# OCEAN CITY CONVENTION CENTER - PHASE 3 CONCEPTUAL - OVERALL PLAN SECOND FLOOR

2009.100.20  
09.12.16





**BATHROOM  
EXPANSION 300 sq. ft.**



NEW OPENING AT EXG.  
EXTERIOR WALL

EXHIBIT HALL  
B  
1008

**OCEAN CITY CONVENTION CENTER - PHASE 3 CONCEPTUAL \_ ENLARGED PLAN PREFUNCTION**  
2009.100.20  
09.12.16

**BECKER  
MORGAN**  
ARCHITECTURE  
ENGINEERING



EXHIBIT HALL C  
30,000 SQ. FT.

OPERABLE PARTITION IN NEW OPENING  
TO UNDERSIDE OF EXG. CONCRETE  
BEAM - TYP. AT 5 LOCATION

NEW EGRESS DOORS AT  
DEMOLISHED OVERHEAD DOOR

NEW EGRESS DOORS AT  
DEMOLISHED DRESSING ROOMS  
RELOCATED PREP. SINK

NEW FIRE-  
RATED  
OVERHEAD  
DOOR

ELECTRICAL  
[18]

FIRE-RATED  
EGRESS  
VESTIBULE

ENCLOSED LOADING DOCK -  
NEW STORAGE  
2250 SQ. FT.

CENTRAL  
PLANT  
[13]

NEW PARTITION  
AND DOOR  
NEW EGRESS  
DOORS

STOR.

MECH.  
700 SQ. FT.

STOR.  
700 SQ. FT.

OVERHEAD  
DOORS

NEW LOADING DOCK  
1600 SQ. FT.

NEW MASONRY WALL TO  
MATCH ADJACENT AT  
ENCLOSED LOADING DOCK

WB-62  
AASHTO 2011 (US)

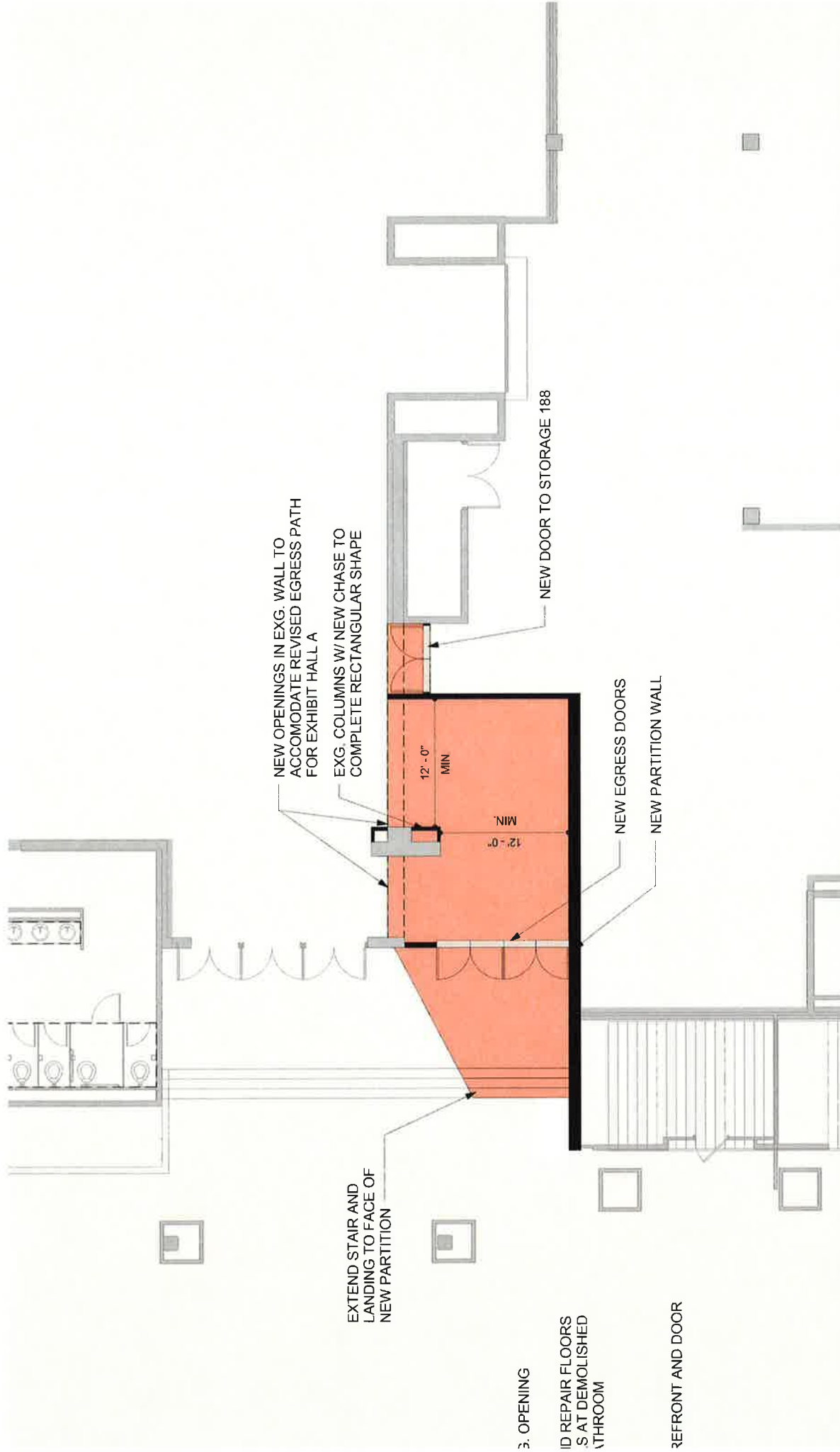
WB-62  
AASHTO 2011 (US)

WB-62  
AASHTO 2011 (US)

WB-62  
AASHTO 2011 (US)

OVERHEAD DOORS

OCEAN CITY CONVENTION CENTER - PHASE 3 CONCEPTUAL - ENLARGED PLAN LOADING DOCK AND EAST EGRESS VESTIBULE  
09.12.16

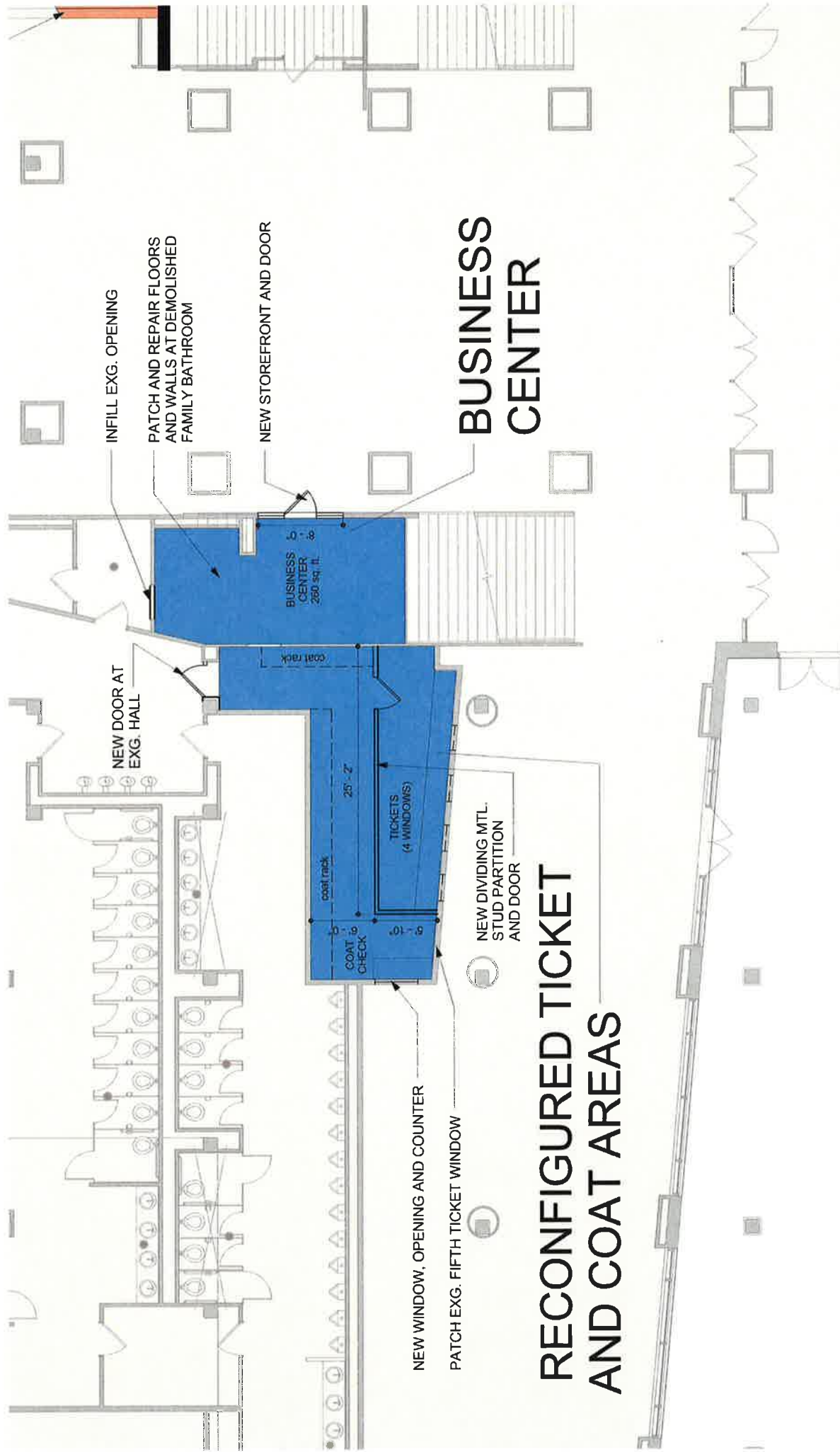


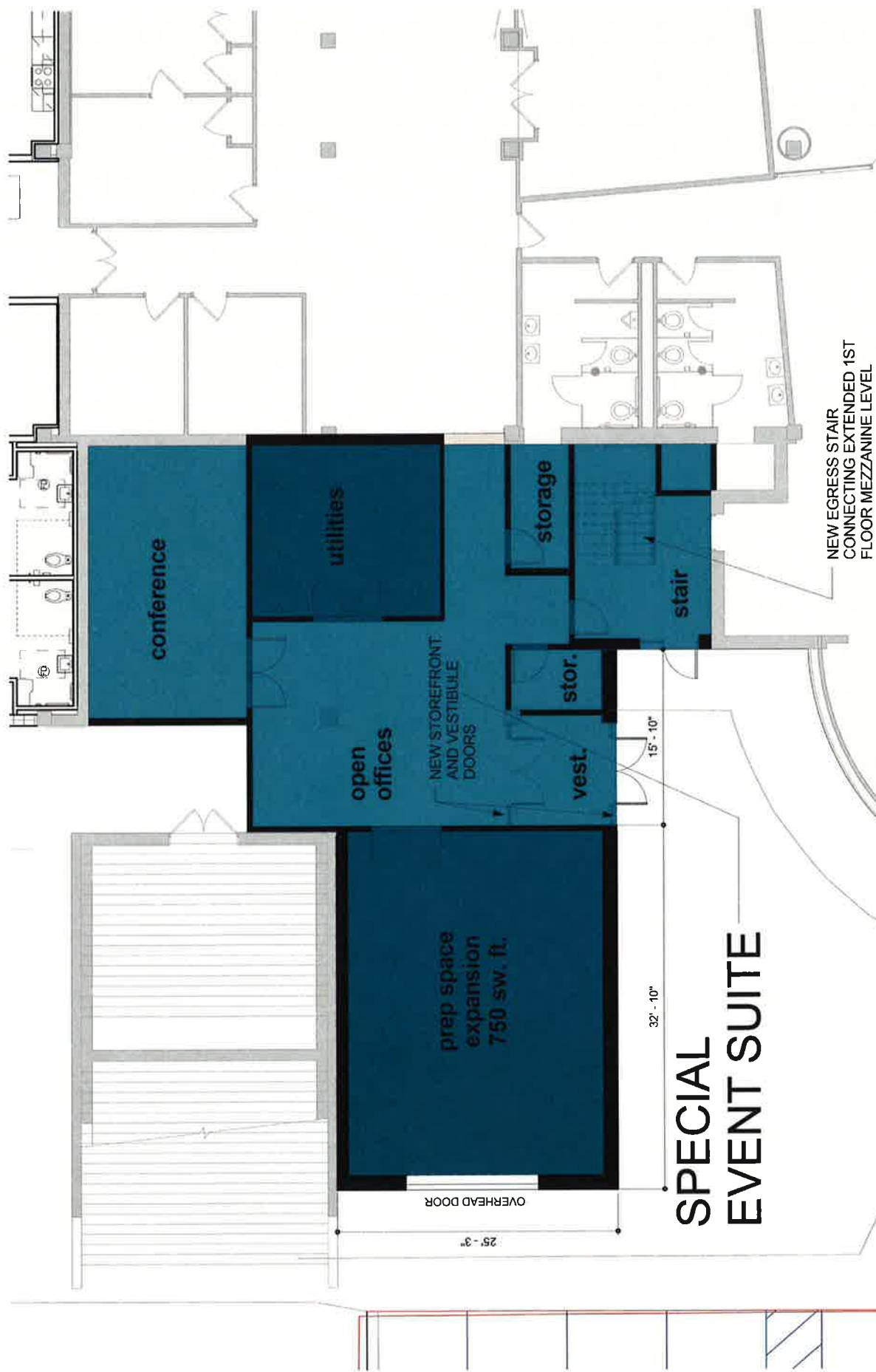
3. OPENING

ID REPAIR FLOORS  
S AT DEMOLISHED  
ATHROOM

REFRONT AND DOOR



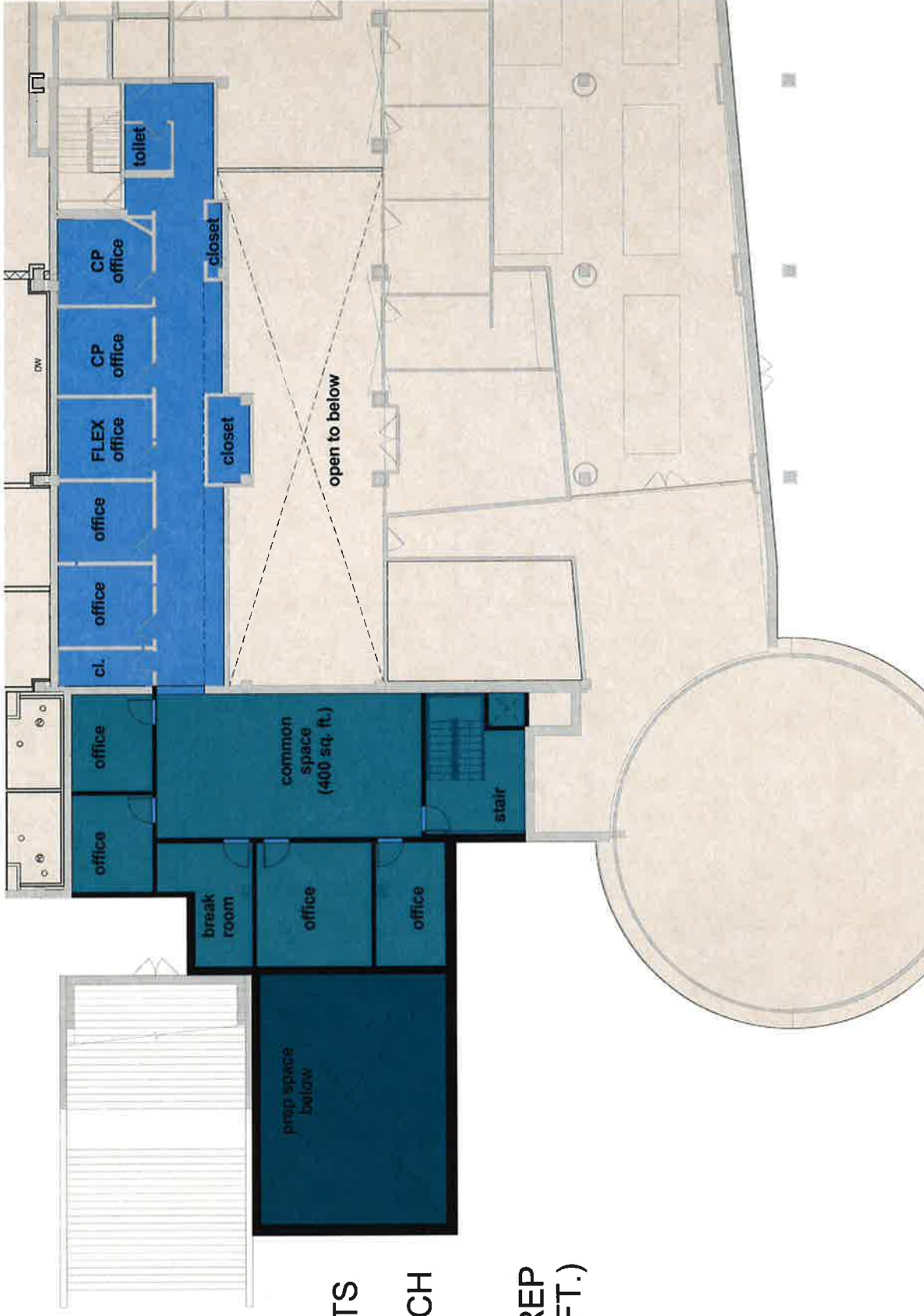




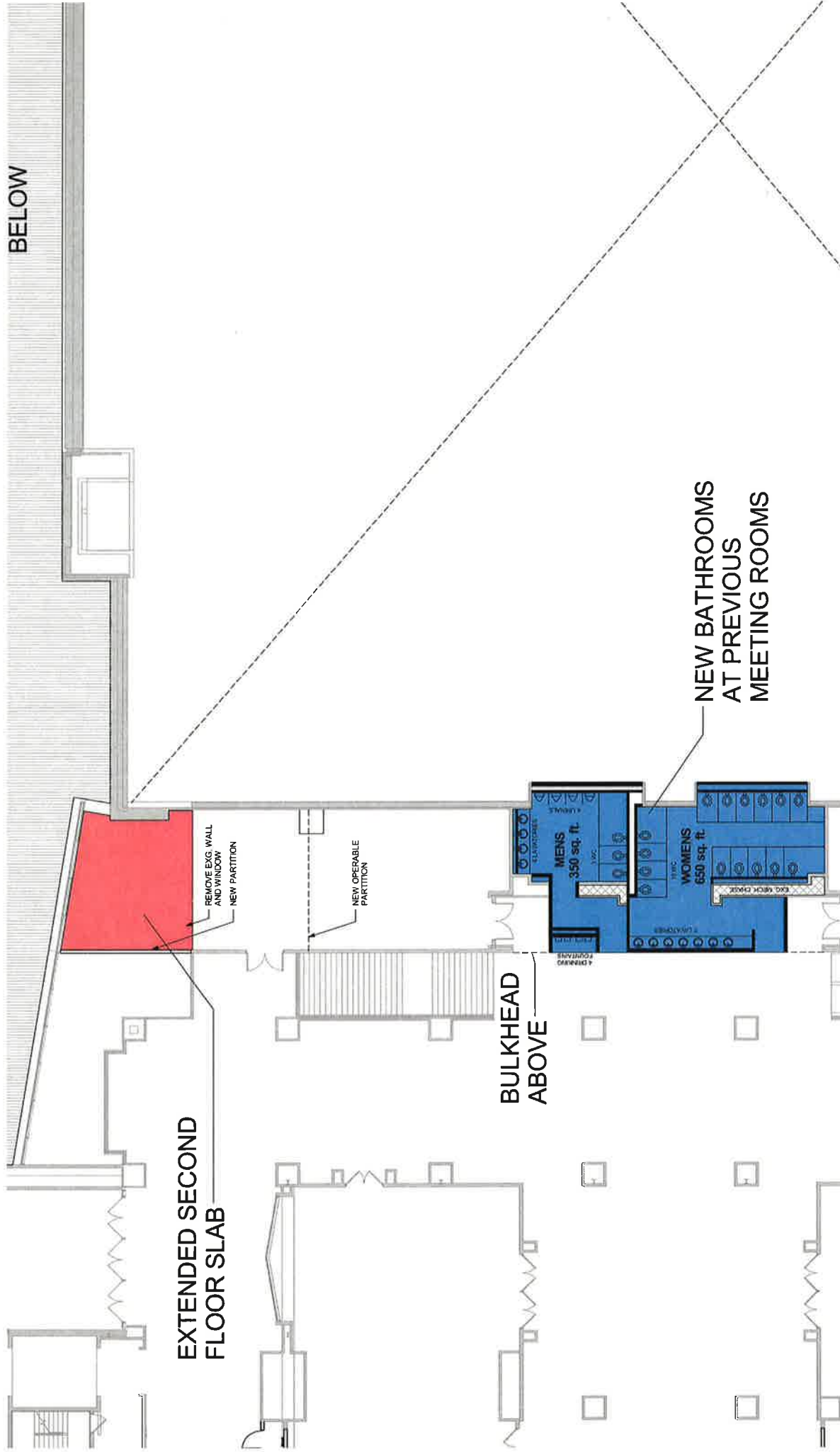
# SPECIAL EVENT SUITE

OCEAN CITY CONVENTION CENTER - PHASE 3 CONCEPTUAL - ENLARGED FIRST FLOOR SPECIAL EVENTS PLAN

2009100.20  
09.12.16



**SPECIAL EVENTS  
ADDITION  
1700 SQ. FT. EACH  
FLOOR  
  
(ADDITIONAL PREP  
SPACE 725 SQ. FT.)**



OCEAN CITY CONVENTION CENTER - PHASE 3 CONCEPTUAL - ENLARGED PLAN SECOND FLOOR

2009100.20

09.12.16



**NARRATIVE OF PROPOSED STRUCTURAL SYSTEMS  
OCEAN CITY CONVENTION CENTER PHASE 3  
WORCESTER COUNTY, MD  
MC JOB No. 16289**

Prepared by  
Morabito Consultants, Inc.  
26 August 2016

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## **Introduction**

Morabito Consultants is collaborating with Becker Morgan Group in the design of a new 30,000 sq. ft. Exhibit Hall and associated support spaces to the Ocean City Convention Center in Ocean City, MD. The project includes the proposed Exhibit Hall at the north end of the site abutting 42<sup>nd</sup> Street, a new Bayfront Gallery (6,000 sq. ft.) along the west side of the site leading to the west entrance to the Exhibit Hall, associated support spaces (lobby, storage, restrooms) at the northwest corner, and a loading dock expansion at the east elevation. Interior renovations including a new Meeting Room and restrooms, reconfigured Ticket and Coat Areas, and an expanded Special Events Addition are also proposed.

Structural systems and materials for the proposed renovations are described in this Conceptual Design Structural Narrative. This narrative is based on the conceptual Architectural Drawings dated 08/24/16 as prepared by Becker Morgan Group and on meeting / discussions with the Project Team.

## **Basis of Design**

Design Loads (2015 International Building Code)

### **Floor Live**

Exhibit Hall	100 psf
Corridors/Lobbies	100 psf
Public Areas	100 psf
Stair	100 psf
Mechanical Room	125 psf
Stage	150 psf

Roof Live 20 psf

Wind Load 130 mph, exposure D

NARRATIVE OF PROPOSED STRUCTURAL SYSTEMS

**Re: Ocean City Convention Center Phase 3**

**MC Job No. 16289**

Page 2

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Snow	Ground Snow Load	$P_g = 20 \text{ psf}$
	Flat Roof Snow Load	$P_f = 22 \text{ psf}$
	Snow Load importance Factor	$I_s = 1.1$
	Thermal Factor	$C_t = 1.0$
Seismic	Site Class D (Assumed)	
	(Final Site Class to be determined by Geotechnical Engineer)	
Use Group	A-1, Assembly	
Construction Type		
Classifications	Type IB	
Deflection Limitations	(Floors/Roofs and Exterior Walls)	
	Live Load Deflection:	$L/480$
	Total Deflection:	$L/240$
	Exterior Walls:	$L/240$

**Outline Specification**

Concrete	3000 psi	(footings)
	3500 psi	(exterior sidewalks)
	4000 psi	(framed slabs)

All concrete exposed to the weather shall have  $5\% \pm 1\%$  entrained air

All concrete shall be normal weight concrete with a maximum weight of 145 pounds per cubic foot maximum density except concrete poured on metal deck shall be light weight with a maximum density of 117 pounds per cubic foot.

Structural		
Steel	ASTM A992 (Grade 50)	
Concrete	Reinforcing bars shall conform to ASTM A 615, Grade 60	
Reinforcing	Welded wire fabric shall conform to ASTM A 185, Grade 65	



- A. FOUNDATION SYSTEM:** The foundation system for this 1 and 2 story structure shall consist of conventional spread footings proportioned for a safe allowable bearing pressure of 2000 psf or a deep foundation system (piles). Final foundation system to be determined by the Geotechnical Engineer. Footings shall be placed 2'- 6" minimum below finish grade around the entire building perimeter. Foundation walls shall be 12" block masonry walls (16" at all exterior walls above 17'-0" tall) and reinforced as required to resist all code required wind and seismic loading.
- B. FIRST FLOOR FRAMING SYSTEM:** The lower level floor of this building structure shall consist of a 5" concrete slab on grade reinforced with 6" x 6"- W2.9 / W2.9 welded wire fabric poured over a vapor barrier over 4" of porous gravel fill. Tongue in groove 24 gauge metal screeds shall be installed at all column centerlines to act as construction and control joints for this facility. In addition, 1-1/4" deep saw cut control joints shall be installed at 15'- 0" o/c maximum between all tongue in groove joints within 8 hours of pouring the structural slabs.
- C. SECOND FLOOR (MEZZANINE) FRAMING SYSTEM:** The second floor (mezzanine) at the Meeting Room and Special Events suite shall consist of 3.5" lightweight concrete slab ( $f'_c = 4000$  psi) reinforced with 6" x 6"- W5.5 / W5.5 welded wire fabric poured over 2" x 20 gage galvanized composite metal deck, resulting in a total slab thickness of 5.5". This composite slab shall be supported by composite steel beams which shall be spaced at ~ 9'- 0" o/c, and supported by composite steel wide flange girders and steel tube columns at the exterior and interior of the building all fabricated from ASTM A992, Grade 50 and ASTM A500, Grade B –  $F_y = 46$  ksi steel respectively.
- D. LOW SLOPE ROOF FRAMING SYSTEM:** The low-slope roofs at the Bayfront Gallery of this building shall consists of 1 1/2" X 22 gauge type "B" galvanized metal roof deck which shall span 6'-0" o/c maximum between steel bar joists that are supported at the exterior and interior of the building by wide flange steel beams (ASTM A992, Grade 50) and steel tube columns (ASTM A500, Grade B –  $F_y = 46$  ksi). These joists shall bear on wide flange beams (ASTM A992, Grade 50) and steel tube columns (ASTM A500, Grade B –  $F_y = 46$  ksi).
- E. HIGH FLAT ROOF FRAMING SYSTEM:** The high flat roofs over the Exhibit Hall will be framed with 1 1/2" x 22 gauge type "B" galvanized acoustical metal roof deck over long span steel bar joist at 6'- 0" o/c. These joists shall bear on wide flange beams (ASTM A992, Grade 50) and steel tube columns (ASTM A500, Grade B –  $F_y = 46$  ksi).
- F. EXTERIOR WALL CONSTRUCTION:** The exterior walls of this building shall consist of 12" CMU at the loading dock expansion. At the Exhibit Hall, the exterior walls shall be insulated metal panels over 12" CMU back-up. The masonry walls shall be reinforced to resist all wind and seismic loads. At the Bayfront Gallery, the exterior walls shall be metal panel over light gauge metal studs. At the Special Events expansion, the exterior walls shall be EIFS over light gauge metal studs.

NARRATIVE OF PROPOSED STRUCTURAL SYSTEMS

***Re: Ocean City Convention Center Phase 3***

***MC Job No. 16289***

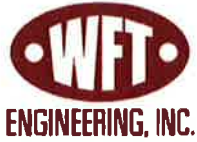
Page 4

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- G. LATERAL FORCE RESISTING SYSTEM:** The lateral force resisting system for this project shall consist of exterior masonry block shear walls at the perimeter of the Exhibit Hall. The masonry shear walls shall be reinforced with vertical rebar, filled with 3000 psi grout, and anchored to the building's foundation system. In addition to the masonry shear walls, moment frames will be utilized as necessary to stabilize the building.

16289/OCCCPhase 3StructuralNarrative\_160825.docx





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**CONCEPTUAL NARRATIVE OF PROPOSED BUILDING SYSTEMS  
MECHANICAL, ELECTRICAL, PLUMBING, FIRE PROTECTION, AND FIRE ALARM**

**Ocean City Convention Center Phase III Expansion  
Worcester County, MD  
September 5, 2016**





## **MECHANICAL, ELECTRICAL, PLUMBING / FIRE PROTECTION SYSTEMS OVERVIEW**

### **A. Introduction**

1. This narrative is based on the conceptual architectural drawings prepared by Becker Morgan Architects, base facility knowledge, discussions with the Project Team, and a brief review of existing facility drawings. The intent of this narrative is to provide a general description of proposed mechanical, electrical, plumbing, fire protection and fire alarm systems for Phase III of the Renovation and Additions to the Ocean City Convention Center (OCCC) for review and preliminary pricing.
2. It shall be understood that the proposed MEP / FP system designs will evolve pending documentation and verification of existing conditions, input and review by the design team and project stakeholders and evolution of the architectural, structural and civil engineering packages.

### **B. General Description**

1. The main feature of the OCCC Phase III renovation is a new 30,000 SF addition (Exhibit Hall C). Additionally a 6,000 SF bay front gallery addition, new toilet facilities, a pre-function space, loading dock expansion and support areas all at the North end of the site.
2. Additional renovation activities are proposed for scattered areas about the existing facility. A bathroom expansion, reconfigured ticket and coat check areas, a special event suite, business center addition, and egress modifications reflect the balance of work considered.

### **C. Design Statement**

1. All new systems will have the following characteristics:
  - Sustainability
  - Integrated Design
  - Occupant and building safety
  - Flexibility for future changes
  - Durability
  - Ease of Maintenance
  - Reliability



## **MECHANICAL**

### **CODES:**

- A. Building codes (latest editions) followed shall be:
- International Mechanical Code (IMC)
  - International Building Code (IBC)
  - National Electrical Code (NEC)
  - International Energy Conservation Code (IECC)
  - Installation of Air Conditioning and Ventilating Systems (NFPA 90A)

### **Existing Systems Overview:**

- A. The existing Ocean City Convention Center HVAC systems are served by a central chilled water plant located at the north end of the building near Exhibit Hall-A. A central hydronic heating water plant is located off the first floor corridor west of the new performance theater. Chilled water to existing air handling units is supplied at 44°F by two 700 Ton centrifugal chillers located in the central chilled water plant, and heating water is supply at 100°F - 110°F by two existing water source heat pump chillers located in the central heating water plant. Existing air systems are a combination of constant volume air handling units and Variable Air Volume (VAV) air handling units with series VAV terminals with electric reheat. Electric unit heaters serve miscellaneous service spaces.
- B. Existing controls are Johnson Controls Metasys with N2 Bus Network. All new DDC controls will be specified for compatibility with the existing Johnson Controls Metasys / N2 System.

### **New Systems Overview:**

- A. Per direction from the Architect cooling for the expansion areas, including new Exhibit Hall C, will be provided by the existing chilled water plant. WFT recommends a study be performed to analyze existing chilled water capacity.
- B. The heating source for new expansion space has not been determined. The existing water source heat pump chillers are unlikely to have sufficient capacity to serve the new expansion spaces. WFT recommends a study be performed to analyze existing hydronic heating water capacity and options for new heating water capacity.
- C. Due to the addition of a storage space where the two 700 Ton cooling towers are currently located, the two existing 700 Ton cooling towers will require relocation or replacement. Age and condition of the two existing cooling towers has not been determined. WFT recommends relocation or replacement in-kind to the new storage space roof directly above the current location.
- D. Proposed new systems and system modifications are described below and are broken down by area served.



- New Exhibit Hall C  
New Exhibit Hall-C will be served by two to four new Rooftop Air Handling units. Current energy codes will require Variable Air Volume (VAV), energy recovery and CO2 based demand control ventilation. Single-zone, VAV rooftop air handling units with energy recovery wheels should be considered. If chilled water capacity is an issue, air cooled rooftop units should be considered. Displacement Ventilation systems with under-slab air distribution and overhead return air are also commonly provided to meet current energy codes and reduce energy. Heating source is TBD.
- New Exhibit Hall C (Pre-Function, Restrooms and Storage)  
The new Pre-Function, Restrooms and Storage spaces located west of new Exhibit Hall C will be served by a new air handling unit. Options include air-cooled rooftop unit or chilled water indoor air handling unit. Heating source is TBD.
- New Exhibit Hall C (Storage)  
The new Exhibit Hall C Storage space located southeast of new Exhibit Hall C will require a unit heater only unless otherwise directed to provide cooling or humidity control. Heating source is TBD.
- New Bay front Gallery  
The new Bay front Gallery space located west of existing Exhibit Hall B will be served by a new air handling unit. Options include air-cooled rooftop unit or chilled water indoor air handling unit. Heating source is TBD.
- Fire Rated Egress Vestibule  
The area southeast of new Exhibit Hall C, including the new fire rated egress vestibule space will require modification of the existing VAV system served by existing AHU-D.
- New Enclosed Loading Dock / Storage  
The new Enclosed Loading Dock / Storage area will require heating and ventilation only unless otherwise directed to provide cooling or humidity control. Heating source is TBD. The Dock Security space will most likely require a small split-system heat pump.
- New 2nd floor Meeting Room  
The new 2nd floor Meeting Room located southwest of existing Exhibit Hall B will be served by a new air handling unit. Options include air-cooled rooftop unit or chilled water air handling unit. Heating source is TBD.
- New 2nd floor Bathrooms  
The new 2nd floor Bathrooms located south of Exhibit Hall B will require modification of the existing VAV system served by existing AHU-D and will require the addition of a new exhaust system.



- 1st floor Bathroom Expansion  
The first floor Bathroom expansion located south of Exhibit Hall B will require modification of the existing exhaust system served by exhaust fan EF-6 and will require modification of the existing VAV system served by existing AHU-B.
- Reconfigured Ticket Area and Business Center  
The reconfigured Ticket Area and Business Center will require modification of the existing VAV systems served by existing AHU-A and AHU-B. The existing exhaust system serving the exiting toilets will also require modification.
- Special Events Addition  
The new Special Events Addition located on southeast corner of the building should be served by a new air handling unit. Options include air-cooled rooftop unit or chilled water air handling unit. Heating source is TBD.
- 1st Floor Mezzanine offices  
The existing 1st Floor Mezzanine offices have limited slab to slab clearance. Modification of the existing system or a new split-system may be required to serve this area.



## **ELECTRICAL**

### **CODES:**

- A. Building codes (latest editions) followed shall be:
- Americans with Disability Act (ADA)
  - Applicable local codes and ordinances
  - International Building Code (IBC)
  - National Electrical Code (NEC)
  - International Fire Code (IFC)
  - Occupational Safety and Health Act (OSHA)
  - Other State code(s)

### **Existing Distribution System Overview:**

- A. The Delmarva Power Company provides underground service to this facility through three metered locations, utilizing four pad-mount transformers. Two (2) 2000 KVA, 7.2 KV primary / 480/277 V, 3Ø, 4W secondary both located on the Northeast end of this site. Additionally two (2) 750 KVA, 7.2 KV primary / 208/120 V, 3Ø, 4W secondary transformers are located on the bay side just west of the phase one addition. The latter service is a more recent upgrade and employs a utility owned and operated pad mount 7.2 KV switchgear on the south end of the site (with primary metering) providing individual feeds to each of the two (2) 750 KVA transformers.
- B. A total of seven (7) existing service entrances are derived from these four (4) pad mounted transformers and have been identified as services 1 - 7:
- Utility transformer 1 (meter #97 847 172) derives services No. 2, 4 & 5, serving switchboard "SBG1", "SBM2" and ATS-FP (Fire Pump). Peak demand to be validated through the utility.
  - Utility transformer 2 (meter #35 901 868) derives services No. 1, & 3, serving switchboards "SBM1" and "SBM3". Peak demand to be validated through the utility.
  - Utility transformers 3 & 4 (primary meter #95 613 095) derives services No. 6 & 7, serving switchboard "A" - Left & Switchboard "A" - Right. Peak demand to be validated through the utility.
- C. A single 750 KW / 938 KVA standby diesel generator (with sub-base fuel oil tank) located just outside the loading dock (North side of the site) provides all emergency power to this facility. This equipment is located within the proposed limits of construction and will have to be relocated during the expansion.

### **New Systems Overview:**

Without the benefit of a thorough investigation of the existing facility, and recent demand loads from the utility, we are left with the assumption that the Phase III expansion will require additional electric service to accommodate the proposed loads. A new pad-mount utility transformer, service entrance, switchboard and distribution system (both @ 480V and 208V) shall be required to be integrated into the Phase III program. The anticipated loads, at this time, are in general terms as defined below.



A. Concept Design loads:

- HVAC - Air Handlers
- Pumps and Misc. Motors
- Water Heaters
- General House Lighting
- Site Lighting
- Plug Loads - General convenience, and exhibitor power
- Smoke Evacuation (if required)
- Egress Lighting

B. Lighting shall be limited to density level of 1.08 W/SF in accordance with ASHRAE 90.1 (38.8 KVA). High Bay LED would be the preferred technology sought to meet and more than likely deliver below the ASHRAE mandated maximum lighting power density.

C. Plug loads through the new Exhibit Hall and Bay Front Gallery are not yet defined but can conceivably be set up for 208V, 3Ø, 60A distribution supporting 15 x 30 exhibitor areas. (345.6 KVA, diversified).

D. The heating source for new expansion space has not been determined. It has been stated that the existing water source heat pump chillers are unlikely to have sufficient capacity to serve the new expansion spaces. (Load undetermined at this time)

E. Air Handlers (expansion only) - approximately 36.0 KVA.

Existing System Modifications:

The Concept Design drawings indicate the relocation of the following equipment / services which will require careful planning and orchestration in order to accommodate a successful moves:

- A. Cooling towers - Displaced by proposed Storage Room (NE section of existing facility). Proposed location not yet defined, however a location above new storage room will maintain proximity to the existing service location.
- B. Standby generator and existing underground feeder - Displaced by proposed Dock Security Room. Proposed location not yet defined.
- C. Existing Electric Room - Displaced by the proposed Egress Vestibule. The magnitude of this exercise is unknown at this time - no new location defined.





## **PLUMBING**

### **DOMESTIC WATER DISTRIBUTION**

#### **A. Description:**

- a. An extension of the existing facility potable water supply shall be provided for the proposed expansion. This modified water supply shall serve all the domestic needs of the building. A separate shut-off valve, shall provide isolation of this extension.
- b. Separate water heaters shall be installed for the domestic water supply serving the new toilet rooms (Exhibit Hall C). There shall be two heaters for this area, each sized to satisfy 75% of the estimated demand.

#### **B. Functional Requirements:**

- a. The water supply system shall be sized to include the building's plumbing fixture water loads, mechanical systems make-up water loads (if any), interior hose wash-down loads, landscape irrigation system and exterior wall hydrant loads.
- b. Shut-off valves shall be provided at all fixtures and equipment for isolation purposes.
- c. Plumbing fixtures shall be of low water consumptions, low flow type.

### **SANITARY DRAINAGE**

#### **A. Description:**

- a. Sanitary waste from the upper areas to the First floor level shall drain by gravity down via 4-inch sanitary waste stacks.
- b. Building drain shall run at Lower Level ceiling and convey sanitary waste to the municipal sewer system.
- c. Sanitary waste from the Lower Level fixtures shall run by gravity under the Lower Level slab toward loading dock area, where grade level is lower than Lower Level finished floor elevation.
- d. Sanitary vent stacks shall be terminated to atmosphere at the roof level.
- e. Alternate: In case that gravity connection to the municipal sewer system for the Lower Level fixtures will not be feasible due to elevation differences and underground existing conditions, a sewage ejector pit with two equal submersible pumps shall be provided. The drainage shall be pumped to the municipal sewer system.

#### **B. Functional Requirements:**

- a. Cleanouts shall be provided for efficient maintenance according to Plumbing Code requirements and shall be located in common/public areas whenever possible. Complete accessibility shall be provided for all cleanouts.
- b. Floor drains shall be provided in mechanical rooms and toilet rooms, with automatic trap primers to maintain trap water-seal integrity.
- c. Drainage piping 3" and larger shall be sloped at not less than 1/8 inch per foot.
- d. Drainage piping smaller than 3" shall be sloped at not less than 1/4 inch per foot.





### STORM DRAINAGE SYSTEM

#### A. Description:

- a. Storm drainage system shall be provided to convey storm water by gravity from roof to the municipal storm sewer system.
- b. The roof system shall be drained by rain water conductor to the municipal storm system.
- c. Leaders, roof drains, horizontal storm drainage branches and headers shall be sized based on the Plumbing Code roof area drainage tables.
- d. A separate secondary (overflow) drain system shall be provided for all areas according to the Code requirements. Secondary drain piping shall run parallel to the primary roof drainage piping and discharge above ground at the locations indicated on the floor plans.

#### B. Functional Requirements:

- a. All roof drain bodies, horizontal and vertical aboveground storm drainage piping shall be insulated to control condensation and noise.
- b. Cleanouts shall be provided for efficient maintenance according to Plumbing Code requirements and shall be located in common/public areas whenever possible. Complete accessibility shall be provided for all cleanouts.



## **FIRE PROTECTION**

### **A. Description:**

- a. Extension of the existing overhead fire sprinkler systems to provide protection for the addition using the existing fire pump as a means for pressure boost. Adequacy of existing water supply to support the new systems shall be validated pending hydrant flow test.
- b. Relocation/modification of the existing fire sprinkler system to provide protection for renovated areas.
- c. New auxiliary hose valve stations will be included in the addition as required pending spatial analysis of the final architectural design.
- d. This Fire Protection system addition shall comply with requirements of the most recent version of the following:
  - o International Building Code (for addition being built beside existing building)
  - o International Existing Building Code (for work taking place within the existing building)
  - o NFPA 13 (sprinkler system design)
  - o Any additional codes or standards specified by the owner/AHJ
  - o Any jurisdictional amendments made to the above referenced codes and standards

## **FIRE ALARM**

### **A. Description:**

- a. The proposed addition shall include the furnishing, installation, and connection of fire alarm equipment to form a complete coordinated system. It shall include, but not be limited to, alarm initiating devices, alarm notification appliances, control units, annunciators, power supplies, and all wiring required to form a fully functional and integrated system.
- b. This Fire alarm system addition shall comply with requirements of the most recent version of the following:
  - o International Building Code (for addition being built beside existing building)
  - o International Existing Building Code (for work taking place within the existing building)
  - o NFPA 72 (fire alarm system design)
  - o Any additional codes or standards specified by the owner/AHJ
  - o Any jurisdictional amendments made to the above referenced codes and standards

### **B. Functional Requirements:**

- a. The proposed fire alarm system addition shall employ a new addressable fire alarm control panel fully compatible with the existing Simplex (analog) 4100 series control panels (located in the SE section of the facility) and Simplex 4100 series Command center located in the fire command room, adjacent to the fire pump room. The existing and new fire alarm control panels will communicate via hard-wire interconnections.



- b. If required the new fire alarm system will be designed and coordinated to integrate with the existing smoke control system modifications/additions/renovations as directed by others.

#### **SMOKE CONTROL**

##### **A. Description:**

- a. The need for this system shall be determined through the code consultant's analysis and direction regarding the project scope and the functionality / effectiveness of the existing and proposed egress capacities.

**OCEAN CITY CONVENTION CENTER EXPANSION - PHASE 3  
PROJECT COST ESTIMATE SUMMARY**

ITEM OF WORK	QUANTITY	UNIT	Cost / Unit	TOTAL COST
<b><i>HARD COST (2017 Cost)</i></b>				
Bayfront Gallery / Pre-Function Space	1	LS	\$ 14,860,000	\$ 14,860,000
Business Center	1	LS	\$ 5,755,000	\$ 5,755,000
Egress Vestibule	1	LS	\$ 913,500	\$ 913,500
Exhibit Hall	1	LS	\$ 573,000	\$ 573,000
Hall A/B Restroom Expansion	1	LS	\$ 432,000	\$ 432,000
Loading Dock	1	LS	\$ 116,000	\$ 116,000
Second Floor Restroom / Meeting Room Expansion	1	LS	\$ 106,000	\$ 106,000
Subtotal				\$ 22,755,500
Inefficiency / Misc. OT	1.5%	of \$ 22,755,500		\$ 341,333
Subtotal				\$ 23,096,833
Design Contingency	2.00%	of \$ 23,096,833		\$ 461,937
Subtotal				\$ 23,558,769
Construction Contingency	5.00%	of \$ 23,558,769		\$ 1,177,938
Subtotal				\$ 24,736,708
Testing & Inspection	1.50%	of \$ 24,736,708		\$ 371,051
Subtotal				\$ 25,107,758
Escalate Project Cost to 2018	3.00%	of \$ 25,107,758	\$ 753,233	\$ 25,860,991
FF&E Allowance	1	Allow	\$ 1,000,000	\$ 1,000,000
AV / IT / Wayfinding Allowance	1	Allow	\$ 450,000	\$ 450,000
<b>TOTAL ESTIMATED COST OF CONSTRUCTION</b>				<b>\$ 27,310,991</b>
<b>SOFT COST</b>				
Construction Manager General Conditions	7.00%	of \$ 27,310,991	\$ 1,911,769	\$ 29,222,760
Construction Manager Fee	3.00%	of \$ 29,222,760	\$ 876,683	\$ 30,099,443
Bonds & Insurance	1.50%	of \$ 30,099,443	\$ 451,492	\$ 30,550,935
Design Fees	7.00%	of \$ 27,310,991	\$ 1,911,769	\$ 32,462,704
Construction Administration / Owner's Rep Fee	1.25%	of \$ 32,462,704	\$ 405,784	\$ 32,868,488
Owner's Project Contingency	3.50%	of \$ 32,868,488	\$ 1,150,397	\$ 34,018,885
<b>TOTAL ESTIMATED PROJECT COST</b>				<b>\$ 34,018,885</b>

**ATTACHMENT D**

**MBE INSTRUCTIONS AND FORMS**

## MBE ATTACHMENT D-1A: MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT & MBE PARTICIPATION SCHEDULE

### INSTRUCTIONS

#### PLEASE READ BEFORE COMPLETING THIS DOCUMENT

**This form includes Instructions and the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule which must be submitted with the bid/proposal. If the bidder/offeror fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal as required, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.**

1. Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) subcontractor participation goal stated in the Invitation for Bids or Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.
2. MBE Goals and Subgoals: Please review the solicitation for information regarding the Contract's MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.
3. MBE means a minority business enterprise that is certified by the Maryland Department of Transportation ("MDOT"). Only MBEs certified by MDOT may be counted for purposes of achieving the MBE participation goals. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm, including a MBE prime, must be MDOT-certified for the services, materials or supplies that it is committed to perform on the MBE Participation Schedule.
4. Please refer to the MDOT MBE Directory at [www.mdot.state.md.us](http://www.mdot.state.md.us) to determine if a firm is certified with the appropriate North American Industry Classification System ("NAICS") Code **and** the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS, please visit [www.naics.com](http://www.naics.com). Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the MBE participation goals. **WARNING:** If the firm's NAICS Code is in **graduated status**, such services/products **may not be counted** for purposes of achieving the MBE participation goals. A NAICS Code is in the graduated status if the term "Graduated" follows the Code in the MDOT MBE Directory.
5. **NOTE: New Guidelines Regarding MBE Prime Self-Performance.** Please note that when a certified MBE firm participates as a prime contractor on a Contract, a procurement agency may count the distinct, clearly defined portion of the work of the Contract that the certified MBE firm performs with its own workforce toward fulfilling up to, but no more than, fifty-percent (50%) of the MBE participation goal (overall), including up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the Contract.

- ✓ In order to receive credit for self-performance, an MBE prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE prime is self-performing and include information regarding the work it will self-perform.
  - ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.
  - ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime's ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
  - ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the contract has subgoals, regardless of MBE Prime's ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to other MBEs for each of any remaining subgoals or request a waiver. As set forth in Attachment 1-B Waiver Guidance, the MBE Prime's ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
  - ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to GOMA's website ([www.goma.maryland.gov](http://www.goma.maryland.gov)) for the MBE Prime Regulations Q&A for illustrative examples.
6. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the contract equal to the distinct, clearly-defined portion of the work of the contract that the certified MBE performs with its own forces toward fulfilling the contract goal, and not more than one of the contract subgoals, if any.
7. As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.
8. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT's Office of Minority Business Enterprise at 1-800-544-6056 or via email to [mbe@mdot.state.md.us](mailto:mbe@mdot.state.md.us) sufficiently prior to the submission due date.
9. Worksheet: The percentage of MBE participation, calculated using the percentage amounts for all of the MBE firms listed on the Participation Schedule **MUST** at least equal the MBE participation goal **and** subgoals (if applicable) set forth in the solicitation. If a bidder/offeror is unable to achieve the MBE participation goal and/or any subgoals (if applicable), the bidder/offeror must request a waiver in Item 1 of the MBE Utilization and Fair Solicitation Affidavit (Attachment \_\_-1A) or the bid will be deemed not responsive, or the proposal determined to be not susceptible of being selected for award. You may wish to use the Subgoal summary below to assist in calculating the percentages and confirm that you have met the applicable MBE participation goal and subgoals, if any.

### **Subgoals (if applicable)**

Total African American MBE Participation:	0%
Total Hispanic American MBE Participation:	0%
Total Women-Owned MBE Participation:	0%

### **Overall Goal**

Total MBE Participation (include all categories):	29%
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## **MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT & MBE PARTICIPATION SCHEDULE**

**This MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule must be completed in its entirety and included with the bid/proposal. If the bidder/offeror fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal as required, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.**

In connection with the bid/proposal submitted in response to Solicitation No. \_\_\_\_\_, I affirm the following:

### **1. MBE Participation (PLEASE CHECK ONLY ONE)**

☐ I acknowledge and intend to meet IN FULL both the overall certified Minority Business Enterprise (MBE) participation goal of **29 percent** and all of the following subgoals:

**0** percent for African American-owned MBE firms

**0** percent for Hispanic American-owned MBE firms

**0** percent for Women-owned MBE firms

Therefore, I am not seeking a waiver pursuant to COMAR 21.11.03.11. I acknowledge that by checking the above box and agreeing to meet the stated goal and subgoal(s), if any, I must complete the MBE Participation Schedule (Item 4 below) in order to be considered for award.

### **OR**

☐ I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals. I acknowledge that by checking this box and requesting a partial waiver of the stated goal and/or one or more of the stated subgoal(s) if any, I must complete the MBE Participation Schedule (Item 4 below) for the portion of the goal and/or subgoal(s) if any, for which I am not seeking a waiver, in order to be considered for award.

### **2. Additional MBE Documentation**

I understand that if I am notified that I am the apparent awardee or as requested by the Procurement Officer, I must submit the following documentation within 10 Working days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier:

- (a) Outreach Efforts Compliance Statement (Attachment D-2);
- (b) MBE Subcontractor/MBE Prime Project Participation Statement (Attachments D-3A and D-3B);
- (c) Any other documentation, including additional waiver documentation if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal and subgoals, if any.



I understand that if I fail to return each completed document within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.

**3. Information Provided to MBE firms**

In the solicitation of subcontract quotations or offers, MBE firms were provided not less than the same information and amount of time to respond as were non-MBE firms.

**[CONTINUED ON NEXT PAGE]**

#### 4. MBE Participation Schedule

Set forth below are the (i) certified MBEs I intend to use, (ii) the percentage of the total Contract amount allocated to each MBE for this project and, (iii) the items of work each MBE will provide under the Contract. I have confirmed with the MDOT database that the MBE firms identified below (including any self-performing MBE prime firms) are performing work activities for which they are MDOT certified.

Prime Contractor	Project Description	Project/Contract Number

LIST INFORMATION FOR EACH CERTIFIED MBE FIRM YOU AGREE TO USE TO ACHIEVE THE MBE PARTICIPATION GOAL AND SUBGOALS, IF ANY. **MBE PRIMES:** PLEASE COMPLETE BOTH SECTIONS A AND B BELOW.

##### SECTION A: For MBE Prime Contractors ONLY (including MBE Primes in a Joint Venture)

MBE Prime Firm Name: _____  MBE Certification Number: _____  (If dually certified, check only one box.)  <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification	Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____%  Percentage of total Contract Value to be performed with own forces and counted towards the subgoal, if any, for my MBE classification (up to 100% of not more than one subgoal): _____%  Description of the Work to be performed with MBE prime's own forces: _____ _____
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##### SECTION B: For all Contractors (including MBE Primes and MBE Primes in a Joint Venture)

MBE Firm Name: _____  MBE Certification Number: _____  (If dually certified, check only one box.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification	Percentage of Total Contract to be performed by this MBE: _____%  Description of the Work to be Performed: _____ _____ _____
MBE Firm Name: _____  MBE Certification Number: _____  (If dually certified, check only one box.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification	Percentage of Total Contract to be performed by this MBE: _____%  Description of the Work to be Performed: _____ _____ _____
MBE Firm Name: _____  MBE Certification Number: _____  (If dually certified, check only one box.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification	Percentage of Total Contract to be provided by this MBE: _____%  Description of the Work to be Performed: _____ _____ _____

MBE Firm Name: _____  MBE Certification Number: _____  (If dually certified, check only one box.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification	Percentage of Total Contract to be performed by this MBE: _____%  Description of the Work to be Performed: _____ _____ _____
MBE Firm Name: _____  MBE Certification Number: _____  (If dually certified, check only one box.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification	Percentage of Total Contract to be provided by this MBE: _____%  Description of the Work to be Performed: _____ _____ _____
MBE Firm Name: _____  MBE Certification Number: _____  (If dually certified, check only one box.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification	Percentage of Total Contract to be provided by this MBE: _____%  Description of the Work to be Performed: _____ _____ _____

**CONTINUE ON SEPARATE PAGE IF NEEDED**

**I solemnly affirm under the penalties of perjury that: (i) I have reviewed the instructions for the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule, and (ii) the information contained in the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule is true to the best of my knowledge, information and belief.**

\_\_\_\_\_  
 Bidder/Offeror Name  
 (PLEASE PRINT OR TYPE)

\_\_\_\_\_  
 Signature of Authorized Representative

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 Printed Name and Title

\_\_\_\_\_  
 City, State and Zip Code

\_\_\_\_\_  
 Date

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

# **MBE ATTACHMENT D-1B WAIVER GUIDANCE**

## **GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET MBE PARTICIPATION GOALS**

In order to show that it has made good faith efforts to meet the Minority Business Enterprise (MBE) participation goal (including any MBE subgoals) on a contract, the bidder/offeror must either (1) meet the MBE Goal(s) and document its commitments for participation of MBE Firms, or (2) when it does not meet the MBE Goal(s), document its Good Faith Efforts to meet the goal(s).

### **I. Definitions**

**MBE Goal(s)** – “MBE Goal(s)” refers to the MBE participation goal and MBE participation subgoal(s).

**Good Faith Efforts** – The “Good Faith Efforts” requirement means that when requesting a waiver, the bidder/offeror must demonstrate that it took all necessary and reasonable steps to achieve the MBE Goal(s), which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient MBE participation, even if those steps were not fully successful. Whether a bidder/offeror that requests a waiver made adequate good faith efforts will be determined by considering the quality, quantity, and intensity of the different kinds of efforts that the bidder/offeror has made. The efforts employed by the bidder/offeror should be those that one could reasonably expect a bidder/offeror to take if the bidder/offeror were actively and aggressively trying to obtain MBE participation sufficient to meet the MBE contract goal and subgoals. Mere *pro forma* efforts are not good faith efforts to meet the MBE contract requirements. The determination concerning the sufficiency of the bidder's/offeror's good faith efforts is a judgment call; meeting quantitative formulas is not required.

**Identified Firms** – “Identified Firms” means a list of the MBEs identified by the procuring agency during the goal setting process and listed in the procurement as available to perform the Identified Items of Work. It also may include additional MBEs identified by the bidder/offeror as available to perform the Identified Items of Work, such as MBEs certified or granted an expansion of services after the procurement was issued. If the procurement does not include a list of Identified Firms, this term refers to all of the MBE Firms (if State-funded) the bidder/offeror identified as available to perform the Identified Items of Work and should include all appropriately certified firms that are reasonably identifiable.

**Identified Items of Work** – “Identified Items of Work” means the bid items identified by the procuring agency during the goal setting process and listed in the procurement as possible items of work for performance by MBE Firms. It also may include additional portions of items of work the bidder/offeror identified for performance by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved. If the procurement does not include a list of Identified Items of Work, this term refers to all of the items of work the bidder/offeror identified as possible items of work for performance by MBE Firms and should include all reasonably identifiable work opportunities.

**MBE Firms** – “MBE Firms” refers to a firm certified by the Maryland Department of Transportation (“MDOT”) under COMAR 21.11.03. Only MDOT-certified MBE Firms can participate in the State's MBE Program.

## **II. Types of Actions Agency will Consider**

The bidder/offeror is responsible for making relevant portions of the work available to MBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE subcontractors and suppliers, so as to facilitate MBE participation. The following is a list of types of actions the procuring agency will consider as part of the bidder's/offeror's Good Faith Efforts when the bidder/offeror fails to meet the MBE Goal(s). This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

### **A. Identify Bid Items as Work for MBE Firms**

#### **1. Identified Items of Work in Procurements**

(a) Certain procurements will include a list of bid items identified during the goal setting process as possible work for performance by MBE Firms. If the procurement provides a list of Identified Items of Work, the bidder/offeror shall make all reasonable efforts to solicit quotes from MBE Firms to perform that work.

(b) Bidders/Offerors may, and are encouraged to, select additional items of work to be performed by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved.

#### **2. Identified Items of Work by Bidders/Offerors**

(a) When the procurement does not include a list of Identified Items of Work or for additional Identified Items of Work, bidders/offerors should reasonably identify sufficient items of work to be performed by MBE Firms.

(b) Where appropriate, bidders/offerors should break out contract work items into economically feasible units to facilitate MBE participation, rather than perform these work items with their own forces. The ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder/offeror of the responsibility to make Good Faith Efforts.

### **B. Identify MBE Firms to Solicit**

#### **1. MBE Firms Identified in Procurements**

(a) Certain procurements will include a list of the MBE Firms identified during the goal setting process as available to perform the items of work. If the procurement provides a list of Identified MBE Firms, the bidder/offeror shall make all reasonable efforts to solicit those MBE firms.

(b) Bidders/offerors may, and are encouraged to, search the MBE Directory to identify additional MBEs who may be available to perform the items of work, such as MBEs certified or granted an expansion of services after the solicitation was issued.

#### **2. MBE Firms Identified by Bidders/Offerors**

(a) When the procurement does not include a list of Identified MBE Firms, bidders/offerors should reasonably identify the MBE Firms that are available to perform the Identified Items of Work.

(b) Any MBE Firms identified as available by the bidder/offeror should be certified to perform the Identified Items of Work.

### **C. Solicit MBEs**

1. Solicit all Identified Firms for all Identified Items of Work by providing written notice. The bidder/offeror should:

(a) provide the written solicitation at least 10 days prior to bid opening to allow sufficient time for the MBE Firms to respond;

(b) send the written solicitation by first-class mail, facsimile, or email using contact information in the MBE Directory, unless the bidder/offeror has a valid basis for using different contact information; and

(c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE, and other requirements of the contract to assist MBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)

2. “All” Identified Firms includes the MBEs listed in the procurement and any MBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE Firms who are no longer certified to perform the work as of the date the bidder/offeror provides written solicitations.

3. “Electronic Means” includes, for example, information provided *via* a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the contract. If an interested MBE cannot access the information provided by electronic means, the bidder/offeror must make the information available in a manner that is accessible to the interested MBE.

4. Follow up on initial written solicitations by contacting MBEs to determine if they are interested. The follow up contact may be made:

(a) by telephone using the contact information in the MBE Directory, unless the bidder/offeror has a valid basis for using different contact information; or

(b) in writing *via* a method that differs from the method used for the initial written solicitation.

5. In addition to the written solicitation set forth in C.1 and the follow up required in C.4, use all other reasonable and available means to solicit the interest of MBE Firms certified to perform the work of the contract. Examples of other means include:

(a) attending any pre-bid meetings at which MBE Firms could be informed of contracting and subcontracting opportunities; and

(b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors' groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website.

### **D. Negotiate With Interested MBE Firms**

Bidders/Offerors must negotiate in good faith with interested MBE Firms.

1. Evidence of negotiation includes, without limitation, the following:

(a) the names, addresses, and telephone numbers of MBE Firms that were considered;

(b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and

(c) evidence as to why additional agreements could not be reached for MBE Firms to perform the work.

2. A bidder/offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.

3. The fact that there may be some additional costs involved in finding and using MBE Firms is not in itself sufficient reason for a bidder's/offeror's failure to meet the contract MBE goal(s), as long as such costs are reasonable. Factors to take into consideration when determining whether a MBE Firm's quote is excessive or unreasonable include, without limitation, the following:

(a) the dollar difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the bidder/offeror;

(b) the percentage difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the bidder/offeror;

(c) the percentage that the MBE subcontractor's quote represents of the overall contract amount;

(d) the number of MBE firms that the bidder/offeror solicited for that portion of the work;

(e) whether the work described in the MBE and Non-MBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and

(f) the number of quotes received by the bidder/offeror for that portion of the work.

4. The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.

5. The bidder/offeror may not use its price for self-performing work as a basis for rejecting a MBE Firm's quote as excessive or unreasonable.

6. The "average of the other subcontractors' quotes received" by the bidder/offeror refers to the average of the quotes received from all subcontractors. Bidder/offeror should attempt to receive quotes from at least three subcontractors, including one quote from a MBE and one quote from a Non-MBE.

7. A bidder/offeror shall not reject a MBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified MBE that is rejected as unqualified or that placed a subcontract quotation or offer that the bidder/offeror concludes is not acceptable, the bidder/offeror must provide a written detailed statement listing the reasons for this conclusion. The bidder/offeror also must document the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.

(a) The factors to take into consideration when assessing the capabilities of a MBE Firm, include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.

(b) The MBE Firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the efforts to meet the project goal.

## **E. Assisting Interested MBE Firms**

When appropriate under the circumstances, the decision-maker will consider whether the bidder/offeree:

1. made reasonable efforts to assist interested MBE Firms in obtaining the bonding, lines of credit, or insurance required by the procuring agency or the bidder/offeree; and
2. made reasonable efforts to assist interested MBE Firms in obtaining necessary equipment, supplies, materials, or related assistance or services.

## **III. Other Considerations**

In making a determination of Good Faith Efforts the decision-maker may consider engineering estimates, catalogue prices, general market availability and availability of certified MBE Firms in the area in which the work is to be performed, other bids or offers and subcontract bids or offers substantiating significant variances between certified MBE and Non-MBE costs of participation, and their impact on the overall cost of the contract to the State and any other relevant factors.

The decision-maker may take into account whether a bidder/offeree decided to self-perform subcontract work with its own forces, especially where the self-performed work is Identified Items of Work in the procurement. The decision-maker also may take into account the performance of other bidders/offerees in meeting the contract. For example, when the apparent successful bidder/offeree fails to meet the contract goal, but others meet it, this reasonably raises the question of whether, with additional reasonable efforts, the apparent successful bidder/offeree could have met the goal. If the apparent successful bidder/offeree fails to meet the goal, but meets or exceeds the average MBE participation obtained by other bidders/offerees, this, when viewed in conjunction with other factors, could be evidence of the apparent successful bidder/offeree having made Good Faith Efforts.

## **IV. Documenting Good Faith Efforts**

At a minimum, a bidder/offeree seeking a waiver of the MBE Goal(s) or a portion thereof must provide written documentation of its Good Faith Efforts, in accordance with COMAR 21.11.03.11, within 10 business days after receiving notice that it is the apparent awardee. The written documentation shall include the following:

### **A. Items of Work (Complete Good Faith Efforts Documentation Attachment D1-C, Part 1)**

A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBE Firms in order to increase the likelihood of achieving the stated MBE Goal(s).

### **B. Outreach/Solicitation/Negotiation**

1. The record of the bidder's/offeree's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a). **(Complete Outreach Efforts Compliance Statement – Attachment D-2).**

2. A detailed statement of the efforts made to contact and negotiate with MBE Firms including:

(a) the names, addresses, and telephone numbers of the MBE Firms who were contacted, with the dates and manner of contacts (letter, fax, email, telephone, etc.) **(Complete Good Faith Efforts Attachment D-1C Part 2, and submit letters, fax cover sheets, emails, etc. documenting solicitations);** and

(b) a description of the information provided to MBE Firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed and the means used to provide that information.



**C. Rejected MBE Firms (Complete Good Faith Efforts Attachment D-1C, Part 3)**

1. For each MBE Firm that the bidder/offeror concludes is not acceptable or qualified, a detailed statement of the reasons for the bidder's/offeror's conclusion, including the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.

2. For each certified MBE Firm that the bidder/offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the bidder's/offeror's conclusion, including the quotes received from all MBE and Non-MBE firms bidding on the same or comparable work. **(Include copies of all quotes received.)**

3. A list of MBE Firms contacted but found to be unavailable. This list should be accompanied by a MBE Unavailability Certificate (see Exhibit A to this Part 1) signed by the MBE contractor or a statement from the bidder/offeror that the MBE contractor refused to sign the MBE Unavailability Certificate.

**D. Other Documentation**

1. Submit any other documentation requested by the Procurement Officer to ascertain the bidder's/offeror's Good Faith Efforts.

2. Submit any other documentation the bidder/offeror believes will help the Procurement Officer ascertain its Good Faith Efforts.

Date \_\_\_\_\_

**MBE ATTACHMENT D-1c****GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST**

PAGE \_\_\_\_ OF \_\_\_\_

<b>Prime Contractor</b>	<b>Project Description</b>	<b>Solicitation Number</b>

**PARTS 1, 2, AND 3 MUST BE INCLUDED WITH THIS CERTIFICATE ALONG WITH ALL DOCUMENTS  
SUPPORTING YOUR WAIVER REQUEST.**

I affirm that I have reviewed Attachment D-1B, Waiver Guidance. I further affirm under penalties of perjury that the contents of Parts 1, 2, and 3 of this Attachment D-1C Good Faith Efforts Documentation Form are true to the best of my knowledge, information, and belief.

---

Company Name

---

Signature of Representative

---

Address

---

Printed Name and Title

---

City, State and Zip Code

---

Date

# GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

## PART 1 – IDENTIFIED ITEMS OF WORK BIDDER/OFFEROR MADE AVAILABLE TO MBE FIRMS

PAGE \_\_\_\_ OF \_\_\_\_

Prime Contractor	Project Description	Solicitation Number

Identify those items of work that the bidder/offeror made available to MBE Firms. This includes, where appropriate, those items the bidder/offeror identified and determined to subdivide into economically feasible units to facilitate the MBE participation. For each item listed, show the anticipated percentage of the total contract amount. It is the bidder's/offeror's responsibility to demonstrate that sufficient work to meet the goal was made available to MBE Firms, and the total percentage of the items of work identified for MBE participation equals or exceeds the percentage MBE goal set for the procurement. Note: If the procurement includes a list of bid items identified during the goal setting process as possible items of work for performance by MBE Firms, the bidder/offeror should make all of those items of work available to MBE Firms or explain why that item was not made available. If the bidder/offeror selects additional items of work to make available to MBE Firms, those additional items should also be included below.

Identified Items of Work	Was this work listed in the procurement	Does bidder/offer or normally self-perform	Was this work made available to MBE Firms? If no, explain why?
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

☐ Please check if Additional Sheets are attached.

# GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

## PART 2 – IDENTIFIED MBE FIRMS AND RECORD OF SOLICITATIONS

PAGE—OF \_\_\_\_

Prime Contractor	Project Description	Solicitation Number

Identify the MBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE participation. Include the name of the MBE Firm solicited, items of work for which bids/quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE provided a quote, and whether the MBE is being used to meet the MBE participation goal. MBE Firms used to meet the participation goal must be included on the MBE Participation Schedule. Note: If the procurement includes a list of the MBE Firms identified during the goal setting process as potentially available to perform the items of work, the bidder/offeror should solicit all of those MBE Firms or explain why a specific MBE was not solicited. If the bidder/offeror identifies additional MBE Firms who may be available to perform Identified Items of Work, those additional MBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE Firms must be attached to this form. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE contractor or a statement from the bidder/offeror that the MBE contractor refused to sign the Minority Contractor Unavailability Certificate (see Exhibit A to MBE Attachment D-1B). If the bidder/offeror used a Non-MBE or is self-performing the identified items of work, Part 4 must be completed.

Name of Identified MBE Firm & MBE	Describe Item of Work Solicited	Initial Solicitation Date &	Follow-up Solicitation Date &	Details for Follow-up Calls	Quote Rec'	Quote Use	Reason Quote Rejected
<b>Firm Name:</b> <hr/> <b>MBE Classification (Check only if requesting waiver of MBE subgoal.)</b> <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call: Spoke With: <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE <input type="checkbox"/> Self-performing
<b>Firm Name:</b> <hr/> <b>MBE Classification (Check only if requesting waiver of MBE subgoal.)</b> <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call: Spoke With: <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE <input type="checkbox"/> Self-performing

☐ Please check if Additional Sheets are attached.

## GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

### PART 3 – ADDITIONAL INFORMATION REGARDING REJECTED MBE QUOTES

PAGE \_\_\_ OF \_\_\_

Prime Contractor	Project Description	Solicitation Number

This form must be completed if Part 1 indicates that a MBE quote was rejected because the bidder/offeror is using a Non-MBE or is self-performing the Identified Items of Work. Provide the Identified Items Work, indicate whether the work will be self-performed or performed by a Non-MBE, and if applicable, state the name of the Non-MBE. Also include the names of all MBE and Non-MBE Firms that provided a quote and the amount of each quote.

Describe Identified Items of Work Not Being Performed by MBE (Include	Self-performing or Using Non-MBE (Provide name)	Amount of Non-MBE Quote	Name of Other Firms who Provided Quotes & Whether MBE or Non-MBE	Amount Quoted	Indicate Reason Why MBE Quote Rejected & Briefly Explain
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE	\$_____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$_____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE	\$_____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$_____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE	\$_____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$_____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE	\$_____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$_____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE	\$_____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$_____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE	\$_____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$_____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other

☐ Please check if Additional Sheets are attached.

## MBE Attachment D- 2 OUTREACH EFFORTS COMPLIANCE STATEMENT

Complete and submit this form within 10 working days of notification of apparent award or actual award, whichever is earlier.

In conjunction with the bid/proposal submitted in response to Solicitation No. \_\_\_\_\_, I state the following:

1. Bidder/Offeror identified subcontracting opportunities in these specific work categories:

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2. Attached to this form are copies of written solicitations (with bidding/proposal instructions) used to solicit certified MBE firms for these subcontract opportunities.

3. Bidder/Offeror made the following attempts to personally contact the solicited MDOT-certified MBE firms: \_\_\_\_\_

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4. **Please Check One:**

☐ This project does not involve bonding requirements.

☐ Bidder/Offeror assisted MDOT-certified MBE firms to fulfill or seek waiver of bonding requirements. (DESCRIBE EFFORTS): \_\_\_\_\_

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5. **Please Check One:**

☐ Bidder/Offeror did attend the pre-bid/pre-proposal conference.

☐ No pre-bid/pre-proposal meeting/conference was held.

☐ Bidder/Offeror did not attend the pre-bid/pre-proposal conference.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Date

**MBE Attachment D-3A**  
**MBE SUBCONTRACTOR PROJECT PARTICIPATION**  
**CERTIFICATION**

**PLEASE COMPLETE AND SUBMIT ONE FORM FOR EACH CERTIFIED MBE FIRM LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT D-1A) WITHIN 10 WORKING DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE BIDDER/OFFEROR FAILS TO RETURN THIS FORM WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE BIDDER/OFFEROR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.**

Provided that \_\_\_\_\_ (Prime Contractor's Name) is awarded the State contract in conjunction with Solicitation No. \_\_\_\_\_, such Prime Contractor intends to enter into a subcontract with \_\_\_\_\_ (Subcontractor's Name – Second Tier) committing to participation by the MBE firm \_\_\_\_\_ (Name of MBE firm - Second or Third Tier as applicable; if second tier subcontractor previously listed is also the MBE firm, please restate name and provide MBE Certification Number) with MDOT Certification Number \_\_\_\_\_ which will receive at least \$ \_\_\_\_\_ or \_\_\_\_% (Total Contract Amount/Percentage) for performing the following products/services for the Contract:

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE)	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES

Each of the Contractor and Subcontractor acknowledges that, for purposes of determining the accuracy of the information provided herein, the Procurement Officer may request additional information, including, without limitation, copies of the subcontract agreements and quotes. Each of the Contractor and Subcontractor solemnly affirms under the penalties of perjury that: (i) the information provided in this MBE Subcontractor Project Participation Affidavit is true to the best of its knowledge, information and belief, and (ii) has fully complied with the State Minority Business Enterprise law, State Finance and Procurement Article §14-308(a)(2), Annotated Code of Maryland which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Bid/Proposal and:

- (1) fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified Minority Business Enterprise in its Bid/Proposal;
- (2) fail to notify the certified Minority Business Enterprise before execution of the Contract of its inclusion of the Bid/Proposal;
- (3) fail to use the certified Minority Business Enterprise in the performance of the Contract; or
- (4) pay the certified Minority Business Enterprise solely for the use of its name in the Bid/Proposal.

I solemnly affirm under the penalties of perjury that the information provided in this form is true to the best of my knowledge, information and belief.

PRIME CONTRACTOR	SUBCONTRACTOR (SECOND-TIER)	SUBCONTRACTOR (THIRD-TIER): <b>Leave Blank if not applicable</b>
<b>Signature of Representative:</b> <div style="border-bottom: 1px solid black; height: 20px; margin-top: 5px;"></div>	<b>Signature of Representative:</b> <div style="border-bottom: 1px solid black; height: 20px; margin-top: 5px;"></div>	<b>Signature of Representative:</b> <div style="border-bottom: 1px solid black; height: 20px; margin-top: 5px;"></div>
<b>Printed Name and Title:</b> _____ <div style="border-bottom: 1px solid black; height: 20px; margin-top: 5px;"></div>	<b>Printed Name and Title:</b> _____ <div style="border-bottom: 1px solid black; height: 20px; margin-top: 5px;"></div>	<b>Printed Name and Title:</b> _____ <div style="border-bottom: 1px solid black; height: 20px; margin-top: 5px;"></div>
<b>Firm's Name:</b> _____	<b>Firm's Name:</b> _____	<b>Firm's Name:</b> _____
<b>Federal Identification Number:</b> _____	<b>Federal Identification Number:</b> _____	<b>Federal Identification Number:</b> _____
<b>Address:</b> _____ <div style="border-bottom: 1px solid black; height: 20px; margin-top: 5px;"></div>	<b>Address:</b> _____ <div style="border-bottom: 1px solid black; height: 20px; margin-top: 5px;"></div>	<b>Address:</b> _____ <div style="border-bottom: 1px solid black; height: 20px; margin-top: 5px;"></div>
<b>Telephone:</b> _____	<b>Telephone:</b> _____	<b>Telephone:</b> _____
<b>Date:</b> _____	<b>Date:</b> _____	<b>Telephone:</b> _____



**MBE Attachment D-3B  
MBE PRIME - PROJECT PARTICIPATION  
CERTIFICATION**

**PLEASE COMPLETE AND SUBMIT THIS FORM TO ATTEST EACH SPECIFIC ITEM OF WORK THAT YOUR MBE FIRM HAS LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT D-1A) FOR PURPOSES OF MEETING THE MBE PARTICIPATION GOALS. THIS FORM MUST BE SUBMITTED WITHIN 10 WORKING DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE BIDDER/OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE BIDDER/OFFEROR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.**

Provided that \_\_\_\_\_ (Prime Contractor's Name) with Certification Number \_\_\_\_\_ is awarded the State contract in conjunction with Solicitation No. \_\_\_\_\_, such MBE Prime Contractor intends to perform with its own forces at least \$ \_\_\_\_\_ which equals to \_\_\_\_% of the Total Contract Amount for performing the following products/services for the Contract:

<b>NAICS CODE</b>	<b>WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE). FOR CONSTRUCTION PROJECTS, GENERAL</b>	<b>DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES</b>	<b>VALUE OF THE WORK</b>

**MBE PRIME CONTRACTOR**

Signature of Representative:

\_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

\_\_\_\_\_

Firm's Name:

Federal Identification Number: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Date: \_\_\_\_\_

**MBE Attachment D-4A**  
**Maryland Stadium Authority**  
**Minority Business Enterprise Participation**  
**Prime Contractor Paid/Unpaid MBE**  
**Invoice Report**

Report #: _____  Reporting Period (Month/Year): _____  <b>Prime Contractor: Report is due to the Compliance Coordinator by the 10<sup>th</sup> of the month following the month the services were provided.</b>	Contract #: _____ Contracting Unit: _____ Contract Amount: _____ MBE Subcontract Amt: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
---	--

Prime Contractor:		Contact Person:																																											
Address:																																													
City:		State:	ZIP:																																										
Phone:	Fax:	E-mail:																																											
MBE Subcontractor Name:		Contact Person:																																											
Phone:	Fax:																																												
Subcontractor Services Provided:																																													
<b>List all payments made to MBE subcontractor named above during this reporting period:</b> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 35%; text-align: center;"><u>Invoice#</u></th> <th style="width: 35%; text-align: center;"><u>Amount</u></th> <th style="width: 25%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td><td></td></tr> <tr> <td colspan="4" style="padding-top: 10px;"> <b>Total Dollars Paid: \$</b> <u>\$0.00</u> </td> </tr> </tbody> </table>			<u>Invoice#</u>	<u>Amount</u>	<u>Date</u>	1.				2.				3.				4.				<b>Total Dollars Paid: \$</b> <u>\$0.00</u>				<b>List dates and amounts of any outstanding invoices:</b> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice #</u></th> <th style="width: 55%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="3" style="padding-top: 10px;"> <b>Total Dollars Unpaid: \$</b> <u>\$0.00</u> </td> </tr> </tbody> </table>			<u>Invoice #</u>	<u>Amount</u>	1.			2.			3.			4.			<b>Total Dollars Unpaid: \$</b> <u>\$0.00</u>		
	<u>Invoice#</u>	<u>Amount</u>	<u>Date</u>																																										
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- If more than one MBE subcontractor is used for this contract, you must use separate D-4A forms for each subcontractor.
- Information regarding payments that the MBE prime will use for purposes of meeting the MBE participation goals must be reported separately in Attachment D-4B
- Return one copy (hard or electronic) of this form to the Compliance Coordinator at the following address**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

(Required)

Lisa M. Johnson, Manager, Compliance & Procurement  
 Maryland Stadium Authority, Capital Projects Development Group  
 351 W. Camden Street, Suite 500  
 Baltimore, MD 21201  
 ljohnson@mdstad.com  
 410-223-4117

**MBE Attachment D-4B**  
**Maryland Stadium Authority**  
**Minority Business Enterprise**  
**Participation**  
**MBE Prime Contractor Report**

MBE Prime Contractor: Certification Number: Report #:  Reporting Period (Month/Year): _____ <b>MBE</b> <b>Prime Contractor: Report is due to the Compliance Coordinator by the 10th of the month following the month the services were</b>	Contract #: _____ Contracting Unit: _____ Contract Amount: _____ Total Value of the Work to the Self-Performed for purposes of Meeting the MBE participation goal/subgoals: _____ Project Begin Date: _____ Project End Date: _____
--	--

Contact Person:		
Address:		
City:	State:	ZIP:
Phone:	Fax: _____ E-mail: _____	

Invoice Number	Value of the Work	NAICS Code	Description of the Work

**Return one copy (hard or electronic) of this form to the Compliance Coordinator at the following address**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Lisa M. Johnson, Manager, Compliance & Procurement  
 Maryland Stadium Authority  
 Capital Projects Development Group  
 351 W. Camden Street, Suite 500  
 Baltimore, MD 21201  
 ljohnson@mdstad.com  
 410-223-4117

**MBE ATTACHMENT D-5**  
**Minority Business Enterprise Participation**  
**Subcontractor Paid/Unpaid MBE Invoice**  
**Report**

<b>Report#:</b> _____  <b>Reporting Period (Month/Year):</b> _____  <b>Report is due by the 10th of the month following the month the services were performed.</b>	<b>Contract #</b> <b>Contracting</b> <b>Unit:</b> <b>MBE Subcontract</b> <b>Amount: Project Begin</b> <b>Date:</b> _____																														
<b>MBE Subcontractor Name:</b> _____																															
<b>MDOT Certification #:</b> _____																															
<b>Contact Person:</b> _____ <b>E-mail:</b> _____																															
<b>Address:</b> _____																															
<b>City:</b> _____	<b>State:</b> _____ <b>ZIP:</b> _____																														
<b>Phone:</b> _____	<b>Fax:</b> _____																														
<b>Subcontractor Services Provided:</b>																															
<b>List all payments received from Prime Contractor during reporting period indicated above.</b>  <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><u>Invoice Amt</u></th> <th style="text-align: left;"><u>Invoice #</u></th> <th style="text-align: left;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="3"><b>Total Dollars Paid: \$</b> <u>\$0.00</u></td> </tr> </tbody> </table>	<u>Invoice Amt</u>	<u>Invoice #</u>	<u>Date</u>	1.			2.			3.			<b>Total Dollars Paid: \$</b> <u>\$0.00</u>			<b>List dates and amounts of any unpaid invoices over 30 days old.</b>  <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"><u>Invoice Amt</u></th> <th style="text-align: left;"><u>Invoice #</u></th> <th style="text-align: left;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="3"><b>Total Dollars Unpaid: \$</b> <u>\$0.00</u></td> </tr> </tbody> </table>	<u>Invoice Amt</u>	<u>Invoice #</u>	<u>Date</u>	1.			2.			3.			<b>Total Dollars Unpaid: \$</b> <u>\$0.00</u>		
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<b>Prime Contractor:</b> _____ <b>Contact Person:</b> _____																															

**Return one copy (hard or electronic) of this form to the Compliance Coordinator at the following address**

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Lisa M. Johnson, Manager, Compliance & Procurement  
 Maryland Stadium Authority  
 Capital Projects Development Group  
 351 W. Camden Street, Suite 500  
 Baltimore, MD 21201  
 ljohnson@mdstad.com  
 410-223-4117

**ATTACHMENT E**

**CORPORATE PROFILE**

## Corporate Profile

## Firm Contact Information

Firm Name: \_\_\_\_\_  
Federal ID Number: \_\_\_\_\_  
D&B Number: \_\_\_\_\_  
Point of Contact: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Regional Office Address: \_\_\_\_\_  
\_\_\_\_\_

## Firm Background Information

Year Firm Founded: \_\_\_\_\_  
 Contractor's License #: \_\_\_\_\_ State: \_\_\_\_\_ Expiration Date: \_\_\_\_\_  
 Bonding Capacity: \_\_\_\_\_ Available Bond Capacity: \_\_\_\_\_  
 Is the firm MDOT MBE and/or SBR Certified? Yes ☐ No ☐ If certified, provide the  
 certification # and minority status.

Primary Business / Service Provided: \_\_\_\_\_  
 Number of Years Performing Construction Management Services: \_\_\_\_\_  
 Number Full Time Employees (Corporate / Regional Office): \_\_\_\_\_ / \_\_\_\_\_

**Provide a brief narrative outlining the firm's history. Elaborate on the firms experience and expertise performing Construction Management at Risk services. Specifically, elaborate on the firms experience completing renovations/additions and/or replacements of large public assembly venues.**

[illegible]

Provide sales volume, project completion data and safety data for the most recently completed three year period. Note that information provided is to be for the regional / local office that would be responsible for completing work under this solicitation.

	Annual Sales Volume	Completed Projects	Largest Project	EMR Rating
2014	_____	_____	_____	_____
2015	_____	_____	_____	_____
2016	_____	_____	_____	_____

## **Firm References**

Provide three (3) references. Note that references are to be from different projects; that is, only one reference per project is allowed.

### **Firm Reference Number 1**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company Name: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Project Relationship: \_\_\_\_\_

### **Firm Reference Number 2**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company Name: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Project Relationship: \_\_\_\_\_

### **Firm Reference Number 3**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company Name: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Project Relationship: \_\_\_\_\_

## **Corporate Profile Prepared By:**

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**ATTACHMENT F**

**PROJECT EXPERIENCE FORM**



**Request for Proposals (RFP) - CM Services - Phase III - Ocean City Convention Center Expansion and Improvements****Project Experience Form**

	<b>PROJECT #1</b>	<b>PROJECT #2</b>	<b>PROJECT #3</b>	<b>PROJECT #4</b>	<b>PROJECT #5</b>
Project Name and Location					
Owner Name, Contact Person, Email & Phone Number					
Offeror's Role in the Project					
Project Type (New, Renovation, etc.)					
Gross Square Footage of Project					
Project Delivery Method (CMR, CM Agency, DB, Negotiated GMP, GC, etc.)					
Similarities/Relevance to this Project					
Original Completion Date					
Actual Completion Date					
Reason(s) for Variance (if applicable)					
Original Construction Cost					
Final Construction Cost					
Reason(s) for Cost Difference (if applicable)					
Offeror's Original Contract Amount					
Offeror's Final Contract Amount					
Reason(s) for Cost Difference (if applicable)					

**Request for Proposals (RFP) - CM Services - Phase III - Ocean City Convention Center Expansion and Improvements**

Project Experience Form					
	PROJECT #1	PROJECT #2	PROJECT #3	PROJECT #4	PROJECT #5
Project Name and Location					
Preconstruction Services Provided (Yes / No)					
Construction Services Provided (Yes / No)					

**ATTACHMENT G**

**STAFFING PLAN**

**Request for Proposals (RFP) - CM Services - Phase III - Ocean City Convention Center Expansion and Improvements**

## Staffing Plan

\* List name, position and number of hours, as indicated. Add rows as needed.

[illegible]

**ATTACHMENT H**

**KEY PERSONNEL PROJECT EXPERIENCE MATRIX**

## Request for Proposals (RFP) - CM Services - Phase III - Ocean City Convention Center Expansion and Improvements

### Key Personnel Project Experience Matrix

<b>KEY PERSONNEL</b>							
Names of Key Personnel (From the Staffing Plan)	Role Performed on Sample Project	Role Proposed on this Contract	Example Projects (From the Project Experience Form. Fill in "Example Projects Key" section below before completing this table. Place and "X" under the project key number for participation in same or similar role.)				
			<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>

**EXAMPLE PROJECTS KEY**

Project Number	Project Name / Title (From the Project Experience Form)
1	
2	
3	



**ATTACHMENT I**

**FINANCIAL PROPOSAL FORM**



**Maryland Stadium Authority**

**Request for Financial Proposal**

**Construction Management Services**

**Phase III - Ocean City Convention Center Expansion and Improvements**

**Issue Date: \_\_\_\_\_, 2017**



**Prospective Offerors who have received this document from the Maryland Stadium Authority and wish to assure receipt of any changes or additional materials related to this Request for Proposal, should immediately confirm receipt of this document to Malaika Damon at [mdamon@mdstad.com](mailto:mdamon@mdstad.com) and provide their name and contact information in order to receive information about Amendments to the RFP or other communications. Proposers must be prequalified for the referenced procurement in order to reply to this solicitation.**

1. The Financial Proposal **must be received** by the Procurement Officer at the address listed in Section 1.5 of the RFP **no later than 11am on - \_\_\_\_\_, 2017.**
2. Submit one electronic original (.pdf only), and six (6) bound copies of the Financial Proposal in a sealed envelope or box. The envelope or box shall have the Proposer's name, the Project name prominently displayed, together with the words, "FINANCIAL PROPOSAL" and the date and time the proposal is due.
3. The Financial Proposal shall be completed in ink or typed. The signer shall initial any erasures and/or alterations to the Proposer's pricing in ink. No changes, alterations or additions to the forms provided herein are permitted.
4. Proposals are valid for the period of time stated in Section 1.11 of the RFP.
5. The Financial Proposal includes the documents listed below. Proposal submissions shall be organized in the sub-sections indicated. Attachments referenced in a specific sub-section are to be included in the sub-section in which they appear.
  - A. Transmittal Letter: Provide a transmittal letter prepared on the Proposer's business stationery with each copy of the Financial Proposal submittal. At a minimum, the letter shall list all items contained in the proposal and shall be signed by a company Executive authorized to bind the firm to all the statements, services and financial commitments contained in the Proposal.
  - B. Financial Proposal Form (**Attachment A**) including:
    1. Lump Sum Fee Preconstruction Services
    2. Lump Sum Fee for General Conditions during the Construction Phase
      - Provide Breakdown of Cost on the Summary Sheet Included in **Attachment B**
    3. Lump Sum Fee for Construction and Post Construction Services
    4. Mark-Up Percentage on Additional Work
      - NOTE: No DBC additional fee shall be assessed for modifications to this Contract after the GMP is approved except for MSA-initiated Scope Modifications after the cumulative value of MSA-initiated Scope Modifications exceeds five percent (5%) of the aggregate GMP. If the cumulative value exceeds the five percent (5%), the CM may request additional fee. The maximum amount of fee allowed is a percent determined by the ratio of the Construction and Post Construction Services Fee to the Construction Cost Amount identified in this RFP.

C. Hourly Rates for Project Management and Professional Services (**Attachment C**).

1. Utilize the form included as Attachment C to provide hourly rates for each position (not individual) included on the Staffing Plan provided in Attachment F in the RFP. Hourly rates identified are to be fully loaded rates inclusive of all expenses and costs in connection with providing the services required under this Contract (e.g. overhead, travel, lodging, meals, etc.).

D. MBE Form D-1A – Fully executed MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule (**Attachment D**) which responds to the expected degree of MBE participation as stated in the RFP and identifies the specific commitment of certified MBEs. The Offeror shall specify the dollar amount associated with each MBE subcontractor identified on the MBE Participation Schedule.

**Attachment A**

**REQUEST FOR FINANCIAL PROPOSAL  
CM SERVICES  
PHASE III - OCEAN CITY CONVENTION CENTER EXPANSION and IMPROVEMENTS  
Financial Proposal Form**

DESCRIPTION OF ITEM & AMOUNT (In Written Words)	AMOUNT (In Numbers)
1.0 Preconstruction Services Fee at:  _____  _____  _____	\$ _____ -
2.0 General Conditions Fee for the Construction Phase at:*	\$ _____ -
* Breakdown of Cost Included on Attachment B	
3.0 Construction and Post Construction Services Fee at:  _____  _____  _____	\$ _____ -
TOTAL OF ITEMS #1 THROUGH #3:  _____  _____  _____  _____	\$ _____ -
4.0 Mark-Up Percentage on Additional Work (Ratio of Item #3 / Construction Cost Amount Identified in RFP)  _____  _____  _____  _____	_____%

**Submitted By:**

\_\_\_\_\_  
(Company)

\_\_\_\_\_  
(Typed Name & Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

**Attachment B**

The cost summary is based on the requirements of Article 6 of the Construction Management Agreement. It provides a general breakdown of costs included in the Offeror's General Conditions cost line item included on the Financial Proposal. It is not intended to be an all-inclusive list of items/services required.

	Category	In General Conditions	Cost Allocation	Percentage of Construction Cost Amount
1	Project Personnel	Project Manager; Superintendent; other field personnel; payroll burden expenses for field personnel; out-of-town travel expenses.	\$	%
2	Vehicle Expenses	Field personnel vehicle costs, including lease, insurance, maintenance, repair, and fuel.	\$	%
3	Safety and Site Security	First aid supplies; hardhats and goggles; safety signage; security locks.	\$	%
4	Temporary Field Facilities and Services	Rent, set-up, and removal of trailers for the CM and for MSA site representative; field offices' utilities, security, communication services, and cleaning; temporary sanitary facilities; Project signs.	\$	%
5	Field Offices' Equipment and Software	Field office equipment, maintenance and repair; field office furniture; field office computer equipment, software, maintenance, repair, and support; equivalent requirements for the MSA on-site field representative (with the exception of computer equipment and software).	\$	%
6	Field Offices' Supplies and Postage/Shipping	Office supplies for CM and MSA; postage/ shipping.	\$	%
7	Project Documentation and Reproduction	Reproduction indicated.	\$	%
8	Temporary Utilities	Temporary utilities.	\$	%
9	Waste Management and Daily Cleaning	Cost of Services.	\$	%
10	Weather and Other Protection	Temporary weather and dust protection not in Trade Contracts; site snow removal; materials for maintenance of erosion control not in Site Trade Contract.	\$	%
11	Material Handling	Chutes, Rental Equipment, etc.	\$	%
12	Elevator Operator(s)	If Applicable	\$	%
13	Miscellaneous Materials and Small Tools	Miscellaneous materials; small tools; surveying equipment.	\$	%
14	Professional Services	Cost of Services Not Included in the CM's Construction Services Fee or Trade Contracts	\$	%
15	Protection of Finished Work	None (Included in Trade Contracts)	N / A	N/A
16	Permit Fees	None. Cost of the Building Permit is by Others. Costs associated with construction related permits are to be included in the GMP and/or the Trade Contracts.	N / A	N/A
17	Other:		\$	%
18	Other:		\$	%
19	Other:		\$	%
20	Other:		\$	%
21	General Liability Insurance		\$	%
22	Builder's Risk Insurance		\$	%
23	Other Insurances		\$	%
24	Payment and Performance Bonds		\$	%
25	Other:		\$	%
<b>TOTAL GENERAL CONDITIONS:</b>			<b>\$</b>	<b>%</b>

## **Attachment C**

## REQUEST FOR FINANCIAL PROPOSAL CM SERVICES

**PHASE III - OCEAN CITY CONVENTION CENTER EXPANSION and IMPROVEMENTS**  
**Hourly Rates For Services**

[illegible]

**ATTACHMENT J**

**BID/PROPOSAL BOND FORM**

**BID / PROPOSAL BOND**  
**PHASE III – OCEAN CITY CONVENTION CENTER EXPANSION & IMPROVEMENTS**

**KNOW ALL MEN BY THESE PRESENTS**, that we, the undersigned \_\_\_\_\_ as Principal, and \_\_\_\_\_ as Surety, are held and firmly bound unto the Maryland Stadium Authority as Owner, in the Sum of \$ \_\_\_\_\_ (an amount equal to Five Percent (5%) of the Maximum Total Bid Submitted) (the "Penal Sum"), for payment of which Penal Sum, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, personal representatives, successors and assigns, firmly by these presents.

The condition of the above obligation is such that WHEREAS the Principal has submitted to the Maryland Stadium Authority a certain Bid, attached hereto, and hereby made a part hereof, to enter into a Contract, in writing, for: (check appropriate categories)

**PHASE III – OCEAN CITY CONVENTION CENTER EXPANSION & IMPROVEMENTS**

**NOW THEREFORE,**

- .1 If said Bid shall be rejected, or
- .2 If said Bid shall be accepted and the Principal shall execute and deliver a Contract in the form of Contract attached hereto (properly completed in accordance with said Bid), and shall furnish a Bid for his faithful performance of Contract and for the payment of all persons performing labor or furnishing materials in connection therewith and shall in other respects perform the Agreement created by the acceptance of the Bid;

**THEN**, in either of such events, this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the Penal Sum.

If the Bid should be accepted and the Principal fails to:

- .1 execute and deliver the Contract, or
- .2 furnish bonds acceptable to the Owner for his faithful performance of the Contract and for payment of all persons performing labor or furnishing materials in connection therewith, or
- .3 perform in any other respects the Agreement created by the acceptance of the Bid;

**THEN**, in any of such events, the Principal shall pay the Penal Sum to the Owner within ten (10) days after demand therefore, failing which the Surety shall pay it.

The Surety, for valued received, hereby stipulates and agrees that the obligations of said Surety and its Bond shall be in no way impaired or affected by any extension of time within which the Owner may accept such Bid; and said Surety does hereby waive notice of any such extension.

**IN WITNESS WHEREOF**, the Principal and Surety have hereunto set their Hand and Seals, and such of them as are corporations have caused their Corporate Seals to be hereto affixed and these presents to be signed by their proper Offices, this \_\_\_\_\_ day of



20\_\_\_\_\_.

**ATTEST:**

**PRINCIPAL:**

SIGN: \_\_\_\_\_ SIGN: \_\_\_\_\_(SEAL)

NAME: \_\_\_\_\_ NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_

**ATTEST:**

**SURETY:**

SIGN: \_\_\_\_\_ SIGN: \_\_\_\_\_(SEAL)

NAME: \_\_\_\_\_ NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_

**AGENT (COMPANY):**

\_\_\_\_\_

AUTHORIZED BY:

\_\_\_\_\_

NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

**ATTACHMENT K**

**PERFORMANCE BOND FORM**

**PERFORMANCE BOND**  
**PHASE III – OCEAN CITY CONVENTION CENTER EXPANSION & IMPROVEMENTS**

**PERFORMANCE BOND**

**PRINCIPAL:**

\_\_\_\_\_  
BUSINESS NAME

\_\_\_\_\_  
BUSINESS ADDRESS

**OBLIGEE**

Maryland Stadium Authority  
its Successors and/or Assigns,  
OBLIGEE NAME

351 W. Camden Street, Suite 500  
Baltimore, Maryland 21201-2435  
BUSINESS ADDRESS

**SURETY:**

\_\_\_\_\_  
BUSINESS ADDRESS

\_\_\_\_\_, 2017  
DATE BOND EXECUTED

A Corporation of the State of \_\_\_\_\_ authorized to do business in the State of Maryland.

**SUM OF BOND** (Equal to Contract Price):

SUM OF \_\_\_\_\_ Dollars (\$\_\_\_\_\_)

**CONTRACT:**

\_\_\_\_\_  
CONTRACT NUMBER AND IDENTIFICATION

\_\_\_\_\_, 2017  
DATE OF CONTRACT

**KNOW ALL MEN BY THESE PRESENTS,** That we, the PRINCIPAL and SURETY are held and firmly bound unto the OBLIGEE in full and just sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS,** the PRINCIPAL is entering into a certain Contract with the OBLIGEE described and dated, as shown above and attached hereto, and is required to give a Bond conditioned as hereinafter set forth.

**NOW, THEREFORE,** if the PRINCIPAL shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term of said Contract and any extensions thereof that may be granted by the OBLIGEE, notice of such extensions to the SURETY being hereby waived and during the terms or terms of any maintenance, repair, guaranty and warranty required under the Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any duly authorized modifications of said contract that may hereafter be made, notice of which modification to the SURETY being hereby waived, and shall indemnify and save harmless the OBLIGEE, its agents and employees, may be subjected by reason of any wrong doing, misconduct, want of care or skill, negligence or default on the part of the PRINCIPAL, its agents or

employees, or in any manner arising directly or indirectly from any and all causes whatsoever, or about the execution or performance of the Contract, during the original term of said Contract and/or any extension or modification thereof and/or during the term or terms of any maintenance, repair, guaranty, and warranty required under the Contract, then this obligation shall be null and void; otherwise to remain in full force and affect.

Whereas PRINCIPAL shall be, and declared by OBLIGEE to be in default under the Contract, the SURETY shall promptly remedy the default, or shall promptly:

1. Complete the Contract in accordance with its terms and conditions, or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by SURETY of the lowest responsible bidder, or, if the OBLIGEE elects, upon determination by the OBLIGEE and the SURETY jointly of the lowest responsible bidder, arrange for a contract between such bidder and OBLIGEE and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the costs of completion less the balance of the contract price, but not exceeding, including other costs and damages for which the SURETY may be liable hereunder, the face amount set forth above. The term "balance of the contract price" as used in this paragraph, shall mean the total amount payable by OBLIGEE to PRINCIPAL under the Contract and any amendments thereto, less the amount previously paid by OBLIGEE to PRINCIPAL.

None of the following shall be defense to any claim under the Bond:

1. Failure of the OBLIGEE to withhold retainages pursuant to the Contract;
2. Failure of the OBLIGEE to withhold other payments from the PRINCIPAL pursuant any right of the OBLIGEE so to do;
3. Waiver by the OBLIGEE of, or failure by the OBLIGEE to enforce, any right remedy against the PRINCIPAL, and
4. Withholding by OBLIGEE of any payment(s) from the PRINCIPAL under a claim of a contractual right to do so, provided that, in the case of (.4), any amount so withheld is approved by the Architect under the Contract or is reasonable under the circumstances and is withheld in good faith.

No right of action shall accrue on the bond to or for the use of any person or corporation other than the OBLIGEE or the successors or assigns of OBLIGEE.

**IN WITNESS WHEREOF**, the parties have executed this instrument under their several Seals on the dated indicated above, the Name and Corporation Seal of each Corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

**ATTEST:**

**PRINCIPAL:**

SIGN: \_\_\_\_\_

SIGN: \_\_\_\_\_ (SEAL)

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_

**ATTEST:**

**SURETY:**

SIGN: \_\_\_\_\_

SIGN: \_\_\_\_\_ (SEAL)

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_

**AGENT (COMPANY):** \_\_\_\_\_ (SEAL)

**AUTHORIZED BY:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_.

**ATTACHMENT L**

**LABOR AND MATERIAL PAYMENT BOND FORM**

**LABOR AND MATERIAL PAYMENT BOND**  
**PHASE III – OCEAN CITY CONVENTION CENTER EXPANSION & IMPROVEMENTS**

**PRINCIPAL:**

\_\_\_\_\_  
BUSINESS NAME

\_\_\_\_\_  
BUSINESS ADDRESS

**OBLIGEE:**

Maryland Stadium Authority  
its Successors and/or Assigns,  
OBLIGEE NAME

351 W. Camden Street, Suite 500  
Baltimore, Maryland 21201-2435  
BUSINESS ADDRESS

**SURETY:**

\_\_\_\_\_  
BUSINESS ADDRESS

\_\_\_\_\_, 2017  
DATE BOND EXECUTED

A Corporation of the State of \_\_\_\_\_ authorized to do business in the State of Maryland.

**SUM OF BOND** (Equal to Contract Price):

SUM OF \_\_\_\_\_ Dollars (\$\_\_\_\_\_)

**CONTRACT:**

\_\_\_\_\_, 2017  
DATE OF CONTRACT

**KNOW ALL MEN BY THESE PRESENTS,** That we, the PRINCIPAL and SURETY are held and firmly bound unto the OBLIGEE in full and just sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS,** the PRINCIPAL is entering into a certain Contract with the OBLIGEE described and dated, as shown above and attached hereto, and is required to give a Bond conditioned as hereinafter set forth.

**NOW, THEREFORE,** the condition of this obligation is such that if the PRINCIPAL shall promptly make payments to all persons supplying labor, material, and/or services in the prosecution of the Work ("claimant") provided for in said contract and any and all duly authorized extension and/or modifications of said contract that may hereafter be made, notice of such extension and/or modifications to the SURETY being hereby waived, and any maintenance, repair, guaranty and warranty required under the Contract, then this obligation to be null and void; otherwise to remain in full force and effect.

The PRINCIPAL and SURETY hereby jointly and severally agree with the OBLIGEE that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last such claimant's work or labor was done or performed, or materials or services were furnished by such claimant, may sue on this bond for the use of claimant, prosecute the suite to final judgment for such sum or sums as may be justly due claimant, and have execution thereof. The OBLIGEE shall not be liable for the payment of any costs or expenses of any such suit.

The amount of this bond shall be reduced by and to the extent of any payment or payments made in good

faith hereunder, inclusive of the payment by SURETY of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

A suit or action commenced hereunder shall comply with applicable Provisions of the Public General Laws of Maryland. No suit or action shall be commenced hereunder against the OBLIGEE, its successors and assigns, nor shall OBLIGEE be liable for any costs or expenses of such suit.

None of the following shall be a defense to any claim under the Bond:

1. Failure of the OBLIGEE to withhold retainages pursuant to the Contract;
2. Failure of the OBLIGEE to withhold other payments from the PRINCIPAL pursuant to any right of the OBLIGEE so to do;
3. Waiver by the OBLIGEE of, or failure by the OBLIGEE to enforce, any right remedy against the PRINCIPAL; and
4. Withholding by OBLIGEE of any payment(s) from the PRINCIPAL under a claim of a contractual right to do so, provided that, in the case of (iv), any amount so withheld is approved by the Architect under the Contract or is reasonable under the circumstances and is withheld in good faith.

**IN WITNESS WHEREOF**, the parties have executed this instrument under their several Seals on the dated indicated above, the Name and Corporation Seal of each Corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

**ATTEST:**

SIGN: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**PRINCIPAL:**

SIGN: \_\_\_\_\_(SEAL)

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**ATTEST:**

SIGN: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**SURETY:**

SIGN: \_\_\_\_\_(SEAL)

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**AGENT (COMPANY):** \_\_\_\_\_(SEAL)

**AUTHORIZED BY:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_



**ATTACHMENT M**

**SAMPLE CONTRACT: PRECONSTRUCTION AGREEMENT FOR  
CONSTRUCTION MANAGEMENT SERVICES**

**PRECONSTRUCTION AGREEMENT**

**FOR**

**CONSTRUCTION MANAGEMENT SERVICES**

**BETWEEN**

**THE MARYLAND STADIUM AUTHORITY**

**AND**

**[CONSTRUCTION MANAGER NAME]**

MSA CONTRACT NO. \_\_\_\_\_

## Table of Contents

Section 1 – Basic Services .....	1
Section 2 – Relationship of Construction Manager and MSA.....	2
Section 3 – Term .....	4
Section 4 – Compensation and Method of Payment .....	5
Section 5 – Contract Representatives and Notices .....	8
Section 6 – Insurance.....	9
Section 7 – Indemnification and Force Majeure .....	9
Section 8 – Dispute Resolution .....	10
Section 9 – Termination .....	10
Section 10 – Retention of Records; Inspections and Audits.....	11
Section 11 – Ethics.....	12
Section 12 – Personnel and Subcontractors .....	14
Section 13 – Economic Inclusion .....	16
Section 14 – Non-Discrimination and Compliance with Laws.....	18
Section 15 – Availability of Funding.....	20
Section 16 – Miscellaneous.....	20

**MARYLAND STADIUM AUTHORITY  
CONTRACT NO. \_\_\_\_\_  
PHASE III – OCEAN CITY CONVENTION CENTER EXPANSION AND  
IMPROVEMENTS**

**PRE-CONSTRUCTION AGREEMENT  
FOR  
CONSTRUCTION MANAGEMENT SERVICES**

THIS PRECONSTRUCTION AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES (this "**Agreement**") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ by and between the MARYLAND STADIUM AUTHORITY, a body politic and corporate and an instrumentality of the State of Maryland ("**MSA**"), and [Construction Manager Name], a [State of Organization] [Type of Organization] ("**Construction Manager**"), each of whom may be referred to as a "**Party**" and both of whom may be collectively referred to as the "**Parties**."

WHEREAS, MSA issued a Request for Proposals ("RFP") dated \_\_\_\_\_, 201\_ for the purpose of seeking proposals for Construction Management (CM) Pre-Construction Services for Phase III – Ocean City Convention Center Expansion and Improvements (the "Project"), which RFP is attached hereto as **Exhibit 1** and incorporated by reference herein; and

WHEREAS, The Contractor submitted its Technical and Price Proposals dated \_\_\_\_\_, 201\_ which is attached hereto as **Exhibit 2 and Exhibit 3** and incorporated by reference herein (the "Proposal").

**AGREEMENT**

NOW, THEREFORE, for and in consideration of the promises and covenants, conditions, representations, and warranties contained herein, and for good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged, the Parties agree as follows:

**Basic Services**

Contract Documents. **Construction Manager shall provide construction management preconstruction services to MSA in accordance with the following documents (collectively, the "Contract Documents"):**

This Agreement;

The documents identified in and attached hereto as **Exhibit 1** which are herein referred to collectively as the "**RFP**";

The documents identified in and attached hereto as **Exhibit 2** which are herein referred to collectively as "**Construction Manager's Technical Proposal**";

The documents identified in and attached hereto as **Exhibit 3** which are herein referred to collectively as "**Construction Manager's Price Proposal**" (Construction Manager's Technical Proposal and Price Proposal are herein referred to collectively as "**Construction Manager's Proposal**");

Construction Manager's executed Bid/Proposal Affidavit, attached hereto as **Exhibit 4**;

Construction Manager's executed Contract Affidavit, attached hereto as **Exhibit 5**;

Construction Manager's executed MDOT-Certified MBE Utilization and Fair Solicitation Affidavit, attached hereto as **Exhibit 6**; and

Construction Manager's executed Conflict-of-Interest Information and Disclosure Affidavit, attached hereto as **Exhibit 7**.

If there is a conflict among the provisions of the Contract Documents, the Contract Documents shall control in the order that they are listed above.

## **Relationship of Construction Manager and MSA**

Acceptance of Appointment. **Construction Manager accepts the relationship of trust and confidence established between Construction Manager and MSA by this Agreement, shall provide Construction Manager's best skill and judgment, and shall cooperate with MSA and its various partners, contractors, and consultants, including those working on the Project, in furthering the interests of MSA in connection with the Project throughout the term of this Agreement. Construction Manager shall furnish efficient business administration and management services in an expeditious and economical manner consistent with the interests of MSA.**

Independent Contractor. **Construction Manager is neither an employee of MSA nor of the Town of Ocean City, but rather is and shall be an independent contractor as that term is defined under Maryland law. Construction Manager shall be responsible for providing all equipment and related services necessary for performance of all obligations under this Agreement, and for withholding any taxes and Social Security payment due in relation to services rendered under this Agreement.**

Limited Agency. Construction Manager shall be an agent of MSA to the extent, and only to the extent, required to properly perform the services requested by MSA under this Agreement. Construction Manager shall not represent or hold itself out to have any authority to act on behalf of or bind MSA other than as specifically provided herein. Construction Manager is not and shall not be an agent of the State or the Town of Ocean City, cannot commit the State or the Town of Ocean City to any expenditure of funds, and cannot enter into any contractual obligation on behalf of the State or the Town of Ocean City.

Standard of Care. Construction Manager covenants with MSA to furnish its best professional skill and judgment with due care in accordance with the generally accepted standards of construction management practice for a large fast-track construction or renovation project of similar size and scope to the Project in the same or similar locality and in accordance with applicable federal, state, and local laws and regulations in effect as of the date of this Agreement. Construction Manager understands and acknowledges that MSA's decision to appoint Construction Manager is based upon the experience, qualification, and other materials submitted in response to the RFP. Construction Manager further represents and warrants that such materials are, as of the date that they were submitted and as of the date hereof, accurate in all material respects and fairly represent the capabilities of Construction Manager and its subcontractors.

Performance of Services. Construction Manager shall, at all times, meet the standard of care described above when fulfilling its duties and obligations under this Agreement and the Contract Documents. Construction Manager shall cooperate with MSA and its employees, agents, and contractors in delivering any service hereunder. At all times, Construction Manager shall keep MSA's Contract Representative (as defined below) informed of the progress made in the performance of all assigned duties.

Ownership and Use of Work Product. Any work product, whether written or in electronic format, prepared by Construction Manager during the term of this Agreement for MSA shall become the sole and exclusive property of MSA. Such work product shall not be used by

**Construction Managers or its consultants or subcontractors for other projects without the specific written consent of MSA.**

Confidential Information.

**In order for Construction Manager to fulfill its obligations under this Agreement effectively, it may be necessary or desirable for MSA to disclose to Construction Manager confidential and proprietary information and trade secrets pertaining to MSA's past, present, or future activities. If MSA marks or otherwise informs Construction Manager in writing that certain materials or information are confidential, proprietary, or secret, Construction Manager hereby agrees to treat such information in a confidential manner. Construction Manager further agrees that it will not disclose any such information so designated to anyone outside of MSA (whether during the term of this Agreement or thereafter) without the prior written consent of MSA.**

**Upon termination of this Agreement, Construction Manager shall return to MSA all documents and records provided by MSA, and any information or materials derived therefrom, which are in Construction Manager's custody or control; provided, however, that Construction Manager shall be allowed to make and keep copies of such documents, records, information, and materials.**

Dissemination of Information. **Unless Construction Manager has obtained the prior written consent of MSA's Contract Representative (as defined below), Construction Manager shall not (a) release, disseminate, publish, distribute, or circulate, in any manner whatsoever, any information, data, document or materials related to the services or performance of the services under this Agreement, or (b) publish any final reports or documents.**

MSA's Responsibilities. **MSA shall provide Construction Manager full information regarding its requirements for the Project. As an expense of the Program, MSA shall furnish or cause others to furnish all design services, surveys, soil borings, and other such reports as may be necessary for the Project.**

## **Term**

**Construction Manager shall complete its services under this Agreement on or before [REDACTED], 201[REDACTED].**

## **Compensation and Method of Payment**

Contract Price. For performing the basic services specified in the Contract Documents, MSA shall pay Construction Manager the lump sum of \_\_\_\_\_ Dollars (\$) as identified in the Price Proposal.

Additional Services. Construction Manager shall perform additional services ("Additional Services") upon the mutual consent of MSA and Construction Manager and upon written authorization to proceed from MSA. Such Additional Services shall be paid for in accordance with subsections 4.3 and 4.4 of this Agreement. Compensation for Additional Services shall be based on actual time spent at hourly rates mutually agreed upon by Construction Manager and MSA.

Invoices. Construction Manager shall submit detailed invoices, setting forth the name of the employee or subcontractor performing services, the date of such services, a full description of the services performed, the agreed upon rates charged for such services, and the hours or fractional hours expended. Each detailed invoice shall be sent in a standard billing format, which shall include, but not be limited to, inclusion of the following: Construction Manager's Federal Tax Identification Number of \_\_\_\_\_; Contract Identifying Number \_\_\_\_\_; and MSA's Blanket Purchase Order Number (to be determined later by MSA).

Payment. Payments to Construction Manager will be based upon a reasonable number of actual hours expended by Construction Manager's employees and subcontractors in the performance of services, as approved by MSA's Contract Representative or his designees, multiplied by the agreed upon rates for such services.

Reimbursement of Expenses. For Reimbursable Expenses (as hereinafter defined), compensation shall be computed as the actual amount of the Reimbursable Expenses at cost and without a markup, subject to the limitations set forth in this subsection. Reimbursable Expenses shall include only those reasonable and actual expenditures made by Construction Manager and its employees and consultants in the interest of the Project for the items identified below. Reimbursable Expenses shall be documented with receipts



and shall be highlighted in expense reports if combined with non-reimbursable expenses. Invoices for costs and expenses incurred shall be itemized in a manner satisfactory to MSA's Contract Representative or his designees in accordance with subsection 4.3. Any Reimbursable Expenses (other than travel and living expenses of Construction Manager and its employees for trips to the Project area and reasonable telephone expenses) requiring expenditures in excess of one thousand dollars (\$1,000) per each separate occasion shall require the prior written approval of MSA (or when so indicated by MSA, oral approval from MSA's Contract Representative, provided that each such oral approval shall be confirmed in writing). A projected schedule of Reimbursable Expenses, which shall not be materially exceeded without the prior written approval of MSA, is set forth in Construction Manager's Price Proposal. Construction Manager will not be reimbursed for indirect costs such as secretarial services, employee overtime costs, photocopying, messenger services, or telephone, computer, or telefax services between Construction Manager and MSA or the Town of Ocean City. Non-reimbursed indirect costs may not be recovered indirectly through "time" charges. "Reimbursable Expenses" shall include:

**Fees paid for securing approval of authorities having jurisdiction over the Project;**

**Reasonable expense of reproduction necessary for the rendition of services hereunder, but which shall not include the expenses of producing the sets of documents covered in Construction Manager's compensation for the basic services under the Contract Documents;**

**Costs of photographic production techniques;**

**Costs of public stenographic services and transcripts for meetings as and when required by MSA;**

**Expense of any sales, use, occupation, or similar taxes applicable to this Agreement;**

**Expense of models, renderings, videos, presentation materials, and photographs when authorized in advance in writing by MSA;**

**Reasonable living expenses in connection with approved out-of-town travel in accordance with the rates set forth in the State's standard travel**

**regulations, as amended from time to time (provided, however, that alcohol and/or entertainment shall never be Reimbursable Expenses); and**

**Such other expenses incurred in connection with the Project when specifically authorized in advance in writing by MSA.**

Taxes. MSA shall not withhold federal, State, local or FICA taxes, if any, from payments made pursuant to this Agreement.

Electronic Funds Transfer. Construction Manager agrees to accept payments by electronic funds transfer unless the State Comptroller's Office grants an exemption from this method of payment. Construction Manager shall register using the COT/GAD X-10 Vendor Electronic Funds Transfer (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT-GAD X-10 form and must include the business identification information as stated on the form and reason for requesting an exemption.

Price in GMP. In accordance with the terms of the RFP, Construction Manager may be awarded the contract to provide construction management services during the construction of the Project on the basis of a construction-manager-at-risk guaranteed-maximum-price contract (the "GMP Contract"). Without in any way implying or guarantying that Construction Manager will be awarded the GMP Contract, MSA and the Construction Manager hereby agree that, unless otherwise agreed to in writing by MSA, all rates and prices for the Construction Manager's services under this Agreement or negotiated during the term of this Agreement shall be the rates and prices payable under the GMP Contract.

## **Contract Representatives and Notices**

Designation of Contract Representatives. The following individuals are designated as Contract Representatives for their respective parties:

**MSA:** Al Tyler, Assistant Vice President  
Maryland Stadium Authority – Capital Projects  
Development Group  
The Warehouse at Camden Yards  
351 West Camden Street, Suite 500  
Baltimore, Maryland 21201

Phone: (410) 223-4150  
e-mail: atyler@mdstad.com

**Construction Manager:** \_\_\_\_\_  
[Construction Manager Name]  
\_\_\_\_\_  
\_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_-\_\_\_\_  
e-mail: \_\_\_\_\_@\_\_\_\_\_.com

Authority of Construction Manager's Contract Representative. Construction Manager's Contract Representative as identified in this Agreement shall be deemed to have authority to render any decision or take any action required under the Agreement.

Authority of MSA's Contract Representative. Except as provided in subsection 5.4 below, MSA's Contract Representative as identified in this Agreement is the individual to be contacted by Construction Manager for the purposes of communicating routine information, requesting assistance, or making routine inquiries regarding this Agreement. Notwithstanding anything in this Section 5, only an authorized MSA official acting in the capacity of Procurement Officer is authorized to make changes to the scope of work or to issue modifications to this Agreement.

Notices. All notices, requests, demands, offers and other written communications given or delivered under or by reason of the provisions of this Agreement shall be (i) in writing, (ii) signed by the Party giving such notice, (iii) addressed to the other Party's Contract

Representative, and (iv) given by registered mail, postage prepaid and return receipt requested, by hand delivery, or by nationally recognized air courier service. Unless and until MSA notifies Construction Manager otherwise, all notices to MSA shall be sent to both MSA's Contract Representative and Program Manager's Representative. Any such notice shall become effective when received (or refused) by the addressee, provided that any notice or communication that is received other than during regular business hours of the recipient on a business day shall be deemed to have been given at the opening of business on the next business day. From time to time, each of the Parties may designate a new addressee or address for purposes of notice hereunder by notice to such effect to the other.

## **Insurance**

During the term of this Agreement, Construction Manager shall obtain, maintain, and provide satisfactory evidence of insurance coverage satisfying at least the minimum requirements set forth in the RFP.

## **Indemnification and Force Majeure**

Indemnity. Construction Manager shall indemnify, defend, and hold harmless MSA, the State and the Town of Ocean City, and their respective employees, officers and agents (collectively, the "Indemnitees") from and against all liabilities, obligations, damages, losses, fines, penalties, claims, demands, costs, charges, judgments and expenses (including, without limitation, reasonable attorney's fees and disbursements) whatsoever, which may be imposed or incurred or paid by, or asserted against the Indemnitees to the extent caused or alleged to be caused by Construction Manager's negligence or willful misconduct. This indemnity shall survive expiration or termination of this Agreement.

Limit of Responsibility. Except with respect to Construction Manager's own employees, subcontractors, and consultants, Construction Manager shall not be responsible for the acts or omissions of MSA, the Town of Ocean City, or any contractor, subcontractor, or consultant used by MSA or the Town of Ocean City with respect to the Project.

Force Majeure. Neither Construction Manager nor MSA shall be liable to the other for any delays in the performance of their obligations and responsibilities beyond their reasonable controls and without their fault or negligence, including, but not limited to, fire, flood, earthquake, epidemic, atmospheric conditions of unusual severity, war, and strikes. In the event of any such delays, the term of this Agreement shall be extended by a period of time equal to the period during which performance was delayed and Construction Manager shall be entitled to an equitable adjustment in its compensation.

## **Dispute Resolution**

Continuity of Services. In the event of a dispute or controversy of any nature whatsoever, Construction Manager shall strictly abide by MSA's decision for the purpose of prompt and uninterrupted continuation of the performance of its duties, obligations, and services under this Agreement; provided, however, that Construction Manager may submit to MSA a written exception to any decision of MSA within ten (10) days after receipt of such decision stating the basis of its exception and reserving the right to file a claim against MSA after completion of the Project for additional compensation or damages. The continued performance by Construction Manager of its duties, obligations, and services under this Agreement shall not operate as a waiver of any such claim, nor shall it be prejudicial to Construction Manager's rights, hereby reserved, to have such exception and claim later adjudicated. Construction Manager shall continue to perform its obligations under this Agreement pending resolution of any dispute and MSA shall continue to make payments of all amounts due to Construction Manager that are not in dispute.

Arbitration. No dispute or controversy under this Agreement shall be subject to binding arbitration except to the extent Construction Manager and MSA mutually agree to arbitrate.

## **Termination**

MSA's Right to Terminate. At any time during the effectiveness of this Agreement, MSA shall have the right, with or without cause, upon ten (10) days' written notice to Construction Manager, to terminate this Agreement in whole or in part.

Termination Generally. In the event of a termination, Construction Manager shall deliver to MSA all materials pertaining to the Project that are within Construction Manager's custody or control. Except as otherwise set forth in this section, MSA shall pay to Construction Manager all amounts due and earned to the time of termination in accordance with the provisions of this Agreement. Except for such amounts due and earned, a termination shall not give rise to any cause of action or claim against MSA for damages, loss of profits, expenses, or other remuneration of any kind.

MSA's Option to Withhold Payment. If in the judgment of MSA, a termination is made necessary or desirable because of Construction Manager's failure to fulfill its obligations under this Agreement or any other fault of Construction Manager, MSA may withhold payment of all or any part of any monies that otherwise may be payable to Construction Manager under this Agreement. Such monies may be applied toward any damages or expenses sustained by MSA as a result of such failure, including, without limitation, any excess costs incurred by MSA in completing the Project. Notwithstanding the foregoing, Construction Manager shall remain liable to MSA for all such damages and expenses without limitation to any amounts withheld by MSA. The failure of MSA to withhold monies from Construction Manager shall not be construed as an acknowledgment by MSA that no such damages or expenses exist and shall not prevent MSA from thereafter making any claim against Construction Manager therefor.

### **Retention of Records; Inspections and Audits**

Construction Manager shall maintain books, records, documents and other evidence directly pertinent to performance under the Agreement in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Agreement. Construction Manager shall also maintain the financial information and data used in the preparation and support of the cost analysis and cost summaries submitted to MSA and the required cost submissions in effect on the date of execution of the Agreement. MSA, and any of its authorized representatives, shall have access to the books, records, documents and other evidence held, owned or

**maintained by Construction Manager for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to Construction Manager. Construction Manager shall provide proper facilities for such access and inspection.**

**Construction Manager shall maintain, for each individual performing services under this Agreement, complete time records that document the services rendered. A summary of the time records (and any coding key necessary to interpret them), indicating the name of each employee, the services rendered, the hourly rate being charged, and the amount of time spent by each such individual, and the dates of performance, shall be available to MSA, and any auditors acting on behalf of MSA, at all reasonable times during the terms of this Agreement and for a period of seven (7) years after final payment hereunder.**

**Construction Manager shall retain and preserve all records and documents relating to this Agreement for seven (7) years after final payment hereunder, and shall make them available for inspection and audit by MSA or its authorized representatives at all reasonable times.**

## **Ethics**

**Financial Disclosure. Construction Manager shall comply with Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State or its agencies and received in the aggregate \$100,000 or more during a calendar year shall, within thirty (30) days of the time when the \$100,000 amount is reached, file with the Secretary of State a list that contains the name and address of: (i) any resident agent of the business; (ii) each officer of the business; and (iii) if known, each person who has beneficial ownership of the business.**

**Campaign Finance Disclosure. Construction Manager shall comply with Subtitle 1 of Title 14 of the Election Law Article of the Annotated Code of Maryland and all regulations promulgated by the State Board of Elections pursuant thereto, which provisions require that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives**

the specified aggregate amount or more, shall file with the State Board of Elections statements disclosing certain contributions at specified times.

Hiring Prohibition. No official or employee of the State of Maryland (as defined under General Provisions Article §5-101, Annotated Code of Maryland) whose duties as such official or employee include matters relating to or affecting the subject matter of this Agreement, shall during the pendency and term of this Agreement and while serving as an official or employee of the State become or be an employee of Construction Manager or any entity that is a subcontractor on this Agreement.

Prohibition of Gratuities and Benefits.

**No employee, officer, member, or representative of MSA, the State of Maryland, the City, or the Town of Ocean City shall in any way personally share in any proceeds or benefit from this Agreement.**

**If it is found by MSA that gratuities (in the form of entertainment, gifts, payment, offers of employment or otherwise) were offered or given by Construction Manager to any official, employee or agent of MSA, the State of Maryland or any other party affiliated with this Contract with a view toward securing the Agreement or any other contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of the Agreement, MSA may, by written notice to Construction Manager, terminate the right of Construction Manager to proceed under the Agreement and may pursue such other rights and remedies provided by law and under the Agreement.**

**If this Agreement is terminated as provided in this subsection, MSA shall be entitled to pursue all available legal remedies to which it may be entitled by law, which may include, but not be limited to, exemplary damages.**

Ethical Standards For Owner's Employees And Former Employees. MSA expects Construction Manager to observe the highest ethical standards and to comply with all applicable laws, rules, and regulations governing ethical conduct and conflicts of interest. Neither Construction Manager, nor any person associated with Construction Manager, shall provide (or seek reimbursement for) any gift, gratuity, favor, entertainment, loan or other thing of value to any employee of MSA or the Town of Ocean City. Construction Manager



shall not engage the services of any person or persons in the employment of MSA or the Town of Ocean City for any work required, contemplated or performed under this Agreement. Construction Manager may not assign to any former employee of MSA or the Town of Ocean City who has joined Construction Manager's firm any matter on which the former employee, while in the employ of MSA or the Town of Ocean City, had any involvement. Construction Manager shall include in every subcontract a provision substantially similar to this section so that such provisions shall be binding upon each subcontractor or vendor.

False Statements. Construction Manager shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to MSA in connection with this Agreement.

## **Personnel and Subcontractors**

### Construction Manager's Project Team.

**Construction Manager shall not make any changes in the composition of its project team as specified in Construction Manager's Proposal without the prior written consent of MSA's Contract Representative. Any change to the composition of Construction Manager's project team without the prior written consent of the Contract Representative shall be deemed to be an event of default by Construction Manager under this Agreement.**

**MSA's Contract Representative may require Construction Manager to remove an employee of Construction Manager from its project team for sufficient cause. Such cause may include, but is not necessarily limited to: deficient performance, lack of responsiveness, illegal or immoral acts, negligence, incompetence, or inefficiency. Should replacement of an employee be required, Construction Manager shall submit a replacement to MSA's Contract Representative for approval.**

### Subcontractors.

**Except as specified in Construction Manager's Proposal, Construction Manager shall not subcontract any of the work to be performed under this Agreement without the prior written approval of MSA. All work subcontracted for under this Agreement shall be based upon a written agreement between Construction Manager and subcontractor incorporating the provisions of this Agreement, unless expressly waived by the Contract Representative.**

**Construction Manager shall comply with all applicable laws, regulations, and policies and procedures of MSA in the procurement of all subcontractors. The approval of a subcontract by MSA shall not operate as a waiver of this requirement or an acknowledgement that it has been satisfied.**

**MSA's Contract Representative, in his or her sole discretion, may require Construction Manager to replace a subcontractor for sufficient cause. Such cause may include, but is not necessarily limited to: deficient performance, lack of responsiveness, illegal or immoral acts, negligence, incompetence, or inefficiency. Should replacement of a subcontractor be required, Construction Manager shall submit a replacement to MSA's Contract Representative for approval. MSA's Contract Representative shall have the right to interview any proposed replacement subcontractor before rendering a decision.**

Prompt Payment Policy.

**If Construction Manager withholds payment of an undisputed amount to its subcontractor, MSA, at its option and in its sole discretion, may take one or more of the following actions:**

**Not process further payments to Construction Manager until payment to the subcontractor is verified;**

**Suspend all or some of the contract work without affecting the completion date(s) for the contract work;**

**Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due to Construction Manager;**

**Place a payment for an undisputed amount in an interest-bearing escrow account; or**

**Take other or further actions as appropriate to resolve the withheld payment.**

**An "undisputed amount" means an amount owed by Construction Manager to a subcontractor for which there is no good faith dispute, including any retainage withheld, and includes an amount withheld because of issues arising out of an agreement or occurrence unrelated to this Agreement.**

**An act, failure to act, or decision of MSA's Procurement Officer, MSA's Contract Representative, or any other representative of MSA concerning a withheld payment between Construction Manager and a subcontractor under this provision may not:**

**Affect the rights of the Parties under any other provision of law;**

**Be used as evidence on the merits of a dispute between MSA and Construction Manager in any other proceeding; or**

**Result in liability against or prejudice the rights of MSA.**

**The remedies enumerated above are in addition to those provided in Section 13 of this Agreement.**

Acts of Agents, Employees, and Subcontractors. **Construction Manager shall be responsible to MSA for any and all acts and omissions of Construction Manager, its agents, employees, and subcontractors.**

## **Economic Inclusion**

Minority Business Enterprises. **With Construction Manager's Proposal, Construction Manager submitted an MDOT-Certified MBE Utilization and Fair Solicitation Affidavit (the "Construction Manager's MBE Affidavit"), a copy of which is attached hereto as Exhibit 5. The Construction Manager's MBE Affidavit lists the name, address, percentage, and dollar value of each Minority Business Enterprise ("MBE") that Construction Manager intends to use on the Project (each of which has been certified as an MBE by the Maryland Department of Transportation). Unless otherwise permitted by MSA in accordance with Title 14, Subtitle 3 of the State Finance and Procurement Article of the Annotated Code of Maryland and the regulations promulgated pursuant thereto (collectively, the "MBE Program"), Construction Manager shall utilize the MBE's as specified in the Construction Manager's MBE Affidavit. Construction Manager may not terminate, cancel, or change the scope of work/value of a subcontract with a certified MBE listed on Construction Manager's MBE Affidavit without:**

**Showing good cause why the subcontract with the certified MBE should be terminated or cancelled;**

**Obtaining the prior written consent of MSA's MBE liaison and Executive Director; and**

**Subsequently amending this Agreement.**

Reporting Requirements. Construction Manager shall:

**Permit MSA to inspect any relevant matter, including records and the jobsite and to interview subcontractors and workers;**

**Submit monthly to MSA a report listing payments made to each MBE subcontractor in the preceding thirty (30) days and any unpaid invoices over thirty (30) days old received from a certified MBE subcontractor, and the reason payment has not been made;**

**Include in its agreements with its certified MBE subcontractors a requirement that the certified MBE subcontractors submit monthly to MSA a report identifying the prime contract, and listing:**

**Payments received from Construction Manager in the preceding thirty (30) days, and**

**Invoices for which the subcontractor has not been paid;**  
**and**

**Before final payment and release of any retainage, submit a final report, in affidavit form and under penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.**

Liquidated Damages. MSA and Construction Manager acknowledge and agree that MSA will accrue damages (including, but not limited to, loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources), if Construction Manager does not comply with the requirements of the MBE Program and related contract provisions. Because such damages would be difficult, if not impossible, to ascertain with precision, Construction Manager agrees that upon a determination by MSA that Construction Manager failed to comply with one or more of the specified requirements of the MBE Program or related contract provisions, Construction Manager shall pay liquidated damages to MSA calculated in accordance with the rates set forth below. Construction Manager expressly agrees that MSA may withhold payment on any invoices as a set-off against liquidated damages owed. Construction Manager further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss MSA is anticipated to incur as a result of such violation. MSA may waive the liquidated damages payable under this section if MSA determines, in MSA's sole discretion, that

Construction Manager has made good faith efforts to comply with the specified requirement of the MBE Program or related contract provisions or that other good cause exists for waiving the liquidated damages payable hereunder. Nothing in the foregoing sentence shall be construed as granting MSA the option to waive liquidated damages in order to seek actual damages instead. MSA reserves the right to terminate this Agreement and, except as expressly set forth above, exercise all other rights and remedies provided in this Agreement or by law. The rates for calculating liquidated damages shall be:

**Failure to submit each monthly payment report in full compliance with paragraph 13.2(b) of this Agreement: \$120 per day until the monthly report is submitted as required.**

**Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with paragraph 13.2(c) of this Agreement: \$60 per MBE subcontractor.**

**Failure to comply with subsection 13.1 of this Agreement in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule set forth in Construction Manager's MBE Affidavit: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work actually performed by that MBE firm under this Agreement.**

**Failure to meet Construction Manager's total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.**

**Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of this Agreement: \$425 per day until the undisputed amount due to the MBE subcontractor is paid.**

## **Non-Discrimination and Compliance with Laws**

### Nondiscrimination.

**In accordance with State Finance and Procurement Article §13-219, Annotated Code of Maryland, Construction Manager agrees: (i) not to discriminate in any manner against an employee or applicant for employment**

because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (ii) to include a provision similar to that contained in the preceding clause (i) in any subcontract except a subcontract for standard commercial supplies or raw materials; and (iii) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this paragraph.

**Construction Manager shall comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Construction Manager may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, disability, or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Construction Manager retaliate against any person for reporting instances of such discrimination. Construction Manager shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this paragraph does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Construction Manager understands that a material violation of this paragraph shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Construction Manager from participating in State contracts, or other sanctions. This paragraph is not enforceable by or for the benefit of, and creates no obligation to, any third party.**

**Upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Construction Manager under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Construction Manager agrees to provide, within 60 days after the request, a complete list of the names of all subcontractors, vendors, and suppliers that Construction Manager has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Construction Manager on each subcontract or supply contract. Construction Manager further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Construction Manager understands that violation of this paragraph is a material breach of this Agreement and may result in contract termination,**

**disqualification by the State from participating in State contracts, and other sanctions.**

Compliance with Applicable Laws. It shall be Construction Manager's responsibility to perform under this Agreement in conformance with all applicable statutes, laws, codes, ordinances, regulations, rules, requirements, orders, and policies of governmental entities. It is the sole responsibility of Construction Manager to determine the statutes, laws, codes, ordinances, regulations, rules, requirements, orders, and policies that apply to the performance of this Agreement and their effects.

Permits, Licensing, Accreditation, and Registrations. Construction Manager shall secure and maintain at its expense all necessary permits, licenses, accreditations, and registrations and any other governmental approvals that are required to perform the services under this Agreement.

## **Availability of Funding**

Construction Manager acknowledges that the Project will be paid for with Program funds. MSA shall keep Construction Manager informed of any shortfall in the Program funds that could affect the Project. If Program funds become unavailable for the Project, this Agreement shall be canceled automatically as of the date for which funds become unavailable, whereupon the parties shall have the rights and remedies provided herein as if MSA had canceled this Agreement solely for MSA's convenience.

## **Miscellaneous**

Entire Contract. This Agreement and the Contract Documents constitute the entire agreement between the Parties. Any other communications between the Parties before execution of this Agreement, whether written or oral, are superseded by this Agreement. This Agreement may not be modified, amended, changed, or altered except by written instrument executed by the Parties.

Governing Law. This Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of Maryland, exclusive of conflicts of law provisions.

Assignment. Neither this Agreement, nor any of the rights or obligations hereunder, may be assigned by Construction Manager.

Any such purported assignment shall be null and void. Notwithstanding the foregoing, in its normal course of business, Construction Manager may assign the accounts receivable which may arise under this Agreement.

Drafting Interpretations. In construing this Agreement, none of the Parties hereto shall have any term or provision construed against such party solely by reason of such party having drafted the same.

Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, extend, or limit the scope or intent of such document or the intent of any provision contained therein.

Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and in lieu of each such invalid, illegal or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible and be valid, legal and enforceable. Each part of this Agreement is intended to be severable.

Counterparts. This Agreement may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if one original was signed by each of the Parties.

No Waiver. The failure of a Party to enforce, insist upon, or comply with any of the terms, conditions or covenants of this Agreement, or a Party's waiver of the same in any instance or instances shall not be construed as a general waiver or relinquishment of any such terms, conditions or covenants, but the same shall be and remain at all times in full force and effect.

Authority to Execute. The individual signing this Agreement on behalf of Construction Manager represents and warrants that (i) Construction Manager is duly organized and authorized to do business in the State of Maryland, and (ii) this Agreement has been duly authorized and is validly executed by an authorized officer or agent of Construction Manager.



IN WITNESS WHEREOF, the Parties to this Agreement have caused it to be executed by their duly authorized representatives as of the date set forth above.

WITNESS

[Construction Manager Name]

\_\_\_\_\_

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

WITNESS

MARYLAND STADIUM AUTHORITY

\_\_\_\_\_

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

Approved as to Form Legal Sufficiency,  
This \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_.

By: \_\_\_\_\_  
Bruce L. Benshoof  
Assistant Attorney General, MSA

## **CONSTRUCTION MANAGER AGREEMENT**

### **LIST OF EXHIBITS**

Exhibit 1	Request for Proposals
Exhibit 2	Technical Proposal
Exhibit 3	Price Proposal
Exhibit 4	Bid/Proposal Affidavit
Exhibit 5	Contract Affidavit
Exhibit 6	MDOT-Certified MBE Utilization and Fair Solicitation Affidavit
Exhibit 7	Conflict-of-Interest Information and Disclosure Affidavit

## EXHIBIT 1

### **REQUEST FOR PROPOSALS**

See attached documents, all of which collectively constitute the "**RFP**":

- Maryland Stadium Authority Request for Proposals – Construction Management Services, dated \_\_\_\_\_, 201\_\_, together with:
  - Addendum No. 1 thereto, dated \_\_\_\_\_, 201\_\_;
  - Addendum No. \_\_ thereto, dated \_\_\_\_\_, 201\_\_; and
  - Addendum No. \_\_ thereto, dated \_\_\_\_\_, 201\_\_.

## EXHIBIT 2

### TECHNICAL PROPOSAL

See attached documents, all of which collectively constitute "**Construction Manager's Technical Proposal**":

- Technical Proposal dated \_\_\_\_\_, 201\_\_ in response to Maryland Stadium Authority Request for Proposals – Construction Management Services, dated \_\_\_\_\_, 201\_\_.

### EXHIBIT 3

#### PRICE PROPOSAL

See attached document which constitutes "**Construction Manager's Price Proposal**":

- Price Proposal dated \_\_\_\_\_, 201\_\_ in response to Maryland Stadium Authority Request for Proposals – Construction Management Services, dated \_\_\_\_\_, 201\_\_.

1/6/2015

**EXHIBIT 4**

**BID/PROPOSAL AFFIDAVIT**

## EXHIBIT 5

### CONTRACT AFFIDAVIT

#### A. AUTHORITY

I HEREBY AFFIRM THAT:

I, (print name) \_\_\_\_\_ possess the legal authority to make this Affidavit.

#### B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

I FURTHER AFFIRM THAT:

\_\_\_\_\_ is a (check applicable items):

- (1) Corporation – \_\_\_ domestic or \_\_\_ foreign;
- (2) Limited Liability Company – \_\_\_ domestic or \_\_\_ foreign;
- (3) Partnership – \_\_\_ domestic or \_\_\_ foreign;
- (4) Statutory Trust – \_\_\_ domestic or \_\_\_ foreign;
- (5) \_\_\_ Sole Proprietorship

and is registered or qualified as required under Maryland Law.

I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation.

The Department ID given to the above business by the State Department of Assessments and Taxation is:

\_\_\_\_\_  
The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

(Print name) \_\_\_\_\_  
(Print address) \_\_\_\_\_

\_\_\_\_\_  
and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies the true name and address of the principal or owner as:

Name and Department ID Number: \_\_\_\_\_

Address: \_\_\_\_\_.

#### C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

#### D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Subtitle 1 of Title 14 of the Election Law Article of the Annotated Code of Maryland and all regulations promulgated by the State Board of

Elections pursuant thereto, which provisions require that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives the specified aggregate amount or more, shall file with the State Board of Elections statements disclosing certain contributions at specified times.

**E. DRUG AND ALCOHOL FREE WORKPLACE**

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
  - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
  - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
  - (c) Prohibit its employees from working under the influence of drugs or alcohol;
  - (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
  - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
  - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
    - (i) The dangers of drug and alcohol abuse in the workplace;
    - (ii) The business's policy of maintaining a drug and alcohol free workplace;
    - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
    - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
  - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b) of this affidavit;
  - (h) In the statement required by §E(2)(b) of this affidavit, notify its employees that as a condition of continued employment on the contract, the employee shall:
    - (i) Abide by the terms of the statement; and
    - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
  - (i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii) of this affidavit or otherwise receiving actual notice of a conviction;
  - (j) Within 30 days after receiving notice under §E(2)(h)(ii) of this affidavit or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
    - (i) Take appropriate personnel action against an employee, up to and including termination; or
    - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
  - (k) Make a good faith effort to maintain a drug and alcohol free workplace through



implementation of §E(2)(a) through (j) of this affidavit.

(3) If the business is an individual, the individual shall certify and agree, as set forth in §E(4) of this affidavit, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
- (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
- (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

**F. CERTAIN AFFIRMATIONS VALID**

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated \_\_\_\_\_, 20\_\_\_\_, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date:\_\_\_\_\_ By: \_\_\_\_\_  
(printed name of Authorized Representative and affiant)

\_\_\_\_\_  
(signature of Authorized Representative and affiant)

**EXHIBIT 6**

**MDOT-CERTIFIED MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT**

## EXHIBIT 7

### CONFLICT-OF-INTEREST INFORMATION AND DISCLOSURE AFFIDAVIT

- A. **"Conflict of interest"** means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.
- B. **"Person"** has the meaning stated in COMAR 21.01.02.01B(64) and includes a bidder, offeror, contractor, consultant, or subcontractor or subconsultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.
- C. The bidder or offeror warrants that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.
- D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain detail-attach additional sheets if necessary):
- E. The bidder or offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the bidder or offeror shall immediately make a full disclosure in writing to the procurement officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the bidder or offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the contractor shall continue performance until notified by the procurement officer of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Representative and Affiant)

**ATTACHMENT N**

**SAMPLE CONTRACT: CONSTRUCTION MANAGEMENT AGREEMENT**

PHASE III – OCEAN CITY CONVENTION CENTER EXPANSION and  
IMPROVEMENTS

NEGOTIATED GUARANTEED MAXIMUM PRICE  
CONSTRUCTION MANAGEMENT AGREEMENT

Between the  
Maryland Stadium Authority  
&  
TBD

# CONSTRUCTION MANAGEMENT AGREEMENT

## Phase III – Ocean City Convention Center Expansion and Improvements

### TABLE OF CONTENTS

<b>Article 1.General</b>	<b>Conditions;</b>	<b>Definitions</b>	
			<b>39</b>
<b>Article 2.CONSTRUCTION</b>	<b>MANAGER’S</b>	<b>SERVICES</b>	
			<b>41</b>
<b>Article 3.OWNER’S</b>		<b>RESPONSIBILITIES</b>	
			<b>48</b>
<b>Article 4.TRADE</b>		<b>CONTRACTS</b>	
			<b>50</b>
<b>Article 5.....</b>		<b>SCHEDULE</b>	
			<b>51</b>
<b>Article 6.CONSTRUCTION</b>	<b>MANAGER’S</b>	<b>COMPENSATION</b>	
			<b>54</b>
<b>Article 7.COST</b>	<b>OF</b>	<b>THE</b>	<b>WORK</b>
			<b>56</b>
<b>Article 8.CHANGES</b>	<b>IN</b>	<b>THE</b>	<b>PROJECT</b>
			<b>60</b>
<b>ARTICLE 9. ....</b>		<b>DISCOUNTS</b>	
			<b>30</b>
<b>Article 10.PAYMENTS</b>	<b>TO</b>	<b>CONSTRUCTION</b>	<b>MANAGER</b>
			<b>31</b>
<b>Article 11.....</b>		<b>INSURANCE</b>	
			<b>36</b>
<b>Article 12.TERMINATION</b>	<b>OR</b>	<b>SUSPENSION</b>	
			<b>38</b>
<b>Article 13.AUDITS</b>	<b>BY</b>	<b>OWNER</b>	
			<b>44</b>
<b>Article 14.....</b>		<b>DISPUTES</b>	
			<b>45</b>
<b>Article 15.MISCELLANEOUS</b>		<b>PROVISIONS</b>	
			<b>46</b>

<b><u>SIGNATURE PAGE.....</u></b>	<b><u>53</u></b>
<b>ATTACHMENT one Contract Affidavit.....</b>	<b>54</b>
 LIST OF EXHIBITS.....	
<b>EXHIBIT AGMP AGREEMENT .....</b>	<b>58</b>
<b>EXHIBIT BProject Manual</b>	<b><u>59</u></b>
<b>EXHIBIT CProject Description</b>	<b>60</b>
<b>EXHIBIT DMBE Goals &amp; Reporting Forms</b>	<b>61</b>
<b>EXHIBIT E<u>Prevailing Wage Scale</u></b>	<b><u>62</u></b>
<b><u>EXHIBIT F Cost Report Summary</u></b>	<b><u>63</u></b>
<b>EXHIBIT G       Certificates of Substantial &amp; Final Completion</b>	<b>64</b>
<b>EXHIBIT HStaffing Plan</b>	<b>65</b>
<b>EXHIBIT I       Architect Agreement</b>	<b><u>66</u></b>
<b>EXHIBIT J Schedule</b>	<b>67</b>
<b>EXHIBIT KFinal Release of Lien &amp; Waiver of Claim</b>	<b><u>68</u></b>
<b>EXHIBIT L Intentionally Omitted</b>	<b><u>69</u></b>
EXHIBIT M     Description of CM Invoice	70
EXHIBIT N     Allowances	71

## **NEGOTIATED GUARANTEED MAXIMUM PRICE CONSTRUCTION MANAGEMENT AGREEMENT**

Phase III – Ocean City Convention Center Expansion and Improvements

This Construction Management Agreement (“Agreement”) is made as of this  
\_\_\_\_<sup>th</sup> day of \_\_\_\_\_ 201\_.

between the Owner:

Maryland Stadium Authority  
The Warehouse at Camden Yards  
333 West Camden Street, Suite 500  
Baltimore, MD 21201 (the “Owner”)

and the Construction Manager:

Name  
Address  
City, State Zip Code (the “Construction Manager”)

The Project is:

Phase III – Ocean City Convention Center Expansion and Improvements (the “Project”)

The Architect is:

Name  
Address  
City, State Zip Code (the “Architect”)

The Client is:

The Town of Ocean City (the "TOC")  
4001 Coastal Hwy  
Ocean City, Maryland 21842

WHEREAS, the Owner is desirous of engaging the Construction Manager to construct the Project (hereinafter defined) as provided herein, and in that regard, to provide construction management services during the Construction Phase of the Project, and to enter into and hold all contracts with trade contractors (the “Trade Contractors”) as a construction manager at risk, and the Construction Manager is willing to provide those services and to undertake such risks and responsibilities, on the terms and conditions set forth herein;



NOW, THEREFORE, for good and valuable consideration, the receipt whereof is hereby acknowledged, the Owner and Construction Manager hereby agree as follows:

## Article 1. GENERAL PROVISIONS; DEFINITIONS

- 1.1. The Construction Manager recognizes and accepts the relationship of trust and confidence established between it and the Owner by this Agreement, and covenants with the Owner to furnish its best skill and judgment and to cooperate with the Architect and any other consultants engaged by the Owner in furthering the interests of the Owner. Construction Manager shall furnish construction administration and management services and shall be responsible for the completion of the Project in an expeditious and economical manner consistent with the interests of the Owner.
- 1.2. The Construction Team: The Construction Manager, the Client, the Owner, and the Architect constitute the "Construction Team" and shall work together throughout the term of this Agreement. The Construction Manager shall provide leadership to the Construction Team on all matters relating to construction.
- 1.3. Cooperation:
  - 1.3.1. Cooperation with Architect, the Construction Manager agrees to work in close cooperation with the Architect. Further, the Construction Manager represents that it has reviewed the agreement between the Owner and the Architect and that on the basis of such review, the Construction Manager is not aware of any conflicts between the respective obligations of the Architect and the Construction Manager under such agreement and under this Agreement. In the event that in the course of the Project, the Construction Manager believes that there is a question as to whether certain services are to be performed by the Architect or by the Construction Manager, Construction Manager shall promptly bring such questions to the attention of the Owner in writing. The Owner's decisions as to such questions shall be final. Notwithstanding anything in the Contract Documents to the contrary, the Architect shall not be empowered to issue any directives, approve materials, colors, substitutions and deviations from the Contract Documents, unless such actions related to emergency or general safety concerns, without the concurrence of the Owner.
- 1.4. Guaranteed Maximum Price: Attached hereto as **Exhibit A** is the documentation setting forth the Guaranteed Maximum Price ("GMP") that has been agreed to by the Construction Manager and the Owner. The Construction Manager shall not be entitled to an increase in the GMP as a result of changes in the scope of work to be performed to complete the Project, unless such increases are specifically provided for in the GMP or are otherwise expressly authorized pursuant to Article 8 of this Agreement.
- 1.5. The Contract Documents consist of this Agreement, the Drawings, the Specifications, Environmental Reports, Soil Boring Data, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and all Modifications issued up until the date execution of this Agreement. All of the foregoing documents form the Contract (the "Contract"), and each is fully a part of the Contract as if attached to this Agreement or contained herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. Any provisions herein to the contrary notwithstanding, all Construction Documents shall be construed consistently to the extent possible. In the event that the foregoing is insufficient to resolve any inconsistency in the Construction Documents, the inconsistency shall be resolved by

construing the Construction Documents to require the greater quantity, higher quality, or sooner completion of the Work or the relevant portion thereof.

1.6. Definitions:

- 1.6.1. Capitalized terms not otherwise defined herein shall have the meaning given such terms in the project manual.
- 1.6.2. The "Project Manual" is the set of general conditions and other contract documents attached hereto as **Exhibit B**.
- 1.6.3. The "Project" is the total construction to be performed under this Agreement, as generally described in **Exhibit C** attached hereto.
- 1.6.4. The "Work" is the aggregate of all of the labor and materials required to complete the Project as required by the Contract Documents, consisting of the construction that the Construction Manager is to perform with its own forces and the construction to be performed by each of the Trade Contractors.
- 1.6.5. Reasonably Inferred: The term "reasonably inferred" takes into consideration the understanding of the parties hereto that not every detail will be shown on the Drawings or included in the Specifications. The Construction Manager shall not be entitled to increase the Contract Sum due to the absence or conflict between the Drawings and/or Specifications of any detail or specification the Contract Documents may require. If an item or system is either shown or specified within the appropriate portion of the contract documents relative to a discipline, all materials and equipment not requiring further definition or design but required for the proper installation and function of such item or system and needed to make a complete, operating installation shall be provided whether or not detailed or specified, omitting only such parts as are specifically excepted by the Owner.

## **Article 2. CONSTRUCTION MANAGER'S SERVICES**

The Construction Manager shall perform the services described in this Article 2.

### **2.1 Construction Phase:**

2.2.1 The Construction Phase will commence upon the Notice to Proceed from the Owner.

2.2.2 The Construction Manager shall supply all labor, materials, utility consumption not requiring local utility company or direct campus connectivity (i.e. portable equipment), and services necessary for the proper and complete performance of the Work, including all items that are consistent with and reasonably inferred by the Contract Documents, without any increase in the GMP.

2.2.3 Contract Administration: As part of its obligation to complete the Project as provided herein, the Construction Manager shall provide administration of the Trade Contracts as set forth below.

2.2.4 Coordination of the Work: The Construction Manager shall coordinate all Work and in this regard shall, inter alia, provide administrative, management, and related services as required to coordinate any portion of the Work whether self-performed by the Construction Manager or performed by the Trade Contractors with each other and with the activities and responsibilities of the Construction Manager, the Owner and the Architect to complete the Project in accordance with the Owner's objectives for cost, time and quality. The Construction Manager shall provide sufficient organization, personnel, and management to carry out the requirements of this Agreement. The Construction Manager shall also coordinate with the Owner and/or Owner's agent(s) with respect to the scheduling, receiving, storing, distributing, installing and clean-up of any FF&E items. In addition, the Construction Manager shall provide storage, security and adequate access throughout the Project, including roads, elevators, loading docks and parking areas for the FF&E items.

2.2.5 Progress Meetings: The Construction Manager shall schedule and conduct pre-construction and construction progress and any other meetings deemed necessary to discuss such matters as procedures, progress, problems, and scheduling, and shall prepare and distribute meeting minutes within three (3) business days. Construction progress meetings will be conducted by the Construction Manager and will be on a minimum weekly basis unless otherwise directed by the Owner. Executive level progress meetings will be on a monthly basis.

2.2.6 The Construction Manager shall assume responsibility for the entire Work and shall provide and maintain all protection required by the applicable provisions of applicable laws, including, but not limited to building codes; requirements of Maryland laws and agencies, including the Maryland Department of Transportation, Maryland Department of Natural Resources (including those regarding the protection and care for existing vegetation, forestry, wildlife and wetlands), Maryland Department of Health (for approval of kitchen and lavatory facilities); conditions to the building permit(s) (if applicable); and any and all other applicable federal, state or local laws, statutes, ordinances, rules, regulations and directives or orders from government agencies ("Laws"). The Construction Manager shall remove any

temporary protection upon completion of the Work or as directed. The Construction Manager shall provide and maintain suitable temporary sidewalks, closed passageways, fences or other structures as required by Law (as well as by the Contract documents) in such a way as to leave unobstructed traffic at street intersections, access to buildings and the Project site and access to hydrants and any other requirements imposed by Law. The Construction Manager shall provide and maintain all lights and security as required by Law (as well as by the Contract Documents) and/or needed to maintain safety and security for personnel, public, and property. All fences, sign posts, light posts, etc., shall be painted and maintained in an attractive manner and shall be subject to the approval of the Owner. The Construction Manager shall submit drawings of sidewalk passageways to the extent required by Law (as well as by the Contract Documents). The Construction Manager shall oversee, maintain and protect all utility accoutrements (e.g., preventing water pipe ruptures due to freeze/thaw conditions and sporadic usage). In performing the Work, the Construction Manager shall coordinate and take all appropriate action, with respect to the disruption of utilities and other such services to all building(s) so as to minimize or avoid, if possible, damage or interference with the normal use of the building(s) and business invitees. The Construction Manager shall organize, provide and coordinate temporary construction signage which shall be submitted to the Owner for approval. Trade Contractor signage shall not be permitted without approval of Owner.

- 2.2.7 Construction Manager's Responsibility for the Work: The Construction Manager shall assume responsibility for the entire Work, including the satisfactory performance of each of the Trade Contractors, and shall comply with all of the terms and conditions of the Contract Documents.
- 2.2.8 Work by the Construction Manager: It is the intent of this Agreement that the Construction Manager shall not bid on any Trade Contracts or perform any material part of the permanent construction work with workmen employed by it, but shall instead have the work performed by Trade Contractors selected by competitive bidding as provided herein. However, the Construction Manager may determine that there are instances in which it would be difficult to obtain reasonable bids or instances where a Trade Contractor is in breach of contract, and in such instances the Construction Manager may recommend to the Owner that the Construction Manager employ its own forces to perform certain work. If such recommendation is made and approved during the bid process, Construction Manager shall submit a bid for such work in the same format as required of other bidders. If such recommendation is made during the course of the Project (for example, where a Trade Contractor is in breach of contract), the Construction Manager shall establish to the Owner's satisfaction that the price for such work is competitive. In any event, no such work shall be started without prior written approval of the Owner, which approval shall include the method of determining the payment to the Construction Manager for such work. The performance of such work shall not entitle the Construction Manager to an increase in the GMP. All such work shall be done in accordance with the Contact Documents.
- 2.2.9 Cost/Budget Control: The Construction Manager shall develop and monitor an effective system of Project cost controls acceptable to Owner, including cash flow projections that will be updated not less than monthly, attached hereto as **Exhibit F**. The Construction Manager shall provide reports to the Owner on a monthly basis

showing budgets, committed amounts, Change Orders, contingencies, and estimated cost to complete variances from budgets and payments for line items in the account structure. The Construction Manager shall advise the Architect and the Owner promptly whenever any line item of projected cost exceeds the budget for or estimate of such item.

2.2.10 The Construction Manager shall be responsible for obtaining and expediting the required permit(s) (including any permits required by federal, state and/or local law for the removal of hazardous materials). All trade permits shall be secured and paid for by the Construction Manager or its subcontractors. The Construction Manager shall obtain and pay for all permits (except the building permit), pay all fees and post all deposits, including those to utility companies, obtain and pay for all licenses, needed to perform the Work and complete the construction, use and occupation of the Project. The Construction Manager shall obtain and pay the cost of the certificates of occupancy for all improvements on the Project. The Construction Manager shall be responsible to coordinate all permanent utilities (i.e., electricity, gas, telephone, or cable) requisite for the performance of the Work. The Construction Manager shall arrange for all necessary utilities to be brought to the Project, the cost of which shall be a cost of the Work. The Construction Manager agrees to make no claim for an increase in the Contract Sum or for damages resulting from a delay in the performance of the Work occasioned by any act or omission to act of any utility company or any of its (or their) representatives.

2.2.11 Safety Programs: The Construction Manager shall have primary responsibility for all Project safety programs, shall require and review Project-specific safety programs developed by each of the Trade Contractors, and shall observe, at a minimum, the safety programs required in the Contract Documents.

2.2.12 Special Consultants and Testing Laboratories: Except as identified in Section 3.8, the Construction Manager shall, in consultation with the Owner and the Architect, provide appropriately licensed and qualified surveyors, special consultants and testing laboratories, and shall coordinate their services, consistent with the provisions of the Contract Documents. The Construction Manager shall maintain a log documenting all deficiencies revealed by such surveyors, consultants and laboratories, and shall monitor and document the corrective measures taken. The Construction Manager shall coordinate any inspections which may be required by any governmental agencies and/or the Owner.

2.2.13 Monitoring/Inspection: The Construction Manager shall ensure that the Work is being performed in accordance with the requirements of the Contract Documents, and shall guard the Owner against defects and deficiencies in the Work, without assuming any of the Architect's responsibilities for inspection, by supervising one or more appropriate professional, independent inspection and testing agencies as identified in Section 2.2.12. As appropriate and in a manner consistent with the Contract Documents, the Construction Manager shall require special inspection or testing, or make recommendations to the Architect regarding special inspection or testing of Work not in accordance with the provisions of the Contract Documents, whether or not such Work has been fabricated, installed or completed, and shall reject the Work which does not conform to the requirements of the Contract Documents.

- 2.2.14 Interpretations: The Construction Manager shall consult with the Architect and the Owner with respect to interpretations of the meaning and intent of the drawings and Specifications, and shall assist in the resolution of questions which may arise, in a manner consistent with the Project Manual and without assuming any of the Architect's responsibilities for interpretation.
- 2.2.15 Submittals: The Construction Manager shall establish and implement procedures for expediting the processing and Architect's approval of shop drawings, product data, samples and other submittals, consistent with the requirements of the Project Manual. The Construction Manager shall provide the Owner with a set of coordinated shop drawings from its Trade Contractors and other necessary documentation as required by the Specifications. The Construction Manager shall also prepare, in a format and with a level of detail acceptable to the Owner, a detailed submittal log which incorporates the activities of Trade Contractors on the Project, including a master registry of all submittals for the Project, with weekly updates to be distributed at the progress meeting.
- 2.2.16 Utilities: The Construction Manager shall coordinate any Work required by private and/or public utility companies to provide utilities to the Project and/or shall coordinate relocation of utilities as required by the Project.
- 2.2.17 Project Progress Report: The Construction Manager shall record the progress of the Project and shall submit such monthly to the Owner and the Architect including: (a) information on each Trade Contractor's Work, as well as the entire Project; (b) percentages of completion; (c) the number, dollar amount, category, and description of all Change Orders; (d) current construction costs versus Project Budget, including projected cost to complete; (e) status of the Project Schedule; (f) Work accomplished; (g) problems encountered; (h) the status of any contingencies established hereunder; and in addition, the Construction Manager shall submit a separate monthly MBE report, including (i) goal for each Trade Contractor (including each Trade Contractor's overall contract goal and their current goal), (ii) the aggregate percentage of all of the Trade Contractors' goals versus the overall project goal, and (iii) information on the MBE subcontractors, and other similar and relevant data as the Owner may require.
- 2.2.18 Records: The Construction Manager shall maintain at the Project site or at its office, on a current basis, all records customarily maintained by a construction manager at risk, including but not limited to the following: a record copy of all contracts, drawings, specifications, addenda, Change Orders and other modifications, in good order and marked to record all changes made during construction; approved shop drawings, product data, samples, and submittals; applicable handbooks; maintenance and operating manuals and instructions; and other documents and revisions which arise out of the contracts or Work. The Construction Manager shall maintain records of principal building layout lines, elevations of the bottoms of footings, project floor levels and key site elevations certified by a qualified surveyor. The Construction Manager shall make all records available to the Owner and the Architect. The Construction Manager shall prepare or shall monitor preparation of as-built drawings by Trade Contractors on a monthly or as-needed basis, and shall take corrective action as appropriate when as-builts are not being properly updated. The Construction Manager shall forward as-builts to the Architect upon completion of the Project for the Architect's preparation of record drawings.

- 2.2.19 Close In Checklists: The Construction Manager shall prepare and observe appropriate checklists for work to be buried, encased in concrete or other material, or enclosed in walls, to ensure that all such work has been fully and properly performed prior to being buried, encased or enclosed. The Owner and/or its agents shall review the checklists prior to any work being buried, encased or enclosed.
- 2.2.20 Checkout, Initial Start-Up and Testing: With the Architect and the Owner, and consistent with the provisions of the Contract Documents, the Construction Manager shall perform and/or shall observe the Trade Contractors' performance of the final checkout of utilities, operational systems and equipment for readiness, and shall assist in their initial start-up and testing. The Construction Manager shall make arrangements with the Trade Contractors for any appropriate maintenance personnel to be trained in the operations of the equipment. All operations and maintenance training, start-up and testing must be completed prior to the issuance of a Certificate of Substantial Completion.
- 2.3 Punch List: The Construction Manager shall commence preparing its internal punch lists of items needed to be completed/ corrected in order to achieve Substantial Completion by the Guaranteed Substantial Completion Date for the Project at least thirty (30) days prior to the Guaranteed Substantial Completion Date. The Construction Manager shall provide copies of such "Construction Manager Punch List" to the Owner and Architect for their review and comment. Upon the Construction Manager completing the items in a Contractor Punch List for Project, the Construction Manager shall notify the Architect and Owner so that the Architect can the Work and prepare an "Architect's Punch List." The Architect's Punch List is intended to consist of minor items, primarily of a cosmetic nature, it being agreed that all other Work shall be completed by the Guaranteed Substantial Completion Date. The Architect's Punch List shall include all punch list items identified by the Architect and by engineers engaged by either the Architect or the Owner. The Construction Manager shall complete the Architect's Punch List prior to the Guaranteed Final Completion Date. In the event that the Construction Manager has not completed the Contractor Punch List before the Guaranteed Substantial Completion Date, so that the preparation of the Architect's Punch List must be prepared thereafter, the Construction Manager shall not claim that any item on a subsequently prepared Architect's Punch List has been caused by the use and occupancy of the Project and therefore is not its responsibility to repair or perform. The Construction Manager will also provide to the Owner all Operating and Maintenance Manuals, training required by the Contract and As-Built prior to the Guaranteed Substantial Completion Date.
- 2.4 Nonconformance of Work: If the Construction Manager observes or otherwise becomes aware of any fault or defect in the Project, or nonconformance with the Contract Documents, prompt written notice thereof shall be given by the Construction Manager to the Owner and the Architect.
- 2.5 Substantial Completion: For purposes of this Agreement, "Substantial Completion" is, in addition to the other provisions and requirements in the Contract Documents, defined as that date when: (1) the Work has been fully and finally completed with the only exception being any outstanding Architect's Punch List or items thereon, in strict compliance with the Contract Documents, and the state of completion is such that Owner can fully and freely occupy or utilize the Project for the purpose intended without hardship, (i.e., (1) that guests and invitees can use all public facilities and areas, all



elevators, parking lots, roads, and sidewalks; and (2) all normal means of ingress and egress are clear of obstruction; and (3) all fire life safety systems are complete and operable; and (4) all mechanical, plumbing and electrical systems are complete and operable; and (5) the Construction Manager has coordinated the FF&E for the Project.) Notwithstanding the above, the Construction Manager shall not be held liable or responsible for delays that affect the critical path created by other contractors directly hired by the Owner. The date when the Project has achieved Substantial Completion shall be confirmed by written certification by the Architect, and the Owner. The Construction Manager shall give reasonable advance notice to the Owner, and Architect as to when it believes the Project will reach Substantial Completion so that the Architect can timely inspect the Project so as to determine whether the Project has reached Substantial Completion. The Construction Manager shall be responsible for the Architect's inspection fees should the Project not be Substantially Complete by the date the Construction Manager calls for the Substantial Completion inspection.

2.5.1 The Construction Manager shall complete all the work on the Architect's Punch List on a time is of the essence basis and prioritized to meet the needs of the Owner. The Construction Manager shall diligently complete all items on the Architect's Punch List by the Guaranteed Final Completion Date.

2.5.2 In the event the Construction Manager either (1) fails to complete the items on the Contractor's punch list by the Guaranteed Substantial Completion Date, or (2) fails to begin to complete the items on the Architect's Punch List within five (5) business days of issuance of the Architect's Punchlist, the Owner shall have the option of correcting and/or completing any such outstanding items and deducting the cost thereof, from the outstanding balance of the Contract Sum (less savings). If that account is insufficient, then the Construction Manager shall promptly pay such amount to the Owner plus a ten percent (10%) management fee.

2.6 Final Completion: The term "Final Completion" shall be the date when the Project has achieved Final Completion in accordance with the requirements of this contract and all of the Contract Documents, as certified by the Owner and the Architect, and all of the items on the Architect's Punch List have been fully and finally completed in strict compliance with the Contract Documents as certified by the Owner and the Architect, and the Construction Manager has fully, completely and satisfactorily performed all of its obligations under and in strict accordance with the Contract Documents.

2.6.1 Project Close-Out: The Construction Manager shall review the Trade Contractors' Contract Documents, and shall secure and transmit to the Owner, with copies to the Architect, as appropriate, all required guaranties, warranties, affidavits, releases, bonds, waivers, insurance certificates, as-built drawings and documents; final MBE and Project accounting; attic stock items; training and commissioning of all equipment and delivery of manuals and other materials pursuant to Paragraph 5.5.4 of the General Conditions; and any items, materials or documents to be turned over to Owner (including, without limitation, all such items pertaining to Work performed directly by the Construction Manager); and shall sign off on a Final Completion certificate in a form approved by the Owner and the Architect. Each Trade Contractor's final payment application shall also be included with the close-out documents to the Owner, after the Architect's review.

2.6.2 Contract Close-Out and Claims Management: The Construction Manager shall provide services, including after final completion, to resolve outstanding claims which arose prior to Final Completion of the Project, and to close-out Trade Contracts as included in GMP.

2.7 Warranty: The Construction Manager shall warrant that all materials and equipment included in the Work will be new, unless otherwise specified, and that such Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Contract Documents. The Construction Manager further agrees to correct all Work defective in material and workmanship for a period of one year, or such greater time period as required by the Plans and Specifications, from the date the Owner receives an executed Certificate of Substantial Completion attached as **Exhibit G**, and all operating and training manuals, and testing and training are completed, or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others.

## 2.8 Personnel.

2.8.1 Except as hereinafter provided, the Construction Manager shall staff the Project and render its services hereunder in strict accordance with the project staffing plan (the "Staffing Plan") attached as **Exhibit H**. The Staffing Plan shall include the names of "Key People" (as defined in Section 2.8.2) staffing the Project, their Direct Personnel Expense, and the amount of time each staff person will be dedicated to the Project. The Construction Manager shall not deviate from the Staffing Plan nor increase or decrease its staff without first obtaining the prior written consent of the Owner in each instance, which consent shall not unreasonably withheld, except that minor changes in staff which do not involve Key People may be made with notice but without the prior written consent of the Owner. Each request for a staff change shall be accompanied by a resume and qualification package with respect to the proposed new staff member. The Construction Manager shall be responsible for all damages and all liability which result from the Construction Manager's failure to properly staff the Project.

2.8.2 The Construction Manager agrees that it shall assign key persons to the Project (the "Key People"), as approved by the Owner, and as set forth in the Staffing Plan; and that the Key People shall devote all their time as necessary to the Project as may be required for the full and timely performance of this Agreement by the Construction Manager. Key People are principals and employees of the Construction Manager that the Owner desires to be and remain assigned to the Project. The Construction Manager agrees that the Key People shall not be removed from their responsibilities on the Project without the prior written consent of Owner, except in the event of death, disability or departure from the employment of the Construction Manager. All work performed by the employees of the Construction Manager shall be adequately supervised by one or more of the Key People. If the Owner determines that any of the Key People are not performing the job satisfactorily, the Owner shall have the right to direct that such individual(s) be replaced. The Construction Manager shall provide the Owner with resumes of possible replacements and the Owner shall have the opportunity to interview any such replacement candidates.

2.8.3 The CM shall furnish concrete, steel, geotechnical, testing and inspection services.

### **Article 3. OWNER'S RESPONSIBILITIES**

- 3.1 The Owner shall provide information regarding its requirements for the Project.
- 3.2 The Owner's representative is Al Tyler, who shall be fully acquainted with the Project and has authority to approve the Project Construction Budgets, approve Change Orders, render decisions promptly and furnish information expeditiously. Any limitations of the foregoing shall be indicated to the Construction Manager in writing.
- 3.3 The Owner shall retain an Architect for design and to prepare construction documents for the Project. The Architect's services, duties and responsibilities are described in the Agreement between the Owner and the Architect, a copy of which has been furnished to the Construction Manager as **Exhibit I**.
- 3.4 The Owner shall furnish all available surveys describing the physical characteristics, soil reports and subsurface investigations, legal limitations, and known utility locations. The Construction Manager is responsible for providing all necessary surveys not available from the Owner. If "Hazardous Material" is discovered at the site and if it was deposited prior to the date hereof and not in the course of construction of the Project by the Construction Manager or its subcontractors, Owner shall contract to have all such materials removed (which contract may be with the Construction Manager, if mutually agreeable, or with a third party), and Owner shall bear all cost and expense of removing the same. As used herein, "Hazardous Material" shall mean collectively, all materials subject to regulation under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601 et. seq., the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901 et. seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et. seq., or any other applicable federal, state or local law or regulation now in force related to materials having adverse effects on human health or the environment.
- 3.5 The services, information, surveys and reports required by this article or otherwise to be furnished by other consultants employed by the Owner, shall be furnished with reasonable promptness at the Owner's expense and the Construction Manager shall verify the accuracy and completeness thereof.
- 3.6 If the Owner becomes aware of any fault or defect in the Project or nonconformance with the Drawings and Specifications, it shall give prompt written notice thereof to the Construction Manager.

## **Article 4. TRADE CONTRACTS**

- 4.1 The Construction Manager shall award the Trade Contracts after the proposals are reviewed by the Construction Manager and Owner. The Owner shall not be a party to any Trade Contract.
- 4.2 Before any Trade Contract (including an order for materials) in an amount in excess of Ten Thousand Dollars (\$10,000.00) is entered into, the Construction Manager shall submit to the Owner a tabulation of qualified and financially responsible bidders or suppliers with their bids (which shall be sufficiently detailed so that the Owner can compare them) and the Construction Manager's recommendation, and the Construction Manager will not award any Trade Contract (including an order for materials) except on prior written approval of the Owner. The Owner shall have the right to review the form of all Trade Contracts. Trade Contracts shall incorporate the terms and conditions of the Contract Documents. If the Owner shall require the Construction Manager to select a bidder whose bid is higher than that of a qualified and financially responsible bidder recommended by the Construction Manager, the GMP shall be increased by the amount by which the bid of the approved bidder exceeds the bid of such bidder recommended by the Construction Manager. The Construction Manager shall not make any changes to any of its Trade Contractors without first obtaining the Owner's prior written approval. The Construction Manager shall deliver to the Owner a copy of each executed Trade Contract, and any changes, modifications, additions or amendments thereto within five (5) business days of the execution of said change, modification, addition or amendment.
- 4.3 The Construction Manager agrees to pay the trade contractor any sum, which the Owner certifies is due and has paid to the Construction Manager, within 10 days of receipt of payment. The Construction Manager agrees that in the event that any lien is filed against the Project by any Trade Contractor, the Construction Manager (at its own cost or use of the Construction Manager contingency) shall take any and all action necessary (e.g. bonding off or paying the lien claim) to have the Project released from said lien prior to the expiration of five (5) business days from the date that the Construction Manager receives written notice of the filing of such lien.
- 4.4 All Trade Contracts shall contain a provision making each Trade Contract assignable to the Owner at the Owner's election in the event the Construction Manager is terminated or fails to perform its obligations under the Contract Documents (including this Agreement). All Trade Contracts shall contain a provision giving the Construction Manager the right to require the Trade Contractor to accelerate the performance of its Work at its own cost (and not as a Cost of the Work, except in case of force majeure) so as to maintain the time requirements of the Project Progress Schedule; the Construction Manager shall require such acceleration of any Trade Contractor whose performance is not in compliance with the Project Progress Schedule. The foregoing notwithstanding, the Construction Manager shall be solely responsible for all Trade Contractors and the Owner and Architect shall have no privity of contract with or obligations or liabilities to the Trade Contractors of the Construction Manager.
- 4.5 In no event shall the Construction Manager be entitled to submit a claim, nor shall the GMP be increased, as a result of the failure of the Construction Manager or any Trade Contractor to perform its respective obligations under a Trade Contract or the bankruptcy or insolvency of or cessation of business or non-performance by a Trade Contractor except as allowed under Section 8.3.

## Article 5. SCHEDULE

- 5.1 The date of commencement of the Work shall be the date indicated in the Notice to Proceed for the Entire Project issued by the Owner to the Construction Manager. The Owner may issue a partial Notice to Proceed for portions of the Work to the extent of available funds.
- 5.2 If the Construction Manager fails to proceed with the Work within ten (10) business days after the issuance of the Notice to Proceed for the Entire Project by the Owner, the Construction Manager shall be in default of this agreement and the Owner may immediately terminate this Agreement upon written notice to the Construction Manager.
- 5.3 Substantial Completion. The Construction Manager shall achieve Substantial Completion of the entire Work not later than **the date identified in Exhibit J**.
- 5.4 Final Completion: The Construction Manager shall achieve Final Completion not later than **the date identified in Exhibit J**.
- 5.5 The Construction Manager shall prepare, in a format and with a level of detail acceptable to the Owner, a detailed CPM schedule which incorporates the activities of Trade Contractors on the Project attached hereto as **Exhibit J**, including activity sequences and durations, for on-site construction; processing of shop drawings, product data and samples; and delivery of products requiring long lead time procurements. The Construction Manager shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority, and shall update and reissue the schedule on a monthly basis to show current conditions and revisions required by actual experience. The Construction Manager shall provide updated look-ahead schedules at the progress meetings.
- 5.6 Failure to Complete on Time:
- 5.6.1 Substantial Completion: The Owner and the Construction Manager each recognize that time is of the essence of this Agreement, and that the Client may suffer financial loss if the Substantial Completion does not occur by the Substantial Completion Date.
- 5.6.2 Final Completion: The Construction Manager agrees to achieve Final Completion by the Final Completion Date. The Owner and Construction Manager each recognize that time is of the essence of this Agreement. If the Owner has reasonable cause to believe that the Construction Manager will not achieve Final Completion by the Final Completion Date the Owner may withhold all or a portion of the Construction Manager's Fee remaining to be paid in accordance with **Exhibit K** until Final Completion. Any unpaid balance of the Construction Manager's Fee shall be paid in accordance with Section 10.8.
- 5.7 Time Extensions:
- 5.7.1 All time limits in the Contract Documents are of the essence of this Agreement. Time is an essential element of this Agreement and it is important that the Work be vigorously prosecuted, with a full work force, until completion. The Construction Manager recognizes that a delay in any one (1) phase of the Project or in any work

sequence or other aspect of the Work does not necessarily result in any delay in, or a delay of equal duration in, completion of all the Work. If, however, the Construction Manager is delayed in the critical path shown by the schedule for the performance of the Work by:

- .1 fault of the Owner, its separate contractors, or the Architect; or
- .2 labor disputes or strikes (other than strikes precipitated by an act or omission of the Construction Manager or any Trade Contractors or by a default by the Construction Manager or any Trade Contractors under any collective-bargaining agreement or by the Construction Manager's or any Trade Contractor's unwillingness to accept the settlement terms of any collective bargaining negotiation accepted by a majority of the other general contracting and subcontracting companies affected by such negotiations); or
- .3 bomb threats; or
- .4 embargoes; or
- .5 fire; or
- .6 unavoidable casualties; or
- .7 national emergencies; or
- .8 unusually severe weather conditions in accordance with Section 5.7.7; or
- .9 acts of terrorism and if any aforementioned delay adversely affects the Substantial Completion Date,

then the Construction Manager shall endeavor to provide for and implement a time recovery plan to minimize the effects of any such delay in the Substantial Completion Date without incurring additional costs in excess of the GMP which the Owner is not willing to assume. In that case, the Substantial Completion Date shall be extended for a period as may be reasonably necessary (but no greater period than the length of such delay) if, within twenty(20) business days after Construction Manager learns of any such delay, the Construction Manager delivers to the Owner a notice of the commencement of the delay and a written claim for extension of time on account of such delay (certifying that no time recovery plan is reasonably possible) and such claim is approved by the Owner. If the Construction Manager fails to timely file such written notice or claim, then any claim for extension of time on account of such delay shall be deemed waived by the Construction Manager. In case of a continuing cause of delay of a particular nature, the Construction Manager shall be required to file only one initial notice with respect thereto, prior to the termination of the condition caused by the alleged delay. Furthermore, if it is deemed that the Construction Manager is delayed in the critical path, the Construction Manager shall, at the discretion of the owner, be entitled to an adjustment in the GMP

It is understood that there are changes in the Work which by their nature do not impact the Project Substantial Completion Date.

- 5.7.2 There shall be no extension of time for inside GMP changes.
- 5.7.3 In addition to an extension of the Contract Time, the Construction Manager may be entitled to an adjustment in the GMP (including the Cost of the Work, Labor, General Conditions and Fee) where any delay:
- .1 is directly caused by acts or neglect of the Owner and its employees constituting breach of the Agreement by the Owner.
- 5.7.4 Delay damages or increases in the GMP for which Construction Manager is entitled to file a claim shall not include any unabsorbed or extended job or home office overhead (so-called "Eichley" damages) other than as permitted under Section 8.5 hereof. The Owner's exercise of its rights to order changes in the Work, regardless of the extent or number of changes, or the Owner's exercise of any of its remedies for suspension of the Work, or correction or re-execution of any defective Work, or the Owner's exercise or enforcement, in good faith, of any other rights or remedies under the Contract Documents shall not be construed as a breach of this Construction Management Agreement or as willful interference by the Owner with the Construction Manager's performance of the Work.
- 5.7.5 Delays caused by the Owner, the Architect, or their agents, even if such delays are the result of a material breach of this Construction Management Agreement or a willful interference by the Owner or the Architect, or their agents, with the Trade Contractor's performance of the Work, shall not be grounds for an extension of time or claim for damages or an increase in the GMP if and to the extent, such delays are concurrent with other causes of delay for which the Owner, the Architect, or their agents are not responsible.
- 5.7.6 It is expressly understood and agreed by and between the Owner and the Construction Manager that the time for the completion of the Work is a reasonable time for completion of the same, taking into consideration the average climatic range and the usual business conditions prevailing in the locality of the Project.
- 5.7.7 The schedule shall include normal weather conditions, such as rain, snow, and freezing temperatures. An extension of time will not be allowed for normal inclement weather as recorded by the National Weather Service. Claims for extensions of time due to delay attributed to unusually severe weather must be supported by climatological data covering the period for the five (5) preceding years. When the weather in question exceeds the intensity or frequency for the worst three (3) year average, the excess experienced shall be considered "unusually severe". Comparison shall be made on a monthly basis. If the critical path of the Project is affected by the adverse weather, credits for one month will offset add items for another month. Whether or not unusually severe weather in fact delays Work will depend upon the effect of such weather on the Work being performed during the time under consideration.



## **Article 6. CONSTRUCTION MANAGER'S COMPENSATION**

- 6.1 Subject to Sections 15.12.2 and 15.12.3 hereof, in consideration of the performance of the Contract, the Owner agrees to pay the Construction Manager, in current funds, all sums owing to the Construction Manager hereunder (subject to the GMP), consisting of the Cost of the Work (as defined in Article 7), the General Conditions (as defined in Section 6.5), and the Construction Manager's Fee and contingency.
- 6.2 **Guaranteed Maximum Price:** The total Construction Cost for the project is **\$XX,XXX,XXX as delineated in Exhibit A**. The CM fee will be fixed at **XXXXXX**. The CM fee on Owner change orders will be X.XX%
- 6.3 In the event the probable construction costs exceed the Project Construction Costs, the MSA reserves the right to direct the A/E and the CM to redesign the Project as necessary to maintain the program and meet the Project Construction Cost.
- 6.4 Included in the Construction Manager's Fee are all of the items set forth in Section 7.3, which items shall not be included in the Cost of the Work.
- 6.5 The "General Conditions" include all expenditures required to be made by the Construction Manager to fulfill its obligations under this Agreement and that are not encompassed by the Construction Manager's Fee, the Cost of the Work, or Labor. The general conditions are fixed. The CM may not use contingency for overages in the General Conditions. General Conditions includes, but is not limited to, the following:
- 6.5.1 Cost, including setup and maintenance, of temporary facilities.
  - 6.5.2 Cost of the premiums for all insurance which the Construction Manager is required to procure by this Agreement or is deemed necessary by the Construction Manager. Any other insurance to be procured by the Construction Manager shall be procured only after first receiving the written approval of the Owner.
  - 6.5.3 Costs of necessary and reasonable document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.
  - 6.5.4 All normal and customary costs related to the supervision, operation and management of the Project, such as removal of all debris, provision of trailers and portable rest rooms, telephone, travel and lodging for Construction Manager's employees in connection with the Project, and propane or other temporary heat.
  - 6.5.5 Cost of job site computer, hardware, software, supplies, and communications.
  - 6.6.6 Direct Personnel Expense of those employees stationed at the field office, or, at the home office for Project Manager's and related engineering support personnel (if ordinarily at the field office) working on the Project.
  - 6.6.7 Direct Personnel Expense of those employees directly employed in the construction of the Project in accordance with the schedule attached as **Exhibit J**.

6.6.8 Direct Personnel Expense is defined as the direct salaries allocated on an hours worked basis of the Construction Manager's employees engaged in performing the services under this Agreement and the cost of all employee benefits, including, without limitation, medical and workers' compensation insurance, allowed absences, vacations, pension and/or profit sharing, all in accordance with the Construction Manager's standard personnel policy, and taxes for such items as unemployment compensation and social security.

6.7 The Construction Manager agrees that it has a fiduciary duty to prosecute the completion of the Project within the GMP. The Construction Manager has provided the GMP based upon XX% Construction documents provided at the time of its bid. The Construction Manager represents that the GMP is adequate to cover the reasonably inferable intent of the contract documents.

6.7.1 Upon execution of this Agreement and throughout the Contract Time, the Construction Manager shall promptly notify the Architect and the Owner of any area of details in the Plans and Specifications and other Contract Documents which are either vague, incomplete, erroneous or confusing and shall assist the Architect in clarifying, resolving and correcting such items so as to bring the Cost of the Work within the contracted amount. At the same time, the Construction Manager shall exert his best efforts to promptly identify potential areas and items that may result in Change Orders ("anticipated changes") and shall assist the Owner in preparing a list of such items so that the Construction Manager and Owner can avoid the risk of increases to the GMP. The Construction Manager shall not be entitled to make a claim for additional cost or time if the Construction Manager fails to notify the Architect and the Owner within 5 days of any anticipated change of which the Construction Manager is aware and that require an increase in the GMP.

## **Article 7. COST OF THE WORK**

7.1 The term "Cost of the Work" shall mean costs necessarily incurred in the Project during the Construction Phase, paid by the Construction Manager, and not included in the General Conditions, Labor, or the Construction Manager's Fee, to the extent expressly authorized under Section 7.2.

7.2 The following items shall be included in the Cost of the Work:

- 7.2.1 Wages paid for trade labor in the direct employ of the Construction Manager under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the Owner and Construction Manager, and including such welfare or other benefits, if any, as may be payable with respect thereto.
- 7.2.2 Payments made by the Construction Manager to Trade Contractors for their work performed pursuant to contracts under this Agreement, including the cost of Trade Contractor payment and performance bonds.
- 7.2.3 Sales, use, gross receipts or similar taxes related to the Work imposed by any governmental authority, and for which the Construction Manager is liable.
- 7.2.4 Permit fees, licenses, tests, royalties, damages for infringement of patents and costs of defending suits therefore, and deposits lost for causes other than the Construction Manager's negligence or breach of contract. If royalties or losses and damages, including costs of defense, are incurred which arise from a particular design, process, or the product of a particular manufacturer or manufacturers specified by the Owner or Architect, and if the Construction Manager had no reason to believe there would be any such royalties, infringement, losses or damages, then Construction Manager shall have no liability for any such royalties, losses or damages and the same shall not be included within the GMP.
- 7.2.5 Cost incurred due to an emergency affecting the safety of persons and property, unless such emergency is caused by the Construction Manager's gross negligence, fault, or breach of contract.
- 7.2.6 Legal costs reasonably and properly incurred by the Construction Manager in the discharge of its duties under this Agreement, but only if such costs are not the result of the Construction Manager's negligence or material breach of contract, and only if the Construction Manager has obtained the prior written approval of the Owner, which approval shall not be unreasonably withheld.
- 7.2.7 The cost of corrective or warranty work provided such work results from causes other than the Construction Manager's negligence or breach of contract. The cost of corrective or warranty work made necessary due to a Trade Contractor shall be reimbursable only after Construction Manager has exhausted all efforts to secure replacement of the defective work or compensation from such Trade Contractor.
- 7.2.8 The cost of the builders risk policy and the deductible portion of any loss covered by the Builder's Risk and Flood insurance policies maintained by the Construction Manager pursuant to Section 11.1.2, up to a maximum of \$5,000 per occurrence on the Builder's Risk policy and \$25,000 per occurrence on the flood and earthquake insurance policy.

- 7.2.9 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction of the Project.
- 7.2.10 Costs of materials described in the preceding Subparagraph 7.2.9 in excess of those actually installed to allow for reasonable waste and spoilage. Unused materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.
- 7.2.11 Costs, including, transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.
- 7.2.12 Rental charges for power operated equipment required for the Work supplied by Construction Manager or rented from others at rates approved by the Owner. All equipment shall be delivered in good condition and hereafter all charges for operating and maintaining equipment shall be charged at cost. Normal wear and tear, repair costs of a capital nature and depreciation charges on equipment shall not be charged but shall be covered by the rental fee charged. The rental fee charged shall be at the lowest prevailing local rates. A schedule of the rental rates and equipment valuations shall be submitted to the Owner for approval. Rental charges for each item Construction Manager owned equipment or tools furnished by Construction Manager shall be charged to the Cost of the Work until such time as the aggregate of such rentals for any items equals eighty-five percent (85%) of the agreed value of that item as established in **Exhibit L** hereto, entitled "Equipment Value/Rental Rate Schedule and Equipment Log"; thereafter, only routine repair and maintenance costs for servicing such items shall be charged to the Cost of the Work or the balance of the period that the equipment and tools are used in performance of the Work. The Construction Manager shall maintain and furnish to Owner an equipment log to track all equipment valued in excess of Five Hundred Dollars (\$500.00) for which rental is charged to the Project. This equipment log (see **Exhibit L**) shall be submitted each month with Construction Manager's progress pay application as part of the documentation for the equipment charges. All power tools, equipment, or other devices, for which rent is charged to the Project, shall be removed from the site in order to terminate the rental charges as soon as possible.
- 7.2.13 Owner's Option to Purchase Equipment. If the aggregate rental charges paid by Owner for any piece of equipment owned by Construction Manager shall equal or exceed eighty-five percent (85%) of the established value of such equipment in accordance with **Exhibit L**, Owner shall have the option to purchase such equipment from Construction Manager. The purchase price for such equipment shall be the difference between the market value of the equipment and the aggregate rental charges paid by Owner to the Construction Manager for such equipment. Owner shall exercise the option to purchase the equipment prior to the issuance of the Certificate of Final Completion for the Work or prior to Construction Manager's request for removal of such equipment from the Project.

7.2.14 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner. The Trade Contractors and the Construction Manager shall not bill or be paid for materials and equipment that are "in stock" and not segregated for and to be promptly incorporated into the Work. Materials and equipment that are needed for the Work shall be stored on site and the Construction Manager will provide security for same. The Construction Manager shall cause insurance coverage to be provided for stored materials and equipment consistent with the requirements of the Owner and the Contract Documents.

#### 7.2.15 Cost of Performance and Payment Bonds

7.2.16 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the GMP. If such royalties, fees and costs are expressly excluded in Contract Documents, then they shall not be included in the Cost of the Work.

7.2.17 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

7.2.18 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Trade Contractor or their subcontractors and suppliers, provided that such damaged or nonconforming Work was not caused by negligence or material failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, sureties, Trade Contractors, or their subcontractors or suppliers.

7.2.19 Cost of overtime work required in the reasonable judgment of the Construction Manager to maintain the Project Schedule provided that (a) the cost of such overtime work results from causes other than the Construction Manager's negligence or breach of contract and (b) the Construction Manager has given prior written notice to the Owner of the overtime or extension of schedule.

### 7.3 The Cost of the Work shall not include:

7.3.1 Except as expressly provided in Section 6.6.1, salaries, expenses and/or other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in the Contract Documents or as approved by the Owner.

7.3.2 Expenses of the Construction Manager's principal office and offices other than the site office.

- 7.3.3 Overhead and general expenses, except as may be expressly included in this Article 7.
  - 7.3.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital used to perform the Work and the Construction Manager's obligations under the Contract Documents.
  - 7.3.5 Rental costs of machinery and equipment, except as specifically provided in Subparagraph 7.2.12.
  - 7.3.6 Except as provided in Subparagraphs 7.2.18 and 7.2.7, of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility or the Construction Manager, Trade Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.
  - 7.3.7 Any cost not specifically and expressly described in Sections 7.2 above.
  - 7.3.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the GMP to be exceeded.
  - 7.3.9 Costs, expenses and legal fees due to the negligence of, wrongdoing of, or violation of this Agreement or other contractual or legal obligation by the Construction Manager or anyone directly employed by him, including, but not limited to, the correction of defective or non-conforming Work, disposal of materials and equipment wrongly supplied, or making good any damage to property or performing any warranty work.
  - 7.3.10 Automobile repairs for Construction Manager's vehicles.
  - 7.3.11 Costs of any education or training of employees of the Construction Manager.
  - 7.3.12 Any Gross Receipts taxes resultant from the Construction Manager's performance of the Work.
- 7.4 The Cost of Work shall not include the General Conditions (Section 6.5) or Labor (Section 6.6).

## **Article 8. CHANGES IN THE PROJECT**

8.1 The Construction Manager acknowledges that the GMP and Substantial Completion Date are based upon the Pre - Bid Visual Inspection Drawings and Specifications as further described and qualified in the Contract Documents. The GMP includes the cost to perform all Work necessary to provide a complete and usable facility in accordance with the scope and intent of the Contract Documents to the extent consistent with and reasonably inferable there from and consistent with the standards of quality established by the Contract Documents for this Project. The Construction Manager will administer Changes in the Trade Contracts in accordance with Paragraph 6.0 of the Project Manual. In no event shall the Construction Manager be responsible for design liability of the Architect.

8.2 Inside GMP Changes and Owner Changes:

8.2.1 There shall be two types of changes recognized by this Agreement: Inside GMP Changes and Owner Changes. Except as specifically set forth herein, Inside GMP Changes and Owner Changes shall both be governed by the "Changes in the Work" provisions in Paragraph 6.0 of the Project Manual. Any disagreement over whether a change is an Owner Change or an Inside GMP Change shall be determined in accordance with the Disputes provisions of Article 14.

8.2.2 Inside GMP Changes include any changes to account for matters that are reasonably inferable from the Contract Documents including changes necessitated by unforeseen causes or details which should have been anticipated by the Construction Manager at the time of the Owner's approval of the GMP or are needed for a complete working system. Unforeseen causes or details include but are not limited to, refinement of details of design within the scope of standards, quality and quantities which may reasonably be inferred from the GMP documents, items omitted during buy-out, the correction of defects in labor or materials, corrections in the Work provided the Construction Manager has exhausted all reasonable means to obtain correction of same from the responsible Trade Contractor, labor and material overruns, and additional costs relating to Trade Contractor defaults, provided any such default is not due to the Owner's actions or failure to act. Inside GMP Changes will not result in an increase to the GMP. The Construction Manager shall not be entitled to a change in the GMP or the Project Time on account of an Inside GMP Change. Notwithstanding anything contained herein to the contrary, the Construction Manager shall not be obligated to perform any additional or changed work as an Inside the GMP Change to the extent an Owner Change requires the Construction Manager to remove or replace original work that has already been completed in whole or in part, in accordance with the requirements of the Contract Documents; however, the Construction Manager shall perform such additional or changed work as an Owner Change.

8.2.3 Owner Changes are limited to changes that are necessitated by the action or inaction of the Owner (provided, however, that for purposes of this Section 8.2.3, "inaction" shall be limited to the failure of the Owner to grant or deny an approval within 20 days after Construction Manager requests a decision in writing, except in an emergency, in which case such decision will be rendered in a timely fashion under the circumstances), which action or inaction makes a change in the cost of performing the Work, or which result from differing site conditions as provided in Section 8.5.6, and which could not reasonably be anticipated by the Construction

Manager at the time of the Owner's approval of the GMP, including changes to the scope of the Work or the overall program directed by the Owner. The Construction Manager's entitlement to an equitable adjustment in the GMP or the Substantial Completion Date on account of an Owner Change shall be determined in accordance with Section 8.5. The Construction Manager's entitlement to an extension of the Contract Time and/or an adjustment in the GMP in accordance with Section 5.6 shall also be considered an Owner Change. The owner currently has no contingency for the project.

- 8.2.4 Value engineering ideas provided by the Owner or the design team will be implemented as a change to the GMP with 100% of the savings going to the Owner. Any value engineering proposed by the Construction Manager and accepted by the Owner will serve to increase the contingency for the Project.

8.3 Contingency. The Guaranteed Maximum Price (GMP) includes a Construction Manager controlled contingency to protect the Construction Manager against the risks assumed in providing the GMP for the Project. The Owner and Construction Manager acknowledge the contingency is included to adjust the estimate for eventualities which have not been taken into precise account in the establishment of the GMP, including (1) scope gaps between Trade Contractors, (2) contract default by Trade Contractors, (3) costs of corrective work not provided for elsewhere, (4) expediting/accelerating of the Work to meet scheduled completion dates (if required), (5) design omissions, consistent with the intent of the contract, needed for a complete working system. The Contingency is not allocated to any particular item of the GMP, and is established for the Construction Manager's use as may be required for increases in costs incurred in the Work from unforeseeable causes or details not capable of reasonable anticipation at the time of the Owner's approval of the GMP. It is understood that the amount of the contingency is the maximum sum available to the Construction Manager to cover costs incurred as a result of such unanticipated causes or details, and that cost overruns in excess of the amount of the contingency will be borne by the Construction Manager. Construction Manager may not use the Contingency without the prior written approval of Owner for amounts in excess of Ten Thousand Dollars (\$10,000). The approval of contingency will not be unreasonably withheld.

8.4 Owner's Contingency. The budget for the Project includes a separately identified contingency factor (the "Owner's Contingency") that is not included in the GMP. The Owner's Contingency is not allocated to any particular item of the Cost of the Work, and is established for use by the Owner in its sole discretion for such Project purposes as Owner may deem necessary or desirable, including payment of the cost of Owner Changes (if any). In the case of Owner Changes, the Construction Manager shall be entitled to an equitable adjustment in the GMP in accordance with Section 8.5, and an adjustment in the Construction Manager's Fee in accordance with Section 6.2.

#### 8.5 Cost Adjustments for Owner Changes:

8.5.1 The Cost of an Owner Change in the Project shall be calculated as the Cost of the Work, less any deductive changes or credits due to the Owner.

8.5.2 The amount of increase in the GMP resulting from an Owner Change shall be the sum of the Cost of the Change in the Project calculated pursuant to Sections 8.5.1 and 6.2 hereof. The Construction Manager's Fee shall be calculated pursuant to the GMP proposal.



- 8.5.3 The amount of decrease in the GMP for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease in accordance with Section 8.5.1 hereof and Paragraph 6.0 of the Project Manual. When both additions and credits are involved in any one change, the increase in Fee shall be figured on the basis of net increase, if any.
- 8.5.4 In the event the Owner and Construction Manager are unable to reach agreement on the Cost of a Change in the Project, the Construction Manager shall promptly proceed with the Work involved, provided it receives a Construction Change Authorization on a form approved by Owner, signed by the Owner. The Cost of such Work shall then be determined in accordance with the "Disputes" provisions of this Agreement. Pending final determination of the total Cost of a Change in the Project, amounts not in dispute for such Changes may, with the prior approval of the Owner (which shall not be unreasonably withheld), be included in the CM Invoice (as defined in Article 10) based on the Construction Change Authorization. In all instances, change orders must be complete, inclusive of all impacts to the Construction Manager and the Trade Contractors, prior to their submission to the Owner for approval.
- 8.5.5 In any emergency affecting the safety of persons or property, the Construction Manager shall act, at its discretion, to prevent threatened damage, injury or loss. The GMP and the Substantial Completion Date shall not be adjusted because of such emergency, except as provided in this Article. If the Owner determines that an emergency exists that threatens the safety of persons or property, and if the Construction Manager or the applicable Trade Contractor does not correct the situation immediately, the Owner shall have the right to order the affected work to be stopped and to cause the situation to be corrected, and all costs incurred in so doing shall be charged to the Construction Manager and shall not increase the GMP.

8.6 Site Conditions:

- 8.6.1 Differing Site Conditions: The Construction Manager shall promptly, and before such conditions are disturbed, notify the Owner in writing of: (1) subsurface or latent physical conditions at the Site differing materially from those indicated in this Contract Documents, or (2) unknown physical conditions at the Site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Agreement. The Owner shall promptly investigate the conditions, and if it finds that such conditions, in its opinion, do materially so differ and cause an increase or decrease in the Construction Manager's cost of, or the time required for, performance of any part of the Work under this Agreement, whether or not changed as a result of such conditions, then an equitable adjustment shall be effected by a Change Order, adjusting the GMP, including, the Labor, and, the General Conditions (including an adjustment to the cap), the Cost of the Work, and the Construction Manager's Fee.
- 8.6.2 Limitation on Claims: No claim of the Construction Manager under this Section 8.6 shall be allowed unless the Construction Manager has given written notice within ten (10) business days of the event which triggered the claim; however, the time prescribed therefor may be extended by the Owner. Failure of the Construction Manager to serve written notice within ten (10) business days as above required

shall constitute a waiver of any claim in relation thereto. No claim by the Construction Manager for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Agreement.

- 8.6.3 Site Investigation: The Construction Manager acknowledges that it has investigated and satisfied itself as to the conditions affecting the Work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides of similar physical conditions at the Site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the Work. The Construction Manager further acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of this Site, including all exploratory work done by the Construction Manager or Owner, as well as from information presented by the Contract Documents. Any failure by the Construction Manager to acquaint itself with the available information shall not relieve it from responsibility for estimating properly the difficulty or cost of successfully performing the Work. The Owner and the Architect assume no responsibility for any conclusions or interpretations made by the Construction Manager on the basis of the information available with respect to the Site.

**Article 9.     Intentionally Omitted**

## **Article 10. PAYMENTS TO CONSTRUCTION MANAGER**

- 10.1 The Construction Manager shall require all Trade Contractors to comply with the payment requirements set forth in the Project Manual. The Construction Manager shall provide the Owner with a copy of the Application for Payment submitted by the Trade Contractor's to the Construction Manager. The Construction Manager shall comply with such requirements with respect to any work self-performed by the Construction Manager. The Construction Manager shall invoice the Owner substantially in accordance with the description of the invoice attached as **Exhibit M** (the "CM Invoice"). Fully executed lien waivers for the prior month's payment (including waivers from Trade Contractors and major suppliers) must be submitted with each current CM Invoice. If the Owner has not made the prior month's payment, then the lien waivers for such month may be conditioned upon receipt of such payment. The Construction Manager will certify that all payments received from Owner in the previous month has been disbursed in accordance with the applicable invoice. If any one or more lien waivers for the prior month's payment is not submitted, the Owner may (but shall not be obligated to) make a partial payment relating only to the Construction Manager's Fee, Labor, General Conditions, and those Trade Contractors and major suppliers who have supplied lien waivers. All CM Invoices submitted by Construction Manager to the Owner will be accompanied by evidence, satisfactory to Owner in its sole discretion, which the Construction Manager has complied with the foregoing requirements.
- 10.2 The Construction Manager shall submit monthly to the Owner a statement, sworn to if required, showing all moneys paid out, costs accumulated or costs incurred on account of the Cost of the Work and General Conditions during the previous month. In addition, the Construction Manager shall submit an invoice for costs of Labor for the previous month, and the amount of the Construction Manager's Fee due, both in accordance with the schedule attached hereto as **Exhibit J**.
- 10.3 If the Construction Manager has made application as provided above and the funds are available as described in Section 15.12, the Owner shall, not later than thirty (30) days following receipt of the Certification of Payment by the Architect with respect to such application, issue to the Construction Manager a payment for such amount as the Owner decides to be properly due. The Owner's agreement with the Architect requires the Architect to process the application within an average of two (2) business days, and the Owner agrees to use its best efforts to require the Architect to comply with such requirement. Payments to the Construction Manager shall be subject to retainage of an amount equal to ten percent (10%) of the amount of the Work, certified by the Owner to be payable with respect to the Work performed by the Construction Manager (including Work performed by the Construction Manager's subcontractors), until the Work is fifty percent (50%) complete as certified by the Owner, at which time retainage may be reduced to five percent (5%), provided however, that if the Owner determines that the Project is not on time (i.e. the Work is not proceeding in accordance with the Project Schedule), or that the Project will be not completed within the Guaranteed Maximum Price, or there are outstanding material defects in the Work, retainage of ten percent (10%) shall be withheld from future payments until the Owner determine that these conditions no longer exist. The final retainage shall be released to the Construction Manager at the time of final payment as provided in Article 12.
- 10.4 The Construction Manager shall maintain detailed statements, including without limitation, payroll records, receipted invoices, check vouchers, and any other evidence demonstrating costs incurred by the Construction Manager on account of the Cost of the

Work, which records shall be available for the Owner's examination during regular business hours.

10.5 The Architect, with the concurrence of the Owner, may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any certificate or other recommendation of payment, or the Owner, with reasonable cause, may unilaterally withhold payments, in each case to such extent as necessary to protect the Owner from loss on account of:

.1 Claims filed or reasonable evidence indicating probable filing of claims.

.2 Failure of the Construction Manager to make payment properly to Trade Contractors for material or labor.

.3 A reasonable doubt that the Work can be completed for the balance of the Contract Sum then unpaid.

.4 A reasonable doubt that the Work can be completed within the balance of the Contract Time then remaining.

.5 Damage to another contractor.

.6 If the Owner has determined that the Construction Manager has not fulfilled its MBE requirements as identified in the Contract Documents, the Owner may hold the entire value of the MBE subcontracts and/or supplier until the Construction Manager has satisfied the goal.

.7 Defective Work not remedied.

10.6 If the Owner deems it inexpedient to require correction of Work injured or performed not in accordance with the Contract Documents, an equitable deduction from the Contract Sum shall be made therefore as determined by the Procurement Officer; such determination to be final and conclusive subject only to appeal as provided in the "Disputes" clause of this Agreement.

10.7 When the above conditions are remedied, payment shall be made for amount withheld.

10.8 Except as provided below, final payment constituting the unpaid balance of the Cost of the Work and the Construction Manager's Fee shall be due and payable when Final Completion has been achieved in accordance with Section 5.6.2 herein and this Agreement substantially performed, including but not limited to checkout, initial start-up, testing and training pursuant to Section 2.2.23, and the completion of all Punch List items. If there should remain only minor items to be completed, the Owner may, in its sole discretion, determine that Final Completion has occurred, provided that (i) the Construction Manager delivers, in writing, its unconditional promise to complete said items within a reasonable time thereafter, and (ii) the Owner retains a sum equal to Two Hundred and Fifty percent (200%) of the estimated cost of completing any unfinished items. If Owner so elects, Owner shall pay to Construction Manager the amount retained for incomplete items as each of said items is completed. Notwithstanding the foregoing,

in the event of unsettled claims, the Owner may withhold all amounts in dispute until such claims are settled.

10.9 The Construction Manager will receive all funds paid to Construction Manager hereunder in trust for proper application to the Project as provided in this Agreement, within the meaning of Section 9-201 of the Real Property Article of the Annotated Code of Maryland. The Construction Manager shall pay all the amounts due Trade Contractors or other persons with whom it has a contract upon receipt of any payment from the Owner, the application for which includes amounts due such Trade Contractor or other persons.

10.10 Amounts that are due but unpaid under this Agreement shall bear interest if such amounts remain unpaid for more than forty-five (45) days following Owner's receipt of a properly documented invoice, in accordance with Sections 15-104 and 15-105 of the State Finance and Procurement Article of the Annotated Code of Maryland. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited.

10.11 In the event that:

1. upon Final Completion as defined in Section 10.8 hereof, the final actual cost of all work required to be performed hereunder, including (i) the Cost of the Work, as defined in Article 7 hereof; plus (ii) the General Conditions and Labor as defined in Section 6.5 and 6.6 hereof , plus (iii) the Construction Manager's Fee; plus (iv) the costs (including any increase in the Construction Manager's Fee) of any Changes is less than the GMP as it may have been amended by any Owner changes pursuant to Article 8 hereof (hereinafter referred to as "Savings"); and
2. the Savings are due to reductions in scope which are the result of value engineering initiated by the Construction Manager after the date of this Agreement, then and in such event the Savings shall be shared as follows: 75% of the savings shall accrue to the Owner and the remaining 25% shall accrue to the CM. Any such payment to the Construction Manager shall be made upon Final Completion.
3. Notwithstanding the foregoing:  
In the event that such Savings are the result of reductions in the scope or deductive changes not initiated by the CM, the Owner receives 100% of such savings.

10.12 **Exhibit M** contains a Trade Payment Breakdown showing the Cost (or estimated cost) of the various portions of the Work, i.e. the line-item limits for each portion (excluding the Construction Manager's Fee, General Conditions and Construction Manager's contingency if any, all of which shall be separately stated in **Exhibit A**, aggregating the Contract Sum and specifying the amount allocable to each portion of the Work and to be paid to each Trade Contractor. The Trade Payment Breakdown shall allocate the entire GMP among the various portions of the Work, except that the Construction Manager's Fee, General Conditions and Labor shall be shown as separate items. The Trade Payment Breakdown shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. Changes shall be permitted in the line-item amounts only if it can be demonstrated that

costs in excess of a line-item limit can be covered by savings in another line-item in an equal amount and that the balance to complete the Work is adequate; in all events, such adjustments must be approved by the Owner. This approval will not be unreasonably withheld. Within two weeks of the delivery of each CM Invoice, the Construction Manager shall furnish the Owner with a revised Trade Payment Breakdown containing all revisions (if any) in the Costs of the Work (or cost estimates) from that contained in the previously submitted Trade Payment Breakdown. In the event that at any time, as determined by the Owner in its sole discretion, the aggregate amount shown on the Trade Payment Breakdown exceeds or may exceed the Contract Sum, the amount payable by the Owner to the Construction Manager with respect to such CM Invoice shall be reduced by the amount of such excess, it being intended that at all time the estimated cost of performing the uncompleted and unpaid portion of the Work (including the Contract's Fee and General Conditions) shall not exceed the unpaid balance of the Contract Sum (less retainage on Work previously completed).

10.13 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the GMP properly allocable to the Cost of Work which has been completed as determined by multiplying the percentage of completion of each portion of the Work by the share of the GMP allocated to that portion of the Work in the updated Trade Payment Breakdown;
- .2 Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation of the Work, or if approved in advance by the Owner, suitably stored in accordance with the Contract Documents;
- .4 Add the Construction Manager's Fee, which shall be computed upon the Cost of the Work described in the two preceding clauses and shall be an amount that bears the same ratio to that fixed sum Fee as the Cost of the Work in the two preceding clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .5 Add the actual costs of the Labor and General Conditions calculated in accordance with this Agreement;
- .6 Subtract the aggregate of previous payments made by the Owner; and
- .7 Subtract amounts, if any, for which the Owner and/or Architect have withheld or nullified a Certificate for Payment.

10.14 The Construction Manager shall afford the Owner, Architect (including Design Team Members) and Project investors access to the Project and shall take such other steps as they deem necessary to timely and completely verify the Work performed and the amounts requested by the Construction Manager under each CM Invoice. If the Owner and Architect are unable to verify any portion of the Work performed or amounts requested prior to the time when the Owner is to make payment to the Construction Manager because of the conduct of the Construction Manager, the Owner shall be entitled to withhold payment for that portion of the Work and those amounts requested until they have been verified, which Owner shall seek to do expeditiously.

10.15 Nothing contained in this Article 10 shall require the Owner to pay the Construction Manager an aggregate amount exceeding the GMP or to make payment if in the Owner believes, in its sole discretion, that the cost to complete the Work (plus the balance of General Conditions and Construction Manager's Fee) would exceed the balance of the GMP (i.e., the GMP less previous payments to the Construction Manager).

10.16 In all events, Final Payment is conditioned upon and shall not be due or owing until:

- .1 The Construction Manager shall have delivered to the Owner a written unconditional consent to such disbursements by the issuer of the bonds guaranteeing performance and payment under the Contract Documents.
- .2 The Owner and the Architect each have determined that the Work is fully and finally complete in strict compliance with the Drawings and Specifications and other Contract Documents.
- .3 The Construction Manager shall have delivered to the Owner the Project Manual as set forth in the General Conditions, Article 1, including, but not limited to all warranties and operation and maintenance manuals applicable to the Work, with all warranties assigned to the Owner.
- .4 The Construction Manager shall have delivered to the Owner an executed Final Release of Lien and Waiver of Claim, **Exhibit K** from the Construction Manager and each and every trade contractor and subcontractor.
- .5 The Owner shall have received from the Construction Manager all documents (which are Construction Manager's responsibility) for the use of the Project, including those which by their nature cannot be obtained prior to completion of the project. Upon completion of the Work and as a condition of receiving payment of retainage, the Construction Manager shall submit at final completion "As-Built" Drawings and Specifications showing all of the Work including all changes, locations and installations for the Owner's approval and acceptance.
- .6 The Construction Manager shall have delivered to the Owner a statement from the Construction Manager that there exist no pending or threatened claims of third parties against the Owner relating to the Work, or for which the Owner may be liable, which are unresolved.
- .7 Any Inspector engaged by the Owner shall have delivered its inspection report that the Work is fully and finally complete in strict compliance with the Plans and Specifications and other Contract Documents.
- .8 The Construction Manager shall have met all of its insurance, indemnification and all of its other obligations under the Contract Documents.
- .9 The Construction Manager has produced Final As-Built Drawings which have been approved by the Architect.



- .10 The Owner may at any time take such action as it deems appropriate to verify that the conditions precedent to each disbursement have been satisfied, including but not limited to verification of the amounts payable, under this Agreement and each Subcontract. The Construction Manager agrees to cooperate with the Owner in any such action. If in the course of any such verification any amount shown payable under this Agreement or any Subcontract, Application for Payment, Sworn Statement or Release of Lien and Waiver of Claim, is subject to a discrepancy, such discrepancy shall be promptly remedied by the Construction Manager.
- .11 The Construction Manager has provided all required MBE documentation in accordance with the contract.

## Article 11. INSURANCE

### 11.1 Construction Manager's Insurance:

11.1.1 The Construction Manager shall purchase and maintain insurance for protection from: claims under workers' compensation acts; claims for damages because of bodily injury, including personal injury, sickness, disease or death of any of the Construction Manager's employees or of any person; from claims for damages because of injury to or destruction of tangible property from any cause (including fire and other perils, such as flood and all types of water, including rain, burst pipes, surface and ground water, and adjacent streams) and including loss of use resulting therefrom; and from claims arising out of the performance of this Agreement and caused by negligent acts or failures to act for which the Construction Manager is liable. More specifically the following insurance will be provided:

Coverage limits shall be as follows:	
<i>Builder's Risk</i>	All Risk Policy
<i>Worker's Compensation and Employer's Liability</i>	Statutory
<i>Auto Liability</i> (Combined single limit)	\$ 1,000,000
<i>General Liability</i> Occurrence General Aggregate Products-completed Operations Aggregate	 \$ 2,000,000 \$ 4,000,000 \$ 4,000,000 \$ 4,000,000
<i>Excess Liability</i> Occurrence and Aggregate	\$ 10,000,000

11.1.2 The deductible on the All Risk Builder's Risk insurance shall be \$5,000 per occurrence and \$25,000 per occurrence on the flood and earthquake insurance policy. All deductibles on any other policy of insurance to be purchased by the Construction Manager hereunder shall be borne by the Construction Manager out of the Construction Manager's own funds. The deductible on the Builder's Risk insurance shall be paid by Construction Manager, subject to reimbursement by the Owner and subject to the GMP. All liability insurance required under this Article shall name the Owner and Owner's Client as additional insured and each policy shall provide that it may not be canceled or substantially modified without forty-five (45) days prior written notice to the Owner. The Construction Manager shall deliver to the Owner certificates evidencing all insurance policies specified in this Article at least once each year during the duration of this Agreement.

11.1.3 Certificate of Insurance: The Construction Manager shall submit valid certificates in form and substance satisfactory to Owner evidencing the effectiveness of the foregoing insurance policies along with original copies of the policies and the amendatory riders to any such policies to Owner for Owner's approval before the Construction Manager commences the rendition of any services hereunder.

11.1.4 Indemnification: The Construction Manager hereby agrees to indemnify, defend and hold the Owner and the Architect, and their respective members, directors, officers, agents, employees and designees (collectively, the "Indemnities") harmless from all losses, claims, liabilities, injuries, damages and expenses, including attorney's fees, that the Indemnities might incur, including but not limited to, by reason of injury or damage sustained to any person or property, other than the work itself (including, but not limited to any one or more the Indemnities), arising out of or occurring in connection with the negligent acts or omissions or breaches of contract of the Construction Manager in connection with its duties and obligations under or pursuant to this Agreement. This Section 11.1.4 shall not be construed as an assumption by the Construction Manager of liability of the Architect or the Architect's consultants, or their respective agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications, or (2) the giving or failure to give directions or instructions by the Architect or the Architect's consultants, or their respective agents or employees, provided that such giving or failure to give is the cause in whole or in part of the injury or damage.

#### 11.2 Property Insurance Loss Adjustment:

11.2.1 Any insured loss shall be adjusted with the Owner and the Construction Manager and made payable to the Owner and Construction Manager as trustees for the insureds, as their interests may appear, subject to any applicable mortgagee clause.

11.2.2 Upon the occurrence of an insured loss, monies received will be deposited in a separate account and the trustees shall make distribution in accordance with the agreement of the parties in interest.

#### 11.3 Waiver of Subrogation:

11.3.1 The Construction Manager waives all rights against the Owner, the Architect, Trade Contractors, and their Trade Subcontractors for damages caused by perils covered by insurance provided under Article 11. The Construction Manager shall require similar waivers from all Trade Contractors and their Trade Subcontractors.

11.3.2 The Owner and Construction Manager waive all rights against each other and the Architect, Trade Contractors and their Trade Subcontractors for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all Trade Contractors and their Trade Subcontractors, in accordance with the Project Manual.

- 11.3.3 If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

## **Article 12. TERMINATION OR SUSPENSION**

### **12.1 Owner's Right to Terminate for its Convenience:**

12.1.1 The performance of Work under this Agreement may be terminated by the Owner in accordance with this Section 12.1 in whole, or from time to time, in part, whenever the Procurement Officer shall determine that such termination is in the best interest of the Owner. Any such termination shall be effected by delivery to the Construction Manager of a Notice of Termination specifying the extent to which performance of the Work under the Agreement is terminated, and the date upon which such termination becomes effective.

12.1.2 After receipt of a Notice of Termination, and except as otherwise directed by the Procurement Officer, the Construction Manager shall:

- .1 Stop Work under the Agreement on the date and to the extent specified in the Notice of Termination;
- .2 Place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of the portion of the Work under the Agreement as is not terminated;
- .3 Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination;
- .4 Assign to the Owner (without recourse to the Construction Manager) in the manner, at the times, and to the extent directed by the Procurement Officer, all of the right, title, and interest of the Construction Manager under the orders and subcontracts so terminated, in which case the Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- .5 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Procurement Officer to the extent he may require, which approval or ratification shall be final for the purpose of this Section;
- .6 Transfer title and deliver to the Owner in the manner, at the times and to the extent, if any, directed by the Procurement Officer, (1) the fabricated or unfabricated parts, work in progress, completed Work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the Notice of Termination, and (2) the completed or partially completed plans, drawings, information, and other property which, if the Agreement had been completed, would have been required to be furnished to the Owner;
- .7 Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Procurement Officer, any property of the types referred to in Section 12.2.1.6 above; provided, however, that the Construction Manager (1) may not be required to extend credit to any

purchaser, and (2) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Procurement Officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Construction Manager under this Agreement or shall otherwise be credited to the price or cost of the Work covered by this Agreement or paid in such other manner as the Procurement Officer may direct;

- .8 Complete performance of such part of the Work as may not have been terminated by the Notice of Termination; and
- .9 Take such action as may be necessary, or as the Procurement Officer may direct, for the protection and preservation of the property related to this Agreement which is in the possession of the Construction Manager and in which the Owner has or shall acquire an interest. The Construction Manager shall submit to the Procurement Officer a list, certified as to quantity and quality, of any and all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Procurement Officer, and may request the Owner to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) business days thereafter, the Owner shall accept title to such items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the Procurement Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

12.1.3 After receipt of a Notice of Termination, the Construction Manager shall submit to the Procurement Officer its termination claim, in the form and with certification prescribed by the Procurement Officer. Such claim shall be submitted promptly but in no event later than sixty (60) days from the effective date of termination, unless one or more extensions in writing are granted by the Procurement Officer, upon request of the Construction Manager made in writing within such sixty (60) day period or authorized extension thereof. However, if the Procurement Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such sixty (60) day period or any extension thereof. Upon failure of the Construction Manager to submit its termination claim within the time allowed, the Procurement Officer may determine, on the basis of information available to him, the amount, if any, due to the Construction Manager by reason of the termination and shall thereupon pay the Construction Manager the amount so determined, and such payment shall constitute final and complete satisfaction of any claims of the Construction Manager with respect to such termination.

12.1.4 Subject to the provisions of Section 7.2, the Construction Manager and the Procurement Officer may agree upon the whole or any part of the amount or amounts to be paid to the Construction Manager by reason of the total or partial termination of Work pursuant to this Section, which amount or amounts may include a reasonable allowance for profit on Work done; provided that such amount or amounts, exclusive of settlement costs, plus the Contract Price of Work not terminated shall not exceed the GMP as reduced by the amount of payments

otherwise made and as further reduced by the Contract Price of the Work not terminated. The Agreement shall be amended accordingly, and the Construction Manager shall be paid the agreed amount. Nothing in Section 12.1.5 prescribing the amount to be paid to the Construction Manager in the event of failure of the Construction Manager and the Procurement Officer to agree upon the whole amount to be paid to the Construction Manager by reason of the termination of Work pursuant to this Section, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Construction Manager pursuant to this Section 12.1.4.

12.1.5 In the event of the failure of the Construction Manager and the Procurement Officer to agree, as provided in Section 12.1.1, upon the whole amount to be paid to the Construction Manager by reason of the termination of Work pursuant to this Section, the Owner shall pay to the Construction Manager the amounts determined by the Procurement Officer as follows, but without duplication of any amounts agreed upon in accordance with Section 12.1.4.

- .1 With respect to all Contract Work performed prior to the effective date of the Notice of Termination, the total (without duplication of any item) of: (1) the cost of such Work; (2) the cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as provided in Section 12.1.2.5 above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor before the effective date of the Notice of Termination of Work under this Agreement, which amounts shall be included in the cost on account of which payment is made under clause (1) above; and (3) a sum, as profit on the cost of such Work, determined by the Procurement Officer (to be fair and reasonable); provided, however, that if it appears that the Construction Manager would have sustained a loss on the entire Agreement had it been completed, no profit shall be included or allowed hereunder and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and
- .2 The reasonable cost of the preservation and protection of property incurred pursuant to Section 12.2.1.9, and any other reasonable cost incidental to termination of Work under this Agreement, including expense incidental to the determination of the amount due to the Construction Manager as the result of the termination of Work under this Agreement, in each case as determined by the Procurement Officer.
- .3 The total sum to be paid to the Construction Manager under this Section 12.1 shall not exceed the total GMP as reduced by the amount of payments otherwise made and as further reduced by the Contract price of Work not terminated. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed to the risk of loss, there shall be excluded from the amounts payable to the Construction Manager under this Section 12.1, the fair value, as determined by the Procurement Officer, of property which is destroyed, lost, stolen, or damaged.

12.1.6 Costs claimed, agreed to, or determined pursuant to this Section 12.1 shall, in the discretion of the Procurement Officer, be in accordance with COMAR 21.09

(Contract Cost Principals and Procedures) as in effect on the date of this Agreement.

- 12.1.7 In arriving at the amount due the Construction Manager under this Section there shall be deducted (1) all unliquidated advance on other payments or account theretofore made to the Construction Manager, applicable to the terminated portion of this Agreement, (2) any claim which the Owner may have against the Construction Manager in connection with this Agreement, and (3) the agreed price for, or the proceeds of sale of any materials, supplies, or other things acquired by the Construction Manager or sold, pursuant to the provisions of this Section, and not otherwise recovered by or credited to the Owner.
- 12.1.8 If the termination hereunder be partial, the Construction Manager may file with the Procurement Officer a claim for an equitable adjustment of the price or prices specified in the Agreement relating to the continued portion of the Agreement (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be determined by the Procurement Officer shall be made in such price or prices. Any claim by the Construction Manager for an equitable adjustment under this Section shall be asserted within sixty (60) days from the effective date of the termination notice, unless an extension is granted in writing by the Procurement Officer.
- 12.1.9 The Owner may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Construction Manager in connection with the terminated portion of this Agreement whenever in the opinion of the Procurement Officer the aggregate of such payments shall be within the amount to which the Construction Manager shall be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Section, excess shall be payable by the Construction Manager to the Owner upon demand, together with interest computed at the prime rate established by the State Treasurer for the period from the date such excess payment is received by the Construction Manager to the date on which the excess is repaid to the Owner, provided however that no interest shall be charged with respect to any such excess payment attributed to a reduction in the Construction Manager's claim by reason of retention or other disposition of termination inventory until ten (10) business days after the date of such retention or disposition, or such later date as determined by the Procurement Officer by reason of the circumstances.
- 12.1.10 Unless otherwise provided in this Agreement, or by applicable statute, the Construction Manager shall, from the effective date of termination until the expiration of three (3) years after final settlement under this Agreement, preserve and make available to the Owner at all reasonable times at the office of the Construction Manager, but without direct charge to the Owner, all its books, records, documents and other evidence bearing on the costs and expenses of the Construction Manager under this Agreement and relating to the Work terminated hereunder or, to the extent approved by the Procurement Officer, photographs, or other authentic reproductions thereof.

## 12.2 Termination for Default:

### 12.2.1 If the Construction Manager



1. does not commence the Work in accordance with the provisions of this Agreement,
2. fails to prosecute the Work to completion thereof in an expeditious, efficient, workmanlike, skillful and careful manner and in strict accordance with the provisions of the Contract Documents,
3. fails to utilize full crews of labor and other personnel and a full complement of equipment needed to maintain the progress of the Work in accordance with the schedule,
4. breaches any of its other obligations under the Contract Documents, and does not rectify any such breach within five (5) days after written notice thereof or, if such failure is of such nature that it cannot reasonably be cured within seven (7) days, or such longer period as may be agreed upon in writing between the Owner and Construction Manager, if the Construction Manager does not diligently pursue a cure and achieve a cure within thirty (30) days,
5. stops the Work for a reason other than one expressly set forth this Agreement, and does not rectify such breach within seven (7) days after written notice thereof,
6. makes a general assignment for the benefit of its creditors,
7. permits a receiver, the trustee or custodian to be appointed on account of its insolvency,
8. does not make prompt payments to its subcontractors or suppliers, except for hold backs based on bona fide claims,
9. files a petition for relief under an applicable Bankruptcy Code, or
10. if a petition for relief is filed against Construction Manager by its creditors under an applicable Bankruptcy Code and such petition is not vacated within sixty (60) days thereafter, then, the Owner may, at the Owner's option and by written notice to the Construction Manager:
  - (1) terminate this Agreement,
  - (2) terminate the Construction Manager's right to proceed with the Work without terminating this Agreement, or
  - (3) terminate the Construction Manager's right to proceed on the part of the Work as to which Construction Manager is in breach of its obligations. In this event, the Owner may take over the Work or the applicable part thereof, and prosecute the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the Work, the materials, appliances, and plant as may be on the site of the Work and necessary

therefore. Whether or not this Agreement is terminated or the Construction Manager's right to proceed with all or part of the Work is terminated, the Construction Manager shall be liable for any damages to the Owner resulting from the Construction Manager's breach of its obligations under this Agreement.

12.2.2 Damages are provided in the Agreement and if the Owner so terminates the Construction Manager's right to proceed, the resulting damage shall consist of such liquidated damages until a reasonable time as may be required for Substantial Completion of the Work beyond the time set forth in the Progress Schedule at the time of such termination, together with any increased costs incurred by the Owner in completing the Work.

12.2.3 Damages are provided in the Agreement and if the Owner does not so terminate the Construction Manager's right to proceed, the resulting damage shall consist of these liquidated damages until the Work is Substantially Complete. In addition, Owner shall have the rights set forth in Section 5.5.2.

12.2.4 If this Agreement is terminated and if the unpaid balance of the GMP is less than the costs of finishing the Work, including compensation for the Architect's and the replacement construction manager's additional services made necessary thereby, such difference shall be paid by the Construction Manager to the Owner. The amount to be paid to the Owner shall be certified by the Architect, and this obligation for payment shall survive the termination of the Agreement.

12.2.5 If, after Notice of Termination of the Construction Manager's right to proceed under the provisions of this Section, it is determined for any reason that the Construction Manager was not in default under the provisions of this Section, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to the Section providing for termination for convenience of the Owner.

### 12.3 Suspension of the Work:

12.3.1 The Owner may order the Construction Manager in writing to suspend all or any part of the Work for a period of time as the Owner may determine to be appropriate for the convenience of the Owner. However, this right of the Owner to suspend the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Construction Manager or any other person or entity.

12.3.2 If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Owner in the administration of this Agreement, or by the Owner's failure to act within the time specified in this Agreement (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this Agreement (excluding profit) necessarily caused by an unreasonable suspension, delay, or interruption and the Agreement modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the

fault of negligence of the Construction Manager or (2) for which an equitable adjustment is provided or excluded under any other provision of this Agreement.

- 12.3.3 No claim under this Section 12.3 shall be allowed (1) for any costs incurred more than 20 days before the Construction Manager shall have notified the Owner in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of a suspension, delay, or interruption, but not later than the date of final payment under this Agreement.

### **Article 13. AUDITS BY OWNER**

- 13.1 Access to Construction Manager's Books and Records: The Construction Manager agrees that the owner or any of its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine any pertinent books, documents, papers, and records of the Construction Manager involving transactions related to this Agreement.
- 13.2 Access to Trade Contractor's Books and Records: The Construction Manager agrees to include in all Trade Contracts a provision to the effect that the Trade Contractors agree that the Owner or any of its duly authorized representatives shall, until expiration of three (3) years after final payment under this Agreement, have access to and the right to examine any pertinent books, documents, papers, and records of such Trade Contractors, involving transactions related to the Project.

## **Article 14. DISPUTES**

- 14.1 All disputes arising under or as a result of a breach of this Agreement which are not disposed of by mutual agreement shall be resolved in accordance with this Article.
- 14.2 As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of Agreement terms, modification of an interpretation or a decision of the Construction Manager or the Architect, or other relief, arising under or relating to this Agreement.
- 14.3 A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this Section. However, where the submission is subsequently not acted upon in a reasonable time, or disputed either as to liability or amount, it may be converted to a claim for the purpose of this Section.
- 14.4 Any claim by the Construction Manager shall be made in writing and submitted to the Owner who shall submit it to the Procurement Officer designated pursuant to the Project Manual for decision within the applicable time limits specified in the Contract Documents or agreed upon by the parties, or, if none, within a reasonable time. No claim shall be valid unless made within the time limits set forth in the Contract Documents.
- 14.4.1 The written claim shall set forth all the facts surrounding the controversy to be considered by the Procurement Officer.
- 14.4.2 In connection with any claim under this Section, the Construction Manager shall be afforded an opportunity to be heard and to offer relevant evidence in support of its claim to the Procurement Officer. At such time, the Construction Manager, the Architect or others will be entitled to present any relevant evidence to the Procurement Officer as well.
- 14.4.3 The Procurement Officer shall render a written decision on all claims within ten (10) days of receipt of the Construction Manager's written claim, unless the Procurement Officer determines that a longer period is necessary to resolve the claim. This decision shall be furnished to the Construction Manager, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The Procurement Officer's decision shall be deemed the final action of the Owner. If a decision is not issued within ten (10) days, the Procurement Officer shall notify the Construction Manager of the time within which a decision shall be rendered and the reasons for such time extensions.
- 14.5 The Procurement Officer's decision shall be final and conclusive with respect to the implementation of the Work and continuing progress payments, but shall be without prejudice to the rights of the Construction Manager to institute suit after completion of the Work in a court of competent jurisdiction for losses incurred by the Construction Manager as a result of such decision. The Construction Manager knowingly waives any rights that he may have at any time to institute suit or file other claims or causes of action, at law or in equity, with respect to the Project prior to completing all of the Work under the Contract Documents. The applicable statute of limitations shall be extended until six (6) months following completion of the Work.

## **Article 15. MISCELLANEOUS PROVISIONS**

- 15.1 Governing Law: This Agreement shall be governed by the laws of the State of Maryland.
- 15.2 Successors and Assigns: The Owner and the Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.
- 15.3 Assignments: The Construction Manager shall not assign, encumber, pledge, sublet or transfer any interest in this Agreement. The Construction Manager shall notify the Owner immediately in writing of any significant changes in its ownership or organization or in the ownership or organization of any of the joint venturers comprising the Construction Manager. Except for an assignment by Owner of any of its rights under this Agreement to the State of Maryland, or any agency or department thereof, or an entity supplying funds for the construction of the Project, the Owner shall not assign, encumber, pledge, sublet or transfer any interest in this Agreement without the written consent of the Construction Manager, which consent shall not be unreasonably withheld or delayed. When requested by an entity supplying funds for the construction of the Project, including any lender, the Construction Manager shall enter into a reasonable and customary "Agreement to Complete."
- 15.4 Remedies Cumulative: The remedies of the Owner provided in this Agreement shall be in addition to, and not in substitution for, the rights and remedies which would otherwise be vested in the Owner, under law or at equity, all of which rights and remedies are specifically reserved by the Owner; and the failure to exercise any remedy provided for in this Agreement shall not preclude the resort to any such remedy for future breaches by the Construction Manager; nor shall the use of any special remedy hereby provided prevent the subsequent or concurrent resort to any other remedy which by law or equity would be vested in the Owner for the recovery of damages or otherwise in the event of a breach of any of the provisions of this Agreement to be performed by the Construction Manager.
- 15.5 No Arbitration: No dispute or controversy under this Agreement shall be subject to binding arbitration.
- 15.6 Jurisdiction and Venue:
- 15.6.1 If the Owner is a party to any litigation with respect to the Project (whether as plaintiff, defendant or third party defendant) the Construction Manager consents to being joined in such action and to the jurisdiction of the Court in which the action is instituted (if the Construction Manager is named as a defendant or impleaded as a third party defendant) and to service of process by that court; and the Construction Manager waives any right to contest its joinder in such action on the grounds of improper jurisdiction or venue. Any action commenced by the Construction Manager shall be brought exclusively in a state or Federal court of competent jurisdiction located in the State of Maryland. Each Trade Contract shall provide that any action commenced by a Trade Contractor shall be brought exclusively in a state or Federal court of competent jurisdiction located in the State of Maryland.

- 15.6.2 If the Construction Manager is a party to any litigation in a state or Federal court of competent jurisdiction located in the State of Maryland with respect to the Project (whether as plaintiff, defendant or third party defendant), the Owner consents to being joined in such action and to the jurisdiction of the Court in which the action is instituted (if the Owner is named as a defendant or impleaded as a third party defendant) and to service of process by that court; and the Owner waives any right to contest its joinder in such action on the grounds of improper jurisdiction or venue.
- 15.7 Ownership of Drawings, Specifications and Other Documents: All documents created as the result of the Project and all data used in compiling, and the results of any tests, surveys or inspections at the site, as well as all photographs, drawings, specifications, schedules, data processing output, computer-aided design/drafting (CADD) system disks/tapes, computations, studies, audits, reports, models and other items of like kind prepared by or with the assistance of the Construction Manager, its employees, Trade Contractors, subcontractors, consultants and/or subconsultants shall be the property of the Owner. All documents shall be turned over to the Owner, in the format specified by the Owner, at the end of the job. The Construction Manager shall require all Trade Contractors, subcontractors, consultants and/or subconsultants to turn over the same to the Owner at the conclusion of their work. This Section 15.7 shall not be deemed to apply to the Construction Manager's proprietary project control system.
- 15.8 Exhibits: All exhibits attached hereto are hereby incorporated into this Agreement and are deemed a material part of this Agreement.
- 15.9 Non-Hiring of Officials and Employees: No official or employee of the State of Maryland, as defined under State Government Article, §15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Agreement, shall during the pendency and term of this Agreement and while serving as an official or employee of the State become or be an employee of the Construction Manager or any entity that is a subcontractor on this Agreement.
- 15.10 Personal Liability of Public Officials: In carrying out any of the provisions of the Agreement, or in exercising any power or authority granted to them by or within the scope of this Agreement, there shall be no personal liability upon the members of the Owner or any employees or representatives of the Owner, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of the Owner.
- 15.11 Disclosures
- 15.11.1 Political Contribution Disclosure: The Construction Manager shall comply with Election Law Article §§ 14-101 – 14-108, Annotated Code of Maryland, which require that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after

the execution of the lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

- 15.11.2 Financial Disclosure: The Construction Manager shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

15.12 Conditions:

- 15.12.1 Approvals: This Agreement shall not be effective until all required approvals of the Maryland Stadium Authority Board and the State of Maryland Board of Public Works have been obtained. No Work shall be commenced hereunder until Owner notifies the Construction Manager that such approvals have been obtained.
- 15.12.2 Appropriation of Funding: The Construction Manager acknowledges that the Project will be paid for with State and Town of Ocean City appropriated funds. The Owner shall keep the Construction Manager informed of the amount and status of all State appropriations. If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Agreement succeeding the first fiscal period, this Agreement shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise not made available; provided, however, that this will not affect either party's rights under any termination clause in this Agreement. The effect of termination of the Agreement hereunder will be to discharge both the Construction Manager and the Owner from future performance of this Agreement, but not from their rights and obligations existing at the time of termination. The Construction Manager shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of this Agreement. The Owner shall notify the Construction Manager as soon as it has knowledge that funds may not be available for the continuation of this Agreement for each succeeding fiscal period beyond the first.
- 15.13 Nondiscrimination in Employment: The Construction Manager agrees: (a) not to discriminate in any matter against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.
- 15.14 Contingent Fee Prohibition: The Construction Manager warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Construction Manager, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, partnership,



corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Agreement.

- 15.15 Compliance with Laws: The Construction Manager hereby represents and warrants that: (a) it is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified; (b) it is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Agreement; (c) it shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Agreement; and (d) it shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement.

15.16 Commercial Nondiscrimination Clause:

15.16.1 As a condition of entering into this Agreement, Construction Manager represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Construction Manager may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, disability, or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Construction Manager retaliate against any person for reporting instances of such discrimination. Construction Manager shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Construction Manager understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Construction Manager from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

15.16.2 As a condition of entering into this Agreement, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Construction Manager under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Construction Manager agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Construction Manager has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Construction Manager on each subcontract or supply contract. Construction Manager further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Construction Manager understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

15.17 Intentionally Omitted

15.18 Notices: All notices required or permitted to be given by one party to the other hereunder shall be in writing and shall be sent by certified U.S. Mail or commercial messenger receipt service, or shall be hand-delivered, to the addresses set forth in the beginning recitals to this Agreement. Either party may change its address for the purpose of receiving notices under this Agreement by written notice to the other party in the manner set forth above.

15.19 Integrated Agreement: This Agreement and the documents attached hereto and referred to herein represent the entire and integrated agreement between the Owner and the Construction Manager, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and the Construction Manager.

15.20 No Third Party Beneficiaries: Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or the Construction Manager. There are no intended third party beneficiaries of this Agreement.

15.21 No Joint Venture: The Construction Manager acknowledges that Owner is not a partner or joint venturer of the Construction Manager and that the Construction Manager is not an employee or agent of the Owner.

15.22 Owner Approval: Whenever provision is made herein or in the Contract Documents for the approval or consent of the Owner, or that any matter be to Owner's satisfaction, unless specifically stated to the contrary, such approval or consent shall be made by Owner in its sole discretion and determination.

15.23 Headings: The headings and captions of the Sections in this Agreement are inserted for identification purposes only, and shall not govern the construction, nor alter, vary, or change any of the terms, conditions, or provisions of this Agreement or any Sections hereof.

15.24 Time of the Essence: Time is of the essence in the performance of the obligations of the Construction Manager under this Agreement.

15.25 All notices required or permitted hereunder shall be in writing and delivered personally or by registered or certified mail (restricted delivery) return receipt requested, postage prepaid to the addresses set forth below:

If to the Owner:

Maryland Stadium Authority  
351 West Camden Street, Suite 500  
Baltimore, MD 21201-2435  
Attention: Al Tyler, Assistant Vice President

If to the Construction Manager:

Company Name  
Address  
City, State Zip Code

Attention: Name, Title

Any party may designate another addressee or change its address by notice given to the other party pursuant to this Article 15. All notices shall be deemed given upon receipt thereof or at the time delivery is refused.

15.26 The Owner has afforded the Construction Manager unrestricted access to the site of the Project and has given the Construction Manager the opportunity to investigate thoroughly the existing structures and conditions which the Construction Manager represents that it has done. The results of the Construction Manager's investigation have been taken into account in establishing the GMP for the Work. The Construction Manager shall not be entitled to any claim for conditions which the Construction Manager discovered or ought to have discovered in the Construction Manager's investigation. Before proceeding with the Work, the Construction Manager shall review the Drawings and Specifications and notify the Architect and Owner of any errors, omissions or discrepancies in the Plans and Specifications it discovers with respect to the existing conditions. The Construction Manager shall not proceed with the Work, or any portion thereof, if prior to its performing any portion of the Work, any defect, defined as any error, omission, conflict, inconsistency or lack of clarity is known or should be known by the Construction Manager to exist in the Plans and/or Specifications or other Contract Documents, and if the Construction Manager nevertheless proceeds to perform the Work then the Construction Manager shall be responsible for all foreseeable costs resulting there from, including the cost of redoing or remedying the Work and time delays resulting there from. Upon discovering a defect in the Plans and/or Specifications, or other Contract Documents, the Construction Manager shall immediately submit a written request for an explanation or decision to the Architect and the Owner. Any change by the Construction Manager in the Work detailed or specified in the Drawings or Specifications or other Contract Documents, without a prior written determination by the Architect and Owner shall be at the Construction Manager's sole risk and expense.

15.27 In the event of any conflict among Contract Documents, the Documents shall be construed according to the following priorities:

HIGHEST PRIORITY:	Modifications and Addenda subsequent to this Agreement (latest date to take precedence)
SECOND PRIORITY:	Agreement
THIRD PRIORITY:	Exhibits to this Agreement
FOURTH PRIORITY:	Supplementary Conditions
FIFTH PRIORITY:	General Conditions
SIXTH PRIORITY:	Specifications
SEVENTH PRIORITY:	Drawings
EIGHTH PRIORITY:	Detail Drawings shall have priority over the Drawings or Plans; and
NINTH PRIORITY:	Large scale details and Plans or Drawings shall have priority over small scale details and Plans or Drawings.

Notwithstanding the foregoing, in case of discrepancies between the Contract Documents, the material, system or equipment of better quality shall take precedence.

15.28            Mutual Waiver of Consequential Damages: The Owner and the Construction Manager agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement. The Owner agrees to waive damages including but not limited to the Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit or financing related to the Project, as well as the loss of business, the services of employees, or loss of reputation. The Construction Manager agrees to waive damages including but not limited to the loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this project, loss of bonding capacity or loss of reputation. This paragraph shall not be construed to preclude contractual provisions for liquidated damages when such provisions relate to direct damages only. The provisions of the paragraph shall also apply to the termination of this agreement and shall survive such termination.

15.29            Prompt Payment of Subcontractors:

15.29.1 This Agreement and all subcontracts issued under this Agreement are subject to the provisions of State Finance and Procurement Article, §15-226, Annotated Code of Maryland, and COMAR 21.10.08. In this Section 15.29, the terms "undisputed amount," "prime contractor," "contractor," and "subcontractor" have the meanings stated in COMAR 21.10.08.01.

15.29.2 A contractor shall promptly pay its subcontractors an undisputed amount to which a subcontractor is entitled for work performed under this contract within 10 days after the contractor receives a progress payment or final payment for work under this contract.

15.29.3 If a contractor fails to make payment within the period prescribed in Section 15.29.2, a subcontractor may request a remedy in accordance with COMAR 21.10.08.

15.29.4 A contractor shall include in its subcontracts for work under this Agreement, wording that incorporates the provisions, duties, and obligations of this Section 15.29, State Finance and Procurement Article §15-226, Annotated Code of Maryland, and COMAR 21.10.08.

15.30            Retainage in Payments to Subcontractors:

15.30.1 The Construction Manager may not retain from any payment due a subcontractor a percent of the payment greater than the percent for retainage specified in Section 10.3 of this Agreement.

15.30.2 A subcontractor may not retain from any payment due a lower tier subcontractor a percent of the payment greater than the percent of payments retained from the subcontractor.

15.30.3 However, the Construction Manager and/or a subcontractor are not prohibited by this Section 15.30 from withholding an amount in addition to retainage if the Construction Manager or subcontractor determines that a subcontractor's performance under the subcontract provides reasonable grounds for withholding the additional amount.

15.30.4 The Construction Manager and each subcontractor at any tier shall include, in all of their subcontracts for work called for by this Agreement, wording that incorporates the provisions of this Section 15.30.

15.31 Liquidated Damages: This contract requires the contractor to make good faith efforts to comply with the Minority Business Enterprise ("MBE") Program and contract provisions. The Owner and the Construction Manager acknowledge and agree that the Owner will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Construction Manager does not make good faith efforts to comply with the requirements of the MBE Program and MBE contract provisions. The parties further acknowledge and agree that the damages the Owner might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.

Therefore, upon a determination by the Owner that the Construction Manager failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or contract provisions, the Construction Manager agrees to pay liquidated damages to the Owner at the rates set forth below. The Construction Manager expressly agrees that the Owner may withhold payment on any invoices as a set-off against liquidated damages owed. The Construction Manager further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the Owner is anticipated to incur as a result of such violation.

- (a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B(3):

\$            per day until the monthly report is submitted as required.

- (b) Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B(4):

\$            per MBE subcontractor.

- (c) Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule:

the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the contract.

- (d) Failure to meet the Construction Manager's total MBE participation goal and subgoal commitments:

the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.

Notwithstanding the use of liquidated damages, the State reserves the right to terminate the contract and exercise all other rights and remedies provided in the contract or by law.

15.32            Retention of Records: The Construction Manager shall retain and maintain all records and documents relating to this Agreement for three years after final payment by the Owner hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the Owner, including the procurement officer or designee, at all reasonable times.

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

**OWNER:**

**Maryland Stadium Authority**

**Michael J. Frenz, Executive Director**

Owner Representative: Name/Title

Witness: Name

Signature

Signature

**CONSTRUCTION MANAGER:**

**Company Name**

CM Representative: Name/Title

Witness: Name

Signature

Signature

Approved as to Form Legal Sufficiency,

This \_\_\_\_\_, day of \_\_\_\_\_, 20\_\_\_\_.

By:

Bruce L. Benshoof

Assistant Attorney General, MSA

## **CONTRACT AFFIDAVIT**

### **A. AUTHORITY**

I HEREBY AFFIRM THAT:

I, (print name) \_\_\_\_\_ possess the legal authority to make this Affidavit.

### **B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION**

I FURTHER AFFIRM THAT:

\_\_\_\_\_ is a (check applicable items):

- (1) Corporation – \_\_\_\_ domestic or \_\_\_\_ foreign;
- (2) Limited Liability Company – \_\_\_\_ domestic or \_\_\_\_ foreign;
- (3) Partnership – \_\_\_\_ domestic or \_\_\_\_ foreign;
- (4) Statutory Trust – \_\_\_\_ domestic or \_\_\_\_ foreign;
- (5) \_\_\_\_ Sole Proprietorship

and is registered or qualified as required under Maryland Law.

I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation.

(Print SDAT  
ID Number)

\_\_\_\_\_

The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

(Print name)

\_\_\_\_\_

(Print address)

\_\_\_\_\_

\_\_\_\_\_



If it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies the true name and address of the principal or owner as:

Name and Department ID Number: \_\_\_\_\_

Address: \_\_\_\_\_.

### **C. FINANCIAL DISCLOSURE AFFIRMATION**

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

### **D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION**

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31.

### **E. DRUG AND ALCOHOL FREE WORKPLACE**

I CERTIFY THAT:

(1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.

- (2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
- (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
  - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
  - (c) Prohibit its employees from working under the influence of drugs or alcohol;
  - (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
  - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
  - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
    - (i) The dangers of drug and alcohol abuse in the workplace;
    - (ii) The business's policy of maintaining a drug and alcohol free workplace;
    - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
    - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
  - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b) of this affidavit;
  - (h) In accordance with the statement required by §E(2)(b) of this affidavit, notify its employees that as a condition of continued employment on the contract, the employee shall:
    - (i) Abide by the terms of the statement; and
    - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

- (i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii) of this affidavit or otherwise receiving actual notice of a conviction;
  - (j) Within 30 days after receiving notice under §E(2)(h)(ii) of this affidavit or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
    - (i) Take appropriate personnel action against an employee, up to and including termination; or
    - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
  - (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a) through (j) of this affidavit.
- (3) If the business is an individual, the individual shall certify and agree, as set forth in §E(4) of this affidavit, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
  - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
  - (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

## **F. CERTAIN AFFIRMATIONS VALID**

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated \_\_\_\_\_, 20\_\_\_\_, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date:\_\_\_\_\_

By: \_\_\_\_\_  
(printed name of Authorized Representative and affiant)

\_\_\_\_\_  
(signature of Authorized Representative and affiant)

## LIST OF EXHIBITS

Exhibit A	Guaranteed Maximum Price Submission
Exhibit B	Project Manual
Exhibit C	Project Description
Exhibit D	MBE Goals & Reporting Forms (A-H)
Exhibit E	Prevailing Wage Scale
Exhibit F	Cost Report Summary
Exhibit G	Certificates of Substantial & Final Completion
Exhibit H	Staffing Plan
Exhibit I	Architect Agreement
Exhibit J	Schedule
Exhibit K	Final Release of Lien and Waiver of Claim
Exhibit L	Intentionally Omitted
Exhibit M	Description of CM Invoice
Exhibit N	Allowances
Exhibit O	DPE Rates

Phase III – Ocean City Convention Center Expansion and Improvements  
Negotiated Guaranteed Maximum Price  
Construction Management Agreement

**EXHIBIT A**

**GMP**

Guaranteed Maximum Price Submission dated \_\_\_\_\_, 201X; see attached.

Phase III – Ocean City Convention Center Expansion and Improvements  
Negotiated Guaranteed Maximum Price  
Construction Management Agreement

**EXHIBIT B**

**PROJECT MANUAL**

See attached General Requirements and refer to Specifications, Drawings, and Addenda.

Phase III – Ocean City Convention Center Expansion and Improvements  
Negotiated Guaranteed Maximum Price  
Construction Management Agreement

**EXHIBIT C**

**PROJECT DESCRIPTION**

The work includes expanding the existing exhibit hall space by 30,000 square feet, constructing new support space to accommodate the expansion of the exhibit hall, making improvements to existing spaces within the facility and addressing the parking needs for the expanded facility.



Phase III – Ocean City Convention Center Expansion and Improvements  
Negotiated Guaranteed Maximum Price  
Construction Management Agreement

**EXHIBIT D**

**MBE GOALS & REPORTING FORMS**

The MBE Participation Goals for the Project is defined in the RFP. See attached MBE forms A through H required for monitoring and reporting of MBE participation and payments.

Phase III – Ocean City Convention Center Expansion and Improvements  
Negotiated Guaranteed Maximum Price  
Construction Management Agreement

**EXHIBIT E**

**PREVAILING WAGE SCALE**

Prevailing Wage documents; see attached.

Phase III – Ocean City Convention Center Expansion and Improvements  
Negotiated Guaranteed Maximum Price  
Construction Management Agreement

**EXHIBIT F**

**COST REPORT SUMMARY**

The Construction Manager will develop and monitor an effective system of Project cost control acceptable to Owner, including cash flow projections that will be updated not less than monthly. The Construction Manager will provide reports to the Owner on a monthly basis showing budgets, committed amounts, Change Orders, contingencies, estimated costs to complete, variances from budgets and payments for line items in the account structure.

Phase III – Ocean City Convention Center Expansion and Improvements  
Negotiated Guaranteed Maximum Price  
Construction Management Agreement

**EXHIBIT G**

**CERTIFICATES OF SUBSTANTIAL & FINAL COMPLETION**

Certificates of Substantial and Final Completion; see attached.

Phase III – Ocean City Convention Center Expansion and Improvements  
Negotiated Guaranteed Maximum Price  
Construction Management Agreement

**EXHIBIT H**

**STAFFING PLAN**

Staffing Plan; see attached.

Phase III – Ocean City Convention Center Expansion and Improvements  
Negotiated Guaranteed Maximum Price  
Construction Management Agreement

**EXHIBIT I**

**ARCHITECT AGREEMENT**

Architect Agreement; see attached.

Phase III – Ocean City Convention Center Expansion and Improvements  
Negotiated Guaranteed Maximum Price  
Construction Management Agreement

**EXHIBIT J**

**SCHEDULE**

Project schedule; see attached.

Phase III – Ocean City Convention Center Expansion and Improvements  
Negotiated Guaranteed Maximum Price  
Construction Management Agreement

**EXHIBIT K**

**FINAL RELEASE OF LIEN & WAIVER OF CLAIM**

Final Contractors/Subcontractor/Supplier, Waiver of Lien- Material and Labor; see attached.



Phase III – Ocean City Convention Center Expansion and Improvements  
Negotiated Guaranteed Maximum Price  
Construction Management Agreement

***EXHIBIT L***

**EQUIPMENT VALUE/RENTAL RATE SCHEDULE & EQUIPMENT LOG**

Intentionally Omitted.

Phase III – Ocean City Convention Center Expansion and Improvements  
Negotiated Guaranteed Maximum Price  
Construction Management Agreement

***EXHIBIT M***

**DESCRIPTION OF CM INVOICE**

CM invoice format shall be AIA Document G702 or modified version thereof with complete breakdowns of Subcontractor, General Conditions, Contingency, and complete billings with requisite backup. Also to be included in invoice is the Construction Manager's MBE Payment Summary detailing payments made to all MBE contractors/suppliers associated with the Project.

Phase III – Ocean City Convention Center Expansion and Improvements  
Negotiated Guaranteed Maximum Price  
Construction Management Agreement

**EXHIBIT N**

**ALLOWANCES**

**Definition:**

A Contract Allowance is an amount of money set aside within the GMAX to cover the cost of scope for which there is not enough information to include accurate pricing at the time the GMAX is set. The scope of each Allowance is defined in each Allowance line item listed below.

Generally, unless specifically indicated otherwise, the allowance includes all costs to furnish and install the work, including miscellaneous costs such as but not limited to expediting, delivery, unloading, distribution, installation and clean up, as well as all other subcontractor costs such as but not limited to general conditions, general requirements, sales tax, overhead and profit.

Upon determination of the final, actual cost of the work contained in the Allowance, the contract shall be adjusted by change order, up or down to reflect the difference between the Allowance and the final, actual cost of the work defined by the Allowance.

Materials and equipment under an Allowance shall be selected by the Owner in sufficient time to avoid delay in the work.

**The following contract Allowances are included in the Guaranteed Maximum Price:**

**ATTACHMENT O**

**SAMPLE CONTRACT: ARCHITECT AGREEMENT FOR DESIGN SERVICES**

**ARCHITECT AGREEMENT**

**FOR**

**ARCHITECTURAL/ENGINEERING DESIGN SERVICES**

**PROJECT NAME**

*Between the Maryland Stadium Authority and **AE FIRM NAME***

## *TABLE OF CONTENTS*

<b>Agreement .....</b>	<b>1</b>
<b>Introductory Statement .....</b>	<b>2</b>
 <b>Article Number &amp; Description</b>	
<b>1. Engagement and Relationship .....</b>	<b>3</b>
<b>2. Scope of Architect's Basic Services.....</b>	<b>8</b>
<b>3. Additional Services .....</b>	<b>17</b>
<b>4. Personnel.....</b>	<b>19</b>
<b>5. Owner's Responsibilities.....</b>	<b>21</b>
<b>6. Construction Cost .....</b>	<b>23</b>
<b>7. Ownership and Use of Architect's Drawings, Specifications and Other Documents.....</b>	<b>24</b>
<b>8. Compliance with Laws and Regulations.....</b>	<b>25</b>
<b>9. Dispute Resolution/Arbitration .....</b>	<b>26</b>
<b>10. Termination, Postponement or Suspension .....</b>	<b>27</b>
<b>11. Insurance Requirements and Indemnification.....</b>	<b>29</b>
<b>12. Payments and Basis of Compensation.....</b>	<b>32</b>
<b>13. Audits by Owner .....</b>	<b>35</b>
<b>14. Miscellaneous Provisions.....</b>	<b>36</b>
<b>Signature Page.....</b>	<b>40</b>
<b>List of Exhibits .....</b>	<b>41</b>

## AGREEMENT

made as of the \_\_\_\_ day of \_\_\_\_\_ in the year of 201\_.

**BETWEEN** the Owner:

Maryland Stadium Authority  
The Warehouse at Camden Yards  
351 West Camden Street, Suite 500  
Baltimore, Maryland 21201

and the Architect:

AE FIRM NAME  
ADDRESS  
CITY, STATE ZIP

for the following project:

**PROJECT NAME** which is described in more detail in the Project Program  
attached hereto as **Exhibit 1**(the "Project").

The Construction Manager (the "CM") is:

CM FIRM  
ADDRESS  
CITY, STATE ZIP

The Client is:

CLIENT NAME  
ADDRESS  
CITY, STATE ZIP

## **INTRODUCTORY STATEMENT**

- A. The Owner was established by the State of Maryland, pursuant to Section 13-701 et seq. of the Maryland Stadium Authority Act (Chapter 283 of the Acts of the General Assembly of 1986, now codified, as amended, as §§ 10-601 *et seq.* of the Economic Development Article of the Annotated Code of Maryland (the "Stadium Act"), as amended.
- B. The Owner will approve a Schedule (the "Construction Schedule") established by the CM for the Project which shows that design and construction will be completed on or before the date set forth in the Project Master Schedule attached as **Exhibit 3** hereto (the "Scheduled Completion Date").
- C. The Owner has established a budget for the design and construction of the Project (the "Budget"), a copy of which is attached as **Exhibit 4** hereto.
- D. The Owner desires to engage the Architect to render professional services with respect to the entire Project, subject to the terms of this Agreement.
- E. The Architect desires to be retained by the Owner to perform the architectural services required herein for the Owner.

NOW, THEREFORE, in consideration of the foregoing Introductory Statement, which is deemed a material and substantive part of this Agreement, and in further consideration of the promises and agreements hereinafter set forth, the Owner and the Architect agree as follows:



# **TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND ARCHITECT**

## **ARTICLE 1 ENGAGEMENT AND RELATIONSHIP**

**1.1 ENGAGEMENT:** Upon, subject to, and in accordance with the terms, conditions, and provisions of this Agreement, the Owner engages the Architect with respect to the furnishing of those professional services set forth in this Agreement, and the Architect accepts such engagement.

**1.2 RELATIONSHIP:** The Architect accepts the relationship of trust and confidence established between it and the Owner by this Agreement and shall furnish its professional skill and judgment consistent with the standards of the profession and cooperate with the Owner, the Client, the CM, and the Owner's other consultants and contractors in furthering the interests of the Owner throughout the duration of this Agreement. For clarity, Architect's status is that of a design professional, not fiduciary. The Architect shall furnish efficient business administration and management services as required herein and shall use its professional efforts to perform its services in an expeditious and economical manner consistent with the interests of the Owner. The Architect shall be an agent of the Owner to the extent, and only to the extent, required to properly perform its obligations under this Agreement. The Architect shall not represent or hold itself out to have any authority to act on behalf of or bind the Owner other than as specifically provided herein.

**1.3 THE CLIENT:** The agreement entered into between the Owner and Client (the "Client Agreement") provides that the Client will actively participate in the design and construction process, which shall be a cooperative, mutual endeavor in which the Owner and Client will work together. The Architect shall recommend appropriate channels of communications with the Owner that will facilitate a continuous and meaningful interface between the Owner, the Client, the Architect and the CM with respect to the planning and design of the Project. The Architect shall use all reasonable best efforts to perform its services under this Agreement in a manner so as not to disrupt the Owner's relationship with the Client; provided that the Owner shall have responsibility for establishing coordination procedures which will adequately involve the Client in the decision making process.

**1.4 THE ARCHITECT:** It is the intent of the Owner and the Architect that this Agreement be construed in a manner that requires the Architect to provide all necessary and customary architectural and engineering services for the Project, including, without limitation, the specific services set forth in Articles 1, 2 and 3 of this Agreement and those services that are reasonably inferable from the terms, provisions and conditions thereof. The Architect understands that all services under this Agreement shall conform to the Contracting Strategy attached hereto as **Exhibit 2** (which the Owner may modify at the Owner's sole discretion).

**1.5 STANDARD OF CARE:** All services to be performed by the Architect in respect of this Agreement shall be provided in a manner consistent with the degree of care and skill usually

exercised by architects experienced in projects of similar scope and in accordance with standards of care and skill expected of architects experienced in the design of projects similar to the Project and under the direction of architects and engineers licensed and duly qualified in the jurisdiction in which the Project is located.

The approval of any material produced by the Architect, in connection with the Project by the Owner in no way relieves the Architect of its responsibility for the accuracy and completeness of such Documents, nor compliance with required Standards, Codes, Ordinances or other applicable regulations, nor compliance with the Agreement and applicable law.

**1.6 ARCHITECT'S EMPLOYEES AND CONSULTANTS:** The Architect's services shall consist of those services performed by the Architect, the Architect's employees and the Architect's consultants. The Architect shall be responsible for the provision of all Services whether provided by the Architect or its consultants, agents, representatives or employee or others on behalf of the Architect. Any consultant employed by the Architect is subject to the approval of Owner, which shall not be unreasonably withheld.

**1.7 CONSTRUCTION MANAGER:** The Architect's services shall be provided in conjunction with the services of a CM.

Prior to the Construction Phase of the Project, the CM's services, duties, and responsibilities will be as described in the Preconstruction Contract for Construction Management Services between the Owner and the CM (the "CM Preconstruction Agreement"). The Owner shall deliver a copy of the CM Preconstruction Agreement to the Architect once completed.

Unless the Owner modifies the Contracting Strategy attached hereto as **Exhibit 2** (which the Owner may modify at the Owner's sole discretion), the Owner shall select a construction manager to act as a "construction manager at risk" for the Construction Phase of the Project. The Owner may choose to retain the pre-construction CM or choose another construction manager as the CM for the Construction Phase. If another construction manager is selected for the Construction Phase, the Owner shall notify the Architect and the new CM shall thereafter be, for all purposes under this Agreement, the CM during and after the Construction Phase. Upon selection of the CM for the Construction Phase, the Owner shall negotiate and enter into a construction management agreement with the CM (the "CM Construction Agreement"). The Owner shall deliver a copy of the CM Construction Agreement to the Architect once completed.

Prior to the Construction Phase of the Project, the term "CM Agreement" shall mean and refer to the "CM Preconstruction Agreement." During and after the Construction Phase of the Project, the term "CM Agreement" shall mean and refer to the "CM Construction Agreement."

The CM Agreement shall not be modified in a manner which materially affects any of the responsibilities of the Architect without making appropriate adjustments to this Agreement.

**1.8 DESIGN SCHEDULE:** The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Architect's services. The Architect and Owner hereby agree to the design schedule, attached as **Exhibit 3** hereto,

which will be incorporated and made a part of the Project Master Schedule. Time limits established by this schedule shall not, except for reasonable cause, be exceeded by the Architect. Any adjustments to the schedule shall be void and of no force and effect until such adjustments are agreed to in writing by Owner and Architect.

**1.9 OWNER'S CONSULTANTS:** The Owner reserves the right to retain additional architects, consultants, engineers, contractors, or others for similar or dissimilar services. It is understood between the parties that, under conditions where the Owner deems it beneficial to the Project, the Architect may be working in coordination and cooperation with other consultants who will be employed independently by the Owner and totally responsible to the Owner for their work and the performance of their respective agreements with the Owner. The Owner shall inform the Architect of the specific relationship with other consultants, if any. All coordination fees associated therewith shall be included as part of Basic Services hereunder unless they arise after the date of this Agreement.

**1.10 BUILDING CODES AND LAWS:** Subject to Section 1.5, all of the Architect's services shall comply with all applicable building codes, statutes, ordinances, laws, rules and regulations, including but not limited to the IBC/BOCA, Americans with Disabilities Act ("ADA"), Elevator/Escalator, Health, and NFPA/Life Safety codes, Mechanical, and Energy Conservation Codes, National Electrical Code, International Energy Conservation Code and ASHRAE standards. The Architect shall develop its specifications and drawings in strict adherence to meet or exceed these requirements and regulations impacting on the project. The Architect shall coordinate approval of all plans with the TOC Fire Marshal, Elevator, and Health Code Officials. Early submissions of design documents or early review meeting(s) shall be implemented as required to maintain the Project Schedule.

**1.11 BUILDING SYSTEMS REQUIREMENTS:** The Architect shall incorporate the requirements of ANSI/ASHRAE 111-1988 or the most current approved version, Practices for Measurement, Testing, Adjusting, and Balancing of Building Heating, Ventilation, Air Conditioning, and Refrigeration Systems, into the construction specifications. The Architect shall address in the construction specifications the requirements of the contractor to provide detailed and comprehensive operations and maintenance manuals for all equipment and systems in an organized format.

**1.12 DEFECTS:** Any defective designs or specifications furnished by the Architect will be promptly, upon notice or discovery, corrected by the Architect at no cost to the Owner, and the Architect will promptly reimburse the Owner for all damages, if any, to the extent caused by such defective designs or specifications. The Owner's approval, acceptance, use of or payment for all or any part of the Architect's services hereunder or of the Project itself shall in no way alter the Architect's obligations or the Owner's rights hereunder.

**1.13 COPIES:** As a part of Basic Services, the Architect shall furnish the Owner with physical copies (in such quantities as are reasonably requested by the Owner) and electronic copies of the documents prepared pursuant to Article 2 at the end of each design phase. The Architect shall also provide all additional copies required by any agency performing permit, code

compliance or other reviews as necessary to facilitate the work of the reviewing agency pursuant to Section 1.10.

**1.14 COMMUNITY RELATIONS:** As part of the Basic Services, upon the Owner's request at any time during the duration of this Agreement the Architect shall assist and support the Owner in preparing presentations of, and attending meetings with respect to, the intended design and status of the Project. Meetings and presentations will be with and to various organizations, including, but not limited to, governmental agencies, legislative bodies, community and civic associations, special interest groups and any other groups deemed necessary by the Owner. The Architect shall assist the Owner to work out methods for ameliorating community concerns and shall contribute articles to any newsletters to be published by the Owner and distributed to civic associations and key public officials.

**1.15 MEETINGS:** The Owner, Client, CM and Architect shall, unless waived by the Owner, conduct design meetings and other meetings scheduled by the Owner on at least a bi-weekly (once every two weeks) basis or as mutually agreed upon as a part of Basic Services. The Architect shall provide at such meetings and at other intervals mutually agreeable to the Owner, Client, CM and Architect appropriate drawings, schedules and other documents which depict the current status of design for the Owner's and Client's review and the CM's information.

**1.15.1** The Owner, Client, CM and Architect shall, unless waived by the Owner, conduct other meetings to review the current construction estimate, engage in value engineering discussions and/or to discuss other project related matters as scheduled by the Owner as a part of Basic Services. The Architect shall provide at such meetings documents which may be required to facilitate discussions such as drawings, schedules, etc.

**1.15.2** The Architect shall keep minutes of all meetings for the Owner's approval and shall distribute the minutes to the Owner, Client, CM and other attendees.

**1.16 SUBMISSIONS FOR OWNER'S APPROVAL:** As part of the Basic Services, upon completion of each design phase, the Architect shall submit drawings, specifications and other documents to the Owner, the Client, and the CM for the Owner's approval, the Client's review and comment, and the CM's information.

**1.17 GOVERNMENTAL APPROVALS:** As part of the Basic Services, the Architect shall assist the Owner and CM in connection with the Owner's responsibility for submitting and/or filing documents required for the review and/or approval of governmental authorities having jurisdiction over the Project.

**1.18 DUTIES:** Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Owner and Architect.

**1.19 COMMUNICATIONS:** Communications by and with the Architect's consultants shall be through the Architect unless direct communication between the Owner and any of Architect's consultants is deemed necessary by Owner to expedite the Project. The Architect shall be

advised of the substance of the direct communication between the Owner and any of the Architect's consultants.

**1.20 PERFORMANCE SPECIFICATIONS:** The Architect shall not provide for the design of any aspects of the Project by any contractors in the contract documents (performance specifications) without the prior written approval of the Owner. The Owner's approval shall not relieve the Architect of any of its responsibilities under this Agreement.

**1.21 PROPRIETARY SPECIFICATIONS:** The Architect agrees to specify at least three capable manufacturers that can meet each specification item as a part of Basic Services. If it is a benefit to the Project to use less than three capable manufacturers, then the Architect must request approval in writing from the Owner.

**1.22 TEST EVALUATION:** The Architect shall identify and provide to the Owner and CM a written list of all necessary and appropriate testing requirements identified in the specifications. The Architect shall review and take appropriate action with regard to the results of all tests as a part of Basic Services.

## **ARTICLE 2**

### **SCOPE OF ARCHITECT'S BASIC SERVICES**

#### **2.1 BASIC SERVICES GENERALLY**

**2.1.1 Scope:** The Architect's Basic Services consist of those services described in this Article 2, **Exhibits 5 and 6** (RFP and Proposals) and any other services specifically identified as Basic Services in Article 1 or elsewhere in this Agreement and shall include, without limitation, land surveys, geo-technical, structural, mechanical, civil, electrical and other engineering services necessary or appropriate for the Project. Subject to Section 1.5, the Architect shall provide all necessary services in order to provide a complete design that meets the design criteria and the intended program of the Project.

**2.1.1.1** The Architect shall collect all required information from the City of Baltimore, local jurisdictions, and utilities owners and operators.

**2.1.1.2** Available existing land surveys, building plans, utility plans, and site maps will be given to the Architect. No assurances, however, are given that these records are complete or accurate. The Architect is responsible for verifying the accuracy of any information provided.

**2.1.1.3** The Architect is responsible for investigating and accurately defining existing conditions and the impact of these conditions on the design. The Architect is required to examine existing drawings and confirm their accuracy, order electrical load tests, and any other means necessary to ensure accuracy for the design. Existing drawings, whether "as built" or construction drawings should only be used as a guide and for reference and under no circumstances be construed as accurate. All conditions shall be field verified by the Architect during the design development of the project. All outages anticipated during any investigative work must be coordinated with the City of Baltimore in order to determine the best windows of opportunity for the outage. Once the window has been established, a minimum of ten (10) days advance notice is required prior to all outages.

**2.1.1.4** The Architect shall prepare land survey(s) that documents all existing conditions of the site and confirms all information provided by the Owner or the City of Baltimore. The extent of the information and work required by the survey shall include, but not be limited to, all existing topography, utilities, hazmat, roads and improvements, significant vegetation and natural features, existing utilities, boundaries, easements, and any legal restrictions that are applicable. The survey shall establish the benchmark(s) to be used for the Project. The Architect shall provide a final survey of the property at the completion of the Project.

**2.1.2 Interior Design:** The Architect shall provide interior design and other similar services required for or in connection with the selection of furnishings and related equipment, as part of Basic Services. These services shall include, but not be limited to, the interior design and coordination for the building; selection and/or coordination of interior paint colors, finishes, and materials; design of wall, floor, and window treatments; architectural signage and graphics. The Architect shall also provide for the inclusion of all furniture, fixtures, and equipment shown in

plan and elevation as necessary to demonstrate that all programmed functions can be accommodated. The Architect shall provide design coordination services for any equipment requiring special environmental conditions and/or building system conditions and connections as well as public space furniture.

Identification of methods of installation and connection with building utility services, and provision of necessary clearances for convenient, safe use, and maintenance of equipment shall be included in the interior design documents. These documents shall be fully coordinated with mechanical, electrical, structural, plumbing (i.e., building systems), and all other pertinent construction documents. The Owner will provide a final list of equipment and furniture requirements during the design development phase. These requirements will be presented in two categories: a) Fixed Equipment—equipment that will be included in the construction contract; and b) Movable Equipment—new equipment that will be purchased and installed via separate contracts, or existing equipment which will be reused.

**2.1.3 Constructability and Maintenance:** The Architect shall also keep in mind the constructability of the design and the maintenance of the facility for the Client. The Architect shall be cautious as not to specify materials that will require replacement from unique (sole) sources that will be difficult or costly for the Client's long term use of the facility. Deviations will require written approval from the Owner and Client. The Construction Manager will advise on constructability issues as a part of its review of the documents.

**2.1.4 Green Building Standards:** In designing the Project, the Architect shall also keep in mind that the Project must meet or, to the extent feasible, exceed the Green Building Standards (as defined below) in effect during the Design Phase of the Project. The "Green Building Standards" shall mean the State of Maryland's and the City of Baltimore's required standards regarding energy savings, resource conservation, storm water management, environmental site design, renewable energy, and any other sustainability strategies to achieve budgetary and life-cycle cost savings and/or health benefits for building occupants. If there is a conflict between the Green Building Standards of the State of Maryland and the City of Baltimore, the Architect shall notify the Owner of such conflict and the Owner shall determine which Green Building Standard to apply.

**2.1.5 Construction Cost:** The Architect shall exert its professional efforts to work with the CM to keep the Construction Cost (as defined in Article 6) for Project within the fixed limit for the Construction Cost set forth in **Exhibit 7** (the "Construction Cost Limit"). If the Construction Cost of the design, as developed, exceeds the established Construction Cost Limit for the Project, the Architect shall work with the Owner, the Client, and the CM to modify the Construction Cost of the design to be within the Construction Cost Limit. Such modifications of the design shall generally be done at no additional cost to the Owner; provided, however, that the Architect may negotiate with the Owner for reimbursement of a substantial cost impact in design fees arising from a major change that either occurred after 50% construction documents were completed or resulted from the Architect's reliance on inaccurate cost projections by the CM.

**2.2 BUILDING INFORMATION MODELING:** Building Information Modeling ("BIM") will be used on this project as a means of preparing construction documents. All lead design teams

and sub-consultants must collaborate on the same BIM model to produce drawings and other components as required.

## **2.3 SCHEMATIC DESIGN PHASE**

**2.3.1 Site Use and Improvements:** The Architect shall review with the Owner and CM proposed site use and improvements; selection of building materials, systems, and equipment; and methods of Project delivery.

**2.3.2 Alternative Approaches:** The Architect shall review with the Owner, the Client and CM alternative approaches to design and construction of the Project, and shall provide the Owner with at least three (3) conceptual drawings of alternative approaches.

**2.3.3 Documents:** Based on the mutually verified and agreed upon conceptual design and the Project Master Schedule and Construction Cost requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings, outline specifications and other documents illustrating the scale and relationship of Project components.

**2.3.4 Studies:** At intervals appropriate to the progress of the Schematic Design Phase and mutually agreeable to the Owner, CM and Architect, the Architect shall provide schematic design studies for the Owner's and Client's review and the CM's information.

**2.3.5 Existing Conditions:** The Architect shall review by visual observation all existing conditions and facilities and any as-built drawings provided by the Owner. The Architect shall advise the Owner in writing: (a) if the Architect believes that the existing conditions or facilities do not conform to the as-built drawings; or (b) if the Architect believes that further testing or inspections should be conducted by the Owner.

**2.3.6 Construction Estimate:** In the further development of the drawings and specifications during this and subsequent phases of design, the Architect shall be entitled to assume the accuracy of the estimates of Construction Cost (as defined in Article 6 hereof) which are to be provided by the CM under the CM Agreement.

**2.3.7 Modification of Design:** If, following completion of the Schematic Design Phase, the total Construction Cost is projected to exceed the established Construction Cost Limit, the Architect shall modify the design (which may include the modification of the level of quality, the design and or the Project Scope to fit within the established Construction Cost Limit) and/or establish alternates at no additional cost to the Owner.

## **2.4 DESIGN DEVELOPMENT PHASE**

**2.4.1 Authorization to Proceed:** The Architect shall begin the Design Development stage upon receipt of Owner's written authorization to implement the documents presented in the Schematic Design Phase.



**2.4.2 Cost Analyses:** The Architect shall assist the Owner and CM in the development and preparation of detailed analyses of the long-term cost effectiveness of alternative design choices for the systems described in the Schematic Design Documents. The selection of any particular system shall not be considered as firm until the full interrelationship of all systems is fully approved in writing and accepted by the Owner.

**2.4.3 Documents:** The Architect shall prepare from the approved Schematic Design, the Design Development Documents consisting of design criteria, drawings, specifications and other documents to establish and describe the size and character of the entire Project and as to architectural, structural, civil, mechanical and electrical systems, materials, landscaping and such other essentials as may be appropriate and submit those documents for approval by the Owner. The Architect shall provide written verification that all design comments from the Schematic Document phase were incorporated in the Design Development Documents. Any comments not included will need to be identified in writing with a reason as why they were not incorporated. MEP systems shall be well defined, identified and requirements provided.

## **2.5 CONSTRUCTION DOCUMENTS PHASE**

**2.5.1 Authorization to Proceed:** Based on the approved Design Development Documents and any further adjustments authorized by the Owner in the scope or quality of the Project or in the Budget, the Architect, utilizing data and estimates prepared by the CM, shall prepare for approval by the Owner Construction Documents consisting of drawings, specifications and alternates setting forth in detail the requirements for the construction of the Project. The Architect shall provide that the documents between the design disciplines have been coordinated amongst themselves, including but not limited to details, specifications, etc.

**2.5.2 GMP Documents:** Upon completion of the 50% Construction Documents Phase, the Architect shall provide 50% Construction Documents for the Owner's approval and the CM's information. The Architect shall provide written verification that all design comments from the previous design phases were incorporated in the documents. The Architect shall provide to the Owner, in writing, a list of all comments not included together with the reasons why they were not incorporated.

**2.5.3 Bidding Documents:** The Construction Documents shall be produced as one (1) complete design package. The Architect shall assist the Owner and CM in the preparation of the necessary bidding information, bidding forms, the conditions of the contracts, the form for the CM Construction Agreement, and the forms for the agreements with trade contractors in accordance with the Contracting Strategy specified in **Exhibit 2**. The Architect shall include the Owner's Project Manual/General Conditions as a part of the Bidding Documents. The Architect shall assist the CM in issuing bidding documents to bidders and conducting pre-bid conferences with prospective bidders. The Architect, with the assistance of the CM, shall respond to questions from bidders, and shall issue addenda as appropriate. As a part of the Construction Documents there shall be a separate schedule created from the specifications listing all attic stock requirements, and any documents that are to be submitted to the Architect as a part of the construction process.

## **2.6 BIDDING OR NEGOTIATION PHASE**

**2.6.1 Bidding:** The Architect, following the Owner's approval of the Construction Documents and of the CM's latest estimate of Construction Cost, shall assist the CM in obtaining bids or negotiated proposals.

**2.6.2 Modification of Design:** If the total of the bids exceed the established Construction Cost Limit as set forth in **Exhibit 4** hereto, the Architect shall modify the design so it is within the established Construction Cost Limit at no additional cost to the Owner or as stipulated in Section 2.1.5. The Architect acknowledges that the Project may not proceed into the Construction Phase unless and until the Construction Cost of the Project is within the established Construction Cost Limit. The Architect must also recognize the Project Master Schedule and the end date of the Project and work expeditiously to solve any problems, for the end date cannot change and compression of the Project Master Schedule will most likely have significant financial impacts upon the Construction Cost for the Project.

## **2.7 CONSTRUCTION PHASE**

**2.7.1 Commencement/Completion:** The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the first award of a Contract for construction and subject to Article 12.7 ends upon the issuance by the Owner to the Architect of the final Project payment and the Architect's submission of the Record Documents.

**2.7.2 Cooperation:** The Architect shall provide administration of the Contract for construction in cooperation with the CM as set forth in the CM Agreement.

**2.7.3 Site Representation:** The Architect shall be a representative of and shall advise and consult with the Owner as a Basic Service during the Construction Phase. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written instrument.

**2.7.4 Permit Coordination:** The Architect shall endeavor to identify all necessary or desirable permits and licenses applicable to the Project and advise the Owner and CM as to the method of obtaining the same and assist in obtaining building permits and special permits for permanent improvements, excluding permits required to be obtained directly by the various trade contractors.

**2.7.5 Site Visits:** The Architect shall visit the site at least bi-weekly (once every two weeks) or as agreed by the Owner and Architect to become familiar with the progress and quality of the contractors' work completed and to determine if the contractors' work is being performed in a manner indicating that the work when completed will be in accordance with the contract documents. On the basis of on-site observations as an architect, the Architect shall keep the Owner informed of the progress and quality of the contractors' work, and shall endeavor to guard the Owner against defects and deficiencies in the work that may be observed while on the field visits agreed upon in the contract.

**2.7.6 Partnering:** As a part of the Architect's visits, time will be available to meet with the Owner, the Client and CM to work out any Project issues. The primary purpose of this meeting is to insure a cohesive and cooperative working relationship between parties. Meetings may be cancelled from time to time by the Owner.

**2.7.7 Construction Means and Methods:** The Architect shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the contractors' work. Unless otherwise provided in this Agreement, the Architect shall not be responsible for the contractors' schedules or failure to carry out the contractors' work in accordance with the contract documents. Unless otherwise provided in this Agreement, the Architect shall not be responsible for the performance by the CM of the services required by the CM Agreement. Unless otherwise provided in this Agreement, the Architect shall not have control over or charge of acts or omissions of the contractors, subcontractors, or their agents or employees, or of any other persons performing services or portions of the work.

**2.7.8 Access:** The Architect shall at all times have access to the contractors' work wherever it is in preparation or progress.

**2.7.9 Contractor Payment Review:** After review and approval by the CM and based on the Architect's observations at the site of the contractors' work and evaluations of each contractor's application for payment, the Architect shall review and certify the amounts due the respective contractors within two (2) business days after receipt of contractor's application for payment. The Architect shall forward the contractor's payment application for payment to the Owner for approval of payment.

**2.7.9.1** The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations at the site as provided in Subsection 2.7.5, on the approval and recommendations of the CM and on the data comprising the contractor's application for payment, that, to the best of the Architect's knowledge, information and belief, the contractor's work has progressed to the point indicated and the quality of the contractor's work is in accordance with the contract documents. The foregoing representations are subject to an evaluation of the contractor's work for conformance with the contract documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the contract documents correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a certificate for payment shall further constitute a representation that the contractor is entitled to payment in the amount certified.

**2.7.9.2** The issuance of a certificate for payment shall not be a representation that the Architect has: (a) made exhaustive or continuous on-site inspections to check the quality or quantity of the contractor's work; (b) reviewed construction means, methods, techniques, sequences or procedures; (c) reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by the Owner to substantiate the contractor's right to payment; or (d) ascertained how or for what purpose the contractor has used money previously paid on account of the contract sum.

**2.7.10 Nonconformance of the Work:** The Architect shall advise Owner, together with notification to the CM, to reject any contractors' work which the Architect has determined does not conform to the contract documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the contract documents, the Architect will have the responsibility and authority, upon written authorization from the Owner, to require additional inspection or testing of the contractors' work in accordance with the provisions of the contract documents, whether or not such contractors' work is fabricated, installed, or completed; provided, however, the Architect must obtain the Owner's prior written approval of any such special inspection or testing.

**2.7.11 Submittals:** The Architect shall review and approve or take other appropriate action upon contractors' submittals such as shop drawings, product data and samples, for the purpose of checking for conformance with the requirements of the contract documents. The Architect's action shall be taken within ten (10) business days so as to cause no delay in the contractors' work or in construction by the Owner's own forces. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the contractors, all of which remain the responsibility of the contractors to the extent required by the contract documents. All submittals to be transmitted electronically through Architect's website per Architect's standard submittal procedures. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the contract documents, the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the contract documents. The Architect shall not modify a submittal such that it would cause a change to the Contract without issuing the proper documentation such as a Construction Change Directive. First and second submittal review is within Basic Scope of Services, but third and beyond reviews are an additional service per Article 3 provided the need for multiple reviews is not caused by the Architect or any of the Architect's consultants.

**2.7.12 Requests for Information (RFI's):** The Architect shall respond to RFI's pre-screened and sent in by the CM requesting clarification to the Contract Documents. The Architect shall take no longer than an average of two business days to return an answer to the RFI. If the RFI response causes a change to the Contract Documents, the Architect shall immediately issue a Construction Change Directive, after Owner's approval. The Architect shall endeavor to provide complete and concise responses.

**2.7.13 Changes:** The Architect shall review and sign or take other appropriate action on change orders and construction change directives approved and prepared by the CM. The Architect shall provide drawings, specifications and other documentation and supporting data, evaluating contractors' proposals for changes in the scope of work and shall provide services in connection with evaluating substitutions proposed by contractors and making subsequent

revisions to drawings, specifications and other documentation resulting therefrom. The Architect may make recommendations to the Owner to make changes in the contractors' work.

**2.7.14 Supplemental Instructions:** The Architect shall issue, through the CM, architectural supplemental instructions, field instructions, sketches, etc. to clarify any questions raised by any contractors.

**2.7.15 Contractor Performance:** The Architect shall interpret and make recommendations concerning performance of the contractors under the requirements of the contract documents on written request of the Owner. The Architect's response to such requests shall be made within ten (10) business days.

**2.7.16 Interpretations:** Interpretations and recommendations of the Architect shall be consistent with the intent of and reasonably inferable from the contract documents and shall be in writing or in the form of drawings or sketches.

**2.7.17 Architect Recommendations:** The Architect's recommendations on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the contract documents and accepted by the Owner.

**2.7.18 Contractor Claims:** At the Owner's request, the Architect shall render written recommendations within ten (10) business days on all claims, disputes or other matters in question between the Owner and contractors relating to the execution or progress of the contractor's work as provided in the contract documents.

**2.7.19 Owner's Consultants:** The Architect shall provide coordination services in connection with the work of separate consultants retained by the Owner.

**2.7.20 Substantial Completion:** The Architect, assisted by the CM, shall conduct one (1) inspection to determine the date or dates of substantial completion and the date of final completion of each contractor's work. With respect to each contractor's work that has been determined to be substantially complete, the Architect, CM, and Owner shall sign off on a certificate of substantial completion (the "Certificate of Substantial Completion") in the form attached as part of **Exhibit 8**.

**2.7.21 Punch List:** Upon completion of an initial punchlist, the Architect shall prepare the punch list in a spreadsheet format compatible with that of the CM. The punch list items shall be a part of the Certificate of Substantial Completion.

**2.7.22 Project Close-Out:** As part of Project close-out, the Architect shall forward to the Owner warranties and similar submittals required by the contract documents which have been received from the CM and/or any of the contractors, including the final payment application. With respect to each contractor's work that has been determined to be complete and meriting final payment, the Architect, CM, and Owner shall sign-off on a final certificate of completion ("Final Completion Certificate") in the form attached as part of **Exhibit 8**.

**2.7.23 Record Documents:** The Architect shall review the Contractor's as-built documents provided by the contractors to check whether they included all Change Orders, Field Instructions, etc on these documents. The Architect shall transfer the Contractor mark ups to the original contract documents. The Architect shall provide the Owner with one (1) set of reproducible record documents (posted with all changes, and supplemental instructions), drawings, specifications, BIM model(s) and computer-aided design/drafting (CADD) system disks showing all significant changes to the drawings during the Construction Phase. Three (3) electronic copies shall be provided.

## **ARTICLE 3**

### **ADDITIONAL SERVICES**

**3.1 GENERAL:** The services described in this Article 3 are not included in Basic Services and shall be paid for by the Owner, as provided in this Agreement, in addition to the compensation for Basic Services. The services described under this Article 3 shall only be provided if authorized or confirmed in writing by the Owner.

**3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES:** If more extensive representation at the site than is described in Subsection 2.7.3 and 2.7.5 is required, the Architect shall provide one or more Project Representatives, with the reasonable approval of the Owner, to assist in carrying out such additional on-site responsibilities.

**3.2.1 Project Representatives:** Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefor as agreed by the Owner and Architect. Through the observations by such Project Representatives, the Architect shall endeavor to provide further protection for the Owner against defects and deficiencies in the contractors' work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect as described elsewhere in this Agreement. The Project Representatives shall also work to solve problems that arise and keep the best interest of the Project in mind.

**3.2.2 Full-time On-site Representation:** If the Owner deems it necessary, in the best interest of the Project, the Owner shall direct the Architect to provide, as an Additional Service, a full-time on-site representative. A full-time on-site representative, if provided, shall further expedite the review of shop drawings and shall resolve field issues and problems of the CM and keep the best interest of the Project in mind. This person should have both design and construction experience. Owner shall provide working space, telephone, fax, Internet access & photocopying at no cost to the Architect.

**3.3 CONTINGENT ADDITIONAL SERVICES:** The services described below, if approved in writing by the Owner, shall be contingent additional services.

**3.3.1 Major Revisions:** Making major revisions in drawings, specifications or other documents when such revisions are:

**3.3.1.1** Inconsistent with written approvals or instructions previously given by the Owner;

**3.3.1.2** Required by the enactment of new codes, laws or regulations subsequent to the preparation of such documents; or

**3.3.1.3** Due to changes required as a result of the Owner's failure to render decisions within a time period reasonably specified by the Architect.

**3.3.2 Significant Changes:** Providing services required because of significant changes in the Project including, but not limited to, changes in size, quality, complexity, or the Owner's or CM's schedule, or the method of bidding or negotiating and contracting for construction, provided that the changes are not required as result of the Project being over the Construction Cost Limit, or as a result of the Architect not providing complete and accurate documents. Any modifications as a result of the Project being over Budget shall not constitute an additional service unless as stipulated in Section 2.1.5.

**3.3.3 Damage:** Providing consultation concerning replacement of work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such work.

**3.3.4 Defects or Default:** Providing services made necessary by the termination or default of the CM or a contractor, or by major defects or deficiencies in the work of a contractor.

**3.3.5 Claims:** Providing services in evaluating an extensive number of claims submitted by a CM or others in connection with the work subject to the limitations set forth in Section 3.3.7(a) below.

**3.3.6 Legal Proceedings:** Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the Architect is party thereto.

**3.3.7 Architect's Failure to Perform:** Notwithstanding anything to the contrary in this Agreement: (a) Owner shall not be responsible to pay and the Architect shall not be entitled to receive compensation for any Contingent Additional Services if such services were required due to the fault of the Architect or the Architect's failure to perform in accordance with the terms of this Agreement; and (b) the services described in this Section 3.3 shall be deemed Additional Services only if the Architect can demonstrate to Owner that a direct and material increase in the Architect's costs has been incurred and caused by the Owner, the Owner's consultants, the CM or any of the contractors or subcontractors.



## **ARTICLE 4**

### **PERSONNEL**

**4.1 PROJECT STAFFING:** Except as hereinafter provided, the Architect shall staff the Project and render its services hereunder in strict accordance with the project staffing plan (the "Staffing Plan") attached hereto as **Exhibit 9**. The Architect shall not deviate from the Staffing Plan or increase or decrease its staff without first obtaining the prior written consent of the Owner in each instance, except that minor changes in staff which do not involve Key People (as defined in Section 4.2 below), may be made without the prior written consent of the Owner so long as there is no increase in cost to the Owner as a result of such change. Each request for a staff change shall be accompanied by a resume and qualification package with respect to the proposed new staff member. If an increase in staff by Architect is required as a result of Architect's negligence or failure to properly perform its services hereunder, then the services of such staff shall be provided by Architect without cost and with no increase in Architect's Fee (hereinafter defined). Architect shall be responsible for all damages and other liabilities (including any which arise under the Client Agreement) to the extent caused by Architect's failure to properly staff the Project in accordance with the Staffing Plan. If an increase in the staff is required due to circumstances beyond the control of the Architect and the Architect has obtained the Owner's prior written approval for such additional staff, the Architect shall be compensated for such staff in accordance with Article 12).

**4.2 KEY PEOPLE:** Architect agrees that it shall assign Key Person(s) to this Project (the "Key People") as set forth in the Staffing Plan attached as **Exhibit 9** or as otherwise approved by the Owner; and that the Key People shall devote their time as necessary to the Project as may be appropriate to and consistent with full and timely performance of this Agreement by the Architect. Key People are principals and employees of the Architect that the Owner desires to be and remain assigned to the Project. The Architect agrees that the Key People shall not be removed from their responsibilities on this Project without the prior written consent of Owner, except in the event of death, disability or departure from the employment of Architect. All computations and other work performed by the employees of the Architect shall be adequately supervised by one or more of the Key People.

**4.2.1 Replacements:** If any of the Key People becomes unavailable to perform services in connection with the Project under this Agreement, the Architect shall provide the Owner with resumes and rates of compensation of possible replacements and the Owner shall have the opportunity to interview any such replacement candidates. The Architect shall not appoint any replacement without the prior written approval of the Owner, but shall promptly appoint the replacement approved by the Owner in writing.

**4.2.2 Re-Assignment:** The Architect shall not transfer or re-assign any of the Key People to other matters undertaken by the Architect without the prior written consent of the Owner. The Owner shall have the right to require that the Architect re-assign any of the Key People or any of the Architect's other personnel at the reasonable discretion of the Owner.

**4.2.3 Removal:** If the Owner determines that any of the Key People are not performing the job satisfactorily, the Owner shall have the right to direct that such individual(s) be replaced. The Architect shall provide the Owner with resumes and rates of compensation of possible replacements and the Owner shall have the opportunity to interview any such replacement candidates. The Architect shall not appoint any replacement without the prior written approval of the Owner, but shall promptly appoint the replacement approved by the Owner in writing.

**4.2.4 Consultants' Key People:** The Architect shall include a provision in all agreements with its consultants requiring each consultant to obtain the prior written approval of the Owner before the consultant assigns its Key People to the Project, and to include provisions relating to staffing substantially the same as those set forth in this Article 4.

## **ARTICLE 5**

### **OWNER'S RESPONSIBILITIES**

**5.1 CONSULTATION WITH THE ARCHITECT:** The Owner shall consult with the Architect regarding requirements for the Project, including the Owner's contemplated objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems, and site requirements.

**5.2 BUDGET UPDATE:** The Owner shall establish and update the Budget based on consultation with the CM, the Architect and the Client, which shall include the Construction Cost, the Construction Cost Limit, the Owner's other costs, and reasonable contingencies related to all of these costs.

**5.3 OWNER'S REPRESENTATIVE:** The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner's Representative is as detailed in list attached hereto as **Exhibit 10**.

**5.4 CONSTRUCTION MANAGER:** The Owner shall retain a CM to administer the Project. The CM's services, duties and responsibilities will be as described in the CM Agreement. The CM Agreement shall be furnished to the Architect and shall not be modified in a manner which materially affects any of the responsibilities of the Architect without making appropriate adjustments in this Agreement. The Architect shall not be responsible for actions taken by the CM. The CM will prepare a Construction Schedule for the Project, subject to the approval of the Owner, that will show that construction of the Project will be completed on or before the Scheduled Completion Date. The Design Schedule and the Construction Schedule will be incorporated into and made part of the Project Master Schedule.

**5.5 LEGAL DESCRIPTIONS:** Pursuant to Section 2.1.1.2, the Owner shall furnish all available surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site, if available. The surveys and legal information may include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, flood plains, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

**5.6 ADDITIONAL OWNER CONSULTANTS:** The Owner shall furnish the services of additional consultants when such services are reasonably required by the scope of the Project as mutually determined by the Architect and the Owner, provided that Owner shall retain such consultants only if such consultants are not retained by Architect.

**5.7 TESTS AND INSPECTIONS:** The Owner shall furnish all necessary geotechnical/soil, structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and

other laboratory and environmental tests, inspections and reports required by law or the contract documents.

**5.8 LEGAL AND ACCOUNTING SERVICES:** The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the Owner may require to verify any contractor's application for payment or to ascertain how or for what purposes the contractor has used the money paid by or on behalf of the Owner.

**5.9 CERTIFICATES:** To the extent the form of certificates or certifications have not been agreed to prior to the execution of this Agreement and attached hereto by way of Exhibit, proposed language of certificates or certifications requested of the Architect or Architect's consultants shall be submitted to the Architect for review and approval at least five (5) business days prior to execution. The Owner shall not request certifications that would require knowledge or services beyond the scope of this Agreement.

**5.10 APPROVALS:** The Owner shall furnish the required information and services and shall render approvals and decisions as expeditiously as possible for the orderly progress of the Architect's services and work of the contractors.

**5.11 COMMUNICATION:** The Owner shall furnish the Architect copies of material written communications with the CM and contractors. The Owner may elect to have the CM communicate directly with the Architect.

**5.11 BUILDER'S RISK INSURANCE:** Owner shall procure, or require the CM to procure, maintain, Builder's Risk Insurance. Owner and Architect mutually waive all rights against each other and each other's respective CM, contractors, subcontractors, and consultants, for losses or damages solely to the extent covered by Builder's Risk Insurance. Owner and Architect shall require similar waivers of their contractual privies of every tier.

## **ARTICLE 6**

### **CONSTRUCTION COST**

**6.1 CONSTRUCTION COST:** The Construction Cost shall be the total cost or estimated cost associated with actual construction to the Owner of all elements of the Project designed or specified by the Architect. The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected, or specially provided for by the Architect, plus a reasonable allowance for the contractors' overhead, profit, and escalation. If the Construction Cost Limit is not yet identified in the Project Budget attached hereto as **Exhibit 4** and/or the Schedule of Construction Costs attached hereto as **Exhibit 7**, then during the Schematic Design Phase, the Owner, with the assistance of the Architect and the CM shall establish a Construction Cost Limit that is equal to or less than the amount of (a) the total Project Budget, less (b) the amounts not included in Construction Cost as described in Section 6.2 below.

**6.2 CONSTRUCTION COST EXCLUSIONS:** Construction Cost does not include the compensations of the Architect and Architect's consultants, the CM and the CM's consultants during preconstruction, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 5, but that are a part of the Project Budget.

**6.3 RESPONSIBILITY FOR CONSTRUCTION COST:** The Architect's review of the Project Budget and of preliminary estimates of Construction Cost or detailed estimates of Construction Cost prepared by the CM is solely for the Architect's guidance in the Architect's preparation of the Construction Documents. Accordingly, the Architect cannot and does not warrant the accuracy of the estimates of the CM, or warrant or represent that bids or negotiated prices will not vary from the Project Budget or from any estimate of Construction Cost or evaluation reviewed by the Architect.

**ARTICLE 7**  
**OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS,  
SPECIFICATIONS AND OTHER DOCUMENTS**

**7.1 DOCUMENTS:** All drawings, specifications, reports, surveys, Computer-Aided Design/Drafting (CADD) System disks/tapes and other documents, including models, photographs and renderings, prepared and/or furnished by the Architect pursuant to this Agreement, shall be the property of the Owner and may not be copyrighted by the Architect or its consultants. In the event that the Owner reuses any of the final working drawings and specifications for the construction of another project by Owner through another licensed professional, the Architect's name shall be removed therefrom and another licensed professional shall assume full responsibility for the reuse of such drawings and specifications. The Architect shall have no liability or responsibility arising from such reuse. Nothing contained herein shall prohibit the Architect from retaining a copy of the above documents. The Architect shall require all of its consultants and/or sub-consultants to give the Owner copyright protection substantially as set forth in this Article 7.

**7.2 OWNERSHIP:** The data used in compiling, and the results of, any tests, surveys or inspections at the Site, as well as all photographs, drawings, specifications, schedules, data processing output, computations, studies, audits, reports, models and other items of like kind prepared by or with the assistance of the Architect or CM, and its employees and consultants, shall be the property of the Owner.

**7.3 RELEASE OF PROJECT INFORMATION; CONFIDENTIALITY:** The Architect shall not issue any press releases or engage in any dialogues or interviews with the media or any other persons or entities for the dissemination to the general public without the prior written consent of the Owner. The contents and substance of all discussions and communications, oral or written, between the Owner, the Client and the Architect shall be kept confidential by the Architect and shall not be disclosed by the Architect to any persons or entities unaffiliated with the Project, including, without limitation, governmental authorities and community groups, without the prior written consent of the Owner. The Architect shall obtain a similar agreement from firms, consultants and others employed by it in the form attached as **Exhibit 12**. The Owner reserves the right to release all information as well as to time its release, form, and content. This requirement shall survive the expiration of this Agreement.

**7.4 ARCHITECT'S USE IN PROMOTIONAL MATERIALS:** The Architect shall have the right, with the prior written consent of the Owner, to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's promotional and professional materials. The Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary.

## **ARTICLE 8**

### **COMPLIANCE WITH LAWS AND REGULATIONS**

**8.1 EMPLOYMENT LAWS; LICENSING REQUIREMENTS:** The Architect shall comply, at its own expense, with the provisions of all laws and regulations applicable to the Architect as an employer of labor or otherwise. The Architect shall further comply, at its own expense, with all laws and regulations, including, but not limited to, licensing requirements, pertaining to its professional status and that of its employees, partners, associates, consultants under subcontracts and others employed to render the services under this Agreement.

**8.2 NON-DISCRIMINATION IN EMPLOYMENT:** The Architect agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in clause (a), above, in any subconsultant agreement except a subconsultant agreement for standard commercial supplies or raw materials; and (c) to post and to cause subconsultants to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

**8.3 MINORITY BUSINESS ENTERPRISES:** The Architect shall make all reasonable efforts to comply with the Minority Business Enterprise ("MBE") participation goal pursuant to Title 14, Subtitle 3 of the State Finance and Procurement Article of the Annotated Code of Maryland. The name, address, percentage and dollar value of each State of Maryland Department of Transportation certified MBE that the Architect intends to use on the Project is attached hereto as **Exhibit 13**. The Architect's MBE Affidavit is attached hereto as **Exhibit 13**.

**8.4 AMERICANS WITH DISABILITIES ACT:** The Project shall be designed in accordance with the Americans with Disabilities Act ("ADA"). If applicable, the Architect shall appoint an ADA task force during the design process. The task force shall meet on a regular basis and provide comments regarding project ADA compliance to the Owner and Client if applicable.

## **ARTICLE 9**

### **DISPUTE RESOLUTION/ARBITRATION**

**9.1 DISPUTES:** In the event of any dispute or controversy of any nature whatsoever, the Architect shall strictly abide by the Owner's decision for the purpose of the prompt and uninterrupted continuation of the performance of its duties, obligations and services under this Agreement; but the Architect may submit to Owner a written exception to any decision of the Owner within ten (10) days after receipt of such decision stating the basis of its exception and reserving the right to file a claim against the Owner after completion of the Project for additional compensation or damages. The continued performance by the Architect of its duties, obligations and services under this Agreement shall not operate as a waiver of any such claim, nor shall it be prejudicial to the Architect's rights, hereby reserved, to have such exception and claim later adjudicated by a court of competent jurisdiction after completion of the Project.

**9.2 CONTINUED PERFORMANCE AND PAYMENT:** Pending resolution of any dispute, the Architect shall continue to perform its obligations under this Agreement and the Owner shall continue to make payments of all amounts due the Architect that are not in dispute.

**9.3 NO ARBITRATION:** No dispute or controversy under this Agreement shall be subject to binding arbitration except to the extent that either (a) the Owner and Architect mutually agree to arbitrate or (b) the Architect is joined as a party in an arbitration proceeding between the Owner and/or the Client and a contractor or the CM.



## **ARTICLE 10**

### **TERMINATION, POSTPONEMENT OR SUSPENSION**

**10.1 TERMINATION:** At any time during the effectiveness of this Agreement, the Owner shall have the right, with or without cause, upon ten (10) days written notice to the Architect, to terminate this Agreement in whole or in part. In the event of a termination, the Architect shall deliver to the Owner all drawings, specifications, reports and other data, records and materials in the Architect's custody or control pertaining to the Project, and the Owner shall pay to the Architect all amounts due and earned to the time of the termination, in accordance with the provisions of this Agreement. Except as specifically set forth above, such termination shall not give rise to any cause of action or claim against the Owner for damages, loss of profits, expenses or other remuneration of any kind. Notwithstanding any other provisions of this Agreement if, in the judgment of the Owner, such termination is made necessary or desirable because of the Architect's failure to fulfill the Architect's obligations under this Agreement or any other fault of the Architect, the Owner may withhold payment of all disputed amounts which otherwise may be payable to the Architect under this Agreement. Such monies may be applied toward any damages or expenses sustained by the Owner as a result of such failure including, without limitation, any reasonable excess costs incurred by the Owner in completing the Project by the use or employment of other licensed professionals or otherwise. Notwithstanding the foregoing, the Architect shall remain liable to the Owner for all such damages and expenses to the extent caused by the fault of the Architect without limitation to any such monies being withheld by the Owner. The failure of the Owner to withhold monies from the Architect shall not be construed as an acknowledgment by the Owner that no such damages or expenses exist and shall not prevent the Owner from thereafter making any claim against the Architect therefor.

**10.2 POSTPONEMENT OR SUSPENSION:** At any time during the effectiveness of this Agreement, the Owner shall have the right, with or without cause, upon ten (10) days written notice to the Architect, to postpone or suspend all or any part of the Project. In the event of any postponement or suspension, the Owner shall have the right, in its discretion, upon written notice to Architect, to keep this Agreement in effect during the period of such postponement or suspension; provided however, that if the postponement or suspension exceeds a period of ninety (90) days the Architect shall be reimbursed for the actual costs incurred by the Architect as a result of such postponement or suspension. Except as specifically set forth above, such postponement or suspension shall not give rise to any cause of action or claim against the Owner for damages, loss of profits, expenses or other remuneration of any kind. Notwithstanding any other provisions of this Agreement if, in the judgment of the Owner, such postponement or suspension is made necessary or desirable because of the Architect's failure to fulfill the Architect's obligations under this Agreement or any other fault of the Architect, the Owner may withhold payment of all disputed amounts which otherwise may be payable to the Architect under this Agreement. Such monies may be applied toward any damages or expenses sustained by the Owner as a result of such

failure including, without limitation, any reasonable excess costs incurred by the Owner in completing the Project by the use or employment of other licensed professionals or otherwise. Notwithstanding the foregoing, the Architect shall remain liable to the Owner for all such damages and expenses to the extent caused by the fault of the Architect without limitation to any such monies being withheld by the Owner. The failure of the Owner to withhold monies from the Architect shall not be construed as an acknowledgment by the Owner that no such damages or expenses exist and shall not prevent the Owner from thereafter making any claim against the Architect therefor.

## **ARTICLE 11**

### **INSURANCE REQUIREMENTS AND INDEMNIFICATION**

**11.1 INSURANCE REQUIREMENTS:** Per the requirements of the RFP, Architect shall maintain, at its own expense, the following insurance coverages, insuring the Architect, its employees, agents and designees, and the Indemnitees (as hereinafter defined), which insurance shall be placed with insurance companies rated "A-VII" or better by A.M. Best & Company and lawfully authorized to do business in the State of Maryland:

- (a) Architect's Professional Liability Insurance in the amount of \$1 million per \$10 million of Construction Cost (including contractual liability coverage, if available, with all coverage retroactive to the earlier of the date of this Agreement or the commencement of Architect's services in relation to the Project), said coverage to be maintained for a period of five (5) years after the date of final payment or the date of final completion of the Project, whichever is later.
- (b) Comprehensive General Liability Insurance in the amount of Four Million Dollars (\$4,000,000) including coverage for blanket contractual liability, broad form property damage and personal injury, and on-going operations and completed operations.
- (c) Umbrella Liability Insurance in the amount of Five Million Dollars (\$5,000,000) following the underlying Comprehensive General Liability Insurance, Commercial Automobile Liability Insurance and Employers' Liability Insurance.
- (d) Commercial Automobile Liability Insurance, including owned, hired and non-owned vehicles, if any, in the amount of One Million Dollars (\$1,000,000) covering bodily injury and property damage.
- (e) Workers Compensation Insurance in the amount required under and in accordance with the State of Maryland's statutory requirements and Employers' Liability Insurance with limits not less than One Million Dollars (\$1,000,000) per accident.

All insurance policies shall provide that they cannot be cancelled, materially changed or non-renewed unless the Owner, Indemnitees and Professional Liability Indemnitees (if available) are given at least thirty (30) days prior written notice. All deductibles on any policy of insurance to be purchased by Architect hereunder shall be borne by the Architect.

**11.2 ADDITIONAL INSUREDS:** Architect shall insure specifically the indemnity set forth in Section 11.5.below and shall include the Indemnitees (as defined in Section 11.5.1) as additional insureds by causing amendatory riders or endorsements to be attached to the insurance policies described above in subsections 11.1(b), 11.1(c), and 11.1(d). Neither the Owner nor any of the other Indemnitees shall be an additional insured on the professional liability insurance described above in subsection 11.1(a). The insurance coverage afforded under these policies shall be primary to any insurance (or self-insurance) carried independently by the Indemnitees. Said amendatory riders or endorsements shall indicate that, as respects the Indemnitees, there shall be severability of interest under said insurance policies for all coverages provided under said insurance policies. The following language shall be specifically included as an endorsement under the Architect's Comprehensive General Liability policy:

"The coverage afforded to the additional insured under this policy shall be primary insurance. The amount of the Company's liability under this policy shall not be reduced by the existence of any other insurance. It is further agreed that the coverage afforded to the additional insured shall not apply to the sole negligence of the additional insured."

**11.3 CONSULTANTS INSURANCE:** The Architect shall require that its consultants maintain, at their own expense, the insurance coverages set forth in Section 11.1, or other amounts as agreed in writing by the Owner.

**11.4 CERTIFICATE:** Architect shall submit valid certificates in form and substance satisfactory to Owner evidencing the effectiveness of the foregoing insurance policies along with copies of the amendatory riders to any such policies to Owner for Owner's approval before Architect commences the rendition of any services hereunder.

**11.5 INDEMNIFICATION:**

**11.5.1** The Architect hereby agrees to indemnify, defend and hold harmless the Owner, the Client, the CM, and their respective members, directors, officers, authorized agents, employees and designees (collectively, the "Indemnitees") from and against any and all losses, claims, demands, liabilities, actions, suits, injuries, damages, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees as and when incurred) asserted by any persons (including, but not limited to, any one or more of the Indemnitees) that are caused by or arise from any negligent acts, errors, or omissions of the Architect, its authorized agents, licensees, employees, and contractors occurring in connection with the performance or lack of performance by the Architect of its duties and obligations under or pursuant to this Agreement. The foregoing indemnity shall be limited to the amount of the insurance policies required under subsections 11.1(b), 11.1(c), and 11.1(d), as applicable.

**11.5.2** With respect to professional liability for design and construction administration services covered under Architect's professional liability insurance policy, the Architect hereby agrees to indemnify and hold harmless the Owner and the Client and their

respective members, directors, officers, authorized agents, employees and designees (collectively the "Professional Liability Indemnitees") from and against all losses, claims, demands, liabilities, actions, suits, injuries, damages, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) caused by the negligent performance or lack of performance by the Architect, or any of the Architect's consultants, of their duties and obligations under or pursuant to this Agreement.

**11.6 TORT CLAIMS ACTS:** The Architect agrees, for itself and for its insurers, that neither Architect nor its insurers may raise or use any immunity from or limitation of liability for torts (including under the Maryland Tort Claims Act and/or the Maryland Local Government Tort Claims Act) in the adjustment of claims or in the defense of suits against the Owner or the Client, unless requested by the Owner.

## **ARTICLE 12**

### **PAYMENTS AND BASIS OF COMPENSATION**

**12.1 PAYMENTS:** Subject to the provisions of this Article 12, the Client shall make payments directly to the Architect within thirty (30) days after the Owner's receipt and approval of (a) the Architect's detailed monthly statement, lien waivers or releases (b) a certificate duly executed by Architect covering that portion of the services completed on the Project prior to the date of said certificate; and (c) a notarized updated MBE Summary indicating the participation of MBEs on the Project for architectural services in accordance with the form attached hereto as **Exhibit 13**.

**12.2 INITIAL PAYMENT:** There shall be no initial payment made upon execution of this Agreement.

**12.3 TOTAL COMPENSATION:** The Client shall compensate the Architect for the services provided by the Architect hereunder as follows: (a) for Basic Services, on the basis of the services actually performed as provided in Section 12.4 for the total lump sum fee set forth in the description of Architect's compensation (the Description of Architect's Compensation) attached hereto as **Exhibit 14**, (b) for Additional Services as provided in Section 12.5 and **Exhibit 14**.

**12.4 BASIC SERVICES:** Basic Services shall include all services described in Article 2, and any other services specifically identified in this Agreement as part of Basic Services. The total of all payments to the Architect for Basic Services shall not exceed the stipulated sum stated in the Description of Architect's Compensation attached as **Exhibit 14** unless approved in advance by Owner in writing.

**12.4.1 Phased Basic Services:** Progress payments for Basic Services shall be made as set forth in the following amounts:

Programming & Due Diligence Services	\$	000,000.00
<hr/>		
<b>Total Basic Compensation:</b>	<b>\$</b>	<b>000,000.00</b>

**12.4.2 Change in Project Scope:** In the event of a material change in the scope of the Project or the scope of the Architect's services, the Architect shall continue to perform in accordance with the terms of this Agreement during the course of any renegotiation of the Architect's compensation hereunder.

**12.5 ADDITIONAL SERVICES:** For Additional Service as described in Article 3, other than (a) Increased Project Representation, as described in Section 3.2; and (b) services of outside consultants, which shall be compensated as set forth in Subsection 12.5.1, compensation shall be computed as the direct personnel expense as set forth in Exhibit 15. Direct personnel expense ("Direct Personnel Expense") shall be defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the

cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

**12.5.1 Additional Services of Outside Consultants:** For Additional Services of outside consultants, compensation shall be computed as the Direct Personnel Expense of the outside consultant as set forth in **Exhibit 14**.

**12.5.2 Increased Project Representation:** For Increased Project Representation as described in Section 3.2, compensation shall be as set forth in **Exhibit 14**.

## **12.6 REIMBURSABLE EXPENSES**

**12.6.1 General:** For Reimbursable Expenses, as hereinafter described, compensation shall be computed as the actual amount of the reimbursable expenses, subject to the limitations set forth below. Reimbursable Expenses include only those reasonable and actual expenditures made by the Architect and the Architect's employees and consultants in the interest of the Project for the items listed in the following subsections. Reimbursable Expenses shall be documented with receipts and shall be highlighted in expense reports if combined with non-reimbursable expenses. Any Reimbursable Expense items (other than travel and living expenses of the Architect and its employees for trips to the Project area and reasonable telephone expenses) requiring expenditures in excess of one thousand dollars (\$1,000.00) per each separate occasion shall require the prior written approval of the Owner (or, when so indicated by Owner, oral approval from Owner's authorized representative, provided that each such oral approval shall be confirmed in writing). The Architect has provided the Owner with a projected schedule of items of reimbursable expense specifically set forth in the Architect's Financial Proposal included in **Exhibit 6** attached hereto, which shall not be materially exceeded without the prior written approval of the Owner. These expenses will be reimbursed at cost and without a mark up and shall include:

**12.6.1.1** Costs of public stenographic services and transcripts for meetings as required by the Owner;

**12.6.1.2** Transportation expenses incurred in connection with the Project if the Architect is required to travel more than fifty (50) miles from the Architect's office at the standard State rate of travel pursuant to **Exhibit 15**, or at the direct cost of transportation expense incurred when traveling by common carrier (airfare or rail: coach class only); and

**12.6.1.3** Such other expenses incurred in connection with the Project when specifically authorized in advance in writing by the Owner.

**12.7 PROJECT COMPLETION:** It is the intent of the parties that the Architect shall continue to perform the services required hereunder through the three (3) months after the Scheduled Completion Date as described in **Exhibit 3**. If Basic Services have not been completed within three (3) months after the Architect's signature on the Final Completion Certificate under subsection 2.7.22, through no fault of the Architect, the Architect shall be compensated for its services as an Additional Service under Section 12.5. The Architect shall have no claim against the Owner, its consultants or contractors, or the Client for any loss, cost, expense, claim or liability incurred as a result of the failure to attain project close-out by the Scheduled Completion Date, but shall look to its right to increased compensation as set forth above as its sole remedy for any such failure; all other remedies being hereby expressly waived. The foregoing shall not, however, be deemed to invalidate the indemnification obligations set forth in Section 11.5.

**12.8 ARCHITECTS ACCOUNTING RECORDS:** Records of Architect's expenses and hours pertaining to the Project shall be kept in accordance with generally accepted accounting principles, which principles shall be consistently applied. Said records shall be available to the Owner or its authorized representative for inspection and copying during regular business hours during the term of this Agreement and for three (3) years after the date of the final payment under this Agreement.



## **ARTICLE 13**

### **AUDITS BY OWNER**

**13.1 ACCESS TO ARCHITECT'S BOOKS AND RECORDS:** The Architect agrees that the Owner or any of its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement have access to and the right to examine any directly pertinent books, documents, papers, and records of the Architect involving transactions related to this Agreement.

**13.2 ACCESS TO CONSULTANT'S BOOKS AND RECORDS:** The Architect further agrees to include in all its consultant agreements hereunder a provision to the effect that the consultants agree that the Owner or any of its duly authorized representatives shall, until expiration of three (3) years after final payment under the consultant agreements, have access to and the right to examine any directly pertinent books, documents, papers, and records of such consultants, involving transactions related to the Project.

## **ARTICLE 14**

### **MISCELLANEOUS PROVISIONS**

**14.1 GOVERNING LAW:** This Agreement shall be governed by the laws of the State of Maryland.

**14.2 SUCCESSORS AND ASSIGNS:** The Owner and the Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.

**14.3 ASSIGNMENTS:** The Architect shall not assign, encumber, pledge, sublet or transfer any interest in this Agreement without the written consent of the Owner. The Architect shall notify the Owner immediately in writing of any significant changes in its ownership or organization or in the ownership or organization of any of the joint venturers comprising the Architect. Except for an assignment by Owner of any of its rights under this Agreement to the State of Maryland, or any agency or department thereof, or an entity supplying funds for the construction of the Project, the Owner shall not assign, encumber, pledge, sublet or transfer any interest in this Agreement without the written consent of the Architect, which consent shall not be unreasonably withheld or delayed. When requested by an entity supplying funds for the construction of the Project, including any lender, the Architect shall enter into a reasonable and customary "Agreement to Complete".

**14.4 REMEDIES CUMULATIVE:** The remedies provided in this Agreement shall be in addition to, and not in substitution for, the rights and remedies which would otherwise be vested in either party hereto, under law or at equity, all of which rights and remedies are specifically reserved by each party. The failure to exercise any remedy provided for in this Agreement shall not preclude the resort to any such remedy for future breaches by the other party, nor shall the use of any special remedy hereby provided prevent the subsequent or concurrent resort to any other remedy which by law or equity would be vested in either party for the recovery of damages or otherwise in the event of a breach of any of the provisions of this Agreement to be performed by the other party.

**14.5 JURISDICTION AND VENUE:** If the Owner is a party to any litigation with respect to the Project (whether as plaintiff, defendant or third party defendant) the Architect consents to being joined in such action and to the jurisdiction of the Court in which the action is instituted (if the Architect is named as a defendant or impleaded as a third party defendant) and to service of process by that court; and the Architect waives any right to contest its joinder in such action on the grounds of improper jurisdiction or venue.

**14.6 CONTRACT AFFIDAVIT:** Simultaneously with the execution of this Agreement, the Architect shall execute, seal and deliver to the Owner the signed Contract Affidavit attached hereto as **Exhibit 16**.

**14.7 EXHIBITS:** All exhibits attached hereto are hereby incorporated into this Agreement and are deemed a material part of this Agreement.

**14.8 NON-HIRING OF EMPLOYEES:** No employee of the State of Maryland or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Agreement, shall, while so employed, become or be an employee of the party or parties hereby contracting with the State of Maryland or any unit thereof.

**14.9 PERSONAL LIABILITY OF PUBLIC OFFICIALS:** In carrying out any of the provisions of the Agreement, or in exercising any power or authority granted to them by or within the scope of this Agreement, there shall be no personal liability upon the members of the Maryland Stadium Authority or any employees or representatives of the Owner, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of the Owner.

**14.10 POLITICAL CONTRIBUTION DISCLOSURE:** The Architect shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contribution in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Election website: [http://www.elections.state.md.us/campaign\\_finance/index.html](http://www.elections.state.md.us/campaign_finance/index.html)

**14.11 MULTI-YEAR CONTRACTS CONTINGENT UPON APPROPRIATION:** If the General Assembly fails to appropriate funds or if funds are not otherwise made available by the Client for continued performance for any fiscal period of this Agreement succeeding the first fiscal period, this Agreement shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the Owner's rights or the Architect's rights under any termination clause in this Agreement. The effect of termination of the Agreement hereunder will be to discharge both the Architect and the Owner from future performance of the Agreement, but not from their rights and obligations existing at the time of termination. The Architect shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Agreement. The Owner shall notify the Architect as soon as it has knowledge that

funds may not be available for the continuation of this Agreement for each succeeding fiscal period beyond the first.

**14.12 RECEIPT OF FUNDS AS CONDITION PRECEDENT:** The Architect also acknowledges that the Project will be paid for with funds appropriated by the State to the Client. As of the date of this agreement, the Owner has not received funds from the Client sufficient in amount to pay the Owner's obligations under this Agreement. Therefore, the Architect agrees that the Owner's receipt of funds from the Client is a condition precedent to the Owner's obligations to pay any sums hereunder.

**14.13 NOTICES:** All notices required or permitted to be given by one party to the other hereunder shall be in writing and shall be sent by certified U.S. Mail or commercial messenger receipt service, or shall be hand-delivered, as set forth in **Exhibit 17**. Either party may change its address for the purpose of receiving notices under this Agreement by written notice to the other party in the manner set forth above.

**14.14 GENERAL CONDITIONS:** Terms which are not defined in this Agreement shall have the same meaning as those in the General Conditions of the CM Construction Agreement provided to the Architect by Owner.

**14.15 INTEGRATED AGREEMENT:** This Agreement and the RFP included in **Exhibit 5** (unless modified by this Agreement) represent the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

**14.16 NO JOINT VENTURE:** Architect acknowledges that Owner is not a partner or joint venturer of Architect and that Architect is not an employee or agent of Owner.

**14.17 HAZARDOUS MATERIALS:** Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances; provided, however, the Architect shall report to the Owner the presence and location of any hazardous material that an architect of similar skill and expertise should have noticed.

**14.18 OWNER APPROVAL:** Whenever provision is made herein or in the contract documents for the approval or consent of Owner, or that any matter be to Owner's satisfaction, such approval or consent shall be made by Owner in its sole discretion and determination unless another standard is expressly stated in that specific provision.

**14.19 HEADINGS:** The headings and captions of the Sections in this Agreement are inserted for identification purposes only, and shall not govern the construction, nor alter, vary, or change any of the terms, conditions, or provisions of this Agreement or any Sections hereof.

**14.20 TIME OF THE ESSENCE:** Time is of the essence in the performance of the obligations of the Architect under this Agreement.

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

**WITNESS:**

**OWNER:**

Maryland Stadium Authority

\_\_\_\_\_

\_\_\_\_\_  
Michael J. Frenz, Executive Director

.....  
**WITNESS:**

**ARCHITECT:**

\_\_\_\_\_

\_\_\_\_\_

Approved as to form and legal sufficiency this  
\_\_\_\_\_ day of \_\_\_\_\_, 201\_:

\_\_\_\_\_  
Assistant Attorney General

**LIST OF EXHIBITS**  
**BALTIMORE CONVENTION CENTER RENOVATION/EXPANSION**

- Exhibit 1.....Project Program
- Exhibit 2.....Contracting Strategy
- Exhibit 3.....Project Schedule
- Exhibit 4.....Budget
- Exhibit 5.....Request for Proposal “RFP”
- Exhibit 6.....Proposals – Technical & Price
- Exhibit 7.....Schedule of Construction Cost
- Exhibit 8.....Certificate of Substantial Completion & Final Completion Certificate
- Exhibit 9.....Staffing Plan
- Exhibit 10.....Owner's Representatives
- Exhibit 11.....Sample Construction Management Agreement
- Exhibit 12.....Confidentiality Agreement
- Exhibit 13.....MDOT Certified MBE Utilization & Fair Solicitation Affidavit
- Exhibit 14.....Description of Architect's Compensation
- Exhibit 15.....State Standard of Travel Reimbursement
- Exhibit 16.....Contract Affidavit
- Exhibit 17.....Notices

# EXHIBIT 1

## PROJECT PROGRAM PROJECT NAME



## **EXHIBIT 2**

### **CONTRACTING STRATEGY** **PROJECT NAME**

The Contracting Strategy will be CM at Risk.

## **EXHIBIT 3**

### **PROJECT SCHEDULE** **PROJECT NAME**

## **EXHIBIT 4**

### **BUDGET PROJECT NAME**

The Total project budget is: To Be Determined.

## EXHIBIT 5

### **REQUEST FOR PROPOSAL** **PROJECT NAME**

Refer to attached Maryland Stadium Authority Request for Proposals –Architectural/Engineering Services, dated **DATE** together with:

- Addendum No. 1 thereto, dated **DATE**; and
- Addendum No. 2 thereto, dated **DATE**.

## **EXHIBIT 6**

### **PROPOSALS – TECHNICAL & FINANCIAL** **PROJECT NAME**

Refer to the attached Technical, Financial, and BAFO Proposals dated:

## **EXHIBIT 7**

### **SCHEDULE OF CONSTRUCTION COST**

**PROJECT NAME**

The Schedule of Construction Cost is: To Be Determined

*PROJECT NAME*

**Exhibit 7**

## EXHIBIT 8

MARYLAND STADIUM AUTHORITY  
351 W. Camden Street, Suite 500  
Baltimore, Maryland 21201

### CERTIFICATE OF SUBSTANTIAL COMPLETION PROJECT NAME

CONTRACT NO.: \_\_\_\_\_ CONTRACT

DATE: \_\_\_\_\_

CONTRACT NAME:

PROJECT NAME:

**DEFINITION:** The date of Substantial Completion on the Work or designation portion thereof is the Date certified by the Architect/Engineer when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner and or Client can occupy or utilize the Work or designated portion thereof for the use for which it is intended, as expressed in the Contract Documents.

#### PROJECT OR DESIGNATED PORTION THEREOF, INCLUDED IN THIS CERTIFICATE:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The Work to which this Certificate applies has been reviewed and found to be substantially complete. The date of Substantial Completion of the Project or portion thereof designated above is established as \_\_\_\_\_, which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

A list of items to be completed or corrected, prepared by the contractor and amended by the Architect/Engineer and Construction Manager is attached hereto. The failure to include any items on such a list does not alter the responsibilities of the Contractor to complete all work in accordance with the Contract Documents. The list of items shall be completed or corrected by the Contractor within thirty (30) days of the above date of Substantial Completion. The date of commencement of warranties for items on the attached list will be the date of final payment unless otherwise agreed to in writing. The responsibilities of the Owner/Client and Contractor for security, maintenance, heat utilities, damages to the Work and insurance shall be as follows:

OWNER: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

\*\*\*\*\*  
\*\*\*\*\*

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a Release of Contractors obligations to complete the Work in accordance with the Contract Documents.

ARCHITECT/ENGINEER:

Date: \_\_\_\_\_

A/E: \_\_\_\_\_

CONSTRUCTION MANAGER:

Date: \_\_\_\_\_

CM: \_\_\_\_\_

PROJECT NAME

Exhibit 8

By: _____	By: _____
<b>CONTRACTOR</b> agrees to this Certificate of	<b>OWNER</b> agrees to this Certificate of
Substantial Completion on:	Substantial Completion on:
Date: _____	Date: _____
Contr.: _____	Owner: _____
By: _____	By: _____



**EXHIBIT 8 - continued**

**MARYLAND STADIUM AUTHORITY  
351 W. Camden Street, Suite 500  
Baltimore, Maryland 21201**

**FINAL COMPLETION CERTIFICATE  
BALTIMORE CONVENTION CENTER RENOVATION/EXPANSION**

**CONTRACT NO.:** \_\_\_\_\_ **CONTRACT**

**DATE:** \_\_\_\_\_

**CONTRACT NAME:**

**PROJECT NAME:**

**DEFINITION:** The date of Final Completion on the Work is the Date certified by the Architect/Engineer when construction is complete, including all close out documents, claims settled and is, in accordance with the Contract Documents. The Owner and or Client took beneficial occupancy of the Work for the use for which it is intended, as expressed in the Contract Documents.

**PROJECT OR DESIGNATED PORTION THEREOF, INCLUDED IN THIS CERTIFICATE:**

\_\_\_\_\_  
\_\_\_\_\_

The Work to which this Certificate applies has been reviewed and found to be complete. The date of Completion of the Project or portion thereof designated above (the Contract) is established as \_\_\_\_\_. The Contractor has no claims or liens against the Project or the Owner.

The responsibilities of the Owner/Client and Contractor for security, maintenance, heat utilities, damages to the Work and insurance shall be as follows:

**OWNER:**

\_\_\_\_\_  
\_\_\_\_\_

—

**CONTRACTOR:**

\_\_\_\_\_  
\_\_\_\_\_

—

\*\*\*\*\*  
This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a Release of Contractors' obligations of the Contract Documents.  
\*\*\*\*\*

**ARCHITECT/ENGINEER:**

Date: \_\_\_\_\_

A/E: \_\_\_\_\_

\_\_\_\_\_

**CONSTRUCTION MANAGER:**

Date: \_\_\_\_\_

CM: \_\_\_\_\_

*PROJECT NAME*

**Exhibit 8**

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

By:

\*\*\*\*\*

**CONTRACTOR** agrees to this Certificate of

Final Completion on:

Date: \_\_\_\_\_  
\_\_\_\_\_

Contr.: \_\_\_\_\_

Owner: \_\_\_\_\_

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

**OWNER** agrees to this Certificate of

Final Completion on:

Date:

By:

## **EXHIBIT 9**

### **STAFFING PLAN** **PROJECT NAME**

See pages \_\_\_\_-\_\_\_\_ of the Technical Proposal dated **DATE**.

## **Exhibit 10**

### **OWNER 'S REPRESENTATIVES** **PROJECT NAME**

1. Executive Director, Michael J. Frenz
2. Senior Vice President, Gary McGuigan
3. Assistant Vice President, Al Tyler
4. Project Manager, Al Tyler / Chris Deremeik
5. Fiscal Officer, Dawn Abshire
6. Compliance Officer, Lisa Johnson
7. Project Coordinator, Natasha Lunsford
8. Executive Assistant II, Malaika Damon
9. Principal Counsel, Cynthia Hahn

## **Exhibit 11**

### **CONSTRUCTION MANAGEMENT AGREEMENT** **PROJECT NAME**

See attached sample CM Pre-con Construction Management Agreements.

## Exhibit 12

### **CONFIDENTIALITY/COPYRIGHT AGREEMENT AND ACKNOWLEDGMENT** **PROJECT NAME**

I, \_\_\_\_\_ as the (title) \_\_\_\_\_ and duly authorized representative of (company) \_\_\_\_\_, which is engaged to do work for the project, understand that certain information regarding the project is or may be sensitive to the Owner and that the timing of its release is of considerable importance to the Owner. I further understand and acknowledge that any materials prepared or furnished by (company) \_\_\_\_\_ in connection of this project shall be the property of the Owner.

THEREFORE, I hereby acknowledge and agree that (company) shall not issue any press releases or engage in any dialogues or interviews with the media or any other persons or entities for the dissemination to the general public without the prior written consent of the Owner. The Owner reserves the right to release all information as well as to time its release, form and content. The contents and substance of all discussions and communications, oral or written, between this company and the Architect, Owner, Construction Manager, and/or any other contractors engaged to perform work on the project shall be kept confidential and shall not be disclosed by this company to any persons or entities unaffiliated with the project, including, without limitation, governmental authorities and community groups, without the prior written consent of the Owner.

I further acknowledge and agree that all drawings, specifications, reports, surveys, CADD System disks/tapes and other documents, including models, photographs and renderings, prepared or furnished by (company) \_\_\_\_\_ shall be the property of the Owner and may not be copyrighted by (company) \_\_\_\_\_.

This Agreement shall become a substantive part of (company) contract to perform work on the project and the Owner shall be entitled to enforce all provisions hereunder, and shall be entitled to reasonable damages for any breach hereof. This Agreement shall survive the expiration of this company's contract to do work on the project.

IN WITNESS WHEREOF, this Agreement was executed on the

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed

## **Exhibit 13**

### **MDOT CERTIFIED MBE & FAIR SOLICITATION AFFIDAVIT** **PROJECT NAME**

See attached completed Attachment D – MBE participation schedule and solicitation affidavit.

## **Exhibit 14**

### **DESCRIPTION OF ARCHITECT'S COMPENSATION** **PROJECT NAME**

Refer to the attached Financial Proposal included in **Exhibit 6**.



## **Exhibit 15**

### **STATE STANDARD OF TRAVEL REIMBURSEMENT** **PROJECT NAME**

Travel reimbursement is included in lump sum fee for all work required in the Request for Proposal “RFP”. Authorized travel beyond what is required for the RFP will be approved, in advance, by the Maryland Stadium Authority.

**Exhibit 16**

**CONTRACT AFFIDAVIT**  
**PROJECT NAME**

See attached Contract Affidavit.

## **Exhibit 17**

### **NOTICES** **PROJECT NAME**

#### **TO OWNER:**

Al Tyler  
Maryland Stadium Authority  
351 West Camden, Suite 500  
Baltimore, MD 21201-8601  
Phone: 410-223-4141  
Email: [atyl@mdstad.com](mailto:atyl@mdstad.com)

#### **TO CLIENT:**

#### **TO ARCHITECT:**

#### **TO CONSTRUCTION MANAGER:**

**ATTACHMENT P**

**CONTRACT AFFIDAVIT**

## **CONTRACT AFFIDAVIT**

### **A. AUTHORITY**

I HEREBY AFFIRM THAT:

I, (print name) \_\_\_\_\_ possess the legal authority to make this Affidavit.

### **B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION**

I FURTHER AFFIRM THAT:

\_\_\_\_\_ is a (check applicable items):

- (1) Corporation – \_\_\_\_ domestic or \_\_\_\_ foreign;
- (2) Limited Liability Company – \_\_\_\_ domestic or \_\_\_\_ foreign;
- (3) Partnership – \_\_\_\_ domestic or \_\_\_\_ foreign;
- (4) Statutory Trust – \_\_\_\_ domestic or \_\_\_\_ foreign;
- (5) \_\_\_\_ Sole Proprietorship

and is registered or qualified as required under Maryland Law.

I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation.

(Print SDAT  
ID Number)

\_\_\_\_\_

The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

(Print name)

\_\_\_\_\_

(Print address)

\_\_\_\_\_

\_\_\_\_\_

If it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies the true name and address of the principal or owner as:

Name and Department ID Number: \_\_\_\_\_

Address: \_\_\_\_\_.

### **C. FINANCIAL DISCLOSURE AFFIRMATION**

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

### **D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION**

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31.

### **E. DRUG AND ALCOHOL FREE WORKPLACE**

I CERTIFY THAT:

(1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.

(2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

- (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
- (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
- (c) Prohibit its employees from working under the influence of drugs or alcohol;
- (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
- (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
  - (i) The dangers of drug and alcohol abuse in the workplace;
  - (ii) The business's policy of maintaining a drug and alcohol free workplace;
  - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
  - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b) of this affidavit;
- (h) In accordance with the statement required by §E(2)(b) of this affidavit, notify its employees that as a condition of continued employment on the contract, the employee shall:
  - (i) Abide by the terms of the statement; and
  - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

- (i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii) of this affidavit or otherwise receiving actual notice of a conviction;
  - (j) Within 30 days after receiving notice under §E(2)(h)(ii) of this affidavit or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
    - (i) Take appropriate personnel action against an employee, up to and including termination; or
    - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
  - (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a) through (j) of this affidavit.
- (3) If the business is an individual, the individual shall certify and agree, as set forth in §E(4) of this affidavit, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
  - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
  - (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

#### **F. CERTAIN AFFIRMATIONS VALID**

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated \_\_\_\_\_, 20\_\_\_\_, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.



I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date:\_\_\_\_\_

By: \_\_\_\_\_  
(printed name of Authorized Representative and affiant)

\_\_\_\_\_  
(signature of Authorized Representative and affiant)