

M&T BANK STADIUM – CONTROLS UPGRADE
CONTRACTOR AGREEMENT
MSA PROJECT NO. 21-040

Between the
Maryland Stadium Authority
&
TBD

CONTRACTOR AGREEMENT

M&T Bank Stadium Control Upgrades

TABLE OF CONTENTS

Article 1	7
GENERAL PROVISIONS	7
Section 1.1 Definitions	7
Section 1.2 Contract Documents	10
Section 1.3 Conformity with Contract Documents	11
Section 1.4 Reserved	12
Section 1.5 Plans and Specifications	12
Section 1.6 Ownership	12
Section 1.7 Dimensions	13
Section 1.8 Conditions Affecting the Work	13
Section 1.9 Compliance with laws	14
Article 2	15
CONTRACTOR SERVICES	15
Section 2.1 Construction	15
Section 2.2 Materials	15
Section 2.3 Patents, Copyrights, Trade Secrets and Protected Matters	16
Section 2.4 Substitutions	16
Section 2.5 Non-Conformance of Work	17
Section 2.6 Quality of Work and Standard of Care	17
Section 2.7 Coordination of the Work	17
Section 2.8 Coordination with Utilities	18
Section 2.9 Submittals	18
Article 3	19
SAFETY, SECURITY & PERMITS	19
Section 3.1 General Provisions	19
Section 3.2 Safety Precautions, Barricades & Warning Signs	19
Section 3.3 Permits, Licenses, Certificates and Fees	20

Article 4	21
SUBCONTRACTORS	21
Section 4.1 In General	21
Section 4.2 Prompt Payment of Subcontractors	21
Section 4.3 Retainage in Payments to Subcontractors	21
Section 4.4 Contract Provisions	22
Section 4.8 Prevailing Wage Requirements	22
Article 5	23
SPECIAL CONSULTANTS; INSPECTIONS	23
Section 5.1 Special Consultants and Testing Laboratories	23
Section 5.2 Inspections	23
Article 6	25
PROGRESS MEETINGS; Reports	25
Section 6.1 Progress Meetings and Reports	25
Article 7	26
RECORDS; DOCUMENTS; AS-BUILT DRAWINGS	26
Section 7.1 Maintenance of On-Site Documents	26
Article 8	27
PERSONNEL	27
Section 8.1 In General	27
Article 9	28
SCHEDULE	28
Section 9.1 Notices to Proceed & Critical Path	28
Section 9.2 Hazardous Materials	28
Article 10	30
SUBSTANTIAL AND FINAL COMPLETION	30
Article 11	32
DELAYS & TIME EXTENSIONS	32
Section 11.1 Delays Generally	32
Section 11.2 Critical Path Delay – Contractor Not At Fault	32

Section 11.3 Critical Path Delay – Contractor At Fault	33
Section 11.4 Compensable Delay Costs	33
Section 11.5 Non-Compensable Delay Costs	34
Article 12	36
CHECKLISTS; TESTING AND TRAINING	36
Article 13	37
PROJECT AND CONTRACT CLOSE OUT; WARRANTIES	37
Article 14	38
OWNER’S RESPONSIBILITIES	38
Article 15	39
CONTRACTOR’S COMPENSATION	39
Article 16	40
CHANGES	40
Article 17	48
STATE PROPERTY NOT SUBJECT TO LIEN.	48
Article 18	49
PROGRESS PAYMENTS	49
Section 18.1 Invoices	49
Section 18.2 Submissions – Documents, Certifications	49
Section 18.3 Progress Payment Calculation	50
Section 18.4 Payment and Interest	50
Section 18.5 Retainage	50
Section 18.6 Additional Withholding	51
Section 18.7 MBE Liquidated Damages Withholding	51
Section 18.8 Non-Conforming Work Remedied	51
Section 18.9 Final Payment	51
Article 19	53
CONTRACTOR’S INSURANCE	53
Article 20	57

TERMINATION & EVENTS OF DEFAULT	57
Section 20.1 Termination for Convenience	57
Section 20.2 Events of Default	60
Section 20.3 Termination for Default	61
ARTICLE 21	64
SUSPENSION OF WORK	64
Section 21.1 Suspension of Work	64
ARTICLE 22	65
MBE LIQUIDATED DAMAGES	65
Article 23	66
AUDITS BY OWNER & RECORD RETENTION	66
Article 24	67
DISPUTES	67
Article 25	67
STATE TERMS	67
Section 25.1 General State Terms	68
Section 25.2 Non-Discrimination Provisions	68
Section 25.3 Disclosures and Ethics	69
Section 25.4 Subject to Appropriations	70
Section 25.5 Drug and Alcohol Free Workplace	70
Section 25.6 Indemnification	70
Section 25.7 Tax Exemption	70
Section 25.8 No Delegation of Authority	71
Section 25.9 Governmental Immunities	71
Section 25.10 Tort Claims Acts	71
Section 25.11 Independent Contractor Status	71
Section 25.12 Remedies Cumulative	71
Section 25.13 No Arbitration	71
Section 25.14 Approvals	72
Section 25.15 No Third Party Beneficiaries	72
Section 25.16 Owner Approval	72

Section 25.17	Time of the Essence	72
Section 25.18	Counterparts	72
Section 25.19	Contract Representatives	72
Section 25.20	Notice	72
CONTRACT AFFIDAVIT		75
LIST OF EXHIBITS		
Exhibit A	Request for Proposals	
Exhibit B	Contractor's Technical Proposal	
Exhibit C	Contractor's Financial Proposal	
Exhibit D	MBE Goals & Reporting Forms (A-H)	
Exhibit E	Prevailing Wage Scale	
Exhibit E-1	Prevailing Wage Instructions to Contractor	
Exhibit F	Project Progress Report	
Exhibit G	Reserved	
Exhibit H	Certificates of Substantial & Final Completion	
Exhibit I	Reserved	
Exhibit J	Schedules, Reports and Schedule of Values	
Exhibit K	Release of Lien and Waiver Claim Forms; Consent of Surety Forms	
Exhibit L	Description of Contractor Invoice	
Exhibit M	Reserved	

CONTRACTOR AGREEMENT

M&T BANK STADIUM CONTROLS UPGRADE

This Contractor Agreement (“Agreement”) is made as of this
_____ th day of _____ 2020.

between the Owner:

Maryland Stadium Authority
The Warehouse at Camden Yards
351 West Camden Street, Suite 300
Baltimore, MD 21201

and the Contractor:

Name
Address
City, State, Zip Code (the “Contractor”)

The Project is:

M&T Bank Stadium Controls Upgrade Project
1101 Russell Street
Baltimore, Maryland 21230 (the “Project”)

The Architect is:

Name
Address
City, State, Zip Code (the “Architect”)

**MARYLAND STADIUM AUTHORITY
PROJECT NO. 21-040
AGREEMENT**

THIS AGREEMENT (this "Agreement") is entered into this _____ day of _____, 2021 by and between the MARYLAND STADIUM AUTHORITY, a body politic and corporate and an instrumentality of the State of Maryland ("MSA"), and _____, a [State of Organization] [Type of Organization] ("Contractor");

RECITALS

WHEREAS, MSA issued a Request for Proposals (the "RFP") attached hereto as **Exhibit A** on to select a contractor to upgrade certain controls at M&T Bank Stadium, as defined in the drawings and specifications attached thereto, the ("Project"); and

WHEREAS, MSA selected Contractor based on its professional qualifications, proposal and related submissions; and

WHEREAS, MSA and Contractor desire to enter into this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Owner and Contractor hereby agree that the foregoing Recitals are incorporated herein, and as follows:

**ARTICLE 1
GENERAL PROVISIONS**

Section 1.1 Definitions

Capitalized terms not otherwise defined herein shall have the meaning given as generally recognized within the industry.

"Architect" is the person commissioned to design the project and/or provide architectural or engineering services. If the design was performed by an Engineer rather than an Architect, "Architect" shall refer to the Engineer. MSA's Project Manager may exercise any power or authority of the Architect under the contract.

"Change Orders" means a change order submitted and approved as provided in Section 15.2.2.

"COMAR" means the Code of Maryland Regulations.

"Commencement Date" means the Project commencement date identified in the Notice to Proceed.

“Conformed Set of Drawings” means completed Project Drawings issued for construction which have been conformed to incorporate clarifications and/or changes stemming from addenda and/or request for clarifications during the estimating and/or bidding process.

“Contract” means the written agreement between the Owner and the Contractor consisting of the Contract Documents and each is fully a part of the Contract as if attached to this Agreement or incorporated herein. Contract as used in this Agreement means this Agreement inclusive of all Contract Documents.

“Contract Documents” means this Agreement, the RFP, Contractor’s Technical and Financial Proposals and all documents listed in this Agreement, all amendments, modifications, addenda, and exhibits to the foregoing.

“Contract Price” means the total contract amount indicated on the Contractor’s Financial Proposal Form.

“Contract Term” means the period for Contract performance from the Commencement Date through and including the Final Completion Date, as amended or modified, including Substantial and Final Completion.

“Contractor” means the party under contract with MSA herein.

“Critical Path Method” (CPM) means a scheduling/management tool recognizing a network of work elements or activities and a critical path for completion of a construction project.

“Day” means calendar day unless otherwise designated.

“Delay” the term “delay” has the meaning set forth in Section 11.1.1 herein.

“Drawings” refers to the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

“FF&E” means furniture, fixtures and equipment.

“Final Completion” means the Owner and the Architect have certified that the Project has achieved final completion in strict compliance with the terms of the Contract Documents including: all of the items on the Punch List (*see* section 10.1.6) have been fully completed and the Contractor has completely and satisfactorily performed all of its obligations and the Certificate of Final Completion has been issued.

“Final Completion Date” means the date by which the Project must be finally complete.

“Hazardous Material” has the meaning set forth in Section 9.2 of this Agreement.

“Including” means “including but not limited to.”

“MBE” means the Minority Business Enterprise Program.

“MBE Liquidated Damages” has the meaning set forth in Article 22.

“MSA” means the Maryland Stadium Authority and includes the State, the Project Manager or any person by name or title authorized to act on behalf of MSA.

“Notice to Proceed” (NTP) means a written notice to the Contractor of the start date on which it shall begin the prosecution of the Work.

“Owner” means MSA.

“Person” means individuals and businesses regardless of legal status or organization.

“Plans” means the official design drawings issued or accepted by MSA as part of the Contract Documents, including those incorporated into the Contract Documents by reference.

“Project” is the total construction to be performed under this Agreement, as generally described in **Exhibit A** attached hereto.

“Project Progress Schedule” or **“Project Schedule”** means the schedules, reports, schedule of values, and any other information described in or required by the attached **Exhibit J**.

“Reasonably Inferred” means that if an item or a system is either shown or specified, although not every detail may be shown or specified, all material and equipment normally furnished with such items or system and needed to make a complete installation shall be provided whether mentioned or not, omitting only such parts as are specifically excepted by Owner. This term takes into consideration the normal understanding that not every detail is to be given in the Contract Document. If there is a difference of opinion, Owner shall make the determination as to the standards of what is reasonably inferable.

“Shop Drawing(s)” means a drawing or set of drawings produced by the contractor, supplier, manufacturer, subcontractor, or fabricator.

“Solicitation Documents” means MSA’s Invitation for Bid or Request for Proposals and any amendment(s) thereto.

“State” means the State of Maryland.

“Subcontractor” except as otherwise provided herein, “subcontractor” means an entity having a direct contract with the Contractor or sub-contractor to furnish a part of the Work. It includes one who furnishes material worked to a design according to the Contract Documents for the Work. As used herein, unless specifically stated otherwise, Subcontractor includes Trade Contractor.

“Substantial Completion” subject to the provisions of Article 10 herein means:

(a) the Work has been fully and finally completed in strict compliance with the Contract Documents (*except* for any outstanding items on the Punch List (*see* Article 10); and the Project

or property can be fully and freely occupied and/or utilized for the purpose intended without hardship.

(b) The Work has been inspected and approved by all state and local agencies and other authorities as applicable, having jurisdiction over the Work.

(c) Guests and invitees can use all public facilities and area, all elevators, parking lots, road, and sidewalks.

(d) All normal means of ingress and egress are clear of obstruction.

(e) All fire, life, safety systems are complete and operable.

(f) All mechanical, plumbing and electrical systems are complete and operable.

(g) Contractor has coordinated the FF&E for the Project (*see* Section 2.7.1).

(h) Contractor has satisfied the requirements of Section 7.1.3 (“as-built” drawings).

(i) Contractor has satisfied the requirements of Article 10 with respect to Substantial Completion.

“Substantial Completion Date” means the date identified in the Notice to Proceed by which the Project must be substantially complete.

“Trade Contractor” means an entity having a direct contract with the Contractor or subcontractor to furnish a part of the Work. It includes one who furnishes material worked to a design according to the Contract Documents for the Work. As used herein, unless specifically stated otherwise, Trade Contractor includes subcontractor.

“Work” or **“work”** is the provision of all services, labor, materials, supplies, utilities, equipment and other incidentals and the manufacture or fabrication of materials or equipment necessary (or reasonably inferable) for the successful completion of the Project and the carrying out of all the duties and obligations of the Contract (as such may be modified or amended).

Section 1.2 Contract Documents

1.2.1 Relationship Contractor recognizes and accepts that Owner is entering into this Agreement in reliance on Contractor’s expertise, skills and abilities with respect to performing its obligations hereunder – including specifically, the Contractor’s expertise, skills, and abilities with respect to the Project. Additionally, the Contractor acknowledges that the Owner is relying upon the Contractor’s knowledge of, and experience with the Project obtained in connection with its role as the Contractor. The Contractor accepts the relationship of trust and confidence established between it and the Owner by this Agreement, and covenants to furnish its best efforts, skill and judgment and to cooperate with the Architect and any other consultants engaged by the Owner. Contractor 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.

1.2.2 Reserved

1.2.3 Contract Document Priority. (a) If there are any inconsistencies between or among the Contract Documents, the Contract Documents shall control in the following order of priority:

- First: Modifications and Addenda subsequent to this Agreement (by latest date)
- Second: This Agreement;
- Third: Solicitation Documents;
- Fourth: Contractor's Proposal (Technical and Financial)

(b) The order of priority in (a) notwithstanding, it is the Contractor's responsibility to inform the Owner and the Architect of any material inconsistencies and confirm any information necessary for the complete, successful prosecution of the Work in accordance with the approved Project schedule.

(c) Nothing in the bid, proposal, or other submissions from the Contractor shall prevail over any Contract Document unless expressly agreed to in writing by the MSA Project Manager with a properly approved Change Order or Contract modification.

1.2.4 Inconsistent Terms or Requirements. Any provisions herein to the contrary notwithstanding, all Construction Documents shall be construed consistently to the extent possible.

1.2.5 Interpretation of the Contract Documents. The Project Manager shall be the final interpreter of the Contract Documents; and it will furnish with reasonable promptness through MSA or the Architect, such clarifications as it may deem necessary for the proper execution of the Work.

1.2.6 Entire Agreement. This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral.

1.2.7 References to Articles and Sections. As used in this Agreement, any reference to an Article or Section number refers to Articles and Sections in this Agreement unless otherwise stated.

Section 1.3 Conformity with Contract Documents

1.3.1 All work performed, and all materials furnished shall be in conformity with the Contract Documents.

1.3.2 In the event the Owner finds the materials, or the finished product in which the materials were used or the Work performed are not in complete conformity with the Contract Documents and have resulted in inferior or unsatisfactory product, the Work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor.

1.3.3 In the event the Owner finds the materials or the finished project in which the materials are used are not in complete conformity with the Contract Documents, but have resulted in a satisfactory product, it shall then determine *if* the Work shall be accepted. If the Work is determined to be acceptable, the Project Manager will document the basis of acceptance by a

Change Order which will provide for an appropriate adjustment, if any. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor.

1.3.4 The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

1.3.5 Organization of the specifications into divisions, sections and articles, and arrangement of drawings shall not control the Contractor in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any subcontractor.

1.3.6 Unless otherwise stated in the Contract Documents, words which have well-known technical construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.3.7 Public Officials Not Personally Liable. In carrying out any of the provisions of this 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 official of the State, it being understood that in all such matters they act solely as agents and representatives of the Owners.

Section 1.4 Reserved

Section 1.5 Plans and Specifications

Contractor shall do no work without approved plans, drawings and instructions from the Owner. Drawings may or may not be drawn to scale, and symbols may be used to indicate materials and structural and mechanical requirements. When symbols are used, those parts of the drawings are by necessity diagrammatic or schematic and it is not possible to indicate all connections, fittings, fastenings, etc. which are required for the execution of the Work. Diagrammatic or schematic indications of piping, ductwork and conduit and similar items in the Work are subject to field adjustment in order to obtain proper grading, fitting for passage over, under or past obstructions, to avoid exposure in finished rooms and unsightly and obstructing conditions. The Contractor shall make these adjustments as part of the execution of the Work and at no increased cost to Owner.

Section 1.6 Ownership

All documents created in connection with the Work and the results of any tests, surveys, inspections, photographs, drawings, specifications, schedules, data processing output, CADDs, studies, reports, models and other items prepared by or with the assistance of the Contractor, its employees, Trade Contractors, subcontractors, consultants, et al., shall be the property of the Owner at the conclusion of their Work. Contractor shall be entitled to retain one set of such documents provided however that it shall not use such documents in connection with any other projects. This Section 1.6 shall not apply to the Contractor's proprietary project control system (if applicable).

Section 1.7 Dimensions

The Contractor shall carefully check all dimensions prior to execution of the particular Work. Dimensions for items to be fitted into constructed conditions at the job shall be taken at the job site and are the sole responsibility of the Contractor. Whenever a stock size manufactured item or piece of equipment is specified or is proposed by the Contractor to be furnished, it is the responsibility of the Contractor to determine the actual space requirements for setting or entrance to the setting space. Whenever inaccuracies or discrepancies are found, the Contractor shall notify the Owner and the Architect prior to any construction or demolition. Should any dimensions be missing, the Contractor, Owner and the Architect shall work together to determine the missing information prior to execution of the Work. No additional cost will be allowed by reason of work requiring adjustments in order to accommodate the particular item or equipment furnished by the Contractor.

Section 1.8 Conditions Affecting the Work

1.8.1 The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work and the general and local conditions which can affect the Work or the cost thereof. Any failure by the Contractor to do so will not relieve it from responsibility for successfully performing the Work without additional expense to Owner. Owner is not responsible for any representation or purported agreement concerning conditions or contract requirements made by any State employee or representative prior to the execution of this contract, unless such understanding or representation is expressly stated in the contract.

1.8.2 Site Conditions. The Contractor 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 or 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 Contractor 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 the site, including all exploratory work done by or on behalf of Owner, as well as from information presented by the drawings and specifications made a part of this Agreement. Any failure by the Contractor to acquaint itself with the available information may not relieve it from responsibility for estimating properly the difficulty or cost of successfully performing the work. Owner assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by Owner.

1.8.3 Differing Site Conditions.

(a) The Contractor shall promptly (but in no event more than ten (10) business days from the date Contractor becomes, or should have become aware) and before such conditions are disturbed, notify the Owner in writing of:

(i) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or

(ii) 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.

(b) The Owner shall promptly investigate the conditions, and if the Project Manager finds that such conditions do materially so differ and cause an increase or decrease in the Contractor'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, an equitable adjustment shall be made and the Agreement modified in writing accordingly.

(c) No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in subsection (a) of this clause; provided, however, the time prescribed therefore may be extended by Owner.

(d) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

1.8.4 The terms of this Section 1.8 notwithstanding, the Contractor shall be deemed to have ascertained the nature and location of the Work and the general and local conditions which can affect the Work or the cost thereof before or during its execution of preconstruction services pursuant to the Preconstruction Agreement.

Section 1.9 Compliance with laws

The Contractor hereby represents and warrants that:

(a) It is qualified to do business in the State of Maryland (whether a domestic business or a foreign corporation) pursuant to § 7-201 et seq. of the Corporations and Associations Article of the Annotated Code 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 moneys 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 Contract;

(c) EPA compliance. Materials, supplies, equipment and other services shall comply in all respects with the Federal Noise Control Act of 1972, where applicable;

(d) Occupational Safety and Health (OSHA). All materials, equipment, supplies or services shall comply with the applicable U.S. and the Maryland Occupational Safety and Health Act Standards and related regulations;

(e) All materials, equipment, supplies or services shall conform to federal and State laws and regulations and to the specifications contained in this Contract; and

(f) Contractor shall obtain at its own expense (except as provided in this Agreement), and comply with federal, State, and local permits, licenses, certifications, inspections, insurance, and governmental approvals, required in connection with the Work required under the Contract.

ARTICLE 2 CONTRACTOR SERVICES

Section 2.1 Construction

2.1.1 The Project will commence upon the Notice to Proceed from the Owner.

2.1.2 Generally, the Contractor shall:

(a) Supply all services, labor, materials, supplies and equipment; and utility consumption not requiring permanent local utility company or direct Project Site connectivity (i.e. portable equipment), necessary for the proper and complete performance of the Work, including items that are consistent with and reasonably inferred by the Contract Documents.

(b) Assume responsibility for the entire Work, including the satisfactory performance of each of its subcontractors.

(c) Comply with all of the terms and conditions of the Contract Documents.

(d) Organize, provide and coordinate temporary signage as necessary.

Section 2.2 Materials

2.2.1 Generally. The Contractor, in accepting the Contract, is assumed to be thoroughly familiar with the materials required and their limitation as to use and requirements for connection, setting, maintenance and operation. Whenever an article or material or equipment is specified and a fastening, furring, connection (including utility connections), access hole, flashing closure piece, bed or accessory is normally considered essential to its installation in good quality construction, such shall be included as if fully specified. Nothing in the Contract Documents shall be interpreted as authorizing any work in any manner contrary to applicable laws, codes or regulations.

2.2.2 Approval. All materials are subject to the Architect's approval as to conformity with the Contract Documents, quality, design, color, etc. No materials for which approval is necessary shall be used until written approval is given by the Architect / Engineer. Approval of a subcontractor or supplier as such does not constitute approval of a material which is other than that included in the Contract Documents.

2.2.3 New Materials. Unless otherwise specified, all materials shall be new. Old or used materials must not be used as substitutes for new, regardless of condition or repair, unless approved in writing by the Owner.

2.2.4 Samples. The Contractor shall furnish for approval all samples as directed and materials used shall be consistent with the approved samples.

2.2.5 Proof of Quality. The Contractor shall, if requested, furnish satisfactory evidence as to the kind and quality of materials either before or after installation. It shall pay for any tests or inspections called for in the specifications and such tests as may be deemed necessary for "substitutions," as set forth in Section 2.4.

2.2.6 Standard Specifications. When no specification or code is cited or otherwise applicable and the quality, processing, composition or method of installation of an item, or is only generally referred to, then:

(a) For items not otherwise specified below, the applicable specification shall be the latest edition of the applicable American Society for Testing Materials (ASTM) specification.

(b) For items generally considered as plumbing and those items requiring plumbing connections, the applicable specification shall be the applicable portions of the National Standard Plumbing Code, as adopted by the State of Maryland.

(c) For items generally considered as heating, refrigerating, air-conditioning or ventilation, the applicable specifications shall be the applicable portions of the latest edition of the Handbook published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE)

(d) For items generally considered as electrical, the applicable specifications shall be the applicable provisions of the International Building Code and the National Electric Code, as adopted by the State of Maryland.

(e) For items generally considered as fire protection, the applicable specifications shall be the applicable sections of the State Fire Prevention Code and the National Fire Protection Association Code, as adopted by the State of Maryland.

(f) For items generally considered energy conservation, the applicable provisions of the International Energy Conservation Code as adopted by the State of Maryland.

(g) For items generally considered accessibility, the most stringent applicable provisions of the American Disabilities Act (ADA) or the Maryland Accessibility Code (MAC), as adopted by the State of Maryland.

Section 2.3 Patents, Copyrights, Trade Secrets and Protected Matters

2.3.1 The Contractor assumes the risk that any materials, equipment, processes, or other items required under the contract or furnished by the Contractor (including the CPM software furnished to Owner under Section 9.1.5) are subject to any patent, copyright, trademark, trade secret or other property right of another. The Contractor shall pay for all royalties and license fees and shall obtain all necessary licenses or permits to permit use of any such item by Owner. Contractor shall defend all suits or claims of infringement of any patent, copyright, trademark, trade secret or other property right of another and shall hold harmless Owner and the State from loss or expense on account thereof.

2.3.2 When an item specified by Owner or furnished by the Contractor infringes or is alleged to infringe any patent, copyright, trademark, trade secret or other property right of another, the Contractor will, at his option, and at no additional cost to Owner or the State, (i) procure for Owner the right to use the item; (ii) replace the item with an approved, non-infringing equal; or (iii) modify the item so it becomes non-infringing and performs substantially the same as the original item.

Section 2.4 Substitutions

2.4.1 Should the Contractor desire to substitute another material for one or more specified by name, it shall apply in writing for such permission and include the amount of any credit or extra costs associated with the substitution.

2.4.2 Any materials which the Contractor proposes be substituted, and the materials it proposes to use as substitutions, require Owner's written approval. The Contractor shall provide its proposal

(including the amount of any credit or extra costs associated with the substitution) in writing which clearly states that it is a proposed substitution and provides evidence that the substitution is of at least equal quality for the substituted material. Any approval (regardless of form or method) of a substitute material by the Architect, will not be binding on Owner if the Contractor has not clearly specified and designated such material as a “substitute” and the Contractor shall not be released from any of its contractual obligations.

Section 2.5 Non-Conformance of Work

2.5.1 If the Contractor 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 Contractor to the responsible party (i.e. Trade Contractors or Subcontractors) with a copy to the Owner and the Architect.

Section 2.6 Quality of Work and Standard of Care

2.6.1 The Work performed shall be consistent with (i) the standards and construction practices observed by contractors of comparable stature to Contractor on projects of similar size and importance; and (ii) the interests of Owner relating to quality, timely completion, safety and economics.

2.6.2 The Work shall be performed and executed in a workmanlike manner by qualified and efficient workers, and in conformance with the Contract Document. Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures relating to the proper execution of the Work.

Section 2.7 Coordination of the Work

2.7.1 The Contractor has full responsibility for the control and execution of the Work. The Contractor shall:

(a) Supervise and direct the work of its subcontractors including providing administrative management and related services as required to coordinate the Work with the activities and responsibilities of the subcontractors, the Architect and the Owner to complete the Project in accordance with the Owner’s objectives of cost, time, quality and safety.

(b) Establish on-site organization and lines of authority in order to carry out the overall plans of the Architect and the Owner.

(c) Coordinate with the Owner or Owner’s agent(s) the scheduling, receipt, storage, distribution, installing and clean-up of any FF&E items, if applicable.

(d) Coordinate and take all appropriate action with respect to the disruption of utilities and other such services to all buildings so as to minimize or avoid damage or interference with the normal use of the buildings and business invitees.

(e) Coordinate with the Owner to minimize disruption to operations of existing facilities as applicable.

Section 2.8 Coordination with Utilities

2.8.1 The Contractor shall have responsibility for notifying all affected utility companies prior to performing any work on their utilities and shall cooperate with them in achieving the desired results. All damage to utility facilities caused by the Contractor's operations shall be the responsibility of the Contractor.

2.8.2 It is understood and agreed that the Contractor's cost proposal has considered all of the permanent and temporary utility appurtenances in their present or relocated positions and that no additional compensation will be allowed for normal delays, inconvenience, or damage due to any interference from said utility appurtenances, the operation of moving them, the making of new connections thereof if required by the Contract Documents, or by other requirements of the utility company.

2.8.3 At any point where the Contractor's operations are adjacent to properties of railway, telegraph, telephone, water and power companies, or are adjacent to other property, damage to which might result in expense, loss or inconvenience, Work shall not be commenced until all arrangements necessary for the protection thereof have been made by the Contractor.

2.8.4 In the event of interruption to utility services as a result of accidental breakage or as a result of being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with the said authority in the restoration of service.

2.8.5 The Contractor shall:

- (a) coordinate any Work required by private or public utility companies to provide utilities to the Project, including but not limited to relocation of utilities as required by the Project;

- (b) coordinate all permanent utilities (i.e electricity, gas, telephone, cable) required for the performance of the Work; And

- (c) notify and coordinate with any and all utility location services required by law or otherwise, i.e. Miss Utility.

Section 2.9 Submittals

2.9.1 The Contractor shall:

- (a) Establish and implement procedures for expediting the processing of, and Architect's approval of Shop Drawings, product data, samples and other submittals consistent with the requirements of this Agreement.

- (b) Provide the Owner and the Architect with a set of Coordinated Shop Drawings from its subcontractors and other necessary documentation as required by the Specifications.

- (c) Within 30 days of issuance of the NTP, prepare in a format and with a level of detail acceptable to the Owner, a submittal log which incorporates the activities of subcontractors on the Project, including a master registry of all submittals for the Project, with weekly updates to be distributed at the progress meeting.

ARTICLE 3 SAFETY, SECURITY & PERMITS

Section 3.1 General Provisions

The Contractor shall provide and maintain, and continuously maintain adequate protection of all Work and materials, protect the property from injury or loss arising in connection with this Agreement and adequately protect adjacent property as provided by law and the Contract Documents.

Section 3.2 Safety Precautions, Barricades & Warning Signs

3.2.1 The Contractor shall:

(a) Take all necessary precautions for the safety of employees on the Project, and shall comply with all applicable provisions of federal, State and municipal safety laws, building codes and conditions of building permits (collectively “Law”), to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed, including but not limited to: Maryland Occupational Safety and Health (MOSH), the Maryland Department of Transportation, Maryland Department of Natural Resources (including those laws, codes or regulations regarding protection for existing vegetation, forestry, wildlife and wetlands); and the Maryland Department of Health (for approval of kitchen and lavatory facilities).

(b) Provide and erect and properly maintain at all times suitable temporary sidewalks, closed passageways, fences, or other structures as required by Law and the Contract Documents, or as required by the conditions and progress of the work in such a way as to leave unobstructed traffic at intersections, access to buildings, the Project site, access to fire hydrants and any other requirements imposed by Law.

(c) Provide and maintain all lights and security needed to maintain safety and security for personnel, the public and property, whether or not required by Law or the Contract Documents

(d) Oversee, maintain and protect all utility accoutrements (e.g. preventing water pipe ruptures due to freeze/thaw conditions and sporadic usage).

(e) Erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public; post danger signs warning against the hazards created by such features of construction as protruding nails, hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials.

(f) Provide all necessary bracing, shoring and tying of all structures, decks and framing to prevent any structural failure of any material which could result in damage to property or the injury or death of persons; take all precautions to insure that no part of any structure of any description is loaded beyond its carrying capacity with anything that will endanger its safety at any time; and provide for the adequacy and safety of all scaffolding and hoisting equipment.

(g) Designate a Competent Person whose duty shall be the prevention of accidents. The name and position of any person so designated shall be reported to the Owner or its designee by the Contractor

(h) Submit drawings of sidewalk passageways to the extent required by Law or the Contract Documents to the Architect and Owner for review and comment.

(i) Remove any temporary protection upon completion of the Work or as otherwise directed by the Owner.

3.2.2 The Contractor also has primary responsibility for all Project safety programs, shall require and review Project-specific safety programs developed by each of the Subcontractors, and shall observe, at a minimum the safety programs required in the Contract Documents.

3.2.3 All fences, signposts, light posts, etc. shall be painted and maintained in an attractive manner and shall be subject to the approval of the Owner.

Section 3.3 Permits, Licenses, Certificates and Fees

3.3.1 The Contractor shall secure and pay for all governmental fees, permits, licenses, certificates, and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Agreement for construction and which are legally required.

3.3.2 This Section 3.3 includes by way of example and not limitation, trade permits, permits required by federal, state or local law for the removal of hazardous materials, and use and occupancy certificates. This Section 3.3 notwithstanding, the *building permit* is not included in the permits required to be obtain and paid for by the Contractor.

3.3.3 Pay all fees, post all required deposits, including those required by utility companies.

ARTICLE 4 SUBCONTRACTORS

Section 4.1 In General

4.1.1 The Contractor is fully responsible to the Owner and the State for the acts and omissions of its Trade Contractors, subcontractors and suppliers at any tier, and persons either directly or indirectly employed by them, as well as for the acts and omissions of itself and persons directly employed by it.

4.1.2 Nothing contained in the Contract Documents shall create any contractual relation between any Trade Contractor, subcontractor or supplier at any tier and Owner or the State, and nothing in the Contract Documents is intended to make any such entity a beneficiary of the contract between Owner and the Contractor. No Trade Contractor, subcontractor or supplier at any tier shall have or make any claim or cause of action directly against the Owner or the State.

Section 4.2 Prompt Payment of Subcontractors

4.5.1 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 4.5, the terms “undisputed amount” “prime contractor” “contractor” and “subcontractor” have the meanings stated in COMAR 21.10.08.01.

4.5.2 A contractor shall promptly pay its subcontractors any 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.

4.5.3 If a contractor fails to make payment within the period prescribed in Section 4.5.2, a subcontractor may request a remedy in accordance with COMAR 21.10.08.

4.5.4 A contractor shall include in its subcontracts for work under this Agreement, wording that incorporates the provisions, duties, and obligations of this Section 4.5, State Finance and Procurement Article §15-226, Annotated Code of Maryland, and COMAR 21.10.08.

Section 4.3 Retainage in Payments to Subcontractors

4.6.1 The Contractor may not retain from any payment due to a subcontractor a percent of the payment greater than the percent of retainage specified in Section 21.5.

4.6.2 A subcontractor at any tier may not retain from any payment due to a lower tier subcontractor a percent of the payment greater than the percent of payments retained from the subcontractor.

4.6.3 However, the Contractor and/or a subcontractor are not prohibited by this Section 4.6 from withholding an amount in addition to retainage if the Contractor or subcontractor determines that a subcontractor’s performance under the subcontract provides reasonable grounds for withholding the additional amount.

4.6.4 The Contractor 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 4.6.

Section 4.4 Contract Provisions

4.7.1 In addition to any other required term or provision contained herein, the Contractor must bind every subcontractor - and will see that every subcontractor agrees to be bound - by the terms of the Contract Documents, as far as applicable to its work, unless specifically noted to the contrary in a subcontract approved by the Owner. The Contractor must include in any subcontracts the following provisions:

4.7.2 Subcontractor agrees to be bound to the Contractor by the terms of the Contract between the Contractor and Owner, and to assume toward it all obligations and responsibilities that the Contractor, by those documents assumes towards Owner.

4.7.3 Subcontractor agrees to submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment under Article 21.

4.7.4 The provisions required by Sections 4.2 and 4.3; and if applicable, the prevailing wage provisions on **Exhibits E and E-1** attached hereto.

4.7.5 Each contract shall be assignable to Owner at Owner's election in the event the Contractor is terminated or fails to perform its obligations under the Contract Documents. Owner may assign its rights under those contracts and this Agreement to any other unit or instrumentality of the State without notice to the Trade Contractor.

4.7.6 The Contractor shall have the right to require the Subcontractor to accelerate performance of its work at its own cost (and not as a Cost of the Work) as necessary to satisfy the time requirements set forth in the Project Progress Schedule.

4.7.7 The provisions of this Section 4.7 notwithstanding, unless there is an assignment of contract pursuant to this Section the Contractor shall be solely responsible for all subcontractors and neither Owner nor the Architect shall have privity of contract with, or, obligations or liabilities to the subcontractors.

Section 4.8 Prevailing Wage Requirements

4.8.1 If this Contract is subject to Prevailing Wage pursuant to State Finance & Procurement Article, Maryland Code Ann. Title 17 subtitle 2 and COMAR 21.11.11.01 et seq., the Contractor shall comply with all Prevailing Wage requirements set forth in **Exhibits H** attached hereto titled "Prevailing Wage Instructions for Contractor."

ARTICLE 5

SPECIAL CONSULTANTS; INSPECTIONS

Section 5.1 Special Consultants and Testing Laboratories

(a) If special consultants or testing laboratories are included in the Work or, should have been reasonably anticipated by the Contractor as being necessary for successful prosecution of the Work, then Contractor 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 Contractor shall maintain a log documenting all deficiencies revealed by such surveyors, consultants and laboratories, and shall monitor and document the corrective measures taken. This information shall be included in the Progress Report. The Contractor shall coordinate any inspections which may be required by any government agencies or the Owner.

(b) If special consultants or testing laboratories were unanticipated and not reasonably anticipated by the Contractor, the Contractor shall notify the Owner and the Architect and 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 Contractor shall maintain a log documenting all deficiencies revealed by such surveyors, consultants and laboratories, and shall monitor and document the corrective measures taken. This information shall be included in the Progress Report. The Contractor shall coordinate any inspections which may be required by any government agencies or the Owner, subject to Owner Changes (Section 19.5).

Section 5.2 Inspections

5.2.1 As used in this Section 5.2 and elsewhere wherever the context calls for it, “inspection” *includes* testing and/or approval of work.

5.2.2 The Contractor shall at its expense, maintain an adequate inspection system and perform, or cause to be performed, such inspections as are required by the contract such as an electrical inspection from an independent (nongovernmental) electrical inspection agency approved or licensed as required by law when required under the contract.

5.2.3 The Contractor shall schedule and coordinate all inspections provided by the Owner (or on Owner’s behalf by a third-party engaged by Owner) in a manner that ensures such inspection is performed in accordance with the Contract Documents and as required to maintain the Project Schedule.

5.2.4 The Contractor shall make application for the inspection, coordinate same, and pay the required inspection fees. The Contractor shall maintain complete records of inspections and shall give Owner copies of these records as they are made. All work shall be conducted under the general direction of the Owner and is subject to State inspection at all places and at all reasonable times to ensure strict compliance with the Contract.

5.2.5 If the Contract, or any applicable laws, ordinances, regulations, or order of any public authority or agency having jurisdiction require any work to be specially inspected, tested or

approved, the Contractor shall give the Owner, the Architect, and any other public authority or agency which must be present or which otherwise should be notified, timely notice (at least 14 calendar days) of readiness for inspection and, if the inspection is by an authority or agency other than the Owner the date of the inspection.

5.2.6 The Owner may charge the Contractor any additional cost of inspection when Work is not ready at the time specified by the Contractor, or when prior rejection makes re-inspection necessary.

5.2.7 All Work, including fabrication and source of supply, is subject to inspection by the Architect, Owner or the State, or any third party inspector. Other than the Owner, inspectors are not authorized to revoke, alter, or waive any requirements of the Contract. Inspectors are authorized to call the attention of the Contractor to any failure of the Work to conform to the Contract, including but not limited to the existence of unsafe conditions, inadequate safeguards and exits, and nuisances. Inspectors are authorized to suspend the Work or any portion of the Work, at no additional charge to the Owner, until resolution of issues concerning compliance with Contract requirements.

5.2.8 Inspections by the Owner, the State or the Architect are for the sole benefit of the Owner. Inspections by the Owner, the State or the Architect, or the presence or absence of the Owner, a State inspector or the Architect at any inspection, or the failure of the Owner, the State inspector or the Architect to report any deviation by the Contractor from Contract requirements shall not: (i) relieve the Contractor of responsibility for adequate quality control measures, compliance with Contract requirements, or damage to or loss of material; (ii) constitute or imply acceptance of any Work; or (iii) affect the continuing rights of the Owner to hold Contractor responsible for failure to meet Contract requirements.

5.2.9 If the Owner determines that any Work requires special inspection not required by the Contract, it may direct the Contractor to obtain such inspection and the Contractor shall do so. If the inspection reveals a failure of the Work to comply with Contract requirements, the Contractor shall bear all costs of the inspection, including any additional compensation paid or payable to the Architect and any other costs incurred by the Owner. In all other cases, the Owner shall bear such costs and an equitable adjustment may be made as an Owner Change (*see* Section 19.5).

5.2.10 Required certificates or other documentation of inspection shall be obtained by the Contractor and promptly delivered to the Architect, Owner, and any other public authority or agency entitled thereto.

5.2.11 Provisions of this Section 5.2 notwithstanding, nothing contained herein is intended to mean, nor should it be construed to mean that the Contractor is expected, required, or responsible for assuming any of the Architect's inspection or supervisory responsibilities.

ARTICLE 6
PROGRESS MEETINGS; REPORTS

Section 6.1 Progress Meetings and Reports

6.1.1 Progress Meetings/Reports. The Contractor shall:

(a) Schedule and conduct construction progress meetings (and any other meetings deemed necessary relative to the Project) at the frequency set by the owner; and shall provide periodic progress reports as agreed upon by Contractor and Owner, or as otherwise required by Owner.

(b) Schedule monthly executive level progress meetings as requested by Owner.

(c) Record and distribute minutes of all construction progress meeting within three (3) business days following the meeting.

ARTICLE 7
RECORDS; DOCUMENTS; AS-BUILT DRAWINGS

Section 7.1 Maintenance of On-Site Documents

7.1.1 The Contractor shall keep at the Project site in good order a complete current set of all drawings, specifications, shop drawings, schedules, Change Orders, contracts, addenda, etc.

7.1.2 As-built Drawings: One set of all contract drawings must be maintained as “as-built” drawings.

7.1.3 Contractor will not be entitled to receive progress payments unless the on-site as-built drawings are kept up to date as required by the Contract. “As-Built” drawings shall be delivered to the Architect, in a condition satisfactory to it, as a condition precedent to Substantial Completion. Final payment and release of final retainage, if any, will not be made until the as-built drawings are revised in accordance with the Architect’s comments and the revised drawings are approved by the Architect.

7.1.4 The Contractor shall make all records available to the Owner and the Architect.

ARTICLE 8 PERSONNEL

Section 8.1 In General

8.1.1 The Contractor shall staff the Project in strict accordance with the project staffing plan provide with its Technical Proposal attached hereto as **Exhibit B.**

8.1.2 If required by applicable State or federal law, all Contractor/Subcontractor personnel shall be subject to a security and/or criminal background check. Before or after award of the contract, at the sole discretion of the Owner, those persons found to be unfit to work on State contracts may be excluded from the job site at no additional cost to the Owner.

8.1.3 Only personnel thoroughly trained and skilled in the tasks assigned them may be employed on any portion of the Work. Any employee found to be unskilled or untrained in its work shall be removed from the Work.

8.1.4 When municipal, county, State or federal laws require that certain personnel (electricians, plumbers, etc.) be licensed, then all such personnel employed on the Work shall be so licensed.

8.1.5 The Contractor shall employ on the Project, at all times, sufficient personnel to complete the Work within the time stated in the Contract.

8.1.6 Minor changes in staff not involving Key People (as defined below), are not subject to Owner's approval, however, the Contractor shall provide written notice to the Owner. With respect to substitutions of staff, in addition to notice, the Contractor shall provide the Owner with a resume and qualification package for the new staff person.

8.2 Key People. "Key People" are principals and employees of the Contractor who the Owner desires assigned to the Project for the duration of the contract.

8.2.1 The Staffing Plan shall include the names of Key People, the proposed role of each person and as applicable, the planned division of responsibilities, their direct personnel expense, and the amount of time each person will be dedicated to the Project.

8.2.2 Key People may not be substituted without the prior written consent of the Owner.

8.2.3 Contractor's employees shall be supervised by one or more Key People.

8.2.4 If the Owner in its sole discretion determines that any Key Person is not performing satisfactorily, the Owner shall have the right to direct that Contractor to replace the individual(s). The Contractor shall provide the Owner with resumes of possible replacements and the Owner shall have the opportunity, but not the obligation to interview replacement candidates.

ARTICLE 9 SCHEDULE

Section 9.1 Notices to Proceed & Critical Path

9.1.1 The Commencement Date. The Commencement Date shall be the date indicated in the NTP for the entire Project. The Owner may issue partial NTPs for portions of the Work coordinated with availability of funds or as the Project may require.

9.1.2 If Contractor fails to proceed with the Work within ten (10) business days after the issuance of the NTP for the entire Project it shall be an Event of Default under Section 20.2.

9.1.3 Substantial Completion. The Contractor shall achieve Substantial Completion of the entire Work not later than the date identified or otherwise required by this Agreement.

9.1.4 Final Completion. The Contractor shall achieve Final Completion not later than the date identified or otherwise required by this Agreement.

9.1.5 CPM. The Contractor shall prepare in a format and with a level of detail acceptable to the Owner (as described in Exhibit J attached), a detailed CPM schedule incorporating the following:

- (a) Project activity sequences and durations for on-site construction.
- (b) Processing of shop drawings.
- (c) Product data and samples.
- (d) Delivery of products requiring a long lead time for procurement.
- (e) The portion of the Project reflecting the Owner's requirements for priority occupancy.

9.1.6 The Contractor shall update and reissue the schedule on a monthly basis to show current conditions and revisions required by actual experience. The Contractor shall provide updated look-ahead schedules at the progress meetings.

Section 9.2 Hazardous Materials

9.2.1 For purposes of this Agreement, "hazardous substances" shall include asbestos, lead, polychlorinated biphenyl (PCB) and any or all of those substances defined as "hazardous substance", "hazardous waste", or "dangerous or extremely hazardous wastes" as those terms are used in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA), and shall also include materials regulated by the Toxic Substances Control Act (TSCA), the Clean Air Act, the Air Quality Act, the Clean Water Act, and the Occupational Safety and Health Act.

9.2.2 In the event the Contractor encounters any materials reasonably believed to be hazardous substances and if deposited prior to the date hereof, and not in the course of the Work by the Contractor or its subcontractors, the Contractor shall immediately stop work in the affected area and report the condition in writing to the Owner.

9.2.3 The Work in the affected area shall not resume except by written agreement of the Owner and the Contractor, if in fact materials that are hazardous substances have not been rendered harmless.

9.2.4 The Owner shall contract to have the hazardous substances removed or rendered harmless (which contract may be with the Contractor if mutually agreeable) and the Owner shall bear the costs and expense of same.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

10.1.1 Time is of the Essence

The Contractor acknowledges that time is of the essence for the Work under this Agreement and that Owner or the State may suffer financial loss if either Substantial Completion or Final Completion do not occur by the respective dates set forth in the NTP.

10.1.2 Substantial Completion

Notwithstanding the required elements of Substantial Completion as defined in Section 1.1, the Contractor shall not be held responsible for delays affecting the critical path described in Section 9.1 which are caused or created by contractors hired directly by the Owner.

10.1.3 Subject to the requirements and conditions in Sections 10.1.4 and 10.1.5 below:

(a) The Contractor shall give reasonable advance notice to the Architect and the Owner of the anticipated Substantial Completion date in order for the Architect to schedule its inspection.

(b) The Architect will inspect the Project to confirm that it has achieved Substantial Completion.

10.1.4 The Contractor shall be responsible for the Architect's inspection fees should the Project not be Substantially Complete by the scheduled inspection date.

10.1.5 Completion List and Punch List.

Throughout the execution of the Work, Contractor shall maintain a list of items needed to be completed or corrected to meet the Substantial Completion Date (the "Contractor Completion List"). The Contractor shall provide copies of the Contractor Completion List to the Owner and the Architect at progress meetings for their review and comment.

10.1.6 If the Owner and the Architect determine that Substantial Completion has been achieved as defined in Section 1.1, the Owner shall determine the time within which the Contractor shall complete any remaining items of work, which will be indicated on a list (the "Punch List").

10.1.7 Unless the Owner establishes a different period, the Punch List shall be completed within thirty (30) days after the date of Substantial Completion.

10.1.8 If the Contractor fails to complete the Punch List in the required time, the Owner shall have the undisputed right to complete the work at the Contractor's expense.

10.1.9 Failure to complete the Punch List in a timely manner shall constitute grounds for termination of the contract for default.

10.1.10 Acceptance of the Work as substantially complete shall not excuse or waive any failure of the Contractor to complete the Contract as required by the Contract Documents.

10.1.11 Final Completion.

Upon satisfactory receipt and acceptance by the Owner and Architect of all requirements in accordance with this Agreement and the Contract Documents, including full and final completion

of all Punch List items, a Certificate of Final Completion in the form attached hereto as **Exhibit H** will be issued by the Owner and Architect. If the Owner has reasonable cause to believe that the Contractor will not achieve Final Completion by the Final Completion Date, the Owner may withhold all or a portion of the Contractor's fee remaining to be paid until Final Completion is achieved. Any withheld amounts shall be paid in accordance with Article 18 once Final Completion is achieved.

10.1.12 In addition to the requirements of Section .9 final payment shall not be made until Final Completion.

10.1.13 Correction of Work before Final Payment.

The Contractor shall promptly remove from the premises all work failing to conform to the Contract, whether or not incorporated in a structure, the Project or property.

10.1.14 Subject to Owner's rights under Section 21.8, the Contractor, at its own expense, shall promptly replace and re-execute such work in accordance with the contract, and shall bear the expense of making good all work of other contractors (including trade and sub-contractors) destroyed or damaged by such removal or replacement.

10.1.15 If the Contractor does not remove such non-conforming work within a reasonable time, the Owner may remove it and may store materials at the expense of the Contractor. If the Contractor does not pay the expense of such removal or storage within ten days' time thereafter, the Owner may sell such materials and shall account for the net proceeds thereof, after deducting all the costs and expenses incurred by the Owner.

ARTICLE 11 DELAYS & TIME EXTENSIONS

Section 11.1 Delays Generally

11.1.1 The term “delay” shall mean any act, omission, occurrence, event, or other factor which results in a failure to complete any work within the time planned for it in accordance with the Project Schedule. This Section 11.1 covers every such act, omission, occurrence, event or other factor, whether called delay, disruption, interference, impedance, hindrance, suspension, construction suspension, extension or otherwise.

11.1.2 Time is an essential element of the Contract and it is important that the Work be vigorously prosecuted, with a full work force until completion. Contractor must take all reasonable action to avoid or to mitigate the effects of delays, recognizing that a delay in any one 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. See also **Exhibit J**.

Section 11.2 Critical Path Delay – Contractor Not At Fault

11.2.1 If Contractor is delayed in the critical path shown by the CPM schedule by one or more of the following:

- (a) fault of the Owner, Architect, or other contractor or consultant separately hired by the Owner (but only to the extent such fault is not caused by Contractor or by its failure to coordinate the Work under the Contract);
- (b) bomb threats;
- (c) embargoes;
- (d) fire;
- (e) unavoidable casualties;
- (f) national emergencies;
- (g) unusually severe weather conditions in accordance with Section 11.5.2; or
- (h) acts of terrorism.

And any aforementioned delay adversely affects the expected date for Substantial Completion, *then* Contractor shall endeavor to provide for and implement a *time recovery schedule* to minimize the effects of any such delay without incurring additional costs in excess of the Cost of the Work and which the Owner is not willing to assume.

11.2.2 If no recovery schedule is reasonably possible, the Owner shall approve an extension to the Project Schedule for a period as may be reasonably necessary (but no longer than the length of the delay), *if* within ten (10) business days after Contractor learns, or should have learned of any such delay, it delivers to the Owner in writing:

- (a) a notice of the commencement of the delay;

(b) its anticipated duration; and

(c) a claim for a time extension on account thereof (certifying that no time recovery schedule is reasonably possible).

11.2.3 If Contractor fails to deliver the written notice and claim as set forth above, then any claim for an extension of time on account of such delay shall be deemed waived by the Contractor.

11.2.4 In the case of a continuing cause of delay the Contractor shall be required to file only one initial notice with respect thereto, prior to the termination of the condition caused by the delay.

11.2.5 Knowledge on the part of the Owner of the act, omission, occurrence, event, or other factor, or of the delay resulting therefrom, shall not excuse Contractor's failure to give the required notice.

11.2.6 It is understood that there are changes in the Work which by their nature do not delay Substantial or Final Completion.

Section 11.3 Critical Path Delay – Contractor At Fault

11.3.1 When the Contractor is responsible for a delay, the Owner may order the Contractor to accelerate construction, work overtime, add additional shifts or manpower, work on weekends, or do anything else reasonably necessary in order to finish on time, at no additional cost to the Owner or increase of the Cost of the Work. The Contractor does not have the unilateral right to complete the Work late.

11.3.2 Unless the Owner expressly agrees *in writing* to (1) an extension of the completion date; (2) a waiver of a default (including default associated with the delay); or (3) to pay for any costs associated with the delay (including acceleration of construction), no action or inaction by the Owner may be deemed or construed as its consent or approval of an extension, a waiver or agreement to pay costs.

11.3.3 If the Contractor or its Subcontractor is responsible for a delay, the Owner, at its option may recover from the Contractor *the* Owner's costs incurred for items set forth in Section 11.4.2 as a result thereof.

11.3.4 Owner may (in its sole discretion) grant time extensions for the sole purpose of providing the Contractor with relief from damages. Any extension granted by Owner is not to be construed as an admission of guilt, liability or responsibility for the delay.

11.3.5 Delays caused by the contractor not scheduling properly, are exclusively the fault of the contractor.

Section 11.4 Compensable Delay Costs

11.4.1 Equitable Adjustments for Delay.

Whenever *Owner* is determined to be responsible for a delay that affects the date of Substantial Completion and the Contractor is entitled to an equitable adjustment in connection therewith, the amount of the equitable adjustment shall be determined in accordance with this Section.

11.4.2 Recoverable Costs.

Only the following costs may be recoverable by the Contractor as compensation for delay damages in connection with Section 11.4.1:

- (a) Direct costs consisting of:
 - (i) Actual additional salaried and non-salaried on-site labor expenses;
 - (ii) Actual additional costs of materials;
 - (iii) Actual additional equipment costs, based solely on actual ownership costs of owned equipment or actual reasonable costs of rented or leased equipment;
- (b) Actual additional costs, proven by clear and convincing evidence, subject to the review and approval of the Owner as to eligibility as a recoverable expense.

11.4.3 Subtraction of Recovered/Recoverable Expenses.

There shall be deducted from the compensation payable to the Contractor under this Section any and all costs, expenses, and overhead recovered or recoverable by the Contractor under Change Orders issued to it, or otherwise recovered or recoverable by it so that no duplication of payment for the same items, services, materials or otherwise are made.

Section 11.5 Non-Compensable Delay Costs

11.5.1 No other compensation or damages are recoverable by the Contractor for compensable delays or extensions of the completion time except as expressly stated in Section 11.4. In particular, Owner will not be liable for the following (by way of example and not limitation) whether claimed by the Contractor or by a subcontractor or supplier at any tier:

- (a) Profit in excess of that provided herein;
- (b) Loss of profit;
- (c) Home office or other overhead in excess of that provided herein;
- (d) Overhead calculated by use of the Eichleay formula or similar formula;
- (e) Consequential damages of any kind, including loss of additional bonding capacity, loss of bidding opportunities, and insolvency;
- (f) Indirect costs or expenses of any nature except those expressly provided for herein; and
- (g) Attorney's fees, costs of claims preparation and presentation and costs of litigation.

11.5.2 Weather.

(a) 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 Services. *See also* **Exhibit J** Section 1.13.

(b) Claims for time extensions due to 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.

(c) Determination of whether or not unusually severe weather in fact delays Substantial Completion will depend on the cumulative analysis of the effect of such weather on the Work performed over the entire duration of the Project.

11.5.3 Contractor shall not be entitled to any compensation or delay damages unless it has complied with the notice requirement in Section 11.2.2. Knowledge on the part of the Owner of the act, omission, occurrence, event, or other factor, or of the delay resulting therefrom, shall not excuse Contractor's failure to give the Owner the required notice.

11.5.4 Reserved

11.5.5 Owner's exercise of its rights to order changes in the Work, regardless of the extent or number of changes; exercise of any of its remedies for suspension of the Work, correction or re-execution of any defective Work; or Owner's exercise or enforcement in good faith of any other rights or remedies under the Contract Documents shall not be construed as either a breach of this Agreement or as willful interference by Owner with Contractor's performance of the Work.

11.5.6 Delays caused by Owner, its agents or consultants, even if Contractor asserts such are the result of a material breach of this Agreement or willful interference by Owner, its agents or consultants with performance of the Work - shall not be grounds for an extension of time or claim for damages if and to the extent such delays are concurrent with other causes of delay for which Owner, its agents or consultants are not responsible.

ARTICLE 12
CHECKLISTS; TESTING AND TRAINING

12.1.1 Close In Checklists. The Contractor shall prepare and observe appropriate checklists for any Project Work that will 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 requirements of this Section 12.1.1 are in addition to all applicable requirements set forth in Article 2 of this Agreement.

12.1.2 Prior to Contractor's performance of any work under Section 12.1.1, the Owner and/or its agent(s) shall review the checklists prepared by the Contractor.

12.1.3 Checkout, Initial Start-Up & Testing.

Owner acceptance of all operations and maintenance manuals, training materials, etc. is required prior to commencing start-up and commissioning.

12.1.4 The Contractor shall perform or observe its subcontractors' performance of the final checkout of utilities, operational systems and equipment for readiness.

12.1.5 The Contractor shall assist in the initial start-up and testing and make arrangements with its subcontractors, if applicable, for appropriate maintenance personnel to be trained in the operations of the equipment.

12.1.6 The Contractor shall perform the requirements of this Section with input and participation of the Owner and the Architect and consistent with the provisions of the Contract Documents.

12.1.7 If applicable, the Contractor shall coordinate the Work with the Owner's Commissioning Agent.

12.1.8 All operations and maintenance training, start-up and testing must be completed prior to the issuance of a Certificate of Substantial Completion.

ARTICLE 13
PROJECT AND CONTRACT CLOSE OUT; WARRANTIES

13.1.1 Project Close-Out.

13.1.2 The Contractor shall sign off on a Final Completion certificate (*see **Exhibit H*** attached) upon the completion of all Work and the satisfaction of all contractual requirements.

13.1.3 Contract Close-Out. The Contractor shall continue to provide services as necessary after Final Completion to close-out Trade Contracts and to resolve outstanding claims which arose prior to Final Completion.

13.1.4 Warranty.

Except to the extent that the contract documents impose longer warranty obligations on the Contractor for all or any part of the work, the Contractor warrants for a one year period commencing on the date of substantial completion of the Project as a whole or on such other date agreed between the parties:

(a) That the work contains no faulty or imperfect material or equipment or any imperfect, careless, or unskilled workmanship.

(b) That all mechanical and electrical equipment, machines, devices, etc., shall be adequate for the use for which they are intended, and shall operate with ordinary care and attention in a satisfactory and efficient manner.

(c) Found not to be as guaranteed by this Section or otherwise not in conformity with the Contract Documents and that the Contractor will make good all damages caused to other work or materials in the process of complying with this Section.

(d) That the entire work shall be watertight and leak-proof in every particular.

13.1.5 The Contractor is liable for failure to perform the contract in accordance with its terms, and is bound to replace work deemed defective or non-conforming. Nothing herein releases or limits the Contractor's liability for latent defects or for any substantial failure to perform the work in accordance with the contract, even if such defects or failure are discovered after the expiration of the warranty period provided by this section.

ARTICLE 14
OWNER'S RESPONSIBILITIES

14.1.1 The Owner shall provide information regarding its requirements for the Project.

14.1.2 The Owner's Project Manager identified in Section 28.19 shall be fully acquainted with the Project and has authority to make routine project decisions on behalf of Owner and approve Owner Change Orders. Any limitations of the foregoing shall be indicated to the Contractor in writing.

14.1.3 The Owner shall retain an Architect for design and preparation of plans and specifications; and to provide certain inspection, review and approval services. The Architect is a member of the Construction Team and its services, duties and responsibilities are described in an agreement between the Owner and the Architect (the "Architect Agreement"), a copy of which may be obtained upon request. The Architect Agreement is a separate contract, negotiated between the Owner and the Architect. The Contractor may not rely on the terms, conditions, requirements or understandings set forth in the Architect Agreement to amend, inform, edit, or modify the requirements of the Contractor's services, responsibilities, obligations or liabilities under its contract with the Owner.

14.1.4 The Owner shall furnish all reasonably available surveys describing the physical characteristics, soil reports and subsurface investigations, legal limitations, and known utility locations. The Contractor is responsible for providing all necessary surveys not available from the Owner.

14.1.5 The services, information, surveys and reports required by this Article 14 or otherwise, to be furnished by the Owner or other consultants employed by the Owner, shall be furnished with reasonable promptness at the Owner's expense. The Contractor shall verify the accuracy and completeness of the aforementioned; and notwithstanding the materials, documents or information provided pursuant to this Article 14, the Contractor remains responsible for those matters set forth in Section 1.3.

14.1.6 Addressing the presence of hazardous materials as provided in Section 9.2.

14.1.7 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 Contractor.

ARTICLE 15
CONTRACTOR'S COMPENSATION

15.1.1 Contract Price. For performing the Services specified in the Contract Documents, MSA shall pay Contractor the lump sum of _____ Dollars (\$ _____) as identified in Contractor's Financial Proposal attached hereto as **Exhibit B**.

ARTICLE 16 CHANGES

16.1.1 Changes. The Project Manager unilaterally may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make any change in the work within the general scope of the contract, including but not limited to changes:

- (a) In the specifications (including drawings and designs);
- (b) In the method or manner of performance of the work;
- (c) In MSA-furnished facilities, equipment, materials, services, or site; or
- (d) Directing acceleration in the performance of the work.

16.1.2 Any other written order or an oral order, including a direction, instruction, interpretation or determination, from the Procurement Manager that causes any such change, shall be treated as a change order under this clause, provided that the Contractor gives the Project Manager written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.

16.1.3 Except as herein provided, no order, statement, or conduct of the Project Manager shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.

16.1.4 Subject to paragraph (6), if any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any change under (2) above shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as therein required; and provided further, that in the case of defective specifications for which MSA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.

16.1.5 If the Contractor intends to assert a claim for an equitable adjustment under this clause, he shall, within 30 days after receipt of a written change order under (1) above or the furnishing of written notice under (2) above, submit to the Project Manager a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by MSA. The statement of claim hereunder may be included in the notice under (2) above.

16.1.6 Each contract modification or change order that affects contract price shall be subject to the prior written approval of the Project Manager and other appropriate authorities and to prior certification of the appropriate fiscal authority of fund availability and the effect of the modification or change order on the project budget or the total construction cost. If, according to the certification of the fiscal authority, the contract modification or change order will cause an

increase in cost that will exceed budgeted and available funds, the modification or change order may not be made unless sufficient additional funds are made available or the scope of the project is adjusted to permit its completion within the project budget.

16.1.7 No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

16.2.1 Miscellaneous

(a) In the event of a dispute between MSA and the Contractor as to whether any work is included in the scope of the contract such that the Contractor would be obligated to provide that work at no additional cost to MSA, the Project Manager may order the Contractor to perform the work (a "Work Order"). If the Contractor considers such an order to be a change in the scope of the contract entitling the Contractor to additional compensation, a time extension, or other relief, the Contractor must provide the notice required by this section and initiate a claim therefore in accordance with contract requirements. An order of the Project Manager, by virtue of being called or referred to as a "change order," does not necessarily constitute a change in the scope of the contract or in the work required under the contract. The Contractor shall not be entitled to additional compensation, a time extension, or other relief for complying with an order of the Project Manager if the contract otherwise requires the Contractor to perform as stated in the order.

(b) A request by the Contractor for additional time or additional costs caused by the impact of an order of the Project Manager on the as-built critical path for completion must be accompanied by: (i) a reasonably detailed description of the effect of the order on the adjusted as-planned/as-built critical path; and (ii) supporting documentation. The mere existence of a change order does not entitle Contractor to an extension of time, compensation for delay, or damages or costs associated with delay. Contractor's entitlement thereto shall depend upon the effect of the change order on the adjusted as-planned/as-built critical path for completion. A change order granting a time extension may provide (i) that the completion date will be extended only for specific critical activities, (ii) that the remaining completion date(s) for all other portions of the work will not be altered, and (iii) for an equitable adjustment of liquidated damages under the new required completion dates.

(c) Upon receipt of a signed written order of the Project Manager under this Section 16, the Contractor shall comply with the order promptly, within the requirements of the completion schedule, whether or not the Contractor signs or accepts the change order. Failure to comply with the order in a timely manner shall constitute a breach of the contract and grounds for termination for default or any other remedy available to MSA.

(d) MSA may issue a unilateral order on MSA's terms (including a promise to pay the Contractor a "not to exceed" ("NTE") amount) which the Contractor may then dispute in accordance with this Article 16 and Article 24. Pending resolution of such a dispute, Contractor must proceed diligently with performance of the contract as ordered by the Project Manager.

(e) The terms “not to exceed” and “NTE” when used in a change order mean that the amount of the change order (whether an increase or a decrease in the contract amount) will be a reasonable amount not to exceed the amount stated.

16.3.1 Modification of Contract Price. When changes in the work require modification of the contract price, such modification shall be accomplished in accordance with the requirements of Section 16.1.1 and the following requirements:

- (a) The Contractor shall promptly submit to MSA and to the architect a fully itemized breakdown of the quantities and prices used in computing the value of the requested change along with a detailed explanation and justification for the proposed change regardless of the nature of the change.
- (b) For all changes in the work to be performed by a Subcontractor, the Contractor shall furnish the Subcontractor’s fully itemized breakdown of quantities and prices which shall bear the original signature of a representative of the Subcontractor authorized to act for the Subcontractor. If requested by MSA or the architect, proposals from suppliers or other supporting data required to substantiate costs shall be furnished.
- (c) Modification of the contract price, when required, shall be determined as follows:
 - (1) Variations in Estimated Quantities - Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies more than twenty-five percent (25%) above or below the estimated quantity stated in this contract, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred twenty-five percent (125%) or below seventy-five percent (75%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Project Manager shall, upon receipt of a written request for an extension of time within ten (10) days from the beginning of the delay, or within a further period of time which may be granted by the Project Manager before the date of final settlement of the contract, ascertain the facts and make the adjustment for extending the completion date as in his judgment the findings justify.
 - (2) A lump sum price agreed upon by both MSA and Contractor. This lump sum shall be supported by a fully itemized cost breakdown provided by the Contractor which shall include:
 - a) Labor;
 - (i) The wages to be paid for each and every estimated hour of work to be performed.
 - (ii) The estimated costs to be paid to or on behalf of workmen by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits, when such amounts are required by collective

bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work; and

- (iii) An equitable percentage, to be determined by the Contractor and Project Manager, applied against the labor cost (premium pay and fringes excluded) for liability and worker's compensation insurance premiums, unemployment insurance contributions and FICA taxes on such labor cost.

b) Material; For materials to be used in accordance with the contract, acceptable to MSA, the Contractor shall document the estimated cost.

c) Equipment; For any machine power tools or equipment (whether rented or owned), the Contractor shall receive the rates agreed upon in writing before such work is begun, or those rates which may be specified elsewhere in the contract, or reasonable rates, whichever are less. Rates shall include fuel and lubricants which are necessary to execute the work required on the change.

- (3) If job conditions or circumstances, or the extent or nature of the change, or failure of MSA and the Contractor to agree upon a lump sum price or the application of unit prices, prevent the determination of the cost of any proposed change, the work shall be done on the basis of a Force Account, as hereinafter stated under Section 16.4.1 Force Account Work, if so ordered by MSA.
- (4) If the change involves a credit to MSA, unless the amount must be determined by the application of unit prices, then the amount of the credit shall be the greater of (a) the alternate or other itemized price for such work stated in Contractor's bid, or (b) a reasonable price, including overhead and profit.
- (5) If the change involves both a credit and a debit, both sums shall be shown and the two sums balanced to determine the adjusted total cost or credit.
- (6) The mark-up allowable to the Contractor for combined overhead and profit for work performed solely by the Contractor with his own forces shall be a reasonable amount not to exceed fifteen percent (15%) of the Contractor's costs, excluding those items which may be included in overhead.
- (7) (a) The mark-up allowable to a Subcontractor for overhead and profit for work performed solely with his own forces shall be a reasonable amount not to exceed ten percent (10%) for the Subcontractor's overhead and five percent (5%) for the Subcontractor's profit, based upon the Subcontractor's costs of labor, materials, and equipment.
 - (b) For work performed by a Subcontractor solely with his own forces, the Contractor is entitled to a reasonable mark-up for combined overhead and profit, not to exceed five percent (5%) of the cost of the Subcontractor's materials, equipment, and labor.

- (8) The cost of supervisory personnel may be added only when the modification makes necessary the hiring of additional supervisory personnel or makes necessary their employment for time additional to that required by the contract.
- (9) If the Contractor and MSA cannot agree as to the extent the contract time shall be increased for extra work or the extent the contract time shall be reduced for work omitted by MSA, the increase or decrease, as the case may be, shall be determined by the Project Manager based on the impact of the change, if any, on the as-built critical path for completion of the work.
- (d) The allowable percentages of cost for overhead and profit are deemed to include but not be limited to all costs and expenses of the following kinds: project management, supervision and coordination; job supervision and field office expenses required by the contract; expenses for supervisors, superintendents, managers, timekeepers, clerks and watchmen; cost of correspondence of any kind; insurance not specifically mentioned herein; all expenses in connection with the maintenance and operation of the field office; use of small tools (for purpose of definition, equipment with a new cost of \$500 or less will be considered "small tools."), costs of vehicles generally used for transporting workmen, materials, tools, or equipment to job location, and other incidental costs; and all expenses of maintenance or operation of Contractor's regularly established principal office, branch office, and similar facilities, and all other costs and expenses customarily classified as overhead.
- (e) No allowance shall be made to the Contractor for loss of anticipated profits on account of changes in the work.
- (f) Execution of a written change order by Contractor, or failure of the Contractor to dispute the terms of a written order of the Project Manager strictly in accordance with contract requirements, shall be binding and conclusive and shall operate as an accord and satisfaction as to (a) all compensation payable to Contractor for the work associated with the change order, and (b) Contractor's right to an extension of the contract completion time. Contractor may not execute or accept a change order subject to any conditions or reservation of rights or claims which have not been agreed to in writing the Project Manager. Any attempt by the Contractor to impose such conditions or reservations shall not be binding on MSA. Contractor's sole remedy for disputing the terms of an order by the Project Manager or for making a claim is to strictly follow the procedures stated in this Article 16 and Article 24
- (g) Whenever the Contractor is entitled to an increase in the contract price, the amount of the increase shall not include any amount for increased costs or premiums of bonds unless: (1) MSA requires an increase in the amount of the penal sum of the bond or bonds, (2) the Contractor actually incurs such cost, (3) the surety actually increases the penal sum of the bonds, and (4) MSA receives proof in satisfactory form that the surety has increased the penal sum of the bonds.

16.3.1 Unauthorized Work. The Contractor shall not be paid for any work outside the scope of the contract not authorized in writing by the Project Manager.

16.4.1 Force Account Work. When the Contractor is required to perform work as a result of or alleged by the Contractor to be an addition or change to the contract for which there are no applicable unit prices in the contract, MSA and Contractor shall attempt to agree upon a price for the performance of such work. If an agreement cannot be reached, MSA may require the Contractor to do such work on a force account basis to be compensated as follows:

16.4.1.1 Labor. The Contractor shall be paid as follows:

- (a) The actual wages for each and every hour work is performed.
- (b) The actual costs paid to or on behalf of workmen by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits, when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work; and
- (c) An equitable percentage, to be determined by the Contractor and Project Manager, applied against the labor cost (premium pay and fringes excluded) for liability and worker's compensation insurance premiums, unemployment insurance contributions and FICA taxes on such labor cost.

16.4.1.2.1 Materials. For materials in accordance with the contract, accepted by MSA and used, the Contractor shall receive the actual cost of such materials.

16.4.1.3 Equipment. For any machine power tools or equipment (whether rented or owned), the Contractor shall receive the rates agreed upon in writing before such work is begun, or those rates which may be specified elsewhere in the contract, or reasonable rates, whichever are less. Rates shall include fuel and lubricants which are necessary to execute the work required on the change.

16.4.1.4 Materials and Supplies Not Incorporated in the Work. For materials and supplies expended in the performance of the work (excluding those required for rented equipment), the Contractor shall receive the actual cost of such materials and supplies used.

16.4.1.5 Bond. Whenever the Contractor is entitled to an increase in the contract price, the amount of the increase shall not include any amount for increased costs or premiums of bonds unless:

- (a) MSA requires an increase in the amount of the penal sum of the bond or bonds;
- (b) the Contractor actually incurs such cost;
- (c) the surety actually increases the penal sum of the bonds; and
- (d) MSA receives proof in satisfactory form that the surety has increased the penal sum of the bonds

16.4.1.6 Superintendence. No additional allowance shall be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided. The cost of Supervisory Personnel may be added only when the modification makes necessary the hiring of additional supervisory personnel or makes necessary their employment for time additional to that required by the contract.

16.4.1.7 The mark-up allowable to the Contractor for combined overhead and profit for work performed solely by the Contractor with his own forces shall be a reasonable amount not to exceed fifteen percent (15%) of the Contractor's costs (excluding items includable in overhead).

16.4.1.8 Subcontractors. For work done solely by a Subcontractor, the Subcontractor's costs shall be determined as stated in subsections 16.4.1.1 through 16.4.1.6 above.

(a) The mark-up allowable to a Subcontractor for overhead and profit for work performed solely with his own forces shall be a reasonable amount not to exceed ten percent (10%) for the Subcontractor's overhead and five percent (5%) for the Subcontractor's profit, based upon the Subcontractor's costs of labor, materials, and equipment.

(b) For work performed by a Subcontractor solely with his own forces, the Contractor is entitled to a reasonable mark-up for combined overhead and profit, not to exceed five percent (5%) of the cost of the Subcontractor's materials, equipment, and labor.

16.4.2 Compensation. The compensation as set forth above shall be received by the Contractor as payment in full for the work done on a force account basis. At the end of each day, the Contractor's representative and MSA shall compare records of the cost of work as ordered on a force account basis.

16.4.3 Statements. No payment will be made for work performed on a force account basis until the Contractor furnishes MSA duplicate itemized statements of the cost of such force account work detailed as to the following:

- (1) Name, classification, date, daily hours, total hours, rate, and extension for such workmen.
- (2) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
- (3) Quantities of materials, prices, and extensions.
- (4) Transportation of materials.
- (5) Cost of property damage, liability and worker's compensation insurance premiums, unemployment insurance contributions, and social security tax.
- (6) Payments of items under (3) and (4) above shall be accompanied by original receipted invoices for materials used and transportation charges. If, however, the materials used in the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the original invoices, the statements shall contain or be accompanied by an affidavit of the Contractor which shall certify that such materials were taken from his stock, that the quantity claimed was actually used, and that the price and transportation of the material as claimed represent actual cost. MSA may require additional proof as to costs, ownership, title, non-existence of liens, etc.

16.4.4 Any other claims of the Contractor arising from work done on a force account basis that are not expressly addressed in this Section 16.4, including (but not limited to) requests for time extensions, are subject to other applicable provisions of the contract.

ARTICLE 17
STATE PROPERTY NOT SUBJECT TO LIEN.

17.1.1 Neither the Contractor nor any subcontractor or supplier at any contract tier may have or acquire any lien against State property.

ARTICLE 18 PROGRESS PAYMENTS

Section 18.1 Invoices

18.1.1 The Contractor shall require all subcontractors to comply with the payment requirements set forth in this Agreement including the Prompt Payment provisions in Section 4.5 and, if applicable, the Prevailing Wage provisions in Section 4.8.

18.1.2 The Contractor shall submit its application for progress payments (the “**Contractor Invoice**”) to the Architect in substantially the form attached hereto as **Exhibit L**. The Architect shall review the Contractor Invoice, and upon approval, provide the Owner with the Architect’s Certificate of Payment as shown on **Exhibit L**.

18.1.3 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 Contractor 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 Contractor.

Section 18.2 Submissions – Documents, Certifications

18.2.1 The Contractor shall

- (a) Provide MSA with a copy of the Contractor Invoice.
- (b) Lien Wavers.

Before the Contractor receives a progress payment or a final payment which includes payments due a subcontractor or major supplier (a “Supplier”) it shall provide the Owner with lien waivers from all subcontractor and Suppliers on a continuous basis.

- (i) Lien waivers must be submitted in substantially the same form attached hereto as **Exhibit K**.
- (ii) Subcontractors and Suppliers are not expected to execute lien waivers for work for which they have not been paid. *However*, the Contractor shall certify in writing that, in accordance with contractual arrangements or agreements Subcontractors and Suppliers have been paid from the proceeds of previous progress payments; and will be paid in a timely manner from the proceeds of the progress or payment currently due.
- (iii) The Owner reserves the right to withhold from any progress payment those amounts payable to a Subcontractor or a Supplier whose payments have not been certified in accordance with (b)(ii) above. In all circumstances, lien releases are required for Final Payment.

(c) Certify that all payments received from the Owner in the prior month have been disbursed in accordance with the applicable invoices.

(d) Include with the Contractor Invoices submitted to the Owner evidence satisfactory to the Owner that disbursements required by (c) above have occurred.

18.2.2 Reserved

18.2.3. Reserved

18.2.4 The Owner shall have access to the Project and the records, documents, or other materials associated with the Project, as deemed necessary to verify the Work performed and the amount requested in any Contractor Invoice. If the Owner and the Architect are unable to verify any portion of the Work performed or payment amount(s) requested, the Owner shall be entitled to withhold payment for that portion of unverified or unconfirmed Work until such time as verification is obtained. Owner shall work with the Contractor to resolve any such issues as quickly as possible.

Section 18.3 Progress Payment Calculation

18.3.1 Subject to the provisions of the Contract Documents, the amount of each Progress payment shall be calculated using the Application for Certification of Payment attached hereto as **Exhibit L**. The values, amounts, claims and actual progress of work remains subject to review of the Architect and the Owner.

Section 18.4 Payment and Interest

18.4.1 Subject to Section 25.4, progress payments to the Contractor shall be made no later than 30 days after Owner's receipt of Certification of Payment from the Architect.

18.4.2 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, or by the Public Service Commission of Maryland with respect to regulated utilities as applicable, are prohibited.

18.4.3 An invoice is *not* deemed "due and payable" under this Section except upon receipt of the Certification for Payment from the Architect, and subject to MSA's determination of the amounts it will agree to pay.

Section 18.5 Retainage

18.5.1 A five percent (5%) retainage ("**retainage**") will be retained on all payments certified by the Architect and due to the Contractor. (See Sections 4.6 and 4.7 for retainage and subcontractors).

18.5.2 In Owner's sole discretion, retainage may be reduced to an amount less than five percent (5%) after certification of Substantial Completion.

18.5.3 In Owner's sole discretion, retainage may be released to a Subcontractor whose role in the Project has been completed.

18.5.4 Final retainage shall be released to the Contractor at the time of Final Payment.

Section 18.6 Additional Withholding

18.6.1 In addition to retainage the Owner may withhold from payments otherwise due the Contractor any amount that the Owner reasonably believes necessary to protect the Owner's or the State's interest, including but not limited to:

(a) Claims filed or reasonable evidence indicating probable filing of claims related to or in connection with the Project.

(b) Failure of the Contractor to perform any material contract requirement including failure to make payments as required by this Agreement to Trade Contractors for material or labor.

(c) Reasonable doubt that the Work can be completed for the balance of the funds then unpaid.

(d) Reasonable doubt that the Work can be completed within the balance of the Contract Time then remaining.

(e) Damage to another contractor.

(f) The cost of completing unfinished or defective work.

21.6.2 Owner may withhold estimated actual damages it reasonably believes is necessary to protect the Owner's interest pursuant to this Section 21.6.

Section 18.7 MBE Liquidated Damages Withholding

18.7.1 If the Owner has determined that the Contractor will not fulfill its MBE requirements as identified in the Contract Documents, the Owner may withhold an amount equal to the liquidated damages set forth in Article 25 until the Contractor has satisfied the goal

Effective July 1, 2019 COMAR 21.07.01.14 requires liquidated damages for violations of MBE requirements for all contracts with certified MBE participation goals. See Article 25 for MBE violation liquidated damages provisions.

Section 18.8 Non-Conforming Work Remedied

18.8.1 The Owner may determine that any work which does not satisfy the requirements of the Contract Documents shall not be corrected by the Contractor, and in lieu thereof, make an equitable deduction from the Contractor's Compensation. Non-conforming work includes work damaged or injured after installation.

18.8.2 The Owner's determination shall be final subject only to appeal as provide in the Disputes clause in Article 24.

18.8.3. Except as provided in Section 21.8 when the condition(s) in Sections 21.6 and 21.7 are remedied, the amounts withheld shall be disbursed.

Section 18.9 Final Payment

18.9.1 Conditions for Final Payment.

Final Payment is conditioned upon and shall not be due or owing until:

18.9.2 Reserved

18.9.3 The Owner shall have received from the Contractor all documents (which are Contractor'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 Contractor 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.

18.9.4 The Contractor shall have met all of its insurance, indemnification and all of its other obligations under the Contract Documents.

18.9.5 The Contractor has provided all required MBE documentation in accordance with the Agreement.

18.9.6 Except as provided in Section 18.9.7 below, final payment constituting the unpaid balance of the Cost of the Work and the Contractor's Fee shall be due and payable when Final Completion has been achieved in accordance with Section 9.1.4 and Article 10 herein and this Agreement has been substantially performed including but not limited to checkout, initial start-up, testing and training pursuant to Article 12 herein.

18.9.7 The Owner may, in Owner's sole discretion, elect to pay the Contractor amounts retained for individual items as each item is completed to the satisfaction of the Owner. Notwithstanding the foregoing, in the event of unsettled claims, the Owner may withhold all amounts in dispute until such claims are settled.

ARTICLE 19
CONTRACTOR'S INSURANCE

19.1.1 The Contractor shall maintain in full force and effect liability insurance necessary to cover claims arising from the Contractor's operations under this Contract. The following types of insurance coverage shall be provided in the amounts indicated as follows:

Coverage limits shall be as follows:

Builder's Risk	All Risk Policy
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Worker's Compensation and Employer's Liability	Statutory
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Auto Liability (Combined single limit)	\$ 2,000,000
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General Liability	
Occurrence	\$ 2,000,000
General Aggregate	\$ 4,000,000
Products-completed	\$ 4,000,000
Operations Aggregate	\$ 4,000,000

Excess Liability	
Occurrence and Aggregate	\$ 10,000,000

19.1.2 The insurance shall be kept in full force and effect until all work has been satisfactorily completed and accepted. Evidence of insurance shall be provided to MSA prior to the execution of the Contract by means of a Certificate of Insurance with copies of all endorsements attached or by certified copy of the complete policy with all endorsements. The Contractor shall delivery to MSA certificates evidencing all required insurance at least once each year (as evidence of continued coverage in the amounts and on the terms required) for the duration of the contract. Failure to obtain or to maintain the required insurance or to submit the required proof of insurance shall be grounds for termination of the contract for default. Exclusion endorsement copies shall be attached to the Certificate of Insurance. The Certificate of Insurance shall be accompanied by a document (a copy of State License or letter from insurer) which indicates that the agent signing the certificate is an authorized agent of the insurer.

19.1.3 The Contractor shall not commence work under this Contract until all the insurance required under COMAR Section 21.07.02.10 and this Subsection has been obtained and approved by MSA, nor shall the Contractor allow any subcontractor to commence work on its subcontract until the insurance required of the subcontractor has been obtained by the subcontractor and approved by the Contractor. All Subcontractors shall be required in the subcontract documents to carry insurance for the line items described in the subcontract. The Contractor shall be responsible for determining appropriate limits for subcontractors, and for enforcing insurance coverage requirements for its subcontractors.

19.1.4 All insurance policies required by this Subsection or elsewhere in the Contract Documents shall be written on forms (including the actual wording of the policies and all endorsements) acceptable to MSA and with insurance companies that hold a current A.M. Best rating of A and that are duly registered or licensed to transact the prescribed coverages in the State.

19.1.5 All insurance policies required by this Section or elsewhere in the Contract Documents shall be endorsed to MSA and the State that the insurance carrier shall provide at least forty five (45) days notice to MSA in the event of cancellation, nonrenewal, or material change in the coverage, either by the insurance company or the Contractor.

19.1.6 The General Liability and Umbrella Liability/Excess Liability insurance policies required by this Subsection or elsewhere in the contract Documents shall include endorsements stating that the State and MSA and any other entities designated by MSA are additional insureds with respect to liability arising out of or resulting from the operations and completed operations of the named insured under the Contract.

19.1.7 All insurance policies required by this Section or elsewhere in the Contract Documents shall contain endorsements stating that such coverage as is provided by the policies for the benefit of the additional insured is primary and other coverage maintained by additional insured (if any) shall be non-contributing with the coverage provided under the policies.

19.1.8 All insurance policies required by this Section or elsewhere in the Contract Documents shall contain waivers of subrogation in favor of the State and MSA and any other entity designated by MSA and shall provide that the bankruptcy or insolvency of the insured does not relieve the insurance company of its obligations under the policies.

19.1.9 In the event any party maintains insurance with limits exceeding the limits required hereunder, the Certificates of Insurance provided to MSA shall state the full extent of the coverage available to the parties. Such excess liability coverage will inure to the benefit of the parties in the event of loss in excess of the minimum insurance required herein.

19.1.10 If, during the term of the Contract, the Contractor fails to secure and maintain the required insurance, MSA shall have the right (without the obligation to do so) to secure the insurance in the amounts specified in the name of the Contractor, in which case, the Contractor shall pay all premiums, deductibles, self-insured retentions or other amounts associated with the insurance and shall furnish all information that may be required in connection with MSA purchasing such insurance.

19.1.11 It is understood and agreed that the coverages and limits contained herein are the minimum requirements only. Contractor is responsible for providing insurance coverage that meets the needs of the Contractor itself, its subcontractors, sub-consultants, employees, and others as

obligated in the Contract Documents. All insurance policies shall contain at a minimum the following provisions:

1. Primary General Liability Insurance

A. Coverage – The policy shall include provisions that offer protection against all risks and exposures, including without limitation:

1. Premises and Operations Coverage
2. Products and Completed Operations Coverage
3. Blanket Contractual Liability Coverage, including any indemnity provisions
4. Broad Named Insured Endorsement
5. Notice, Knowledge, and Unintentional Errors and Omissions Coverage
6. Incidental Malpractice Coverage
7. Independent Contractors Coverage
8. Personal Injury Coverage
9. Broad Form Coverage for damage to property of the State, as well as other third parties resulting from the Contractor's Work
10. Any aggregate limits apply on a "per project" basis

(i) Limits of Liability – See Section 19.1.1.

(iii) Deductibles – The Contractor is responsible for payment of all deductibles and shall include and specifically identify in its bid any amounts that it expects to pay for deductibles.

(iii) Status of the State as Additional Insured – The Policy shall name the State and MSA and any other entities required by MSA as additional insured.

(iv) Term of Coverage – The term of coverage shall be the full contract term. Contractor shall continue to name all additional insured for the entire Period.

(v) Other Coverage/Features – The Primary General Liability Insurance Policy and all Umbrella Liability/Excess Liability Policies are also subject to the following requirements:

B. All policies shall include a provision that no act or omission of the Contractor or any party acting under its direction will affect or limit the obligations of the insurance company in respect of any additional insured.

C. All policies shall delete any warranty stating that coverage is null and void (or words to that effect) if the Contractor does not comply with the most stringent regulations governing the work under the Contract.

D. All policies must provide that the insurance company have the duty to adjust a claim and provide a defense.

2. Umbrella Liability Insurance

(i) Coverage – Coverage shall be at least as broad as the underlying primary commercial general liability policy.

(ii) Limits of Liability – See Section 19.1.1.

(iii) Deductibles – The Contractor is responsible for payment of all deductibles and shall include and specifically identify in its bid any amounts that it expects to pay for deductibles.

(iv) Status of the State as Additional Insured – The Policy shall name the State and MSA and any other entities required by MSA as additional insured.

3. Automobile Liability Insurance

(i) Coverage – All vehicles used in conjunction with the Contract shall be insured.

(ii) Limits of Liability – See Section 19.1.1.

(iii) Deductibles – The Contractor is responsible for payment of all deductibles and shall include and specifically identify in its bid any amounts that it expects to pay for deductibles.

4. Workers' Compensation

(i) Coverage – Statutory Workers' Compensation as required by the State of Maryland.

(ii) Limits of Liability – Statutory.

5. Builder's Risk Insurance (and Installation Floater, if not included in Builder's Risk Coverage)

(i) Named Insured – At a minimum the policy shall insure the Contractor, the State, MSA, and any other party with an insurable interest in the Project.

(ii) Coverage – All risks of direct physical loss of or damage to the property (including without limitation perils of flood). Coverage shall be as broad as possible with respect to both covered property interests and covered locations. All covered locations shall be named, and shall include the contract number and project description. Coverage applies to all materials, supplies, and equipment that are consumed on or intended for State of Maryland specific installation in the Project while such materials, supplies and equipment are located at the Project site. If the Builder's Risk Policy does not cover materials onsite that have not yet been installed, Contractor shall also provide an Installation Floater. Contractor shall comply with any requirements in the Policy for project reports by the Contractor to the insurance company. The Builder's Risk Policy shall be endorsed:

(a) waiving the insurance company's rights of recovery under subrogation against all insureds and additional insureds on the policy;

(b) to make MSA a Loss Payee for all claims; and

(c) to delete any provisions that void coverage with respect to MSA for acts or omissions of the Contractor or any other party.

(iii) Limits of Liability – Full replacement cost of the structure under construction, plus debris removal coverage and ordinance coverage for all risk perils, and cost of materials onsite that have not yet been installed. Any sub-limits must be clearly identified, and are subject to prior approval by MSA.

(iv) Deductibles – The Contractor is responsible for payment of all deductibles and shall include and specifically identify in its bid any amounts that it expects to pay for deductibles.

ARTICLE 20
TERMINATION & EVENTS OF DEFAULT

Section 20.1 Termination for Convenience

20.1.1 The performance of work under this contract may be terminated by MSA in accordance with this clause in whole, or from time to time in part, whenever MSA shall determine that such termination is in the best interest of MSA or the State. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work is terminated and the time when such termination becomes effective.

20.1.2 After receipt of a Notice of Termination, and except as otherwise directed by the Project Manager, the Contractor shall:

- (a) Stop work as specified in the Notice of Termination;
- (b) 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 contract as is not terminated;
- (c) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (d) Assign to MSA, in the manner, at times, and to the extent directed by the Project Manager, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case MSA or the State 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;
- (e) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Project Manager, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;
- (f) Transfer title and deliver to MSA or the State, in the manner, at the times, and to the extent, if any, directed by the Project Manager, (i) the fabricated or un-fabricated parts, work in process, 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 (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to MSA;
- (g) 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 Project Manager, any property of the types referred to in (f) above; provided, however, that the Contractor (i) may not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Project Manager; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by MSA or the State to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Project Manager may direct;
- (h) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(i) Take any action that may be necessary, or as the Project Manager may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which MSA or the State has or may acquire an interest.

20.1.3 The Contractor shall submit to the Project Manager a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Project Manager, and may request MSA to remove them or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, MSA shall accept title to these 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 Project Manager 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 before final settlement.

20.1.4 After receipt of a Notice of Termination, the Contractor shall submit to the Project Manager his termination claim, in the form and with certification prescribed by the Project Manager. This claim shall be submitted promptly but in no event later than three (3) months from the effective date of termination, unless one or more extensions in writing are granted by the Project Manager, upon request of the Contractor made in writing within the one-year period or authorized extension thereof. However, if the Project Manager determines that the facts justify such action, it may receive and act upon any such termination claim at any time after the three-month period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Project Manager may determine the claim at any time after the one-year period or any extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Project Manager may determine, on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

20.1.5 Subject to the provisions of Section 20.1.4 the Contractor and the Project Manager may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Cost of the Work as reduced by the amount of payments otherwise made and as further reduced by the amount of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in Section 20.1.6, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Project Manager to agree upon the whole amount to be paid to the Contractor 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 that may be agreed upon to be paid to the Contractor pursuant to this paragraph.

20.1.6 In the event of the failure of the Contractor and the Project Manager to agree as provided in Section 20.1.5 above upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Project Manager shall pay to the Contractor the amounts determined by the Project Manager as follows, but without duplication of any amounts agreed upon in accordance with Section 20.1.5:

- (a) for Work performed prior to the effective date of the Notice of Termination:
 - (i) the cost of such Work;

(ii) the supplies and materials accepted by Owner (or sold or acquired as provided in Section 20.1.2(g) above) and for which payment has not theretofore been made;

(b) the total of:

(i) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto to the extent they are separate or additional costs to which the Contractor would be entitled under the contract if not terminated in whole or in part pursuant to the Section, but exclusive of any costs attributable to supplies or services paid or to be paid for under Section 20.1.6(a) hereof;

(ii) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph 20.1.2(e) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors before the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (i) above); and

(iii) a sum, as profit on (i) above, determined by the Project Manager to be fair and reasonable; provided, however, that if it appears that the contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (iii) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(c) the reasonable cost of settlement accounting, legal, clerical and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract.

The total sum to be paid to the Contractor under (a) and (b) of this paragraph shall not exceed the total Contractor's Compensation as reduced by the amount of payments otherwise made and as further reduced by the amount of work not terminated. Except for normal spoilage, and except to the extent that the State shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in Section 20.1.6(a) and (b)(i) above, the fair value, as determined by the Project Manager, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the State or to a buyer pursuant to Section 20.1.2(g).

(d) Costs claimed, agreed to, or determined pursuant to Sections 20.1.4, 20.1.5, and 20.1.6 (a), (b) and (i) hereof shall be in accordance with COMAR 21.09 (Contract Cost Principles and Procedures) as in effect on the date of this contract.

(e) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Project Manager under Sections 20.1.4, 20.1.6 (a), (b) or 20.1.6(g) hereof, except that if the Contractor has failed to submit his claim within the time provided in Sections 20.1.4 or 20.1.6(g) (hereof, and has failed to request extension of the time, he shall have no right of appeal. In any case where the Project Manager has made a determination of the amount due under Sections 20.1.4, 20.1.6 (a), (b) or (g) hereof, MSA or the State shall pay to the Contractor the following: (a) if there is no right of appeal hereunder or if no

timely appeal has been taken, the amount so determined by the Project Manager, or (b) if an appeal has been taken, the amount finally determined on such appeal.

(f) In arriving at the amount due the Contractor under this clause there shall be deducted (a) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (b) any claim which MSA or the State may have against the Contractor in connection with this contract, and (c) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to MSA or the State.

(g) If the termination hereunder be partial, the Contractor may file with the Project Manager a claim for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause shall be asserted within ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the Project Manager.

(h) MSA or the State 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 Contractor in connection with the terminated portion of this contract whenever in the opinion of the Project Manager the aggregate of such payments shall be within the amount to which the Contractor 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 clause, such excess shall be payable by the Contractor to MSA or the State 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 Contractor to the date on which such excess is repaid to the State; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or a later date as determined by the Project Manager by reason of the circumstances.

(i) Unless otherwise provided for in this contract, or by applicable statute, the Contractor shall—from the effective date of termination until the expiration of three years after final settlement under this contract—preserve and make available to MSA and the State at all reasonable times at the office of the Contractor but without direct charge to MSA or the State, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Project Manager, reproductions thereof.

Section 20.2 Events of Default

20.2.1 If the Contractor:

(a) Fails to proceed with the Work within ten (10) business days after the issuance of the NTP to Proceed for the entire Project as set forth in Section 9.1;

(b) 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,

(c) 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;

(d) 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 Contractor, if the Contractor does not diligently pursue a cure and achieve a cure within thirty (30) days;

(e) Stops the Work for a reason other than one expressly set forth in this Agreement, and does not rectify such breach within seven (7) days after written notice thereof;

(f) Makes a general assignment for the benefit of its creditors.

(g) Permits a receiver, the trustee or custodian to be appointed on account of its insolvency.

(h) Does not make prompt payments to its Trade Contractors, Subcontractors or suppliers, except for hold backs based on bona fide claims.

(i) Files a petition for relief under an applicable Bankruptcy Code, or

(j) If a petition for relief is filed against Contractor by its creditors under an applicable Bankruptcy Code and such petition is not vacated within sixty (60) days thereafter.

(k) Fails to perform within the time specified herein or any extension thereof.

(l) Fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Project Manager may authorize in writing) after receipt of notice from the Project Manager specifying such failure,

Section 20.3 Termination for Default

Upon an Event of Default, MSA may, subject to the provisions of paragraph (3) of this Section, by written notice of default to the Contractor, terminate the whole or any part of this contract.

20.3.1 In the event MSA terminates this contract in whole or in part as provided in paragraph 1 of this Section, MSA may procure substitute performance upon terms and in whatever manner the Project Manager may deem appropriate, and the Contractor shall be liable to MSA for any excess costs for substitute performance; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

20.3.2 Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the State in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform shall be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if the default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be

liable for any excess costs for failure to perform unless substitute performance for the subcontractor was obtainable from another source in sufficient time to permit the Contractor to meet the performance schedule.

20.3.3 If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of MSA, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

20.3.4 If this contract is terminated as provided in paragraph 1 of this Section, MSA, in addition to any other rights provided in this Section may require the Contractor to transfer title and deliver to MSA, in the manner, at the times, and to the extent, if any, directed by the Project Manager, (a) 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 (b) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to MSA; and the Contractor shall, upon direction of the Project Manager, protect and preserve property in the possession of the Contractor in which MSA has an interest. Payment for completed supplies delivered to and accepted by MSA shall be at actual cost. Payment for manufacturing materials delivered to and accepted by MSA and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Project Manager; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." MSA may withhold from amounts otherwise due the Contractor hereunder such sum as the Project Manager determines to be necessary to protect MSA against loss because of outstanding liens or claims of former lien holders.

20.3.5 The rights and remedies of MSA provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

20.3.6 As used in paragraph (3) of this clause, the terms, "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

20.3.7 Prior to and after the Contract completion date, MSA may withhold an amount equal to liquidated damages whenever the progress of construction is such that, due to the fault or responsibility of the Contractor, the Contractor, in the judgment of MSA, is behind schedule so as not reasonably to be able to complete the contract on time. Due account may be taken of excusable delays and for delays for which MSA or its direct agents or contractors are responsible subject to the provisions of Section 11.2.

20.3.8 If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as shall insure its completion within the time specified in this Contract, or any extension thereof, or fails to complete said work within this time, MSA may, by written notice to

the Contractor, terminate the Contractor's right to proceed with the work or the part of the work as to which there has been delay. In this event MSA may take over the work 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 therefor. Whether or not the Contractor's right to proceed with the work is terminated, the Contractor and its sureties shall be liable for any damage to MSA resulting from the Contractor's refusal or failure to complete the Work within the specified time.

ARTICLE 21
SUSPENSION OF WORK

Section 21.1 Suspension of Work

21.1.1 MSA unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for a period of time as MSA may determine to be appropriate for the convenience of MSA or the State.

21.1.2 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 MSA in the administration of this contract, or by MSA's failure to act within the time specified in this contract (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 contract (excluding profit) necessarily caused by an unreasonable suspension, delay, or interruption and the contract 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 or negligence of the Contractor or (2) for which an equitable adjustment is provided for or excluded under any provision of this contract.

21.1.3 No claim under this Section 21 shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Project Manager 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 the contract.

ARTICLE 22
MBE LIQUIDATED DAMAGES

22.1.1 This contract requires the Contractor to make good faith efforts to comply with the MBE Program and contract provisions with respect to subcontractors. The Owner and the Contractor 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 Contractor does not make good faith efforts to comply with the requirements of the MBE Program and MBE contract provisions. Because the precise dollar amount of such damages is impossible to determine, Contractor agrees upon a determination by Owner that Contractor failed to comply with one or more of the specified requirements of the MBE Program, related contract provisions, or the prompt payment requirements, Contractor shall pay liquidated damages to Owner calculated as follows:

<u>MBE COMPLIANCE</u>	
<u>COMPLIANCE FAILURE</u>	<u>LIQUIDATED DAMAGES CALCULATION</u>
(a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B(3)	\$120 per day until the monthly report is submitted as required.
(b) Failure to include in its agreements with an MBE subcontractor a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B(4)	\$60 per MBE subcontractor
(c) Failure to comply with COMAR 21.11.03.12 in terminating, cancelling 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 firm and the dollar value of the work actually performed by that MBE firm under this Agreement.
(d) Failure to meet the Contractor's total MBE participation goal and sub-goal 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, MSA reserves the right to terminate the contract and exercise all other rights and remedies provided in the contract or by law.

ARTICLE 23
AUDITS BY OWNER & RECORD RETENTION

23.1.1 Access to Contractor's Books and Records: The Contractor 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 Contractor involving transactions related to this Agreement.

23.1.2 Access to Trade Contractor's Books and Records: The Contractor agrees to include in all Trade Contracts a provision to the effect that the Trade Contractors, Subcontractors and Suppliers agree that the Owner or any of its duly authorized representatives shall, until expiration of three (3) years any pertinent books, documents, papers, and records of such Trade Contractors, involving transactions related to the Project.

23.1.3 Retention of Records: The Contractor shall retain and maintain all records and documents relating to this Agreement for three (3) 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 Project Manager or designee, at all reasonable times.

ARTICLE 24 DISPUTES

24.1.1 Except as otherwise may be provided by law, all disputes arising under or as a result of a breach of this contract that are not disposed of by mutual agreement between the Contractor and MSA's Project Manager shall be resolved in accordance with this Article.

24.1.2 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 contract terms, or other relief, arising under or relating to this contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this Article. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed as to liability or amount, it may be converted to a claim for the purpose of this Article.

24.1.3 A claim shall be made in writing and submitted to the MSA Project Manager identified in Section 28.19 for decision within thirty days of when the basis of the claim was known or should have been known, whichever is earlier.

24.1.4 When a claim cannot be resolved by mutual agreement, the Contractor shall submit a written request for final decision to the MSA Project Administrator identified in Section 25.19. The written request shall set forth all the facts surrounding the controversy.

24.1.5 The Contractor shall be afforded an opportunity to be heard by the Project Administrator and to offer evidence in support of its claim.

24.1.6 The Project Administrator shall render a written decision on all claims within ninety (90) days of receipt of the Contractor's written claim, unless the Project Administrator determines that a longer period is necessary to resolve the claim. If a decision is not issued within ninety (90) days, the Project Administrator shall notify the Contractor of the time within which a decision shall be rendered and the reasons for such time extension. The decision shall be furnished to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The Project Administrator's decision shall be deemed the final action of the MSA.

24.1.7 The Project Administrator's decision shall be final and conclusive without prejudice to the rights of the Contractor to institute suit after completion of the Work in a court of competent jurisdiction for losses incurred by Contractor as a result of the Project Administrator's decision. Contractor hereby waives any rights that it may have at any time to institute suit or file other claims or causes of action, at law or in equity, 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.

24.1.8 Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the contract in accordance with the Project Administrator's decision.

ARTICLE 25 STATE TERMS

Section 25.1 General State Terms

25.1.1 Applicable Law. The provisions of this Contract shall be governed by the laws of the State of Maryland and the parties hereto expressly agree that the courts of the State of Maryland shall have jurisdiction to decide any question arising hereunder after all administrative remedies, if any, have been exhausted.

25.1.2 Amendment. This Contract may be amended by and only by an instrument executed and delivered by each party hereto

25.1.3 Assignment. This Contract may not be assigned by either Party, in whole or in part without the written consent of the other; provided however, that MSA may assign any or all of its rights under this Contract to the State of Maryland, or any agency or department thereof. The Contractor 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 Contractor

25.1.4 Incorporation by Reference. All terms and conditions and any changes thereto, are made a part of this Contract.

25.1.5 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 Contract shall, during the pendency or term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

25.1.6 Articles and Headings. The Article and Section headings contained in this Contract are solely for convenience of reference and shall not affect the meaning or interpretation of this Contract or provision thereof.

Section 25.2 Non-Discrimination Provisions

25.2.1 Nondiscrimination in Employment. Contractor agrees 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 and 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.

25.2.2 Commercial Nondiscrimination. As a condition of entering into this agreement, the company 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, the company may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company 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 nothing contained in this clause shall prohibit or limit otherwise lawful

efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. The company understands and agrees 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 the company 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.

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 the company under Title 19 of the State Finance and Procurement Article, as amended from time to time, the company agrees to: provide to the State within 60 days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the company 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 the contractor on each subcontract or supply contract. The company 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 is requested by the State. The company understands and agrees that violation of this clause shall be considered a material breach of this agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

Section 25.3 Disclosures and Ethics

25.3.1 Financial Disclosure. Contractor shall comply with State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which requires that every business that enters into contracts, leases or other agreements with the State and receives in the aggregate \$200,000 or more during a calendar year shall, within 30 days of the time when the \$200,000 is reached, file with the Secretary of State certain specified information to include disclosure of beneficial ownership of the business.

25.3.2 Statement of Political Contributions. Contractor shall comply with the Election Law Article, Title 14 Subtitle 1, Md. Code Ann., which requires that a person doing public business with the State, shall file a statement with the State Board of Elections as provided in section 14-104. Generally, this applies to every person that enters into contracts, leases, or other agreements with the State of Maryland or a political subdivision of the State, including its agencies, during a calendar year in which the person receives in the aggregate \$200,000 or more, shall file with the State Board of Election 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.

25.3.3 Anti-Bribery. Contractor warrants that neither it nor any of its officers, directors, or partners nor any of its employees who are directly involved in obtaining or performing contracts with any public body has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or of the federal government or has engaged in conduct since July 1, 1977, which would constitute bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the federal government.

25.3.4 Contingent Fees. Contractor 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 Contractor, 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 Contract.

Section 25.4 Subject to Appropriations

25.4.1 If funds are not appropriated or otherwise made available to MSA to support continuation in any fiscal year succeeding the first fiscal year, this Contract shall terminate automatically as of the beginning of the fiscal year for which funds are not 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 Contractor and the Owner from future performance of this Agreement, but not from their rights and obligations existing at the time of termination. The Contractor 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 Contractor 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. Contractor may not recover anticipatory profits or costs incurred after termination.

Section 25.5 Drug and Alcohol Free Workplace

28.5.1 The Contractor warrants that the Contractor shall comply with COMAR 21.11.08 Drug and Alcohol Free Workplace, and that the Contractor shall remain in compliance throughout the term of this Contract.

Section 25.6 Indemnification

25.6.1 Contractor shall be responsible for, and shall defend, indemnify and hold harmless the State of Maryland, MSA, the Baltimore Ravens Limited Partnership and their members, officers, agents, and employees against and from, any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs, expenses, proceedings of any kind whatsoever, and costs of any kind or type (including but not limited to reasonable attorney's and expert's fees and costs), arising directly or indirectly from the Contractor's or its consultant's activities, or those of its subcontractors, sub-consultants, employees, and invitees, in connection with the work. The foregoing shall not apply to the gross negligence or willful misconduct of MSA pursuant to the Maryland Tort Claims Act, State Government Article -Title 12 subtitle 1.

Neither the State nor MSA shall not assume any obligation to indemnify, hold harmless, or pay attorneys' fees that may arise from or in any way be associated with the performance of this Contractor.

Section 25.7 Tax Exemption

25.7.1 MSA is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. Where a Contractor is required to furnish and install material in the construction or improvement of real property in performance of a contract, the Contractor shall pay the Maryland Sales Tax and the exemption does not apply.

Section 25.8 No Delegation of Authority

25.8.1 Properties in and upon which the Contractor executes the Work are owned by, or under the control of Baltimore City or its housing authority. The Contractor shall not sign, approve, or execute any manifests, certificates, other documents required by the Environmental Protection Agency, or any state, for transport and deposit of materials deemed hazardous or certified non-hazardous.

Section 25.9 Governmental Immunities

25.9.1 Nothing in the preceding provision, or in any other term or provision in this Agreement, shall waive, limit, or otherwise affect in any way the limitations, immunities or notice requirements applicable to claims against MSA as unit of the State of Maryland.

Section 25.10 Tort Claims Acts

25.10.1 Contractor agrees for itself and for its insurers, that neither Contractor nor its insurers may raise or use any governmental 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 Owner or Client, unless requested by Owner.

Section 25.11 Independent Contractor Status

25.11.1 The Contractor is an independent Contractor and neither the Contractor nor its employees, agents or representatives shall be considered employees, agents or representative of the State or of MSA. Nothing contained in this Contract is intended or should be construed as creating the relationship of co-partners, joint venturers or an association between the State or MSA and the Contractor.

Section 25.12 Remedies Cumulative

25.12.1 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 Contractor; 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 Contractor.

Section 25.13 No Arbitration

25.13.1 No Arbitration: No dispute or controversy under this Agreement shall be subject to binding arbitration.

Section 25.14 Approvals

25.14.1 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 Contractor that such approvals have been obtained.

Section 25.15 No Third Party Beneficiaries

25.15.1 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 Contractor. There are no intended third party beneficiaries of this Agreement.

Section 25.16 Owner Approval

25.16.1 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.

Section 25.17 Time of the Essence

25.17.1 Time is of the essence in the performance of the obligations of the Contractor under this Agreement.

Section 25.18 Counterparts

25.18.1 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Section 25.19 Contract Representatives

25.19.1 The following individuals are designated as representatives for the purposes of the routine management of the Agreement and communication between the parties:

MSA Project Manager:

MSA Project Administrator:

Section 25.20 Notice

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 300

Baltimore, MD 21201-2435
Attention:

If to the Contractor:

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 Section. All notices shall be deemed given upon receipt thereof or at the time delivery is refused.

[Remainder of Page Intentionally Left Blank]

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

OWNER:

ATTEST:

MARYLAND STADIUM AUTHORITY

By: _____

By: _____ (SEAL)

Michael J. Frenz, Executive Director

ATTEST:

CONTRACTOR

By: _____

By: _____ (SEAL)

Authorized Officer

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 ID Number) _____ SDAT

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 the business to file with the Secretary of State of Maryland certain specified information, including disclosure of beneficial ownership of the business, within 30 days of the date the aggregate value of any contracts, leases, or other agreements that the business enters into with the State of Maryland or its agencies during a calendar year reaches \$200,000.

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 Project Manager 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)

[PROJECT NAME]

EXHIBIT A

REQUEST FOR PROPOSAL

[PROJECT NAME]

EXHIBIT B
CONTRACTOR'S TECHNICAL PROPOSAL

[PROJECT NAME]

EXHIBIT C
CONTRACTOR'S FINANCIAL PROPOSAL

[PROJECT NAME]

EXHIBIT D

MBE GOALS & REPORTING FORMS

Owner maintains a web-based MBE compliance system (*B2G*). 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 MBE firms participating on the project. Contractor, its' first tier Trade Contractors, and all MBE Trade Contractors and Subcontractors will be required to use the web-based system to submit Project information including, but not limited to, certification of payments made and received by MBE firms. Owner may reasonably require additional information related to the Project to be provided electronically through the system at any time during the Project.

The MBE Participation Goal for the Project is defined in the RFP. See attached MBE forms required for monitoring and reporting of MBE participation and payments.

Contractor shall:

- (1) Submit monthly to Owner a report listing (a) payments made to each MBE subcontractors in the preceding thirty (30) days, and (b) any unpaid invoices over thirty (30) days old received from certified MBE subcontractor, together with the reason payment has not been made. This is to be included in the Project Progress Report (**Exhibit F**).
- (2) Include in its agreements with its certified MBE subcontractors a requirement that the certified MBE subcontractors submit monthly to Owner a report identifying the prime contract, and listing:
 - a. Payments received from Contractor in the preceding thirty (30) days, and
 - b. 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.

MBE INSTRUCTIONS

PLEASE READ BEFORE COMPLETING THIS DOCUMENT

This form includes Instructions and the MBE Participation Schedule which must be submitted with the bid/proposal. This form should only be used when submitting bids/proposals to the Contractor.

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 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. A firm whose MBE certification application is pending may not be counted.
4. Please refer to the MDOT MBE Directory at <https://mbe.mdot.maryland.gov/directory/> 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 codes, please visit <https://www.census.gov/eos/www/naics/>. 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. **CAUTION:** 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. 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.
6. 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.

7. **Materials and Supplies: New Guidelines Regarding MBE Participation.**

- ✓ **Regular Dealer** (generally identified as a wholesaler or supplier in the MDOT Directory): Up to 60% of the costs of materials and supplies provided by a certified MBE may be counted towards the MBE participation goal(s) if such MBE is a Regular Dealer of such materials and supplies. Regular Dealer is defined as a firm that owns, operates, or maintains a store, a warehouse, or any other establishment in which the materials, supplies, articles, or equipment are of the general character described by the specifications required under the contract and are bought, kept in stock, or regularly sold or leased to the public in the usual course of business; and does not include a packager, a broker, a manufacturer's representative, or any other person that arranges or expedites transactions.

Example for illustrative purposes of applying the 60% rule

Overall contract value: \$2,000,000

Total value of supplies: \$100,000

Calculate Percentage of Supplies to overall contract value:

\$100,000 divided by \$2,000,000 = 5%

Apply 60% Rule - Total percentage of Supplies/Products $5\% \times 60\% = 3\%$

3% would be counted towards achieving the MBE Participation Goal and Subgoal, if any, for the MBE supplier in this example.

- ✓ **Manufacturer**: A certified MBE firm's participation may be counted in full if the MBE is certified in the appropriate NAICS code(s) to provide products and services as a manufacturer.
- ✓ **Broker**: With respect to materials or supplies purchased from a certified MBE that is neither a manufacturer nor a regular dealer, a unit may apply the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, fees, or transportation charges for the delivery of materials and supplies required on a procurement toward the MBE contract goals, provided a unit determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. A unit may not apply any portion of the costs of the materials and supplies toward MBE goals.
- ✓ **Furnish and Install and other Services**: The participation of a certified MBE supplier, wholesaler, and/or regular dealer certified in the proper NAICS code(s) to furnish and install materials necessary for successful contract completion may be counted in full. Includes the participation of other MBE service providers in the proper NAICS code(s) may be counted in full.

8. **Dually certified firms**. An MBE that is certified in more than one subgroup category may only be counted toward goal fulfillment of ONE of those categories with regard to a particular contract.

Example: A woman-owned Hispanic American (dually certified) firm may be used to fulfill the women-owned OR Hispanic American subgoal, but not both on the same contract.

9. 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 sufficiently prior to the submission due date.

MBE PARTICIPATION AFFIDAVIT AND SCHEDULE

Set forth below are the (i) certified MBEs I intend to use, (ii) the percentage of the total Contract value 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.

<p>MBE Prime Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><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</p> <p>NAICS code: _____</p>	<p>Please refer to Item #7 of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%) <input type="checkbox"/> Manufacturer (count 100%) <input type="checkbox"/> Broker (count reasonable fee/commission only) <input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</p> <p>A. Contract amount of subcontract where the MBE Prime firm is being used for manufacturer, furnish and install, and/or services (excluding products / services from suppliers, wholesalers, regular dealers and brokers): \$ _____</p> <p>B. Contract amount for items of work where the MBE Prime firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule). Total percentage of Supplies/Products \$ _____ x 60% = \$ _____</p> <p>C. Amount of fee where the MBE Prime firm is being used as broker (count reasonable fee/commission only):\$ _____</p> <p>Description of the Work to be performed with MBE prime's own forces: _____</p>
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SECTION A: For MBE Prime Contractors ONLY (including MBE Primes in a Joint Venture)

SECTION B: For all Contractors (including MBE Primes and MBE Primes in a Joint Venture)

<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p>Please refer to Item #7 of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</p> <p>A. Contract amount of subcontract where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers): \$ _____</p> <p>B. Contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule)). Total percentage of Supplies/Products: \$ _____ X 60% = \$ _____</p> <p>C. Amount of fee where the MBE firm is being used as broker (count reasonable fee/commission only): \$ _____</p> <p>Description of the Work to be Performed: _____</p> <p>_____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p>Please refer to Item #7 of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</p> <p>A. Contract amount of subcontract where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers): \$ _____</p> <p>B. Contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule)). Total percentage of Supplies/Products: \$ _____ X 60% = \$ _____</p> <p>C. Amount of fee where the MBE firm is being used as broker (count reasonable fee/commission only): \$ _____</p> <p>Description of the Work to be Performed: _____</p> <p>_____</p>

<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p>Please refer to Item #7 of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</p> <p>A. Contract amount of subcontract where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers): \$ _____</p> <p>B. Contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule)). Total percentage of Supplies/Products: \$ _____ X 60% = \$ _____</p> <p>C. Amount of fee where the MBE firm is being used as broker (count reasonable fee/commission only): \$ _____</p> <p>Description of the Work to be Performed: _____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p>Please refer to Item #7 of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</p> <p>A. Contract amount of subcontract where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers): \$ _____</p> <p>B. Contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule)). Total percentage of Supplies/Products: \$ _____ X 60% = \$ _____</p> <p>C. Amount of fee where the MBE firm is being used as broker (count reasonable fee/commission only): \$ _____</p> <p>Description of the Work to be Performed: _____</p>

CONTINUE ON SEPARATE PAGE IF NEEDED

SIGNATURE PAGE

Bidder/Offeror must sign below

I solemnly affirm under the penalties of perjury that: (i) I have reviewed the instructions in this form; (ii) 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; and (iii) the information contained in this form is true to the best of my knowledge, information and belief.

Bidder/Offeror Name
Authorized Representative
(PLEASE PRINT OR TYPE)

Signature of

Address
Printed Name and Title

City, State and Zip Code

Date

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

[PROJECT NAME]

EXHIBIT E
PREVAILING WAGE SCALE

Owner maintains a web-based prevailing wage compliance system (*LCPTTracker*). The system was designed to provide various work-flow automation features that improve the reporting process for the Project. Contractor and firms performing work on the Project at any level will be required to use the web-based system to submit certified payroll records. Owner may reasonably require additional information related to the Project to be provided electronically through the system at any time during the Project.

Prevailing Wage documents are attached.

EXHIBIT E-1
PREVAILING WAGE
INSTRUCTIONS FOR THE CONTRACTOR

CONTRACT NO.

The Maryland Stadium Authority (“MSA”) requires payment to employees of at least prevailing wage in accordance with State Finance & Procurement Article (“SF”) MD Code Ann. Title 17 subtitle 2 for this Contract. If the employee is an apprentice, payment shall be of at least the rate that the Apprenticeship and Training Council sets for an apprentice based on a percentage of the prevailing wage rate for a mechanic in that trade.

This Exhibit E-1 is attached to and made a part of the Contract.

I. DEFINITIONS.

Terms not otherwise defined herein shall have the meaning ascribed so such terms in the Contract to which this Exhibit is attached.

- (a) The “**Act**” means the Prevailing Wage Act set forth in SF Title 17 subtitle 2.
- (b) “**Apprentice**” has the meaning set forth in SF § 17-201(b).
- (c) “**Employee**” has the meaning set forth in SF § 17-201(f).
- (d) “**Prevailing wage rate**” has the meaning set forth in SF § 17-201(h).

II. PREVAILING WAGE NOTICE.

Consistent with the Act, the Contractor and each subcontractor at any tier shall (1) post in a prominent and easily accessible place at the Project site a clearly legible statement of each prevailing wage rate to be paid under the Contract as shown on the attached Exhibit E; and (2) keep the statement posted during the full time that any employee is employed for work under the Contract.

III. PAYROLL RECORDS.

MSA requires certified payroll records be submitted electronically through its web-based system, LPC Tracker. For instructions on how to register and submit go online to _____ and follow the instructions for registering.

A. When Due.

Within 14 days after the end of each payroll period, the Contractor and each Trade Contractor shall submit electronically a complete copy of the Contractor’s payroll records, and each subcontractor’s payroll records.

B. Certification.

Each copy of the payroll records shall be accompanied by a statement signed by the Contractor or, for the subcontractor's records, by the subcontractor and indicates that (1) the payroll records are correct; (2) the wage rates paid are not less than those shown on the attached Exhibit E; (3) the classification set forth for each employee conforms with the work performed by that employee; and (4) the Contractor or subcontractor has complied with the Act.

C. Contents. Each payroll record shall:

- (1) Contain only information relevant to the Project under this Contract;
- (2) List:
 - (a) The name, address, and telephone number of the Contractor or the subcontractor;
 - (b) The name, location, and project number of the job; and
 - (c) Each employee's:
 - (i) Name and social security number;
 - (ii) Current address, unless previously reported;
 - (iii) Specific work classification;
 - (iv) Daily straight time and overtime hours;
 - (v) Total straight time and overtime hours for the payroll period (tabulated both daily and weekly);
 - (vi) Rate of pay;
 - (vii) Total amount of fringe benefits and the amount of the total that is allocated toward apprenticeship; and
 - (1) When fringe benefits are required, indicate separately the amount of employer contributions to fringe benefit funds and/or programs. The fringe benefits shall be individually identified, but may be tabulated on a separate sheet. When required fringe benefits are paid in cash, add the required fringe benefit amount to the basic hourly rate to obtain the total prevailing wage rate for the employee.
 - (viii) Gross wages.
- (3) Include for each apprentice, proof that the apprentice is in an apprenticeship program; and
 - (a) Registered with the Maryland Apprenticeship and Training Council of the Maryland Department of Labor; and
 - (b) Approved by the Bureau of Apprenticeship and Training of the U.S. Department of Labor.
- (4) All payrolls shall be numbered, beginning at No. 1, and consecutively numbered through the end of the Contract.
- (5) The employee's net pay and the itemized deductions shall be included in all payrolls.

- (6) A Contractor (including the Contractor or any subcontractor) may make deductions that are required by law or required by a collective bargaining agreement (between the Contractor and a bona fide labor organization). Deductions are also permitted if they are identified in a written agreement between the employee and employer that was made at the beginning of employment, provided that the Contractor presents the agreement to MSA before the employee begins working on the Contract
- (7) If the wage determination in Exhibit E lacks a necessary classification the Contractor is responsible to submit the request for the additional classification, with a proposed rate, to MSA prior to the employee's employment at the project.
- (8) Contractor for itself and on behalf of its subcontractors shall report any other information required by MSA.

IV. OVERTIME.

Overtime rates shall be paid by the Contractor and subcontractors under their contracts and agreements with their employees, which in no event shall be less than time and a half the prevailing hourly rate of wages for all hours worked in excess of ten hours in any one calendar day or forty hours in any one calendar week and work performed on Sundays and legal holidays.

Fringe benefits shall be paid for all hours worked, including the overtime hours. However, the fringe benefit amounts may be excluded from the half time premium due as overtime compensation.

V. WORK BY LABORERS.

- (a) A laborer may perform any work that is not ordinarily performed by a mechanic or mechanic's apprentice, but shall be paid the prevailing wage rate for the work performed.
- (b) A laborer receiving the prevailing wage rate for laborers may not perform work ordinarily performed by a mechanic or mechanic's apprentice.
- (c) If a laborer performs work ordinarily performed by any mechanic or mechanic's apprentice, the contractor or subcontractor shall pay the laborer for the entire time of performance of that work at the prevailing wage rate for a mechanic.

VI. SUBCONTRACTORS SHALL COMPLY.

The Contractor shall comply with and cause subcontractors to comply with the Act. Any employee of the Contractor or a subcontractor paid less than the prevailing wage for its classification shall also be entitled to all of the rights provided to employees under the Act.

VII. ENFORCEMENT AND FEES.

A. Violations.

Violations of the Act by the Contractor or its subcontractors may result in certain enforcement actions by MSA and the assessment of certain fees and penalties as shown below.

	VIOLATION	PENALTY OR FEE
1.	Failure to post prevailing wage rates required by Section II herein	\$50 per violation
2.	Late submission of payroll records required by Section III herein.	(a) MSA may postpone processing of a progress payment – or part of a progress payment under Article 21 of the Contract; and (b) Contractor shall be liable for liquidated damages in the amount of \$10 for each calendar day the records are late.
3.	If MSA receives a complaint of a violation in the course of performance under this contract and determines that a provision of the Act has been violated:	MSA may withhold any amount that the Contractor or its subcontractor owes to its employees or to MSA as a result of the violation. The withheld amount shall be used to: (a) pay the affected employees the full amount of wages due them; and (b) the amount the Contractor or subcontractor is liable to MSA for under SF §17-222 (\$20 for each laborer or other employee for each day for which (i) the laborer is paid less than the prevailing wage rate of a mechanic while performing the task required to be performed by a mechanic or a mechanic's apprentice; or (ii) the employee is paid less than the prevailing wage rate.
4.	Contractor (or subcontractor at any tier) knew or reasonably should have known of the Contractor's (or subcontractor at any tier) obligation to pay the prevailing wage rate and that deliberately failed or refused to pay the prevailing wage rate.	Liable to MSA for liquidated damages of \$250 for each laborer or other employee for each day which: (a) the laborer is paid less than the prevailing wage rate of a mechanic while the laborer is performing a task required to be performed by a mechanic or mechanic's apprentice; or (b) the employee is paid less than the prevailing wage rate.
5.	(a) Failure of Contractor to cooperate with investigation, refusal to correct or cooperate with MSA to correct violations, determination by MSA that Contractor is not acting in good faith. (b) Subcontractor failure to cooperate with investigation, refusal to correct or cooperate with MSA or Contractor to correct violations, or determination of MSA that Trade Contractor or subcontractor is not acting in good faith.	(a) May be an Event of Default under the Contract subject to termination. (b) MSA may require Contractor to terminate subcontractor contract. Cost of any associated delays or substitutions shall be the sole responsibility of Contractor and not considered an Owner Change.

B. Remedies Exclusive.

With the exception of number 4(a) and (b) above, MSA agrees that its right to collect liquidated damages and fees as provided in numbers 1 through 3 supersedes and replaces any and all rights of MSA to seek or collect actual damages or other damages for violations of the Act, even if MSA waives or is unable to collect such damages or fees. The foregoing shall not be construed to prevent MSA from withholding or collecting the amounts necessary to compensate any worker paid less than the applicable prevailing wage rate.

C. Contractor Consent.

Contractor expressly agrees that MSA may withhold payment on any invoices as a set-off against amount owed to MSA for liquidated damages or other fees as set forth above and amounts owed to any worker to compensate for being paid less than the applicable prevailing wage rate. Contractor agrees that MSA may wait to assess liquidated damages until Final Completion.

D. MSA May Waive Damages.

MSA may waive the liquidated damages under this Section if MSA determines in its sole discretion that the Contractor has made good faith efforts to comply with the specified requirement or provision or that good cause exists for waiving liquidated damages payable hereunder.

VIII. INVESTIGATION.

A. Generally.

An investigation into a claim for a violation of the Act may include but necessarily be limited to interviews with employees, requests for, and review of additional documents, and observation of work being performed on the Project site. The Contractor shall cooperate fully with all requests by MSA in connection with its investigation of a claim for a violation of the Act, and with MSA's routine due diligence in connection with verifying the accuracy of information provided with the payroll records (e.g. correctness of each classification, ratio of apprentices to mechanics, payment of straight and overtime prevailing wage rates etc.). The Contractor shall also require full cooperation by Trade Contractors and subcontractors.

B. Department of Labor Licensing & Regulation.

The Commissioner of Labor and Industry (the “**Commissioner**”) at the Department of Labor Licensing and Regulation (“**DLLR**”) may receive a prevailing wage complaint directly from an employee or someone acting on their behalf, or by a referral from MSA. The Contractor acknowledges and agrees that MSA may share any documents, records, findings, notes, correspondence, submissions, or other materials relating to the Act in connection with this Contract with the Commissioner. If the Commissioner elects to pursue its own investigation of a prevailing wage violation, Contractor shall cooperate fully with the Commissioner or other staff at DLLR, its officers, agents and employees assigned to such investigation, and shall require each of its Trade Contractors and subcontractors to cooperate as well.

IX. RETALIATION OR DISCRIMINATION PROHIBITED.

Pursuant to SF § 17-224(g) an employer may not discharge, threaten, or otherwise retaliate or discriminate against an employee regarding compensation or other terms and conditions of employment because that employee or an organization other person action on behalf of that employee (1) reports or makes a complaint or otherwise asserts the worker’s rights under the Act; or (2) participates in any investigation, and if applicable, a hearing held by the Commissioner of Labor and Industry at DLLR. An employee so retaliated against or discriminated in violation of SF § 17-224 may file an action and pursue judicial relief.

X. NO DUTY ON MSA.

In addition to any other obligations and responsibilities the Contractor has for its Trade Contractors and subcontractors under this Contract, those obligations and responsibilities extend to and include the Trade Contractors’ and subcontractors’ compliance with the Act. Any fees, damages, amounts withheld from progress or other payments (regardless of payment category), or amounts paid to employees pursuant hereto, whether or not caused by a failure of the Contractor or its Trade Contractors or subcontractors, MSA has no duty or responsibility to attempt to collect amounts due workers or MSA from any source other than progress payments or final payment due to the Contractor. MSA has no duty or responsibility to assist Contractor with its collection or reimbursement from its Trade Contractors or subcontractors. MSA has no other duty or responsibility to mitigate or attempt to mitigate damages or fees which accrue with the passage of time. However, MSA does agree it will work as expeditiously as possible to resolve issues under its review or investigation.

Owner
Maryland Stadium Authority

By: Michael J. Frenz
Executive Director

Contractor
[NAME]

By: [Name}
[Title]

[PROJECT NAME]

EXHIBIT F PROJECT PROGRESS REPORT

The Project Progress Report is to be submitted per Section 6.1 of the Agreement. Submit two (2) hard copies and one (1) electronic copy on a flash drive of the following items, organized and tabbed in the order listed below:

- (a) Schedule Status Report per Section 1.9.4 of **Exhibit J**.
 - (i) Tabular and Graphic Reports per Section 1.9.2 and Section 1.9.3 of **Exhibit J**.
- (b) Cost Status
 - (i) Current Payment Application per **Exhibit L**.
 - (ii) Log of Anticipated Changes (Section 15.2.4 of the Agreement). A log and summary statement showing potential Change Orders which require the MSA's immediate attention.
- (c) Trade Contracts/Subcontracts/Purchase Orders
 - (i) Provide a log of each Trade Contract/Subcontract/Purchase Order issued for the Project including a contract reconciliation summary matrix.
 - (ii) Provide copies of Trade Contracts/Subcontracts/Purchase Orders issued during the month being reported.
 - (iii) Provide copies of any Contract Modifications and/or Amendments issued during the month being reported.
- (d) Project Logs/Reports
 - (i) Contractor's Daily Construction Reports for the month being reported.
 - (ii) Payroll Reports. Certified Payroll reports submitted by each Trade Contractor/Subcontractor and for trade work performed directly by the CM during the month being reported. Provide a statement that completed copies of all payrolls have been submitted electronically to the *LCPTTracker* system and certifying the accuracy of each payroll record thereof as described in **Exhibits E and E-1**.
 - (iii) Safety Log with reports from the month being reported.
 - (iv) RFI Log
 - (v) Submittal Log
 - (vi) CM Completion List (Section 10.1.5 of the Agreement)
 - (vii) Punch List (Section 10.1.6 of the Agreement)
 - (viii) CM QA/QC Log and reports from the month being reported.
 - (ix) MSA QA/QC Log and reports from the month being reported.
- (e) Photographs of work performed during the month being reported.

[PROJECT NAME]

EXHIBIT G
RESERVED

EXHIBIT H

[PROJECT NAME]

EXHIBIT H
CERTIFICATES OF SUBSTANTIAL & FINAL COMPLETION

Certificates of Substantial and Final Completion; see attached.

Maryland Stadium Authority
333 West Camden Street, Suite 500
Baltimore, Maryland 21201

CERTIFICATE OF SUBSTANTIAL COMPLETION

MSA PROJECT NO: _____ CONTRACT DATE: _____

CONTRACTOR NAME: _____

PROJECT NAME: _____

DEFINITION: The date of Substantial Completion on the Work or designation portion thereof is the Date certified by the Owner 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 and amended by the Owner and Contractor 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: _____

EXHIBIT H

This Certificate does not constitute an acceptance of Work not in accordance with the Contract Documents, nor is it a Release of the Contractor's obligations to complete the Work in accordance with the Contract Documents.

ENGINEER agrees to this Certificate of Substantial Completion on:

Date: _____

Architect: _____

By: _____

MSA accepts to this Certificate of Substantial Completion on:

Date: _____

Contractor: _____

MSA: _____

CONTRACTOR agrees to this Certificate of Substantial

Date: _____

Contractor: _____

By: _____

Maryland Stadium Authority
333 West Camden Street, Suite 500
Baltimore, Maryland 21201

CERTIFICATE OF FINAL COMPLETION

MSA PROJECT NO: _____ CONTRACT DATE: _____

CONTRACTOR NAME: _____

PROJECT NAME: _____

DEFINITION: The date of Final Completion is the date on which the Project has achieved final completion in strict compliance with the terms of the Contract Documents including: all of the items on the Punch List pursuant to Section 10.1.6 of the Agreement) have been fully completed and the Contractor has completely and satisfactorily performed all of its obligations and the Certificate of Final Completion has been issued.

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 Completion of the Project or portion thereof designated above is established as: _____

The Contractor has no claims or liens against the Project or the Owner.

The responsibilities of the Owner and Contractor for security, maintenance, heat utilities, and 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 the Contractor's obligations to complete the Work in accordance with the Contract Documents.

EXHIBIT H

[PROJECT NAME]

EXHIBIT I

[PROJECT NAME]

EXHIBIT J
SCHEDULES, REPORTS and SCHEDULE OF VALUES

See attached.

[PROJECT NAME]

SCHEDULES, REPORTS AND SCHEDULE OF VALUES

1.1 GENERAL

- (a) The requirements in this Exhibit shall be coordinated with the requirements of the Agreement and other Sections of the RFP/Contract Documents.
- (b) The work shall be planned, executed and reported using the Critical Path Method (CPM) in calendar days.
- (c) The CONTRACTOR shall engage all Subcontractors and/or Suppliers that will perform work on the project in the preparation, cost loading and maintenance of the Preliminary Construction Schedule and the Detailed Construction Schedule to ensure accuracy and concurrence among the concerned parties.
- (d) With each schedule submission, the CONTRACTOR shall ensure that the critical path of the work is clearly identified, logical and realistic.
- (e) MSA has included in its budget a reasonable amount of time for project management and facilities assistance. Any additional MSA time required due to faults of the CONTRACTOR will be billed back to the CONTRACTOR.

1.2 CONTRACTOR'S RESPONSIBILITY FOR THE SCHEDULE

- (a) The CONTRACTOR is solely responsible for the Construction Schedule. MSA's acceptance of a schedule submitted by the CONTRACTOR in no way makes MSA insurers of success of the CONTRACTOR's time performance, or liable for time or cost overruns flowing from the shortcomings of a CONTRACTOR-authored schedule. MSA disclaims and the CONTRACTOR waives any MSA obligation or liability by reason of MSA's acceptance of the CONTRACTOR's schedule submissions.
- (b) Should the CONTRACTOR fail to define any element of construction, activity, or logic, and the MSA review does not detect this omission or error, such omission or error, when discovered by the CONTRACTOR or MSA, shall be corrected by the CONTRACTOR before the next monthly schedule update and shall not be cause for delay of completion of construction within the required time. The CONTRACTOR acknowledges that MSA is not required or otherwise obligated to discover errors or omissions in the CONTRACTOR's proposed schedule. MSA's acceptance of a schedule does not relieve the CONTRACTOR of its responsibility for the schedule.
- (c) Inclusion of activities and/or specific items in the Construction Schedule does not relieve the CONTRACTOR from the responsibility for providing proper notice to MSA, or any other applicable party, or for properly coordinating the work with MSA, Authorities Having Jurisdiction or any other party.

1.3 DEFINITIONS

- (a) Activity: One single identifiable task in the Project.
- (b) Calendar Day: One 24 hour period measured from midnight to midnight, that includes every day in a month.
- (c) Construction Phase DMilestones: The dates indicated in the most current Detailed Construction Schedule accepted by MSA for the completion of defined portions and/or phases of construction. Show milestones in the schedule as zero duration activities with "Finish-No-Later-Than" dates. Milestones shall represent only the major items of construction work or interface dates. Milestones are considered essential to the satisfactory performance of this Contract and to the coordination of work on the Project.
- (d) Construction Schedule: The document required for planning and control of the timely execution of the Project.
- (e) Critical Activity: Tasks with no (zero) total float time which determine the critical path and control Project completion.
- (f) Critical Path Method (CPM): A construction scheduling technique using network analysis diagrams to plan and organize construction activities in an orderly manner along the critical path.
- (g) Detailed Construction Schedule: The schedule required for planning and control of Construction Phase activities.
- (h) Duration: The amount of time assigned to the completion of an activity or task.
- (i) Event: The starting or ending point of an activity.
- (j) Float: Time available for a given activity in excess of its estimated duration as it relates to the Critical Path. It represents the amount of leeway available in scheduling an activity.
 - (i) Free float: The amount of time an activity can be delayed without adversely affecting the early start of its successor activity.
 - (ii) Total float: The amount of time an activity can be delayed without adversely affecting the overall time for Project completion.
- (k) Network: A network diagram is a graphic representation showing the relationship of activities and events in the correct sequences required to complete the Project within the agreed upon Construction Schedule.C
- (l) Preliminary Construction Schedule: The schedule to be submitted by the CONTRACTOR required for planning and control of construction activities until the Detailed Construction Schedule is submitted and accepted by MSA.
- (m) Work Days: The days during which the CONTRACTOR intends that construction work will be performed, excluding Saturdays, Sundays, and holidays that are submitted by the CONTRACTOR and agreed to by MSA. The list of holidays shall be submitted to MSA in writing and shall accompany the Preliminary Construction Schedule.

1.4 QUALITY ASSURANCE

- (a) CONTRACTOR's Scheduler: The CONTRACTOR shall designate an authorized representative in its firm who will be responsible for assisting in the preparation and updating of the Construction Schedule and to review/report the progress of the Project to MSA. The CONTRACTOR's representative shall have direct project control and complete authority to act on behalf of the CONTRACTOR in fulfilling requirements of this Exhibit, and such authority shall not be interrupted throughout the duration of the Project.
- (b) Computer Program: CThe Construction Schedule shall be prepared using Primavera Project Planner software by Oracle Corporation or approved equal.
 - (i) Upon request from MSA, the CONTRACTOR shall provide a license(s) for use by MSA employees and/or its designated agent(s). Each license shall provide the ability to receive, open, read and fully utilize the files created in the scheduling software used on the Project. The CONTRACTOR shall be reimbursed the actual cost of each license requested.

1.5 PRELIMINARY CONSTRUCTION SCHEDULE

- (a) Within fourteen (14) calendar days of receiving a Notice To Proceed (NTP), the CONTRACTOR shall submit a Preliminary Construction Schedule.
- (b) The Preliminary Construction Schedule shall be a CPM network diagram containing detail activities, including "Key Procurement Items" listed below, for the first ninety (90) days of construction and summary activities for the period after the first ninety (90) days until the end of the Project. The work for each Phase or area shall be represented by at least one summary activity such that the Preliminary Construction Schedule indicates construction work through Substantial Completion.
- (c) At a minimum, the schedule shall include the following milestones.
 - (i) Construction NTP
 - (ii) Substantial Completion
 - (iii) Final Completion
- (d) At a minimum, each Activity shall be coded to allow the schedule to grouped or sorted by the following.
 - (i) Responsibility (i.e. CONTRACTOR; CONTRACTOR's Specific Subcontractor/Supplier/etc.; MSA; MSA's Third Party QA/QC Firm; Owner/Client; Authority Having Jurisdiction, etc.)
 - (ii) Activity Type (i.e. Submittal; Construction; Testing/Inspection; Warranty; Administrative; etc.)

(iii) Area / Level / Room / Etc.

(iv) Phase

- (e) Review and approval of submittals: Unless defined otherwise, allow no less than twenty-one (21) calendar days for the review and approval of structural, mechanical, electrical, plumbing and life-safety system submittals. Allow no less than fourteen (14) calendar days for the review and approval of all other submittals. Adjust logic and/or duration of submittal activities as directed by MSA in the event that MSA determines that the CONTRACTOR's proposed submittal schedule assumes an overly concentrated period of submittal review.
- (f) Except for those activities that represent procurement tasks, activity durations for tasks included in the Preliminary Construction Schedule are not to exceed thirty (30) calendar days.
- (g) Delivery activities are to be represented by finish milestones.
- (h) A written detailed description of the CONTRACTOR's proposed construction methodology, including a proposed general sequencing plan shall accompany the submission of the Preliminary Construction Schedule.
- (i) Tabulation of Key Procurement Items: For all "key" (major equipment and materials and long-lead (over sixteen (16) weeks, from order placement to delivery) items fabricated or supplied for construction, include a tabular report detailing these items and indicating schedule dates and responsible party for the following related activities:
 - (i) Preparation of submittals.
 - (ii) Review and approval of submittals.
 - (iii) Manufacture or fabrication.
 - (iv) In-plant testing.
 - (v) Packaging and loading, where applicable.
 - (vi) Shipment.
 - (vii) Delivery.
 - (viii) Receipt, inventory, off-loading, warehousing.
 - (ix) Handling and re-handling.
 - (x) Erection or installation.
 - (xi) Testing and inspection.
 - (xii) Commissioning.
 - (xiii) Final inspection of installed equipment and materials.

- (j) CTabulation of Submittals: Tabulate by date of submittal and responsible party required during the first ninety (90) days of construction. List those submittals required to maintain orderly progress of construction and those required early because of long lead-time for manufacture/fabrication or extended transportation/delivery requirements.
- (k) Distribution: Provide five (5) copies as well as the electronic files to MSA. Distribute the Preliminary Construction Schedule to the Trade Contractors and suppliers that need to know about the timing of construction activities contained in the schedule.

1.6 SCHEDULE UPDATES

- (a) Updates to the schedule shall be presented by the CONTRACTOR and discussed at all periodic Progress Meetings or as designated by MSA but in no case less than monthly. Update any significant changes as a result of an action agreed to in the periodic Progress Meeting.
- (b) The CONTRACTOR shall come to progress meetings with the required data prepared in advance of each meeting, to provide, as of the end of the updating period, a complete and accurate report of contract procurement and construction progress and showing how the CONTRACTOR plans to continue construction to meet the contract completion date.DE
- (c) The CONTRACTOR acknowledges that updating the schedule to reflect actual progress made as of the date of update is not a modification to the schedule requirements of the contract.
- (d) Submit computer reports and network graphics that reflect the progress of construction with respect to both cost and time, in accordance with the requirements of this Exhibit.

1.7 MSA REVIEW AND CONTRACTOR SCHEDULE REVISIONS¹²

- (a) MSA will respond in writing within seven (7) calendar days to each submitted schedule update. MSA's response may include questions and/or requests for revisions. Within two (2) business days of receipt of MSA's response, the CONTRACTOR shall respond by submitting a revised schedule if it accepts MSA's revision requests, or the CONTRACTOR shall submit in writing the justification why such revisions should not be implemented. If the CONTRACTOR's justification for not implementing the revisions is acceptable to MSA, MSA will accept the CONTRACTOR's schedule as submitted. Schedule issues that remain unresolved will result in a schedule that is not accepted by MSA. MSA's non-acceptance of the CONTRACTOR's schedule does not absolve the CONTRACTOR of the requirement to meet the completion date required by the Contract.
- (b) MSA reserves the right to direct the CONTRACTOR to modify all or any portion of the Construction Schedule or Schedule Status Report submission if MSA reasonably

determines the information to be: (1) impracticable or unreasonable; (2) unrealistic based on the CONTRACTOR's performance to date; (3) inaccurate due to erroneous calculations, logic or estimates; (4) lacking the incorporation or consideration of other work occurring on the site not under the CONTRACTOR's control.

- (c) At the request of MSA, the CONTRACTOR shall participate in any meetings necessary to reach a mutual agreement and acceptance of schedules or cash flow projections.
- (d) MSA's acceptance of an updated Construction Schedule signifies only that MSA's summary review of the schedule leads MSA to believe that the CONTRACTOR has met the general requirements of this Exhibit pertaining to the schedule's format and content. Acceptance by MSA of the updated Construction Schedule does not relieve the CONTRACTOR of any responsibility for the accuracy or feasibility of the CONTRACTOR's plan for execution of construction, or to perform the construction within specified time constraints. Such acceptance does not express or imply that MSA warrants, acknowledges or admits the reasonableness of the activities, logic, durations, manpower, cost or equipment loading of the CONTRACTOR's proposed or accepted schedule.
- (e) Re-submittals shall be in the same quantities provided for monthly submissions.

1.8 DISTRIBUTION OF CONSTRUCTION SCHEDULE

- (a) Within three (3) calendar days of MSA's acceptance of the Preliminary Construction Schedule, Construction Schedule or any updated Construction Schedule, the CONTRACTOR shall:
 - (i) Distribute copies of the accepted Detailed Construction Schedule, including all graphic reports described earlier in this document, to all subcontractors, suppliers, MSA, the Architect and other concerned parties.
 - (ii) Instruct recipients to promptly report in writing, problems anticipated by the projections shown in the schedule.
 - (iii) When revisions are made, distribute updated schedules to the same parties.

1.9 FLOAT TIME

- (a) Float is not for the exclusive benefit of either the CONTRACTOR or MSA. The CONTRACTOR shall manage construction according to early start dates, by commencing activities on the early start date (calculated by the latest accepted schedule) or earlier if possible, unless constrained by a bona fide resource limitation. Actual or projected MSA-caused delays that do not exceed available float time shall have no effect on the CONTRACTOR's adherence to specified time constraints and shall not be a basis for any time extension.
- (b) The CONTRACTOR acknowledges that:
 - (i) Activity delays shall not automatically result in adjustment of specified time constraints.

- (ii) A Contract Modification or other MSA action or inaction may not affect existing critical activities or cause non-critical activities to become critical.
 - (iii) A Contract Modification or delay may result in only absorbing a part of the available total float that may exist within an activity chain of the network, thereby not causing any effect on specified time constraints.
 - (iv) Pursuant to the above float sharing requirements, use of float released by elimination of float suppression techniques such as preferential sequencing, special lead/lag logic restraints, unreasonably extended activity durations, or imposed dates shall be distributed by MSA to the benefit of MSA and CONTRACTOR.
- (c) If the CONTRACTOR wishes to complete construction earlier than the time required, the following shall apply:
- (i) The CONTRACTOR shall continue to calculate float based on the construction completion date required by the Contract and Contract Modifications, by maintaining the required Substantial Completion date as a “finish-no-later-than” constraint.
 - (ii) The completion time for construction shall not be amended by MSA’s acceptance of the CONTRACTOR’s proposed earlier completion date.
 - (iii) The CONTRACTOR shall not, under any circumstances, receive additional compensation for fees, General Conditions, or Trade Contracts for the period between the time of earlier completion proposed by the CONTRACTOR and the completion time for construction specified as of NTP.

1.10 ADVERSE WEATHER OR OWNER MANDATED NON-WORKING DAYS CAUSED DELAYS

- (a) Weather Related Non-Working Days: The CONTRACTOR shall prepare the schedule to take into consideration the average climatic range and the usual business conditions prevailing in the locality of the Project.
- (b) Owner Mandated Non-Working Days: CONTRACTOR shall assume little to no owner mandated non-working days in the off season. Work restrictions will occur during the season. CONTRACTOR shall coordinate all construction activities with MSA as required in the specifications. These days are in addition to any Weather Related Non-Working Days.
- (c) MSA will issue written notice to the CONTRACTOR of an “Owner Mandated Non-Working Day” event resulting from a facility operation function that will require the cessation of construction activities. A lost work day shall be considered an “Owner Mandated Non-Working Day” delay when an event directly causes work to be delayed on the activity or activities which are on the critical path according to the latest accepted update of the schedule during that month. “Owner Mandated Non-Working Day”

schedule losses shall be measured in half (0.5) workday increments if the event affects work at the site only for one half of a normal workday. If the event occurs during the first half of a normal work day and also delays work during the second half of the day the entire work day shall be considered a lost work day.

- (d) The CONTRACTOR's request for time extensions resulting from Owner Mandated Non-Working Day events shall be considered only for the aggregate of actual work days lost in excess of the number of work days listed in the table above and meeting the criteria established in this Exhibit. The CONTRACTOR shall meet the submission and notification requirements and follow the procedures for requesting time adjustments to the schedule as described in the Agreement, RFP and this Exhibit.
- (e) The critical path of the schedule shall include the applicable number of days per month included in the table.

1.11 CONTRACT MODIFICATIONS, DELAYS, AND TIME EXTENSIONS

- (a) Submit a written Time Impact Analysis with proposed Contract Modifications which affect the Contract's required completion date, illustrating the impact of the proposed Contract Modification on that date.
- (b) Time Impact Analyses shall include a fragnet (network analysis) demonstrating how the CONTRACTOR proposes to incorporate the proposed Contract Modification or delay into the Detailed Construction Schedule. The analysis shall demonstrate the time impact based on the anticipated date the signed Contract Modification is given to the CONTRACTOR, the status of construction at that point in time, and the event time computation of all affected activities. The event times used in the analysis shall be those included in the latest update of the schedule or as adjusted by mutual agreement. The CONTRACTOR shall submit any supporting electronic files with the Time Impact Analysis.
- (c) Time extensions will be granted only to the extent that the equitable time adjustment for the activities affected exceeds the total float along the path of activities at the time of actual delay or at the time that NTP was issued for the Contract Modification. Each Time Impact Analysis shall be submitted in triplicate within fourteen (14) calendar days after a delay occurs or after notice of direction for a change is given to the CONTRACTOR by MSA. If the CONTRACTOR does not submit a Time Impact Analysis with a proposed Contract Modification for a delay within the required time period, he shall be deemed to have irrevocably waived his rights to any additional time and cost. Upon mutual agreement by both parties, fragnets illustrating the influence of Contract Modifications and delays will be incorporated into the schedule during the first update after agreement is reached.
- (d) In the event the CONTRACTOR does not agree with the decision of MSA regarding the impact of a delay, it shall be resolved in accordance with Article 27 of the Agreement.

1.12 RESPONSIBILITY FOR COMPLETION

- (a) The CONTRACTOR shall furnish sufficient field personnel, offices, materials, facilities, plant and equipment, to ensure the prosecution of construction in accordance with the current accepted schedule. If MSA advises that the CONTRACTOR has fallen behind in meeting milestones as presented in the schedule, the CONTRACTOR shall take such steps as may be necessary to improve progress. Upon MSA's written notice that the CONTRACTOR is behind schedule as a result of inexcusable causes, the CONTRACTOR shall immediately mitigate such loss by increasing the hours of work, the number of shifts, overtime operations and/or the amount of construction equipment. The CONTRACTOR acknowledges that such remedial action on its part is not compensable acceleration of the performance of the construction.
- (b) Work for remedial action may be conducted on Saturdays, Sundays, or holidays, with sufficient written notice and subject to MSA's approval which shall not be unreasonably withheld.
- (c) Recovery Schedule: If, at any time, the Construction Schedule shows the work to be more than fourteen (14) calendar days behind the approved schedule, and the cause of which is not attributable to MSA, the CONTRACTOR shall prepare a Recovery Schedule that clearly details the CONTRACTOR's plan to bring the work back into compliance with the project requirements. The CONTRACTOR shall submit the Recovery Schedule within five (5) calendar days of receiving written notice from MSA to do so. Within two (2) calendar days of submitting the recovery schedule, the CONTRACTOR shall host a conference with MSA and a representative authorized to act on behalf of every Trade Contractor, Subcontractor, Supplier, etc. whose actions are required to cause the recovery of the schedule to discuss the revised work sequence/methods presented in the Recovery Schedule. Upon MSA's acceptance of the proposed Recovery Schedule, the CONTRACTOR shall monitor and report the progress of the work with respect to the Recovery Schedule to MSA no less than every two (2) calendar days or time period as may be agreed to by MSA and the CONTRACTOR.

[PROJECT NAME]

EXHIBIT K
RELEASE OF LIEN & WAIVER OF CLAIM FORMS
CONSENT OF SURETY FORMS

See attached.

Partial & Final Contractors/Subcontractor/Supplier, Waiver of Lien – Material and Labor;

Consent Of Surety To Reduction In Or Partial Release Of Retainage; Consent Of Surety For Final Payment

[PROJECT NAME]

MSA Project No. _____

Exhibit K
PARTIAL CONTRACTOR/SUBCONTRACTOR/SUPPLIER
Waiver Of Lien - Material And Labor

State of _____

Date: _____

County of _____

Whereas the undersigned _____ has been
employed by _____ for the construction of the

Now, therefore, for, in consideration of, and upon receipt of \$ _____ for value received,
the undersigned do(es) hereby irrevocably waive and receive any lien or claim or right to lien for
the period and work covered by this and all previous invoices for which the contractor has received
payment, against the above described premises under and by virtue of the statute of the State of
relating to mechanics liens.

The Contractor represents that the amounts set forth below are correct and that the amount of the
current payment due will be applied promptly to full payment of all outstanding amounts due from
contractor to others in connection with project.

Contract Sum to Date	\$ _____
Total Completed and Stored to Date	\$ _____
Total Retention to Date	\$ _____
Total Earned Less Retention	\$ _____
Less Previous Payments	\$ _____
Current Payment Due	\$ _____

The undersigned respectively warrants that all cost for labor, material, and subcontract work has
been paid covering work completed through _____

Signature: _____

Sworn to and subscribed to me this _____ day

of _____, 20____.

Title: _____

Given under by hand and notary seal this _____

Day of _____, 20____.

Company: _____

Notary Republic: _____

Signature: _____

Commission expires: _____

[PROJECT NAME]

MSA Project No. _____

Exhibit K

FINAL CONTRACTOR/SUBCONTRACTOR/SUPPLIER
Waiver Of Lien - Material And Labor

State of _____

Date: _____

County of _____

Whereas the undersigned _____ has been
employed by _____ for the construction of the

Now, therefore, for, in consideration of, and upon receipt of \$_____ for value received,
the undersigned do(es) hereby irrevocably waive and receive any lien or claim or right to lien for
the period and work covered by this and all previous invoices for which the contractor has received
payment, against the above described premises under and by virtue of the statute of the State of
relating to mechanics liens.

The Contractor represents that the amounts set forth below are correct and that the amount of the
current payment due will be applied promptly to full payment of all outstanding amounts due from
contractor to others in connection with project.

Contract Sum to Date	\$ _____
Total Completed and Stored to Date	\$ _____
Total Retention to Date	\$ _____
Total Earned Less Retention	\$ _____
Less Previous Payments	\$ _____
Current Payment Due	\$ _____

The undersigned respectively warrants that all cost for labor, material, and subcontract work has
been paid covering work completed through _____

Signature: _____

Sworn to and subscribed to me this _____ day
of _____, 20____.

Title: _____

Given under by hand and notary seal this _____
Day of _____, 20____.

Company: _____

Notary Republic: _____

Signature: _____

Commission expires: _____



AIA[®] Document G707[™] – 1994

Consent Of Surety to Final Payment

PROJECT: <i>(Name and address)</i>	ARCHITECT'S PROJECT NUMBER:	OWNER: <input type="checkbox"/>
	CONTRACT FOR:	ARCHITECT: <input type="checkbox"/>
TO OWNER: <i>(Name and address)</i>	CONTRACT DATED:	CONTRACTOR: <input type="checkbox"/>
		SURETY: <input type="checkbox"/>
		OTHER: <input type="checkbox"/>

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the
(Insert name and address of Surety)

on bond of
(Insert name and address of Contractor)

, SURETY,

hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall
not relieve the Surety of any of its obligations to
(Insert name and address of Owner)

, CONTRACTOR,

as set forth in said Surety's bond.

, OWNER,

IN WITNESS WHEREOF, the Surety has hereunto set its hand on this date:
(Insert in writing the month followed by the numeric date and year.)

(Surety)

(Signature of authorized representative)

(Printed name and title)

Attest:
(Seal):

[PROJECT NAME]

EXHIBIT L
DESCRIPTION OF CONTRACTOR INVOICE

The CONTRACTOR invoice format shall be as described below. Each invoice shall consist of the following:

- (a) AIA Cover Sheet (Document G702 attached).
- (b) Schedule of Values (**Exhibit J**).
- (c) CONTRACTOR Partial/Final Release of Lien (**Exhibit K**).
 - (i) Consent of Surety if applicable.
- (d) Statement per Section 21.2.2 of the Agreement.
- (e) MBE Payment Report listing (a) all payments made to each MBE firm in the preceding thirty (30) days, and (b) any unpaid invoices over thirty (30) days old received from a certified MBE together with the reason the payment has not been made. Include confirmation of payments to all MBEs from the web-based compliance system referenced in **Exhibit D**.
- (f) Cost of the Work Backup Documentation
 - (i) Application for Payment with Release of Lien for each Trade Contractor per Section 21.2 of the Agreement.
 - (ii) Copies of invoices paid for work/items not included in Trade Contracts.

APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702

PAGE ONE OF

TO OWNER:

PROJECT:

APPLICATION NO:

0

Distribut

CONTRACT NUMBER:

PO NUMBER:

FEDERAL TAX ID #:

PERIOD TO:

FROM CONTRACTOR:

VIA ARCHITECT:

PROJECT NOS:

CONTRACT FOR:

CONTRACT DATE:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment was completed in accordance with the Contract Documents, that all amounts shown are due to the Contractor for Work for which previous Certificates for Payment were issued, and that current payment shown hereon is due.

1. ORIGINAL CONTRACT SUM \$
2. Net change by Change Orders \$ 0.00
3. CONTRACT SUM TO DATE (Line 1 + 2) \$ 0.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$ 0.00
5. RETAINAGE:
 - a. % of Completed Work \$ 0.00
(Column D + E on G703)
 - b. % of Stored Material \$ Included in above
(Column F on G703)Total Retainage (Lines 5a + 5b or Total in Column I of G703) \$ 0.00
6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total) \$ 0.00
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) \$
8. CURRENT PAYMENT DUE \$ 0.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6) \$ 0.00

CONTRACTOR:

By: Date:

State of: County of:
Subscribed and sworn to before me this day of
Notary Public:
My Commission expires:

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observation comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed to the point that the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$

(Attach explanation if amount certified differs from the amount applied for.)
Application and on the Continuation Sheet that are changed to conform to the Architect's certificate.
ARCHITECT:

By: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		
Total approved this Month		
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order	\$0.00	

AIA DOCUMENT G702 - APPLICATION AND CERTIFICATION FOR PAYMENT - 1992 EDITION - AIA - ©1992

THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVE., N.W., WASHINGTON, D.C. 20004

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CONTINUATION SHEET

AIA DOCUMENT G703

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION
APPLICATION I
PERIOD
ARCHITECT'S PROJECT

A ITEM NO.	BID PACK.	B DESCRIPTION OF WORK	C ORIGINAL SCHEDULED VALUE	IN-SCOPE CHANGES	ADJUSTED SCHEDULE VALUE	D WORK COMPLETED		E THIS PERIOD	F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H (G)
						FROM PREVIOUS APPLICATION (D + E)					
		(Fill in & break down contract values)									
		(Add any change order(s) descriptions)									
		GRAND TOTALS	\$0.00			\$0.00		\$0.00	\$0.00	\$0.00	

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[PROJECT NAME]

EXHIBIT M
RESERVED