



**Maryland Stadium Authority**

**Request for Proposals**

**Design-Build Services**

**Hagerstown Multi-Use Sports and Events Facility**

**Issue Date: September 21, 2021**

**KEY INFORMATION SUMMARY SHEET**

**MARYLAND STADIUM AUTHORITY**

**Request for Proposals  
Design-Build Services  
Hagerstown Multi-Use Sports and Events Facility**

**RFP Issue Date:** September 21, 2021

**Procurement Officer:** Yamillette Waite  
Maryland Stadium Authority  
351 West Camden Street, Suite 300  
Baltimore, Maryland 21201  
Phone: 443-602-0681  
E-mail: [ywaite@mdstad.com](mailto:ywaite@mdstad.com)

**Procurement Method:** Competitive Sealed Proposals

**MBE Participation Goal:** Design and Preconstruction Services  
Overall Goal of 29% with subgoals of 7% for African American firms and 10% for Women-owned firms

Construction Services  
Overall goal of 29% with Subgoals of 8% for African-American firms and 11% for Women-owned firms

**Pre-Proposal Conference:** October 5, 2021 at 10:00 a.m. (Local Time)  
Web Conference

**Site Visit:** October 19, 2021 at 11:00 a.m. (Local Time)  
Herald Mail Building (Parking Lot)  
100 Summit Ave  
Hagerstown, MD 21740

**Closing Date and Time  
Technical Proposals:** November 12, 2021 at 1:00 p.m. (Local Time)

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## SECTION 1

### GENERAL INFORMATION

#### 1.1 Summary Statement

MSA is issuing this solicitation to select a highly qualified firm to provide design-build services related to the Hagerstown Multi-Use Sports and Events Facility. The facility is anticipated to be a state of the art, family-friendly venue with flexibility to include the hosting of outdoor concerts, festivals, community and family oriented events, in addition to serving as the home field for an Atlantic League Professional Baseball Club.

In May 2019, the Maryland Stadium Authority (hereinafter the “MSA”) released a report titled “Market and Site Assessment for a Proposed New Minor League Baseball Ballpark in Hagerstown, Maryland” (hereinafter “the Report”). The Report includes a market and site assessment related to this Project. The Report is available via the MSA’s website at:

<https://www.mdstad.com/sites/default/files/Hagerstown%20MiLB%20Stadium%20Market%20and%20Site%20Assessment%20Final%20Report%20May%2C%202019.pdf>.

In October 2019, the City of Hagerstown (hereinafter the “City”) and MSA entered into a Memorandum of Understanding for MSA to provide architectural/engineering services related to the potential development of a multi-use sports and events facility (hereinafter the “Project”) at the Baltimore Street site in Hagerstown, as identified in the Report.

Pursuant to Senate Bill 926, MSA is authorized to finance site acquisition, design, and construction activities relating to the Hagerstown Multi-Use Sports and Events Facility. A copy of the legislation and related legislative materials can be found at:

<https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/SB0926?ys=2021RS>

#### 1.2 Abbreviations and Definitions

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

- a. Agreement – The sample Design-Build Agreement included in this RFP as **Attachment J**.
- b. Architect/Engineer (“A/E”) – The Design-Builder’s design team responsible for providing professional engineering, architectural, and design services for the Project.
- c. Client – Hagerstown/Washington County Industrial Foundation (CHIEF).



- d. COMAR - Code of Maryland Regulations (available at <http://www.dsd.state.md.us>).
- e. Design-Build Agreement – The contract entered into between the Maryland Stadium Authority and the Design-Builder for the execution of the Project. The Agreement is attached hereto as **Attachment J** and includes all general MSA terms and conditions, the entire RFP, any amendment(s), and all or indicated portions of the Offeror’s Proposal.
- f. Design-Builder – The design-build Offeror selected for Contract award under this RFP.
- g. eMMA - eMaryland Marketplace Advantage (<https://emma.maryland.gov>).
- h. Local Time – Time in the Eastern Time Zone as observed by the State.
- i. MBE –Minority Business Enterprise certified by the Maryland Department of Transportation (“MDOT”).
- j. MSA – Maryland Stadium Authority (<http://www.mdstad.com>).
- k. MSA Business Hours – 8:30 A.M. to 5:00 P.M., local time, Monday through Friday, excluding State holidays and official State closures.
- l. MSA Procurement Policies – MSA procurement policies and procedures (available at <http://www.mdstad.com>).
- m. Notice to Proceed (hereinafter “NTP”) – A formal notification issued by the Procurement Officer that directs the successful Offeror to perform work and establishes the date on which the work is to commence on the Project.
- n. Offeror - An individual or entity, regardless of legal status or organization, that submits a Proposal in response to this RFP. The Offeror is the individual or entity that will be executing the Contract with MSA.
- o. Owner – Maryland Stadium Authority.
- p. Procurement Officer (“PO”) – The MSA representative responsible for this RFP. MSA may change the Procurement Officer at any time and will provide written notice to the Offerors of any such change.
- q. Project – The design and construction of the Hagerstown Multi-Use Sports and Events Facility.

- r. Project Manager (“PM”) – The MSA representative primarily responsible for monitoring the daily activities associated with, and providing technical guidance for, the Project. The Project Manager is the point of contact, post-award, who will assign work and to whom invoices will be submitted. MSA may change the PM at any time by written notice to the CM.
- s. Project Team – The Design-Builder, MSA, and Client.
- t. Proposal - The submission provided by Offerors in response to this RFP.
- u. Request for Proposals (“RFP”) - This RFP for the execution of the Project.
- v. Selection Committee- The persons responsible for selecting the successful Offeror.
- w. State - The State of Maryland.

### **1.3 Contract Type**

The contract that results from this RFP will include a fixed fee, an allowance, and a contingency to be used by MSA at its sole discretion.

### **1.4 Contract Duration**

The term of the contract will be for a period necessary to complete the scope of work and as agreed upon by MSA and the Design-Builder.

### **1.5 Procurement Officer**

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

Yamillette Waite  
Maryland Stadium Authority  
351 West Camden Street, Suite 300  
Baltimore, Maryland 21201  
Telephone: 443-602-0681  
Email: [ywaite@mdstad.com](mailto:ywaite@mdstad.com)

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

## **1.6 Pre-Proposal Conference and Site Visit**

A virtual pre-proposal conference (“Conference”) will be held on **October 5, 2021 at 10:00 a.m., Local Time**. Please click on the link below for details regarding the Conference and to RSVP to the event

<https://us02web.zoom.us/meeting/register/tZEvdOmgrTosHNNbPVk23CZK3X-OuiqKWGDZ>

A Site Visit will take place on **October 19, 2021 at 11:00 a.m., Local Time**. Please click on the link below to register.

<https://www.eventbrite.com/e/site-visit-rfp-design-build-hagerstown-multi-use-sports-events-facility-tickets-174267387447>

### **Google Form**

Trade contractors and subconsultants interested in participating in the design/preconstruction and construction phases may register for the outreach session. Information regarding the outreach session will be posted on MSA’s website. Trade contractors are also encouraged to sign-up for notifications regarding outreach events and subcontracting opportunities via this link: <https://mdstad.com/doing-business/contractor-sign-up>

## **1.7 The Project Manager**

The Project Manager is:

Cedric Lowe  
Maryland Stadium Authority  
351 West Camden Street, Suite 300  
Baltimore, Maryland 21201

Prior to contract award, MSA may change the Project Manager at any time and will provide written notice to the Offerors. After Contract award, MSA may change the Project Manager at any time by written notice to the Design-Builder.

## **1.8 eMaryland Marketplace Advantage (“eMMA”)**

In order to receive a contract award, a vendor must be registered on eMMA. Registration is free. You can register at: <https://emma.maryland.gov/> Click on “New Vendor? Register Now” to begin the process and follow the prompts.

## 1.9 Questions

Questions regarding this RFP shall be submitted electronically, in Word or PDF format, via the following upload link no later than **October 20, 2021 at 1:00 p.m. (Local Time)**:

<https://mdstad.sharefile.com/r-r9b130acf4cb94a7e9caf962d1b10f1ea>

Please include information regarding the name of the firm, representative's name, and contact information. Based on the availability of time to research and communicate an answer, the Procurement Officer will decide whether an answer can be given before the proposal closing date. Answers to all substantive questions that have not previously been answered, and are not clearly specific to the requestor, will be provided via addendum.

## 1.10 Technical Proposals - Closing Date and Time

To be considered, Technical Proposals must be uploaded to the following link no later than **November 12, 2021 at 1:00 p.m. (Local Time)**:

<https://mdstad.sharefile.com/r-rc25c2ddb7fe3412485dde8d211722d4b>

Requests for an extension of this date and/or time will not be granted. Offerors should allow sufficient electronic transmission time to ensure timely receipt of their proposals. Proposals received by MSA after the deadline will not be considered. Proposals will not be reviewed publicly.

## 1.11 Oral Presentations

Short-listed Offerors will be required to attend oral presentations to the Selection Committee. MSA will make a determination in the near future whether to hold in person or virtual oral presentations. Significant representations made by an Offeror during their oral presentation must be confirmed in writing. All such representations will become part of the Offeror's Proposal and are binding if a contract is awarded as a result of this RFP. Oral Presentations are to be held on November 30, and December 1-2, 2021. In your Technical Proposal, please state your availability for the dates provided. Typically, oral presentations will follow a specified format and generally be limited to 90 minutes [60 minutes for the presentation and 30 minutes for questions]. The Procurement Officer will notify the short-listed Offerors with details and instructions prior to the presentation. The presentation must consist of, but not be limited to, a discussion of the Offeror's specific approach to the project and understanding of the scope of work.

## 1.12 Duration of Offer

Proposals submitted in response to this RFP are irrevocable for **180 days**

following the closing date for proposals. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

### **1.13 Proposal Affidavit**

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

### **1.14 Contract Affidavit**

All Offerors are advised that if a contract is awarded as a result of this RFP, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes only as **Attachment K** of this RFP. This Affidavit must be provided within five business days after notification of proposed contract award. For purposes of completing Section B of the affidavit (Certification of Registration or Qualification with the State Department of Assessments and Taxation), a business entity that is organized outside of the State of Maryland is considered a “foreign” business.

### **1.15 Procurement Method**

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

### **1.16 Arrearages**

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

### **1.17 Revisions to the RFP**

If it becomes necessary to revise this RFP before the closing date for proposals, an addendum/addenda will be posted on eMMA and MSA’s website. Addenda issued after the closing date for proposals will be sent only to those Offerors who submitted a responsive and timely proposal, or, if applicable, Offerors that were short-listed to participate in the next phase of the procurement process. Acknowledgment of the receipt of all addenda to this RFP issued before the proposal closing date must accompany the Offeror’s Proposal as identified in Section 4. Acknowledgement of receipt of addenda to the RFP issued after the proposal closing date shall be in the

manner specified in the addendum notice. Failure to acknowledge receipt of addenda does not relieve the Offeror from complying with all terms of any such document.

### **1.18 Cancellations; Discussions**

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

### **1.19 False Statements**

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

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

### **1.20 Minority Business Enterprise**

Minority Business Enterprises are encouraged to respond to this solicitation. The Offeror shall submit a D-1A form for design services, as well as a D-1A form for construction services with its technical proposal. Please refer to the Key Information Summary Sheet of this RFP.

- a. An overall MBE subcontractor participation goal as identified in the Key Information Summary Sheet has been established for this procurement,

representing a percentage of the total Contract dollar value, including all renewal option terms, if any.

- b. Notwithstanding any subgoals established for this RFP, the Design-Builder is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.
- c. By submitting a response to this solicitation, the Offeror acknowledges the overall MBE subcontractor participation goal and subgoals, and commits to achieving the overall goal and subgoals by utilizing certified minority business enterprises, or requests a full or partial waiver of the overall goal and subgoals.
- d. An Offeror that does not commit to meeting the entire MBE participation goal outlined in this Section 1.20 must submit a request for waiver with its proposal submission that is supported by good faith efforts documentation to meet the MBE goal made prior to submission of its proposal as outlined in **Attachment D-1B**, Waiver Guidance. Failure of an Offeror to properly complete, sign, and submit **Attachment D-1A** at the time it submits its Technical Proposal to the RFP will result in the State's rejection of the Offeror's Proposal. This failure is not curable.
- e. Attachments
  1. Minority Business Enterprise instructions, and forms are provided in **Attachment D** to assist Offerors.
  2. The Offeror shall include with its technical Proposal a completed MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) whereby:
    - a) The Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
    - b) The Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Proposal submission. The Offeror shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE prime (including a prime participating as a joint venture) to be counted towards meeting the MBE participation goals.
    - c) An Offeror requesting a waiver should review **Attachment D-1B** (Waiver Guidance) and **D-1C** (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.

- d) If the Offeror fails to submit a completed **Attachment D-1A** with the technical Proposal, as required, the Procurement Officer shall determine that the Proposal is not reasonably susceptible of being selected for award.
- f. Offerors are responsible for verifying that each MBE (including any MBE prime and MBE prime participating in a joint venture) selected to meet the goal and any subgoals and subsequently identified in **Attachment D-1A** is appropriately certified by the Maryland Department of Transportation and has the correct NAICS codes allowing it to perform the committed work.
- g. Within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, the Offeror must provide the following documentation to the Procurement Officer:
1. Outreach Efforts Compliance Statement (**Attachment D-2**);
  2. MBE Subcontractor/Prime Project Participation Certification (**Attachment D-3A/3B**); and
  3. Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.
  4. Further, if the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11. If the recommended awardee fails to return each completed document within the required time, the Procurement Officer may determine that the recommended awardee is not responsible and, therefore, not eligible for Contract award. If the contract has already been awarded, the award is voidable.
- h. A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.maryland.gov/directory/>. The most current and up-to-date information on MBEs is available via this website. Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.
- i. An Offeror that requests a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (**Attachment D-1C**) and all documentation within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in COMAR 21.11.03.11.



- j. All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (**Attachment D-1A**), completed and submitted by the Offeror in connection with its certified MBE participation commitment shall be considered a part of the Agreement and are hereby expressly incorporated into the Agreement by reference thereto. All of the referenced documents will be considered a part of the Proposal for order of precedence purposes (see Design-Build Agreement – **Attachment J**).
- k. The Offeror is advised that liquidated damages will apply in the event the Design-Builder fails to comply in good faith with the requirements of the MBE program and pertinent Contract.

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

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

#### **1.22 Protests/Disputes**

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

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

An Offeror should give specific attention to the clear identification of those portions of the Proposal that it considers confidential, proprietary commercial information or trade secrets, and provide written justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Title 4 of the General Provisions Article of the Annotated Code of Maryland. Offerors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information may be disclosed.

#### **1.24 Offeror Responsibilities**

The Offeror shall be responsible for all products and services required by this RFP. Subcontractors must be identified, and a complete description of their roles relative to the Proposal must be included in the Proposal. The

Offeror retains responsibility for all work to be performed by and any deliverable submitted by a subcontractor. If an Offeror that seeks to perform or provide the services required by this RFP is the subsidiary of another entity, all information submitted by the Offeror such as, but not limited to, references and financial reports, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror's proposal must contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

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

- a. If the Design-Builder furnishes any design, device, material, process or other item that is covered by a patent or copyright or that is proprietary to or a trade secret of another, it shall obtain the necessary permission or license to permit MSA to use such item.
- b. The Design-Builder will defend or settle, at its own expense, any claim or suit against MSA alleging that any such item furnished by the Design-Builder infringes any patent, trademark, copyright, or trade secret. If a third-party claim that a product infringes that party's patent, trademark, copyright or trade secret, the Design-Builder will defend MSA against that claim at the Design-Builder's expense and will pay all damages, costs, and attorney's fees that a court finally awards, provided MSA: (i) promptly notifies Design-Builder in writing of the claim; and (ii) allows the Design-Builder to control and cooperates with the Design-Builder in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in the next paragraph.
- c. If any products furnished by the Design-Builder become, or in the Design-Builder's opinion are likely to become, the subject of a claim of infringement, the Design-Builder will, at its option and expense: (i) procure for MSA the right to continue using the applicable item; (ii) replace the product with a non-infringing product substantially complying with the item's specifications; or (iii) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

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

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of a contract succeeding the first fiscal period, the contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect the rights of the Design-Builder and MSA under any termination clause in the contract. The effect of termination of the contract hereunder will be to discharge the Design-Builder and MSA from future performance of

the contract, but not from their rights and obligations existing at the time of termination. The Design-Builder shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the contract. MSA shall notify the Design-Builder as soon as it has knowledge that funds may not be available for the continuation of the contract for each succeeding fiscal period beyond the first.

### **1.27 Financial Disclosure**

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

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

Neither this RFP nor any resulting Agreement shall be construed to require MSA to use any Offeror or exclusively use the Design-Builder for the services described in this RFP. MSA reserves the right to obtain services of any nature from other sources when it is in the best interest of MSA to do so and without notice to any party. MSA makes no guarantees that it will purchase any products or services from the Design-Builder resulting from this RFP.

### **1.29 Sustainability Policies**

MSA is committed to procuring all supplies, services, maintenance, construction, and architectural/engineering services in a manner consistent with the promotion of sound environmental practices.

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

By submitting a response to this RFP, the Offeror agrees to accept payments by electronic funds transfer (EFT). A form will be provided to the selected Offeror.

### **1.31 Confidentiality**

Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party to an Agreement resulting from this RFP (including without limitation any information or data stored within the Design-Builder's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such

disclosure is necessary for the performance of their duties under the Agreement, provided that the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of the Agreement; (c) was already in the possession of such party; (d) was supplied to such party by a third-party lawfully in possession thereof and legally permitted to further disclose the information; or (e) such party is required to disclose by law.

### **1.32 Loss of Data**

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

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

No official or employee of the State, as defined in State Government Article, §15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this procurement, shall, during the pendency and term of a resulting Agreement, and while serving as an official or employee of the State, become or be an employee of the Design-Builder or any entity that is a subcontractor on said Agreement.

### **1.34 Nondiscrimination in Employment**

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

### **1.35 Contingent Fee Prohibition**

The Design-Builder warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson or commercial selling agency working for the Design-Builder, to solicit or secure an Agreement, and that it has not paid or agreed to pay any person, partnership,

corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson or commercial selling agency, any fee or other consideration contingent on the making of an Agreement.

### **1.36 Political Contribution Disclosure**

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

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

Before a corporation can do business in the State, it must be registered with the Department of Assessments and Taxation, State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. It is strongly recommended that any potential Offeror complete registration prior to the closing date for receipt of Proposals. An Offeror's failure to complete registration with the Department of Assessments and Taxation may disqualify an otherwise successful Offeror from final consideration and recommendation for Agreement award.

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

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

### **1.39 Bonding**

The Design-Builder shall have bonding capacity (i.e., performance and payment) no less than \$65 million.

### **1.40 Maryland Law**

This RFP and any subsequent RFPs or Agreements shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

### **1.41 Acceptance of Terms and Conditions**

By submitting a Proposal, the Offeror accepts all of the terms and conditions set forth in this RFP including all attachments.

### **1.42 Procurement Regulations**

The RFP and any Agreements entered into as a result hereof is not subject to the provisions of Division II of the State Finance and Procurement Article of the Maryland Annotated Code (the "Procurement Article") except as set forth in MSA's procurement policies available online at [www.mdstad.com](http://www.mdstad.com).

### **1.43 Multiple Proposals**

MSA will not accept multiple or alternative proposals from a single Offeror.

### **1.44 Outreach Event**

MSA anticipates holding an outreach event(s) to promote procurement opportunities related to the Project. Offerors interested in submitting a proposal in response to this RFP are highly encouraged to sign up and actively participate in the event(s). Please refer to Section 1.6 of this RFP for additional information.

## SECTION 2

### **OFFEROR'S QUALIFICATIONS**

#### **2.1 Qualifications**

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

- a. Has at least five (5) years of experience in managing design-build projects of similar size, scope, and complexity;
- b. Is licensed to operate in the State of Maryland;
- c. Has experience providing the following services during both preconstruction and construction phases: quality assurance/quality control, estimating and budget control, CPM scheduling, value engineering, and evaluation and implementation of innovative construction techniques;
- d. Has experience completing highly complex construction projects that require working in locations with logistical challenges, occupied building environments, and the hosting of large gatherings/public events during construction operations;
- e. Has ability to meet the insurance requirements set forth in the Agreement; and
- f. Has ability to meet the bonding requirements set forth in Section 1.39 of the RFP.

**NOTE:** An Offeror meeting these requirements does not guarantee that the Offeror will be deemed responsible or have its Technical Proposal deemed acceptable.

## **SECTION 3**

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

#### **3.1 Purpose**

The MSA is issuing this RFP to contract with a qualified Design-Build firm for the design and construction of a new Multi-Use Sports and Events Facility in Hagerstown, MD. The primary sport to utilize the facility will be minor league baseball. The completed project will serve as both a professional baseball stadium and multi-use venue as outlined in the Project Criteria exhibit to the sample Agreement, included herein as **Attachment J**.

#### **3.2 Overview**

The Project will be executed under the Design-Build with Guaranteed Maximum Price delivery method. The obligations of the Design-Builder are set forth in the Design-Build Agreement attached hereto as **Attachment J** as well as other parts of the RFP.

Generally, the Design-Builder will provide the following:

1. Design and Preconstruction Services including, but not limited to, design and engineering, scheduling, cost estimating, constructability analysis, logistics planning, value engineering, and preparation and submission of a GMP Proposal for the execution of the Project.
2. Pursuant to Section 3.6 of the Design-Build Agreement, if MSA accepts the GMP the Design-Builder will provide Construction Services including, but not limited to, project management and field supervision, construction, safety and quality control.

The Guaranteed Maximum Price Limit (the “GMP Limit”) for the Project is Forty Five Million Dollars (\$45,000,000).



## **SECTION 4**

### **PROPOSAL SUBMISSION AND REQUIREMENTS**

#### **4.1 Solicitation Process**

The solicitation will follow a multi-step process to select the successful Offeror.

##### **1. Step 1– Submission of Technical Proposal**

Offerors will submit a technical Proposal in accordance with Section 4.3 to demonstrate their experience (including meeting the minimum requirements and ability to execute the Project successfully). Upon receipt of the technical Proposals, proposals will be reviewed and those deemed responsible and reasonably susceptible of being selected for award will be reviewed by the Selection Committee. Offerors must respond to all requirements of the RFP. Offerors that fail to do so will be deemed not reasonably susceptible of being selected for award.

##### **2. Step 2 – Review of Technical Proposals**

The Selection Committee will review technical Proposals and rank the Proposals according to technical merit. Based on their achieved technical rankings, selected Offerors will be “short-listed” to participate in the oral presentation phase of the procurement.

##### **3. Step 3 – Short-list and Oral Presentations**

Short-listed Offerors will be asked to attend a virtual oral presentation. Offerors that are not short-listed will be notified that they are not reasonably susceptible of being selected for award.

##### **4. Step 4 – Short-listing – Financial Proposal Phase**

After Oral Presentations, and based on achieved ranking, the Selection Committee will short-list firms to participate in the Financial phase of the procurement. Short-listed firms will be requested to submit a financial Proposal. Offerors that are not short-listed will be notified that they are not reasonably susceptible of being selected for award.

##### **5. Step 5 – Recommendation for Award**

The Offeror deemed to provide the best value (Technical and Financial) to the Project by the Selection Committee will be recommended for award.

## 4.2 Instruction for Submission of Proposals – General Requirements

Offerors shall submit proposals labeled “**Request for Proposals – Design-Build Services – Hagerstown Multi-Use Sports Facility- Volume I - Technical Proposal.**” All pages of each proposal volume must be consecutively numbered from beginning (Page 1) to end (Page “x”). The final page shall state “Final Page.”

Technical proposals shall be uploaded electronically to the link provided in Section 1.10 of the RFP. **The electronic submissions (formatted as .pdf file) shall include the firm’s name in the file name and shall be formatted so each page can be legibly printed in 8 ½” x 11” format.**

## 4.3 Volume I - Technical Proposal

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

### a. Transmittal Letter

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

### b. Title and Table of Contents

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

### c. Executive Summary

The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled “Executive Summary.” The summary shall acknowledge the receipt of any amendments or addenda associated with this RFP and include the Offeror’s tax identification number. The Executive Summary shall not exceed two (2) pages. Offerors shall also identify any joint ventures at the time of submission, if any, and the roles these relationships will have in the performance of a Contract. Upon MSA’s

request, Offerors shall make available within 24 hours the joint venture scope of work documents and/or agreement.

**d. Experience and Qualifications**

1. Corporate Qualifications

- a. Corporate Profile and References: Provide a completed Corporate Profile Form included herein as **Attachment E**, including three (3) references. The form must be completed by the Offeror and all joint venture partners, if applicable.
- b. Insurance: Provide proof of insurance certifying the Offeror's ability to comply with the insurance requirements outlined in the Agreement.
- c. Bonding: Provide a letter from the Offeror's Bonding Company certifying the Offeror's ability to comply with the bonding requirements contained in Section 1.39.
- d. Qualifications/Exceptions: The Offeror shall identify any qualifications/exceptions it has taken to the requirements of this RFP or any modification(s) it proposes to make to the Agreement attached hereto as **Attachment J**.

A general statement that qualifications/exceptions will be discussed at a later date is not acceptable. Offeror must provide specific information regarding any requested changes. If no exceptions are taken, the Offeror shall so state.

Warning: Exceptions to terms and conditions may result in having the proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.

2. Corporate Experience

- a. Submit information on five (5) relevant projects, valued at approximately \$50 million or greater, that have achieved Substantial Completion within the past ten (10) years, and which demonstrate the Offeror's experience and any of its proposed subconsultants as outlined in **Attachment F**.
- b. The project examples shall include the following information:
  - 1. Identification of project, role of Offeror (preconstruction, construction, etc.), project location, project gross square footage, project type, and building type.
  - 2. Method of delivery such as: D/B with GMP, D/B, CM at Risk, GC, CM Agency.

3. Original project construction cost at time of award, final project cost and percentage change; explain variance.
4. Original completion date at time of award and actual completion date; explain variances.
5. Describe similarities of the project example to this Project. If performed within an occupied environment, provide details regarding the level of occupancy and major events hosted during construction operations, and any measures taken to accommodate ongoing operations during the construction process.
6. Project owner's name, email address, and telephone number.
7. Identify the Project Executive, Project Manager, Project Superintendent, and Project Scheduler for the Project.
8. Identify any of the proposed Key Personnel who were involved in the project example, including their role and responsibilities.
9. Provide color photographs of the project.

### 3. Key Personnel Experience and Past Performance

- a. Provide an Organizational Chart identifying the Key Personnel that will be assigned to the Project. At a minimum, the Key Personnel shall include the positions listed in subsections (e) and (f) herein. Identify the person(s) responsible for overall management of the Project, and the key person proposed to be responsible for each of the following activities:
  1. Design and Preconstruction: Management of the Design Process, Interdisciplinary Construction Documents review; constructability reviews; cost models and estimates; schedule; value engineering; BIM, procurement; and MBE requirements.
  2. Construction: Coordination of Trade Contractors, Subcontractors, Suppliers; vendors, suppliers, safety; quality control/ inspections; submittal review; construction waste monitoring; Contract Modification review; claims resolution; schedule control; BIM, payment approval; and MBE compliance.
- b. Clearly identify the individual(s) that will attend design meetings and serve as the day-to-day contact for the Project Team.
- c. Clearly identify the individual(s) that will attend construction progress meetings and serve as the day-to-day contact for the Project Team.
- d. Provide a brief narrative outlining the anticipated roles and responsibilities of the Key Personnel during preconstruction and construction.
- e. Utilizing Standard Form (SF) 330, provide resumes for the Design-Builder's design professionals and key consultants Key Personnel listed below.

1. Principal in Charge
  2. Project Manager
  3. Project Designer
  4. Civil Engineer
  5. Structural Engineer
  6. Geotechnical Engineer
  7. Mechanical Engineer
  8. Electrical Engineer
  9. Plumbing Engineer
  10. Fire Protection Engineer
  11. Sports Playing Surface Specialist or Consultant
  12. Landscape Architect
  13. Event/Space Planning Consultant
  14. Telecommunications/IT Consultant
  15. LEED Consultant
- f. Provide a detailed but concise, resume for the Design-Builder's construction professionals and key consultants' Key Personnel proposed to be assigned to the preconstruction and construction phases. Include all information required regarding Key Personnel with each individual's resume. Information included elsewhere in the Proposal may not be considered in the evaluation of the Key Personnel. Resumes shall include the following information: (1) Educational background, including degree(s) received; (2) work experience with current employer, including duration of employment, with dates, and position(s) held; (3) work experience with prior employers if relevant with dates; (4) project experience, preferably on one or more of the projects submitted in response to the Corporate Experience section herein, with emphasis on projects similar in size and nature to this Project. Include project design start and completion dates (month and year), and construction start and Substantial Completion dates (month and year) for each project. Indicate the individual's specific role in both preconstruction/design and the construction phases of each project listed in the resume. Include the exact period the individual performed the specific role in the design/preconstruction phase (month and year) and in construction phase (month and year), even if the role was performed for the entire design and/or construction phases. If the specific role was performed for a particular part or aspect of the project, provide details.
- g. Qualifications for Key Personnel:
1. Project Executive: Served in a similar role on three (3) projects. One of the three projects shall have had a construction cost of approximately \$50 million.
  2. Project Manager(s) for design and construction: Served in a similar role on three (3) projects; one of which shall have a construction cost of approximately \$50 million.

3. Project Superintendent: Served in a similar role on three (3) projects; one of which shall have a construction cost of approximately \$50 million.
  4. Cost Estimator: Served in a similar role during the preconstruction/design phase on five (5) projects utilizing the construction management at risk or design-build delivery method; three (3) of which shall be approximately \$50 million in construction cost. Explain specific experience estimating early design concepts and value engineering.
  5. Lead Scheduler: Served in a similar role on three (3) projects; one of which shall have a construction cost of approximately \$50 million.
- h. References. Provide two references for the Key Personnel. For each reference, please include the full name, title, contact information (email and cell), a summary of the project, and the Key Personnel's role.
  - i. Key Personnel Previous Working Relationships Matrix. Include information that identifies the experience of the Key Personnel working together on the Key Personnel Project Experience Matrix form included with **Attachment H**.

**e. Work Plan**

1. Staffing Plan. Provide a Staffing Plan in the format included in **Attachment G**, for the Design and Preconstruction Phase and the Construction Phase. Based on the scope and complexity of this Project, include the estimated amount of time that each team member will dedicate to the Project. The Staffing Plan shall identify the actual hours for each individual during the Design and Preconstruction Phase and the percentage of time for each individual during the Construction Phase.
2. Project Plan. Provide a detailed narrative that is both technical in nature and effective in communicating the Offeror's approach to executing the requirements of the Scope of Work outlined in Section 3 of the RFP and the Agreement. Identify the roles, responsibilities and reporting structure for the Key Personnel during the execution of the work.
  - a. Provide a brief, overall description of how the team will be organized and managed, and how the services will be performed in the Design and Preconstruction Phase and the Construction Phase. Include

organizational charts for Design and Preconstruction and Construction services.

- b. Describe the team's logistics especially if any of the Key Personnel and/or consultants are not located in the Baltimore/Washington area (or in proximity to the Project site). Describe where internal meetings will take place during design given the physical location of the team members.
- c. Conceptual CPM Schedule: Provide a conceptual CPM schedule describing the time/event relationship between the Design and Preconstruction Phase and the Construction Phase. The activities related to each individual phase of the work (Design and Preconstruction and Construction) are to be grouped separately on the project schedule so the sequence of work for each can be easily identified. Each item of work shall include specific milestones clearly indicating the NTP and Substantial Completion of each major activity as well as the achievement of Substantial Completion, Use and Occupancy and Final Completion of the Project. Activities related to general and administrative items may be grouped separately if necessary.
  1. At a minimum, the schedule shall explain the proposed design, permitting, bidding, construction, and other Phases required to complete the work. The schedule must include all stages of the design-build process including: Schematic Design, Design Development, seventy percent (70%) Construction Documents, one hundred percent (100%) Construction Documents, GMP Preparation and Negotiation, Construction Phase(s), recommended Early Package(s), Close-Out and Post Construction.
  2. The schedule shall include at least 30 calendar days for approval of the GMP by the MSA Board of Directors and the Maryland Board of Public Works.
  3. The schedule shall contain a minimum of 100 and a maximum of 300 activities to demonstrate the Offeror's understanding of the Project requirements and the responsibilities of the Design-Builder.
3. Cooperation: Describe the Offeror's approach to working actively and collaboratively with the Project Team to help guide the design and construction of the Project. Highlight any unique skills or abilities that the Offeror can/will provide in the execution of the Project.
4. Project Challenges: Identify the five (5) most significant challenges to executing the Project in order of importance based on the information made available in this RFP and any site visit(s). Provide

a brief description of the Offeror's approach to addressing each, including specific experience resolving similar challenges.

5. Bidding and GMP Proposal Preparation. Describe the Offeror's approach to conducting the bidding and GMP Proposal development activities. At a minimum, discuss the following topics.
  - a. The process for organizing and packaging the items of Work.
  - b. The process for advertising and soliciting bids from Trade Contracts and/or Suppliers.
  - c. The process for receiving, evaluating and comparing bids from Trade Contractors/Suppliers.
  - d. The criteria used to recommend Trade Contractors and/or Suppliers for incorporation into the GMP Proposal.
6. GMP Limit. Comment on the adequacy of the GMP Limit amount identified in Section 3.2 to meet the goals of the Project as presented in the RFP. Highlight any issues or circumstances (i.e., market, administrative, contractual, project cost associated with overtime or expediting, etc.) that could impact the Offeror's ability to ensure the execution of the Project meets the Project Criteria and occurs within the established GMP Limit.

**f. Economic Benefits Factor**

1. The Offeror shall submit with its Proposal a narrative describing benefits that will accrue to the Maryland economy as a direct or indirect result of its performance of the Contract. Proposals will be evaluated to assess the benefit to Maryland's economy specifically offered. The economic benefit offered should be consistent with the Offeror's Financial Proposals.
2. Proposals that identify specific benefits as being contractually enforceable commitments will be rated more favorable than Proposals that do not identify specific benefits as contractual commitments, all other factors being equal.
3. Offerors shall identify any performance guarantees that will be enforceable by the State if the full level of promised benefit is not achieved during the Contract term.
4. As applicable, for the full duration of the Project, including any renewal period, or until the commitment is satisfied, the Offeror shall provide to the Procurement Officer or other designated agency personnel reports of the actual attainment of each benefit listed in



response to this section. These benefits attainment reports shall be provided quarterly, unless elsewhere in these specifications a different reporting frequency is stated.

5. In responding to this section, the following do not generally constitute economic benefits to be derived:
  - Generic statements that the State will benefit from the Offeror's superior performance under the Contract;
  - Descriptions of the number of Offeror employees located in Maryland other than those that will be performing work under the Contract; or
  - Tax revenues from Maryland-based employees or locations, other than those that will be performing, or used to perform, work under the Contract.
  - Discussion of Maryland-based employees or locations may be appropriate if the Offeror makes some projection or guarantee of increased or retained presence based upon being awarded the Contract.
6. Examples of economic benefits to be derived from a Contract may include any of the factors listed below. For each factor identified below, identify the specific benefit and Contractual commitments, and provide a breakdown of expenditures in that category:
7. The Contract dollars to be recycled into Maryland's economy in support of the Contract, through the use of Maryland subconsultants/subcontractor, suppliers, and joint venture partners. Do not include actual fees or rates paid to subconsultants or information from your Financial Proposal;
8. The number and types of jobs for Maryland residents resulting from the Contract. Indicate job classifications, number of employees in each classification and the aggregate payroll to which the Offeror has committed, including Contractual commitments at both prime, and if applicable, subcontract levels; and whether Maryland employees working at least 30 hours per week and are employed at least 120 days during a 12-month period will receive paid leave. If no new positions or subcontracts are anticipated as a result of the Contract, so state explicitly;
9. Tax revenues to be generated for Maryland and its political subdivisions as a result of the Contract. Indicated tax category (sales tax, payroll taxes, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues

resulting from the Contract;

10. Subcontract dollars committed to Maryland small businesses and MBE firms; and
11. Other benefits to the Maryland economy which the Offeror promises will result from awarding the Contract to the Offeror, including Contractual commitments. Describe the benefit, its value to the Maryland economy, and how it will result from, or because of the Contract award. Offerors may commit to benefits that are not directly attributable to the Contract, but for which the Contract award may serve as a catalyst of impetus.

**g. Other Required Submissions**

Offerors must submit the following items in the Technical Proposal:

1. A completed Bid/Proposal Affidavit (**Attachment A**). The form must be completed by the Offeror and all joint venture partners (if applicable).
2. A completed Conflict of Interest Information/Affidavit and Disclosure (**Attachment B**). The form must be completed by the Offeror and all joint venture partners (if applicable).
3. A completed MBE Attachment D-1A (**Attachment D**) for Design/Preconstruction as well as a completed D-1A for Construction.

**4.4 Volume II - Financial Proposal**

Information about the due date and submission instructions will be included in the notification to the selected short-listed Offerors as set forth in Section 4.1. A sample copy of the Request for Financial Proposal is attached hereto as **Attachment I**. Each Offeror submitting a financial proposal will also have to submit a copy of its current Dun and Bradstreet's Comprehensive Report.

Note: MSA reserves the right to require, during proposal evaluation, that the Offeror provide a copy of its most current Annual Report or audited Statement of Financial Condition to include a Balance Sheet, Income Statement and Cash Flow Statement or other acceptable financial information. These documents may be relied upon in any selection determination.

## **SECTION 5**

### **EVALUATION CRITERIA AND SELECTION PROCEDURE**

#### **5.1 Evaluation Criteria**

Evaluation of the Proposals will be performed by the Selection Committee and will be based on the criteria set forth below. Technical criteria shall be given more weight than financial criteria.

#### **5.2 Technical Criteria**

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

- a. Understanding of the Project and adequacy of the Work Plan presented to provide the proposed services.
- b. Experience and qualifications of the Offeror and its Key Personnel, with specific emphasis on key personnel with similar projects.
- c. Past Performance and References of Offeror, Key Personnel, and subconsultants.
- d. Work Capacity of Offeror and Key Personnel.
- e. Economic Benefits to the State of Maryland.
- f. Overall Quality of Submission.
- g. Oral Presentation.

#### **5.3 Financial Criteria**

Short-listed Offerors that participate in the Financial Proposal phase and are deemed as meeting all of the requirements will be ranked (most advantageous to least advantageous) based on an analysis of the information provided on the Financial Proposal submission.

#### **5.4 Reciprocal Preference**

Although Maryland law does not authorize procuring agencies to favor resident Offeror in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. Therefore, as described in COMAR 21.05.01.04, a resident business preference may be given if: a responsible Offeror whose headquarters, principal base of operations, or principal site that will primarily provide the

services required by this RFP is in another state submits the most advantageous offer; the other state gives a preference to its residents through law, policy, or practice; and the preference does not conflict with a federal law or grant affecting the Contract. The preference given will be identical to the preference that the other state, through law, policy, or practice gives to its residents.

## **5.5 General Selection Process**

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

## **5.6 Award Determination**

Upon completion of all evaluations, discussions and negotiations, and reference checks, the Procurement Officer will recommend award of the Agreement to the responsible Offeror(s) whose proposal is determined to be the most advantageous considering the technical and financial evaluation factors as set forth in this RFP. The award is subject to approval by the MSA Board of Directors and the Board of Public Works.

## ATTACHMENTS

Attachments can be downloaded via the following link:

<https://mdstad.sharefile.com/d-s65bcf8408ef9439693b3cd789e581361>

- A. ....**BID/PROPOSAL AFFIDAVIT**
- B. ....**CONFLICT OF INTEREST AFFIDAVIT**
- C. ....**CONCEPT DESIGN REPORT**
- D. ....**MBE INSTRUCTIONS AND FORMS**
- E. ....**CORPORATE PROFILE**
- F. ....**PROJECT EXPERIENCE FORM**
- G. ....**STAFFING PLAN**
- H. ....**KEY PERSONNEL PROJECT EXPERIENCE MATRIX**
- I. ....**FINANCIAL PROPOSAL FORM**
- J. ....**DESIGN-BUILD AGREEMENT**
- K. ....**CONTRACT AFFIDAVIT**
- L. ....**CAPACITY SUMMARY SHEET**

**ATTACHMENT A**  
**BID/PROPOSAL AFFIDAVIT**

**Attachment A. Bid/Proposal Affidavit**

**A. AUTHORITY**

I hereby affirm that I, \_\_\_\_\_ (name of affiant) am the \_\_\_\_\_ (title) and duly authorized representative of \_\_\_\_\_ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

**B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION**

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

**B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.**

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

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority bid/proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the Bid/proposal;
- (3) Fail to use the certified minority business enterprise in the performance of the contract; or
- (4) Pay the certified minority business enterprise solely for the use of its name in the Bid/proposal.

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the

Bid/proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/proposal.

**B-2. CERTIFICATION REGARDING VETERAN-OWNED SMALL BUSINESS ENTERPRISES.**

The undersigned Bidder/Offeror hereby certifies and agrees that it has fully complied with the State veteran-owned small business enterprise law, State Finance and Procurement Article, § 14-605, Annotated Code of Maryland, which provides that a person may not:

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;
- (2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a Bid/proposal preference or a procurement contract;
- (3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.13; or
- (6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of § B-2(1) -(5) of this regulation.

**C. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

I FURTHER AFFIRM THAT:

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

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**D. AFFIRMATION REGARDING OTHER CONVICTIONS**

I FURTHER AFFIRM THAT:

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

- (1) Been convicted under state or federal statute of:
  - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
  - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Bids/Proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)— (5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Bids/Proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
  - (a) §7201, Attempt to Evade or Defeat Tax;
  - (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
  - (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information;
  - (d) §7206, Fraud and False Statements, or
  - (e) §7207 Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. §286 Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;
- (11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;
- (12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:

- (a) A court:
    - (i) Made the finding; and
    - (ii) Decision became final; or
  - (b) The finding was:
    - (i) Made in a contested case under the Maryland Administrative Procedure act; and
    - (ii) Not overturned on judicial review;
- (13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:
- (a) A court:
    - (i) Made the finding; and
    - (ii) Decision became final; or
  - (b) The finding was:
    - (i) Made in a contested case under the Maryland Administrative Procedure act; and
    - (ii) Not overturned on judicial review;
- (14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:
- (a) A court:
    - (i) Made the finding; and
    - (ii) Decision became final; or
  - (b) The finding was:
    - (i) Made in a contested case under the Maryland Administrative Procedure act; and
    - (ii) Not overturned on judicial review; or
- (15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(14) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

**E. AFFIRMATION REGARDING DEBARMENT**

I FURTHER AFFIRM THAT:

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

name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

---

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**F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES**

I FURTHER AFFIRM THAT:

- (1) The business was not established and does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and
  - (2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):
- 
- 

**G. SUBCONTRACT AFFIRMATION**

I FURTHER AFFIRM THAT:

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

**H. AFFIRMATION REGARDING COLLUSION**

I FURTHER AFFIRM THAT:

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

- (1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying Bid/proposal that is being submitted; or
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Bid/proposal price of the Bidder/Offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying Bid/proposal is submitted.

**I. CERTIFICATION OF TAX PAYMENT**

I FURTHER AFFIRM THAT:

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

**J. CONTINGENT FEES**

I FURTHER AFFIRM THAT:

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

**K. CERTIFICATION REGARDING INVESTMENTS IN IRAN**

- (1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:
  - (a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and
  - (b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.
- (2) The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities:

---

---

**L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)**

I FURTHER AFFIRM THAT:

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

**M. PROHIBITING DISCRIMINATORY BOYCOTTS OF ISRAEL**

I FURTHER AFFIRM THAT:

In preparing its bid/proposal on this project, the Bidder/Offeror has considered all bid/proposals submitted from qualified, potential subcontractors and suppliers, and has not, in the solicitation, selection, or commercial treatment of any subcontractor, vendor, or supplier, refused to transact or terminated business activities, or taken other actions intended to limit commercial relations, with a person or entity on the basis of Israeli national origin, or residence or incorporation in Israel and its territories. The Bidder/Offeror also has not retaliated against any person or other entity for reporting such refusal, termination, or commercially limiting actions. Without limiting any other provision of the solicitation for bid/proposals for this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to reject the bid/proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the bid/proposal.

**N. I FURTHER AFFIRM THAT:**

Any claims of environmental attributes made relating to a product or service included in the bid or bid/proposal are consistent with the Federal Trade Commission's Guides for the Use of Environmental Marketing Claims as provided in 16 C.F.R. §260, that apply to claims about the environmental attributes of a product, package or service in connection with the marketing, offering for sale, or sale of such item or service.

**O. ACKNOWLEDGEMENT**

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

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

**By:**

\_\_\_\_\_  
*Signature of Authorized Representative and Affiant*

**Printed Name:**

\_\_\_\_\_  
*Printed Name of Authorized Representative and Affiant*

**Title:**

\_\_\_\_\_  
*Title*

**Date:**

\_\_\_\_\_  
*Date*

**ATTACHMENT B**  
**CONFLICT OF INTEREST AFFIDAVIT**

**Attachment B. Conflict of Interest Affidavit and Disclosure**

**Reference COMAR 21.05.08.08**

A. "Conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

B. "Person" has the meaning stated in COMAR 21.01.02.01B (64) and includes a Offeror, Contractor, consultant, or subcontractor or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a Proposal is made.

C. The Offeror warrants that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail — attach additional sheets if necessary):

E. The Offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Offeror shall immediately make a full disclosure in writing to the procurement officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the Offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the Contractor shall continue performance until notified by the procurement officer of any contrary action to be taken.

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

Date: \_\_\_\_\_ By: \_\_\_\_\_

(Authorized Representative and Affiant)

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

**ATTACHMENT C**  
**CONCEPT DESIGN REPORT**



# Hagerstown Multi-Use Sports and Events Facility Hagerstown, Maryland

## Concept Design Report

PREPARED FOR  
City of Hagerstown &  
Maryland Stadium Authority  
351 West Camden Street, Suite 300  
Baltimore, Maryland 21201

Project Location  
W Baltimore Street & Summit Ave  
Hagerstown, MD 21740

PREPARED BY  
  
Rummel, Klepper & Kahl, LLP  
In Association with Populous  
700 East Pratt Street, Suite 500  
Baltimore, Maryland 21202

May 2021



Rummel, Klepper & Kahl, LLP

**POPULOUS®**

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## I. Concept Design Statement of Work Summary

The Maryland Stadium Authority (MSA) on behalf of the City of Hagerstown (COH), engaged the RK&K/Populous team to study the feasibility of a new multi-use sports and events facility in downtown Hagerstown. In May 2019, the COH received the results of their Market and Site Assessment Report, prepared by Crossroads Consulting & Populous, that provided research and analysis of potential sites in Hagerstown. Subsequently, the COH selected the Baltimore Street location as the site to be further studied in the next phase of the due diligence process. The selection was based on the Baltimore Street site containing a minimum of 5.5 acres of land suitable to support construction of a 5,000 seat Class “A” Minor League ballpark with adequate parking available within a walkable radius to the site. Other evaluation factors were also included in the May 2019 report. The COH is now proceeding with conceptual studies of the Baltimore Street site with preparation of this concept report to be followed by schematic/concept design plans.

This concept design report is the first step in the development of the schematic design package for a new multi-use events facility in Hagerstown Maryland. It’s anticipated minor league professional baseball will be the primary tenant however, the facility is being conceptualized as a comprehensive events facility. Specifically, RK&K’s statement of work included the following:

Develop models to depict critical site conditions including grades, rock, environmental hot spots, utilities. Evaluate:

- Availability and capacity of the surrounding infrastructure including roads and utility systems
- Environmental site conditions related to hazardous materials including options for remediation and regulatory requirements
- Cultural resource assessment related to historic and archaeological conditions
- Geotechnical assessment with particular focus on karst and limestone conditions
- Traffic evaluation related to pedestrian access and parking needs
- Evaluation of the bond-funded Hagerstown Cultural Trail with the possibility of options for integration into the facility or adjacent to the facility but with the proposed site.
- Strategy for Property Acquisitions and next steps towards assembling the properties
- Initial concept diagrams related to the Site Plan and
- Facility layouts

We understand that the MSA will share the conceptual information with the MSA’s project cost estimator to develop conceptual rough order-of-magnitude cost estimate ranges. We understand that it is the intent that this report and associated conceptual estimates be used by COH to assist with determining a preferred concept design option.

## II. Site Description

The project site selected by the City of Hagerstown for this study is in downtown Hagerstown, Washington County, Maryland. The site, referred to as the “Baltimore Street Site” in previous studies, is bounded by Antietam Street to the North, Summit Avenue to the West, W Baltimore Street to the South and an unnamed alley to the East.

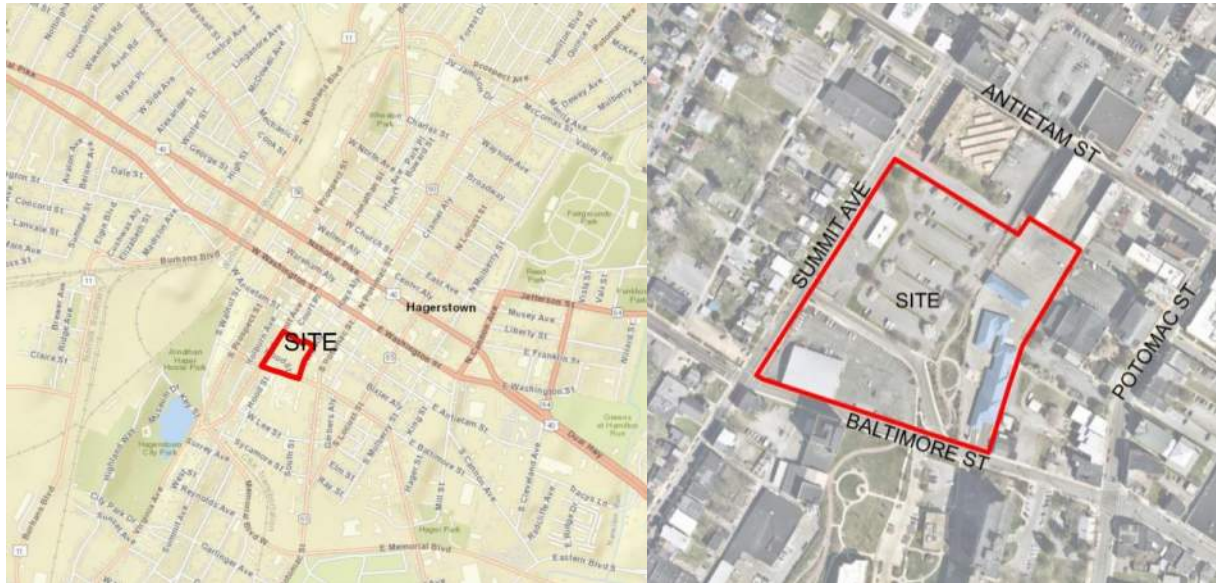


Figure 1 - Project Site

## III. Concept Site Option Summary

The modeling in this report is the result of a coordination meetings between RK&K and Populous and a stakeholder workshop held on 9/2/2020 with the COH and MSA. Four site concepts have been developed for consideration.

The modeling was completed utilizing Bentley’s SiteOPS software using available records and feedback from the concept design workshop. The layouts represent a conceptual layout informed by cut/fill and required site work. These are estimates only, intended to compare between sites and layouts, rather than to provide a specific cost.

The site layouts and features within this report are considered conceptual only and may be subject to change as design progresses. The layouts have been prepared prior to detailed site topographic and utility survey which may influence the limitations of space or features available within a site.

The arrangement of the field in all four models is oriented to maximize views of downtown. Based on the location of parking and the downtown core, which are both North of the stadium site, it is anticipated most attendees will be entering the stadium from the outfield at the connection to the cultural trail. The connection to the cultural trail will be maintained at the North and South edges of the site, however within the site, the trail will require relocation East towards the existing alley. Maintaining the alley along the east boundary of the site is important to maintain access to the adjacent properties and parking lots.

All options anticipate demolition of the buildings at 80 W Baltimore Street, 32 West Baltimore Street and 140 Summit Ave. Some concepts provide for possible engagement of adjacent privately-owned structures such as the Herald Mail and Antietam Paper Buildings. The design of the stadium will need to be sensitive to the residential neighborhood that borders the site along Summit Avenue.

The site is generally free of utilities, with the exception of a 3'x5' stone and brick arch storm drain through the future outfield. Based on feedback received from COH, it's likely the storm drain culvert will need replacement. Rock is exposed on site and based on geotechnical evaluation in some locations is immediately below the surface. Table 1 on page 12 includes a summary of rough order of magnitude rock removal, contaminated soil removal, cut, fill, and borrow/spoil for each layout. The unsuitable cut noted are areas of contaminated soil, based on the environmental site investigations, that may be able to be capped on-site or may require removal with proper handling and disposal.

### *Land Acquisition*

The real estate acquisition execution plan below and shown in Appendix B, describes the approach to identify, research and administer the land acquisition and management program for the project. The May 2019 Market and Site Assessment Report has identified the need to acquire 3 privately-owned properties and 1 publicly owned property. It is with this report's preliminary identification the plan for land acquisition is prepared to provide guidance to the COH and the Schematic/Concept Planning Team in making decisions on land acquisition efforts and schedule. Potential cost ranges for property acquisition and relocation are noted in Appendix B.

Below are descriptions of the properties currently identified for acquisition by the preliminary site planning:

- **32 West Baltimore Street:** This property is privately owned by WLR Residential Properties Inc. in Frederick, MD and was purchased on 3/21/2019. The property is occupied by an Auto Spa and Lube Center. This is a very large business enterprise with multiple structures. A full fee-acquisition and relocation of the business would be required for this site.
- **140 Summit Avenue:** This property is privately owned by Sweeney Bros. Properties LLC in Hagerstown, MD and was purchased in 12/18/2018. The property is occupied by D&P Coin Operated Laundry. A full fee-acquisition and relocation of the business would be required for this site.
- **100 Summit Avenue:** This property is privately owned by Gatehouse Media Maryland in Pittsford, NY and was purchased on 2/13/2019 from the Herald Mail. The property is occupied by the Herald Mail building, however, only a partial fee acquisition is required for the project which impacts the parking lot at the site.
- **80 West Baltimore Street:** This property is publicly owned by Washington County Commissioners and the property is occupied by County offices including offices for Engineering and Planning.
- **Other Acquisitions:** There may be other acquisitions required for the project to accommodate the relocation of the Hagerstown Cultural Trail, Parking, utility relocations and other project needs that may be identified by the Schematic/Concept Planning Team or during the Preliminary Design and Final Design phases.

For the Hagerstown Multi-use Sports and Events Center project and specifically, the Baltimore Street site, it is assumed the facility will be owned by the City of Hagerstown (COH). As a public organization, the COH must follow the requirements of federal and state laws to acquire property. In the Constitution

of the United States, Amendment V states the government may not take property for public use without just compensation. In the Constitution of Maryland, Article III, § 40B also protects the rights of private property owners to receive just compensation when property is to be taken for public use. In addition, the Real Property Article of the Annotated Code of Maryland (§12-201), and Chapter 15 of the Maryland Rules, require the Government, whether federal, state or local, to pay just compensation for the acquisition of any property rights and/or improvements. The Draft Plan, its subsequent updates and the land acquisition efforts, if authorized, shall incorporate and adhere to the federal, state and local laws.

The acquisition process will require titles, appraisals, appraisal reviews, offers of just compensation, negotiations and settlements. If the properties are occupied, relocation assistance may also be required. If an amicable settlement through the negotiation process cannot be reached, the condemning agency (COH), will have the authority for eminent domain to complete acquisition.

Any property occupied by residential tenants/owners or business tenants/owners will be eligible for relocation assistance. Relocation benefits will include advisory services and payments based on State guidelines.

Relocations require a minimum of 90-day advanced notice; however, relocations of residential and business occupants typically take 6-9 months to complete. Availability of replacement locations is a key factor in the timeframe to complete relocations. When publicly owned real property, including land and/or facilities, is to be acquired, in lieu of paying the fair market value for the real property, the Agency may provide compensation by functionally replacing the publicly owned real property with another facility which will provide equivalent utility. Relocation for the publicly owned occupied property may require functional replacement and result in higher expenditures.

Adequate notices and time frames will be needed to provide owners and businesses maximum opportunities to identify replacement locations and time to move equipment and personal property. Once the Preliminary Design is completed and funding is approved, the project can move forward with initial interviews with potential displaced businesses. The businesses currently identified for relocations in the project area are complex entities and may require additional resources to successfully relocate.

The Draft Plan outline of project requirements for Acquisition and Relocation provides a brief and general concept of the project impacts. As the planning advances and more of the project details are developed, additional investigation and steps in the acquisition/relocation processes will be needed. These additional steps may include but are not limited to:

- **Title Searches:** More extensive review of title documents to review easements, encumbrances and other potential ownership issues.
- **Market Analysis for Replacement Sites:** Search of potential sites for businesses to relocate and availability of those sites
- **Business Analysis:** Complete initial interviews with businesses to determine relocation time frames, site requirements, equipment and inventories.
- Address other acquisition/relocation that may result based on temporary construction easements, staging areas, parking replacement, utility replacements and other project needs.

### *Lot Consolidation and Subdivision*

This site will combine several individual parcels of record and therefor, a lot consolidation subdivision plat will be necessary. A subdivision plat will be submitted to the City of Hagerstown Planning



Commission for review and approval. This process may take several months for completion and approval.

### *Utilities*

Public utilities are in close proximity to the site. A detailed capacity analysis of the utility systems was not completed as part of this study. As design progresses, a utility capacity analysis is recommended to determine if there is adequate capacity in the existing systems. Utility availability is expected as follows:

- **Water:** 24" (Summit Ave), 12" (W Baltimore St)
- **Sanitary Sewer:** 8" Gravity Sewer (Summit Ave), 10" Gravity Sewer (Baltimore Ave)
- **Gas:** Gas Service is currently provided on Baltimore Street to both 32 W. Baltimore St and 80 W. Baltimore Street. Medium pressure gas is available on Baltimore Street and low pressure gas is available on Summit Ave.
- **Electric:** Electric service is available on both Baltimore St. and Summit Ave.
- **Storm Drain:** There is a 3'x5' brick & stone arch storm drain through the middle of the project site. A portion of this was previously damaged and replaced by a 48" diameter steel pipe. Based on feedback received from COH, the arch storm drain is in poor condition and will need to be replaced. The estimated capacity of the culvert is 105 cfs which could be replaced with a 42" concrete pipe adjacent to the existing structure. Should adjacent replacement not be feasible due to below grade rock, the existing storm drain could be repaired and lined in place. It's assumed the below grade field drainage will tie into the replacement or repaired storm drain line. Due to the age of the adjacent storm drain system, any increase in storm drain discharge will require a detailed condition and capacity analysis to ensure adequate conveyance.

Utility availability maps are available in Appendix C.

### *Parking & Traffic*

In 2012, the City of Hagerstown conducted a traffic impact study and parking study for a 6,000 seat event center which was expected to generate 2,000 event in-bound trips (based on minor league baseball and zoning requirements), generating a need for 2,000 parking spaces. The proposed concepts in this report have a maximum capacity of 5,000 people reducing the demand for parking spaces by approximately 17%, to a revised demand of 1,700 parking spaces.

An updated assessment by RK&K, shown in Appendix D, found 1,628 publicly available pay to park off-street parking spaces within a ½ mile radius of the proposed stadium site, based on publicly available data. Additionally, the 2012 COH report notes there are 500 on-street parking spaces available and more than 2,000 non-residential parking spaces available which for major event days could also be leveraged to provide ample parking for events. The assessment in Appendix D identified five private parking lots totaling 364 spaces in the vicinity of the stadium which may be good candidates for game day pay to park spaces.

The 2012 report also noted all but one intersection maintained a level of service A or B, operating at an acceptable level. The intersection of Washington Ave at Summit/Jonathan shows operating at a level of service E. This level of service is generally considered below acceptable and shows the intersection is operating at or near capacity. An event day signal and traffic plan should be created to manage traffic to significant events.

Once the final Schematic Design package is complete, a detailed parking and traffic analysis is recommended to determine the full extent of impacts and appropriate mitigation strategies.

### *Archeological Analysis*

The overall objectives of the archaeological assessment, included in Appendix E, were to identify previously recorded archaeological sites and architectural properties in the vicinity of the Study Area that may be significant to regional and national cultural heritage, and to determine the effects of future activities on those properties. The Phase IA archaeological assessment included an intensive background investigation to provide a determination of archaeological probability for the property.

The Study Area is located southeast of historic downtown Hagerstown, just outside the Hagerstown Historic District (WA-HAG-158) and Hagerstown Commercial Core District (WA- HAG-143). It is bounded by West Antietam Street, Summit Avenue, West Baltimore Street, and Ayers Alley, and is currently occupied by commercial buildings and parking lots. Both neighboring historic districts are listed on the National Register of Historic Places (NRHP). Although there are no documented historic properties located within the Study Area, the Baltimore and Ohio (B&O) railroad depot servicing Hagerstown was once located at the corner of West Antietam Street and Summit Avenue just outside the Study Area's north corner. The project site is located in Maryland Archaeological Research Unit 19, the Antietam Creek and Conococheague Creek Drainage areas.

Three archaeological sites with precontact components and two with historic components have been identified within one mile of the Study Area, along with 123 documented historic properties within one quarter mile of it. The Study Area is located near the heart of historic Hagerstown and served a vital function as a freight yard that fostered its economic growth and industry during the nineteenth and early twentieth centuries. Historic maps and records document extensive industrial and transportation infrastructure on the property, but also extensive twentieth-century construction disturbance.

Precontact sites tend to contain perishable materials that do not survive the kind of extensive disturbance created by large construction episodes. Historic features tend to be more durable and may have survived the twentieth-century construction. While modern demolition and construction may have further disturbed archaeological resources in the center of the property, there is a moderate probability that intact archaeological resources exist in the corners of the property where clusters of structures are depicted on late nineteenth and early twentieth century historic maps. Traditional hand excavation methods of archaeological survey are unlikely to be effective in this environment, however, carefully conducted mechanical trenching under the close supervision of an archaeologist has been successful in identifying intact contexts in urban environments such as the Study Area. As such, mechanical trenching is recommended in the northeast, northwest, and southeast corners of the property to document possible in situ cultural features and contexts. In addition, mechanical trenching is recommended in the center of the property to assess the degree to which construction activity related to the railroad impacted that portion of the Study Area.

The cemetery associated with St. John's Evangelical Lutheran Church is generally shown on historic maps outside the Study Area and multiple records indicate that it was moved, however no records could be found of the number of individuals who were originally buried there or disinterred. It is possible that burials might be present along the southeastern boundary of the Study Area where it borders the St.



John's Evangelical Lutheran Church property. Archaeological monitoring is recommended in that area to assure that human remains are not disturbed by the proposed ground disturbing activity.

Finally, it is recommended that a viewshed analysis be conducted by a qualified architectural historian once the final concept plan of the facility is adopted in order to evaluate potential adverse effects to the surrounding historic districts and numerous individual historic structures in the vicinity.

### *Environmental Impact Analysis*

A review of the previous environmental site assessments was completed as part of this report. A detailed summary of previously provided documentation is included in Appendix F, which identifies data gaps in the existing due diligence efforts, recommends potential remedial actions, evaluates potential regulatory oversight strategies, and to provides recommendations for next steps.

Phase I and Phase II Environmental Site Assessments (ESAs) completed at the Site in 2012 and 2013 identified several environmental issues at the Site parcels. The Phase I ESA identified four recognized environmental conditions (RECs) related to historic Site operations: the historic use of the Site as a railroad yard, automotive repair, and printing facility; evidence of three prior gasoline filling stations across the Site; the presence of an out-of-use 1,000-gallon heating oil underground storage tank (UST); and the presence of a former dry cleaner. Further, vent and fill pipes, indicative of the presence of potential heating oil tanks, were identified on the exterior of two Site buildings, but those buildings could not be inspected, so the presence of tanks could not be confirmed.

In July 2012, ECS Mid-Atlantic, LLC completed a Phase I ESA (ECS 2012) at the Site. Based on a review of historic records included in the Phase I ESA, the majority of the Site was owned and operated by the Washington County Railroad Company from 1967 through 1980. Historic fire insurance maps showed the property contained numerous gas and oil tanks, railroad spurs and industrial use. According to online records maintained by the State Department of Assessment and Taxation, the southwestern Site building located at 80 West Baltimore Street (Washington County Commissioners) was constructed in 1950, the western Site building addressed as 140 Summit Avenue (D&P Coin Op Laundry) and northeastern Site building addressed as 37 West Antietam Street (Antietam Paper Company) were constructed in 1900, and the southeastern Site building, addressed as 32 West Baltimore Street (Baltimore Street Station Car Wash) was constructed in 1990.

The Phase I ESA identified four RECs, one historic recognized environmental condition (HREC), and three Business Environmental Risks, as follows:

RECs:

- **Historic Site Use:** The majority of the Site was historically owned and operated by the Washington County Railroad Company from 1867 to 1980. The historic Sanborn fire insurance maps also revealed a history of numerous gas and oil tanks, railroad spurs (including a turntable), and industrial use. Railroad tracks are noted to often be associated with creosote timbers, herbicide applications, and possible fuel spills as part of the railroad operation. The historic use of the Site as a railroad yard, automotive repair, and printing (37 West Antietam Street) was considered to be a REC.
- **Historic Filling Stations:** Three filling stations were observed on the northwestern (Herald Mail Building), western (near D&P Coin Op), and southeastern portion of the subject on the 1951 Sanborn map. Historic gas stations operated with little, if any, regulation and are commonly associated with some degree of petroleum contamination.

- Underground Storage Tank: One 1,000-gallon heating oil UST was listed as out of use at the 140 Summit Avenue property (Coin-Op Laundry) and was recommended for removal.
- Former Dry Cleaner: A former dry cleaner operated at 140 Summit Avenue from prior to 1978 until approximately 2000.

HRECs:

- Prior Leaking Underground Storage Tanks (LUSTs): Two Site addresses were listed in the LUST database. The 100 Summit Avenue property (case number 96-0561WA) was identified with a case closed listing. Further, ECS noted that the MDE frequently closes cases with low levels of petroleum contamination present that are not a risk to human health or the environment. Future development grading activities and/or excavations may encounter petroleum contaminated material at the former tank location. If so, impacted material should be properly handled and disposed.
- The 80 West Baltimore Street property (case number 95-2029WA) was listed as closed by MDE with no release or cleanup noted.

Business Environmental Risks:

- Fill and Vent Pipes: Fill and vent pipes were observed along the exterior walls of 25 and 37 West Antietam Street. Fill and vent pipes are commonly associated with heating oil aboveground storage tanks (ASTs) located in the basement of the structures. ECS was not granted access to the buildings and could not assess the conditions of the tanks. ECS recommended assessing the AST conditions prior to redevelopment activities at the Site.
- Age of Site Structures: Given the age of construction of some onsite structures (buildings constructed prior to 1978), asbestos-containing materials and lead-based paint are possible. ECS recommended an asbestos and lead-paint survey for the subject prior to any demolition or renovation.
- Radon: The property is located in an EPA radon Zone 1, which means the area has a predicted average indoor radon screening level greater than 4 picocuries per liter (pCi/L). A level above 4 pCi/L is considered an environmental concern. ECS recommended mitigation be incorporated into future development plans.

Based on the identified RECs, ECS recommended a Phase II ESA consisting of soil and groundwater sampling within areas of concern at the Site. In general, Urban Green concurred with the results of the ECS Phase I ESA. However, in addition to the recommendations provided, it is noteworthy, that in accordance with the Code of Maryland Regulations (COMAR) Section 26.10, Urban Green would have recommended that any inactive UST present at the Site should be evaluated and closed in accordance with local, state, and federal requirements.

In March 2013, Triad Engineering, Inc., completed a Phase II ESA (Triad 2013) at the Site to further evaluate the RECs identified in the Phase I ESA. In total, 26 soil borings were advanced across the Site and 22 soil samples and three groundwater samples were collected from those soil borings and three temporary wells. Samples were analyzed for volatile organic compounds (VOCs), total petroleum hydrocarbons diesel range organics and gasoline range organics (TPH DRO/GRO), semi-volatile organic compounds (SVOCs), priority pollutant list (PPL) metals, and polychlorinated biphenyls (PCBs). Concentrations of arsenic and TPH DRO/GRO were identified in the soils above the Maryland Department of the Environment (MDE) Non-Residential Cleanup Standards, and concentrations of arsenic, benzene, beryllium, chromium, lead, mercury, naphthalene, nickel, 1,3,5-trimethylbenzene, and

TPH DRO/GRO were detected above the MDE cleanup standards for groundwater. In addition, the Phase II report identified four areas of the property where additional study would be prudent due to the laboratory results and the elevated levels of VOCs identified using field screening equipment during the investigation.

Results of the investigation identified concentrations of arsenic, mercury, TPH DRO, and TPH (C06-C10) in the soils above the 2018 MDE Cleanup Standards for Non-Residential Soil or the anticipated typical concentration (ATC). Arsenic was detected in concentrations in excess of the MDE Cleanup Standard for Non-Residential Soil of 3 milligrams per kilogram (mg/kg) in all 10 samples that were analyzed for PPL metals. Concentrations ranged from 6.6 mg/kg in sample B-9 10 to 29.0 mg/kg in sample B25. Mercury was detected at a concentration in excess of the ATC of 0.51 mg/kg in one of the 10 samples that were analyzed for PPL metals. Mercury was detected at 1 mg/kg in sample B- 14.

TPH DRO was detected in concentrations in excess of the MDE Cleanup Standard of 620 mg/kg in three of the 21 samples that were analyzed for TPH DRO. TPH DRO exceeded the cleanup standard in samples B-7 3.5 (652 mg/kg), B-8 5 (663 mg/kg), and B-9 10 (875 mg/kg). Further, concentrations of TPH (C06-C10) were detected in concentrations in excess of the MDE Cleanup Standard for Non- Residential Soil of 620 mg/kg in two of the 21 samples that were analyzed for TPH (C06-C10). TPH (C06-C10) exceeded the cleanup standard in samples B-9 10 (692 mg/kg) and B-15 (650 mg/kg).

Triad concluded that four areas of the Site may require environmental attention and cleanup based on the PID readings and laboratory analytical testing data. Triad then provided an estimated footprint of those four areas and provided a cost range to remove the soil in those areas. While Urban Green concurs that additional attention should be paid to those areas, there are substantial data gaps that prevent a more comprehensive understanding of the potential environmental concerns/subsurface impacts present at the Site and the associated bearing on project cost and schedule to address these impacts during future development activities.

Given the results of the Phase I and Phase II investigations, several data gaps exist that present challenges for evaluating the costs and schedule implications associated with the above environmental concerns during redevelopment of the Site.

A review of the existing environmental reports for the Site indicates that there are environmental issues that are recommended to be addressed prior to and during the proposed redevelopment of the property. Since the Phase I ESA is more than eight years old, an updated Report is recommended to examine current Site conditions and review any new environmental documentation, such as the records of the onsite UST removals conducted in 2018.

In addition, there are several other data gaps at present; however, these data gaps may be best addressed following a review of proposed Site plans. An optimal remediation strategy would limit the amount of soil to be disturbed or requiring offsite disposal. With a careful review of future Site plans and areas of proposed cut and fill across the Site, an appropriate work plan could be developed to carefully define the limits of disturbance and minimize the amount of soil characterization sampling required.

Further, prior to the construction of new structures at the Site, in the absence of a multi-seasonal soil gas sampling investigation, vapor mitigation should be included in the development plans. The soil and groundwater data collected in 2012 indicates the presence of petroleum-related compounds in soil and groundwater across the property. These compounds can create a vapor intrusion risk, and it is much

more cost effective to design a vapor mitigation strategy prior to construction rather than trying to retrofit a building upon its completion. For detailed remediation strategies, please see the report included in Appendix F.

The team should determine with its stakeholders if oversight from MDE is needed during the construction process. While the contaminants identified during the previous investigation may not require state regulatory involvement, there can be value to the project by enrolling the Site into an MDE-overseen program. The decision should be based upon the project's ownership structure, financial partners, tenant expectations and project timing.

If oversight from MDE is deemed desirable, the first step should be to request a pre-application or pre-development meeting where the initial findings can be presented, and a discussion started regarding plans for additional investigations that would be required by the Department. MDE can provide valuable, informal technical guidance during these preliminary meetings. Although no guidance would be considered official until the property is formally enrolled in one of its programs, pre-application meetings tend to serve as a valuable litmus test to judge if development plans will match well with MDE expectations. It is also important to note that MDE would expect an updated Phase I be submitted at the time of any program enrollment.

With or without MDE oversight, final construction documents should include a formal remediation plan that addresses the appropriate handling and disposal of soil and groundwater on the property. The plan should also address vapor mitigation, if necessary, and outline any steps necessary to protect the health and safety of construction workers during the redevelopment process.

### Geotechnical Analysis

The project site is mapped in the Middle Member of the Stonehenge Formation, which consists of limestone. As such, there is potential for karst features to be encountered at the site. The band of the Stonehenge Limestone the site is mapped in appears to have significant karst activity to the south and farther north. There is a closed depression mapped just a block south of the site along Summit Ave, as shown in the adjacent figure.

In situ decomposition of parent carbonate rock such as limestone typically produces a surficial layer of residual soil of variable thickness. Localized concentrations of bedding planes, fractures and other discontinuities often result in decomposition extending to deeper levels. Occasionally, solution activity develops below the rock surface; these are generally filled with very soft reworked residual material. Sometimes the soils will arch over the cavity until the cavity becomes too large, then the soil collapses forming a sink hole. More resistant, less fractured rock will often form pinnacles of unweathered rock that can extend to the ground surface. This combines with the solution cavities to form an irregular rock surface.

The NRCS Soil Survey for the project site suggests there may only be 5 to 7-ft of residual soil above bedrock. In an urban environment like this, there could also be additional fill overlying the residual soil. Rock outcropping can be observed at the southwest corner of the project site along Summit Ave.

To assess the subsurface conditions at the site, seismic surveys of the proposed Hagerstown Multi-Use Sports & Events Facility were conducted by ERT, Inc. (ERT) under contract to RK&K. The objective of the survey was to map the variation in thickness of the overburden materials using the standard seismic refraction technique to help estimate depth to bedrock and identify potential karst features. On June 17 and 18, 2020, four seismic refraction lines were placed in the field with reference to existing site features. The lines were placed roughly parallel to Hood Street, spaced 95- to 190-ft apart, located using GPS. The accuracy should be within approximately 1 ft.

The data was collected using a Geometrics SmartSeis 24-channel seismograph with 4.5-Hertz geophones. Each spread, consisting of up to 24 geophones, was arranged at a constant geophone interval of 5 feet along a straight line on the ground, yielding a geophone array length of up to 115 feet. A 16-lb sledgehammer struck directly on asphalt surfaces or against an aluminum plate placed on the ground was used as the seismic source.

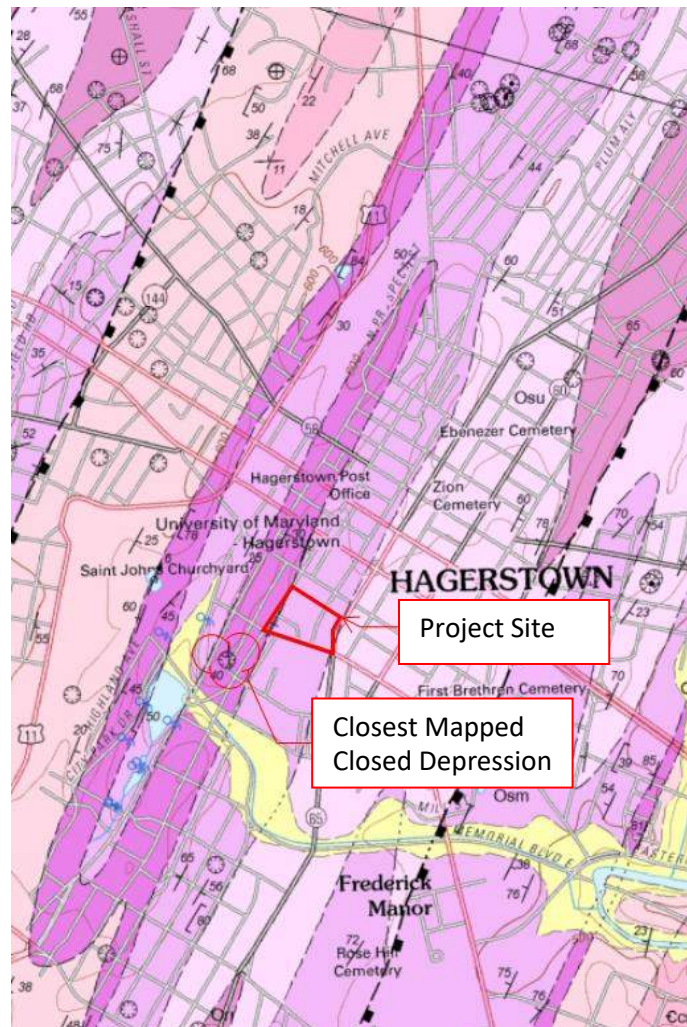


Figure 2 - Geotechnical Mapping



Seismic refraction data was downloaded at the end of the survey. The data was analyzed using tomographic inversion to produce subsurface profiles. The seismic velocity in the bedrock was calculated along each spread and evaluated for its variation along each transect to determine the rippability of the bedrock.

Considering the seismic survey data results, it can be assumed for preliminary planning and cost estimating purposes that the proposed Hagerstown Multi-Use Sports and Event Facility can be founded on conventional spread footings bearing on completely weathered rock or bedrock around or below EL 535 in the southwest and northeast quadrant of the site and EL 530 in the northwest quadrant, generally speaking. Deeper foundations may be required in the Southeast quadrant. If significant cuts are proposed, it is likely that rock excavation techniques will be required. More detailed subsurface data is contained in ERT's report. It is possible that pinnacles or valleys in the bedrock surface may occur between the seismic lines tested.

For a detailed summary of the Geotechnical conditions, see Appendix G.

### ***Stormwater Management***

The Stormwater Management Design will follow the City of Hagerstown's Stormwater Design Regulations for Redevelopment. The majority of this site is already impervious with buildings, parking lot and paved roadways and therefore, the redevelopment process would require 50% of this area to be managed under the Stormwater Regulations. Artificial turf would follow MDE's interpretation and be treated as an impervious surface, which will require stormwater treatment. The majority of this area will most likely experience rock immediately below the surface and therefore infiltration will be highly unlikely for stormwater management. The City of Hagerstown Engineering Department has set a goal of trying to manage up to the 50% of redevelopment using whatever methods are deemed most practical. The engineering department has acknowledged that there may be some reduction in this requirement as the engineering design progresses and there is a better understanding of the full site conditions.

### ***Building Permit Process***

The building permit process will start with separate demolition plans for each site that has a building that must be demolished. Demo permits normally only take about 2 weeks for approval. A hazardous materials / asbestos investigation is needed first. If asbestos or hazardous materials are discovered, that needs properly removed first and the demolition permit may require additional time. After the site plan is approved by the City of Hagerstown Planning Department then a building permit may be obtained. The applicant must submit two sets of signed and sealed building plans together with a digital set of signed and sealed plans and the application to the City of Hagerstown Building Department.

### ***Work in the Right of Way***

This project may necessitate an abandonment of a portion of the public roads within this site so that this project may combine various parcels to create the overall development site. If right-of-way abandonment is necessary, a survey of that area and a plat must be prepared and submitted to the Mayor and Council through the City of Hagerstown's Engineering Department Office for right-of-way abandonment. This process may take several months to complete. If work within a public right-of-way is proposed and that right-of-way is not being abandoned, then a public works agreement would be required if the work occurring in the public right-of-way is significant. If the work within the public right-

of-way is minor, then a public works agreement would not be necessary, and the work would be approved as part of the overall site plan process for this project.

## IV. Conceptual Options Overview

The following sections include summaries of each of the conceptual options prepared for the Site Concept Workshop and subsequent to the workshop. Each option is presented with basic components highlighted and associated pros/cons. We understand that MSA will share the conceptual information with their project cost estimator to develop conceptual rough order-of-magnitude cost estimate ranges. All quantities noted are approximate.

### *Program Highlights*

Based on coordination with project stakeholders the goal of this facility is flexibility to achieve more than just a ballpark. Its needs to be a multi-purpose facility that can accommodate a variety of events, including sports, e-sports, concerts, festivals, town halls, movie nights, car shows, weddings, conferences, civic events, etc. To accomplish this task the facility must have spaces that are “chameleon like” in adopting to what event is happening that day or hour. For example, a suite for sports might be a break out room for conferences or the auxiliary locker room for sports will convert to a green room for concerts or the kid’s zone for sporting events will double as an asset along the Trail when there is no activity in the facility.

One of the most iconic pieces of the facility will be the Hagerstown Cultural Trail and its incorporation into the facility. It is anticipated that the trail will be part of the event experience and when not in event mode will maintain its identity as a destination for Hagerstown. The design team has added seating to the trail that looks into the field and has truly integrated it with the facility to be used during events or by trail users at all other times. A key aspect of the site layout that all options have addressed is the slope of the site. From the Southwest corner to the Northeast corner there is a 20’ grade difference which allows for multiple access points into the facility at varying levels. One scheme presents opportunities to incorporate surrounding buildings to integrate within the facility, resulting in a much broader approach to the master plan.

All four concepts are based on coordinated program which has a facility capacity of 5,000 people. This includes group sales, bars, 3000-3500 chair backs (no bleachers), lawn seating/berm, standing room only, and party decks. An important asset of the facility will be an event space for 400, and a designated community room. The event space will also be used during sporting events for patrons and will include 100 club seats that sit directly in front facing the field. There are six suites that will be equipped with AV capabilities for meetings and breakout sessions. Robust Wi-Fi connectivity and a high definition video board in left field are critical to keep this facility up to date with ever-changing technology.

Another highlight is the 360° concourse that allows spectators to view the activity from multiple vantage points. The concourse could be seen as an extension of the cultural trail and tell its unique story. The facility program is based on the most current MiLB guidelines and anticipates increased areas for player development that is currently under MLB review. The current field has been designed to accommodate the pitch requirements for a United Soccer League (USL) event, in addition to MiLB requirements. The auxiliary and visitor’s locker room could be utilized for a USL event. A detailed building program is included in Appendix H.

The facility is expected to be able to meet the following field standards:

- United Soccer League (330'x210')
- High School/Small College Football (360'x160')
- Rugby (300'x210')
- Lacrosse (330'x180')
- Field Hockey (300'x180')

Table 1 below includes a summary of site layout characteristics. The unsuitable cut is due to areas of contaminated soil which must either be relocated and capped on-site or removed and properly disposed. For comparison, the existing elevation in the middle of the parking lot (middle of the future outfield) is 536.5'. Table 2 below is a comparison summary of site features and constraints considered with each layout option.

*Table 1 - Site Summary*

Concept	Field Area (SF)	Field Elevation	Rock Cut (CY)	Unsuitable Cut (CY)	Earth Cut (CY)	Earth Fill (CY)	Import (CY)	Limit of Disturbance (AC)	Capacity (People)
1	107,000	535.5'	718	8,998	2,585	35,135	32,551	7.5	5,000
2	107,000	538'	145	10,343	5,588	23,825	18,238	7.5	5,000
3	107,000	538'	0	9,650	3,607	31,181	27,575	7.5	5,000
4	107,000	537'	1	7,000	6,539	32,880	26,340	7.5	5,000

*Table 2 - Site Features & Constraints*

Site Feature/Constraint	Concept 1	Concept 2	Concept 3	Concept 4
Meets Minor League Baseball Standards	Yes	Yes	Yes	Yes
Accommodates Football Runout	Yes	Yes	-	-
Semi-Truck Accessible	Yes	Yes	Yes	Yes
Cultural Trail Relocated	Yes	Yes	Yes	Yes
Player & Staff Parking on-site	Yes	Yes	-	-
Player Facilities at Field Level	Yes	-	-	Yes
Grounds & Maintenance facilities at Field Level	Yes	Yes	Yes	Yes
Maintains service drive to Herald Mail building	Yes	-	Yes	Yes
Commissary close to club/event/suite spaces	Yes	-	-	Yes
Allows for Future Expansion	Yes	Yes	-	Yes
Eliminates Rock Removal	-	-	Yes	Yes
Engages existing buildings	-	Yes	-	Yes
Accommodates United Soccer League play	Yes	Yes	Yes	Yes
Grounds & Maintenance facilities in stadium	Yes	Yes	-	Yes



## V. Concept Option 1

This layout is the optimal stadium layout regardless of site constraints. It includes all team amenities and field maintenance at field level and can accommodate multiple rectangular sports. For detailed renderings, see the Architectural concept plans in Appendix A.

### *Site Summary*

- Limit of Disturbance: 7.5 Ac
- Cut: 2,585 yd<sup>3</sup>
- Fill: 35,135 yd<sup>3</sup>
- Net Import: 32,551 yd<sup>3</sup>
- Rock Removal: 718 yd<sup>3</sup>
- Contaminated Soil Removal (Unsuitable Soil): 8,998 yd<sup>3</sup>
- Field Elevation: 536.5'
- Capacity: 5,000

### *Site Layout*

- Maintains access to the existing truck docks to the Herald Mail building
- Cultural trail has views over the 8' outfield fence (drink rail height)
- Field access from the north, semi-truck access from the right field bullpen
- Player, staff parking on site, partially under cover
- Cultural trail modified adjusted to the east, demo of existing buildings, maintains alley
- Large amount of rock removal

### *Field Level*

- All team amenities and field maintenance at field level
- Field level at existing grades in left and right field
- Added length of left field to accommodate football runouts

### *Concourse Level*

- Open concourse with views to field
- 360° concourse with change of elevations, cultural trail will be closed during events
- Kid zone located in cultural trail for 365 day/year use
- All seating below concourse
- Buildings along Summit Ave don't allow for 20' setback
- Home plate area respects the granite outcropping, can activate the outdoor space near the intersection
- Summit Street façade could be opened up for vendors, neighbors to view in
- Commissary located below club/event/suite spaces

### *Suite Level*

- Event space, club along 1<sup>st</sup> base allows for focused views to downtown
- Closer relationship programmatically to administration
- Reduces vertical presence along Summit Ave (residential side)
- Expansion could occur along 3<sup>rd</sup> base line

Concept Option 1 Pros	Concept Option 1 Cons
<ol style="list-style-type: none"><li>1. Player &amp; staff parking on site</li><li>2. Player, grounds &amp; maintenance facilities at field level</li><li>3. Views from cultural trail maintained with no obstructions</li><li>4. Maintains service drive to Herald Mail building</li><li>5. Majority of seating is below concourse level</li><li>6. Allows for open area along Summit Ave for vendor trucks and visual connection between the street and the activity within the stadium</li><li>7. Commissary close to club/event/suite spaces</li><li>8. Expansion opportunities along 3<sup>rd</sup> base at suite level</li></ol>	<ol style="list-style-type: none"><li>1. Requires the greatest amount of rock removal</li><li>2. Minimum amount of setback from Summit Ave</li><li>3. Left field distance for baseball is longer than normal to accommodate football runout</li></ol>

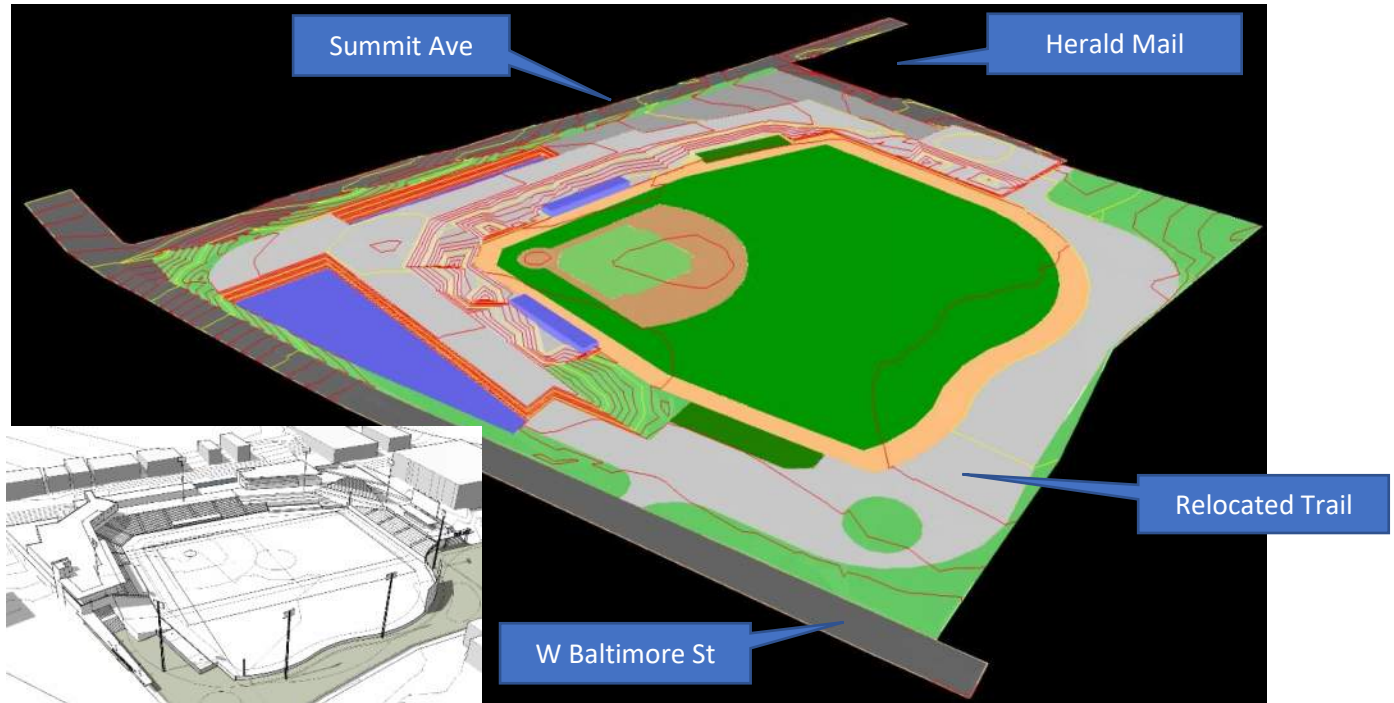


Figure 3 – Layout 1, Grading Model

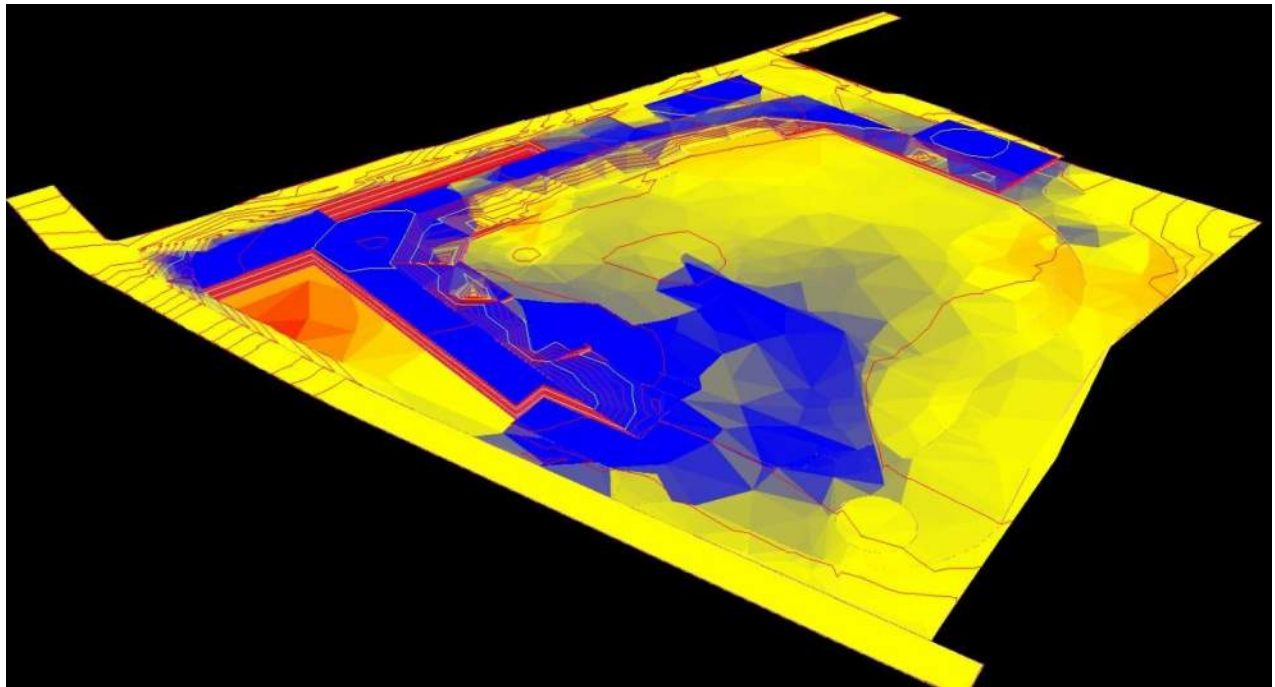


Figure 4 – Layout 1, Cut/Fill Model (Cut: Red, Fill: Blue, No Change: Yellow)

## VI. Concept Option 2

This layout brings the facility further away from Summit Ave and raises the field elevation by 1.5', as compared to option 1. Additionally, this layout presents an opportunity to incorporate the Herald Mail building as part of the development. For detailed renderings, see the Architectural concept plans in Appendix A.

### *Site Summary*

- Limit of Disturbance: 7.9 Ac
- Cut: 5,588 yd<sup>3</sup>
- Fill: 23,825 yd<sup>3</sup>
- Net Import: 18,238 yd<sup>3</sup>
- Rock Removal: 145 yd<sup>3</sup>
- Contaminated Soil Removal (Unsuitable Soil): 10,343 yd<sup>3</sup>
- Field Elevation: 538'
- Capacity: 5,000

### *Site Layout*

- Includes opportunity to incorporate the Herald Mail building for development
- Utilize loading dock and replace with parking and field access (semi-truck )
- Facility is moved off Summit Ave by 20' to soften impact of building off the street
- Move field elevation up 1.5' compared to option one, 2' above existing grade in left field and right field
- Access new parking, service off Antietam St
- Reduced rock removal/increased site fill

### *Field Level*

- All team facilities moved to concourse
- Team tunnels to access dugouts
- Field access in left center field
- Football orientation is rotated 45° from home plate to center field to reduce length of left field; results in encroachment into the cultural trail

### *Concourse Level*

- Increased square footage as compared to other options
- Split seating bowl to minimize impact of stadium on cultural trail (full seating would effectively eliminate trail, without elevating trail above outfield wall)
- Potential to include Herald Mail building in left field, offices, retail, event spaces
- Maintain views from concourse to field
- 360° concourse with change of elevations, cultural trail closed during events
- Kid zone located in cultural trail for 365-day use
- Cultural trail view into stadium is through outfield fence (fence is 6' above grade in most places)
- Commissary located in left field corner, away from suite level but accessible from concourse
- For smaller events, the split deck at this level would not have to open
- Outfield split deck can have its own identity
- No simple expansion along 3<sup>rd</sup> base line

*Suite Level*

- Additional expansion for club, event space is possible
- Access to new split seating deck off 3<sup>rd</sup> base via roof of concourse building or at concourse
- For smaller events the split deck at this level would not have to open
- Outfield split deck can have its own identity
- No simple expansion along 3<sup>rd</sup> base line

Concept Option 2 Pros	Concept Option 2 Cons
<ol style="list-style-type: none"> <li>1. Potential engagement of the Herald Mail building for fan amenities, offices, retail &amp; residential</li> <li>2. Reduced amount of rock removal as compared to option 1</li> <li>3. Player &amp; staff parking on site</li> <li>4. Left field wall is at the MiLB standard (football field runs from home plate to 2<sup>nd</sup> base)</li> <li>5. Club &amp; event space can be easily expanded</li> <li>6. Grounds crew &amp; maintenance facility at field level</li> </ol>	<ol style="list-style-type: none"> <li>1. Player facilities are at concourse level (not unusual but not preferred)</li> <li>2. Split seating deck</li> <li>3. Commissary located in left field, away from suites/club/event spaces</li> <li>4. Limited 3<sup>rd</sup> base expansion at suite level</li> <li>5. Cultural trail grades will need to be modified to maintain unobstructed views to the field</li> <li>6. Viewing for football compromised</li> <li>7. Cultural trail gets narrower because of the football field</li> </ol>

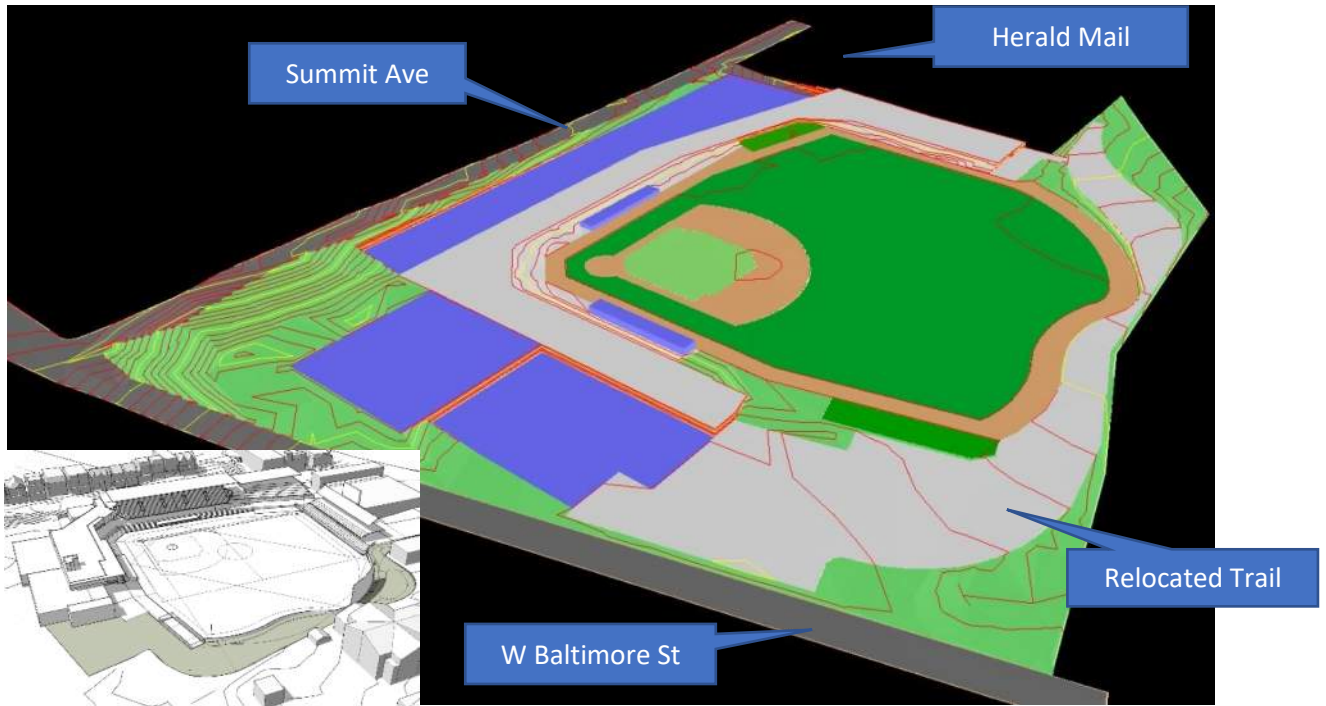


Figure 5 - Layout 2, Grading Model

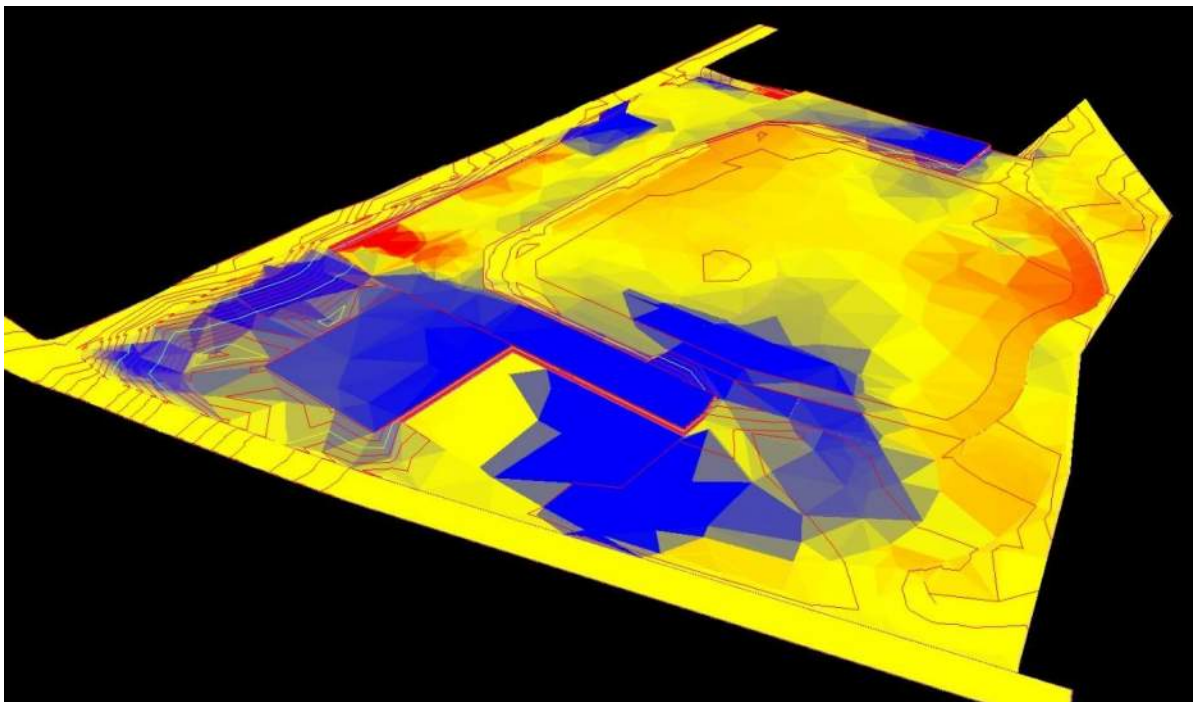


Figure 6 – Layout 2, Cut/Fill Model (Cut: Red, Fill: Blue, No Change: Yellow)



## VII. Concept Option 3

Layout 3 maintains access to the loading dock at the Herald Mail building, moves the facility back to the corner (similar to option 1) but brings the field and team facilities up 1.5' from option one. This significantly reduces the need for rock removal on site. For detailed renderings, see the Architectural concept plans in Appendix A.

### *Site Summary*

- Limit of Disturbance: 7.5 Ac
- Cut: 3,607 yd<sup>3</sup>
- Fill: 31,181 yd<sup>3</sup>
- Net Import: 27,575 yd<sup>3</sup>
- Rock Removal: 0 yd<sup>3</sup>
- Contaminated Soil Removal (Unsuitable Soil): 9,650 yd<sup>3</sup>
- Field Elevation: 538'
- Capacity: 5,000

### *Site Layout*

- Maintains access to the existing truck docks to the Herald Mail building
- Moves field elevation up 1.5' compared to option one, 2' above existing in left & right field
- Field access is at right field bullpen
- Maintenance/field building is in right field off cultural trail/alley
- Minimal to no rock removal/increased site fill
- No parking on site; player & staff parking off site

### *Field Level*

- All team facilities moved to concourse
- Team tunnels to access dugouts
- Field access in right field through bullpen
- Football orientation is along 3<sup>rd</sup> base but with no runouts to reduce length of left field

### *Concourse Level*

- Increased square footage
- Split seating bowl to minimize impact of stadium on cultural trail; full seating would effectively eliminate trail, without elevating trail above outfield wall
- Maintain views from concourse to field
- 360° concourse with change of elevations, cultural trail closed during events
- Kid zone located in cultural trail for 365-day use
- Cultural trail view into stadium is through outfield fence (fence is 6' above grade in most places)
- Commissary located in left field, away from suite level but with access from concourse

### *Suite Level*

- Access to new split seating deck off 3<sup>rd</sup> base via roof of concourse building or at concourse
- For smaller events the split deck at this level would not have to open
- Outfield split deck can have its own identity
- No simple expansion along 3<sup>rd</sup> base line, due to existing deck

Concept Option 3 Pros	Concept Option 3 Cons
<ol style="list-style-type: none"> <li>1. Least amount of rock removal</li> <li>2. Maintains service access to Herald Mail building</li> <li>3. Minimum MiLB field dimensions are met with football running home plate to 3<sup>rd</sup> base</li> </ol>	<ol style="list-style-type: none"> <li>1. Grounds keeping/maintenance facility along Baltimore St. within the cultural trail</li> <li>2. Player facilities are at concourse level (not too unusual but not preferred)</li> <li>3. Split seating deck</li> <li>4. Commissary located in left center, away from suites/club/event space</li> <li>5. Field access across trail, through left field bullpen</li> <li>6. Limited 3<sup>rd</sup> base expansion at suite level</li> <li>7. Cultural trail grades will need to be modified to maintain unobstructed views to the field</li> <li>8. No player or staff parking</li> <li>9. No player runouts for football</li> </ol>



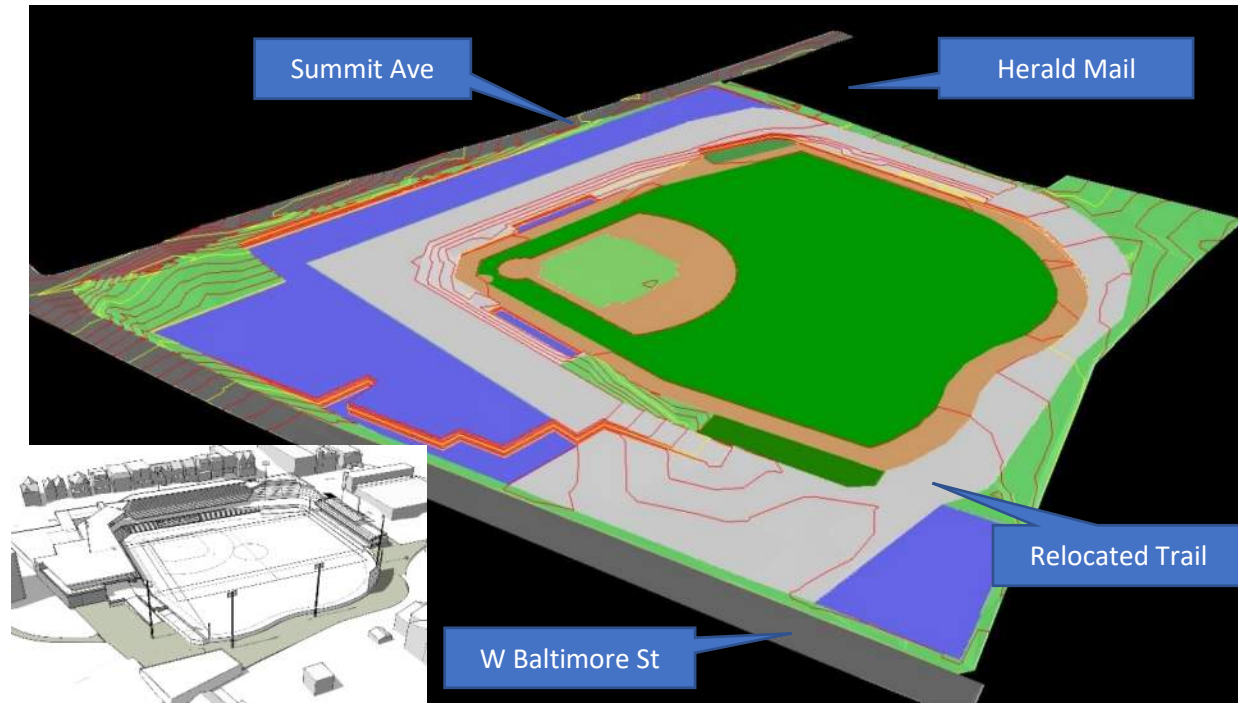


Figure 7 – Layout 3, Grading Model

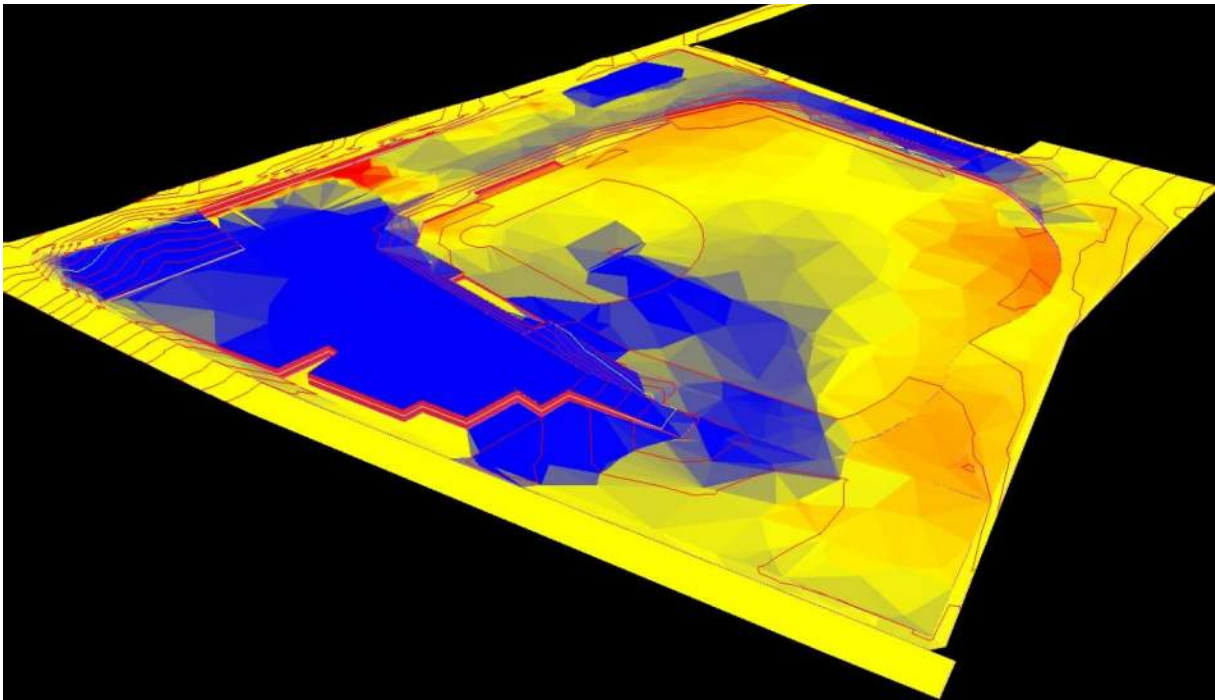


Figure 8 – Cut/Fill Model (Cut: Red, Fill: Blue, No Change: Yellow)

## VIII. Concept Option 4

Layout 4 is a hybrid of other options presented. The field elevation has been lowered from options 2 and 3 to 537'. For detailed renderings, see the Architectural concept plans in Appendix A.

### *Site Summary*

- Limit of Disturbance: 7.5 Ac
- Cut: 6,539 yd<sup>3</sup>
- Fill: 32,880 yd<sup>3</sup>
- Net Import: 26,575 yd<sup>3</sup>
- Rock Removal: 1 yd<sup>3</sup>
- Contaminated Soil Removal (Unsuitable Soil): 7,000 yd<sup>3</sup>
- Field Elevation: 537'
- Capacity: 5,000

### *Site Layout*

- Opportunity to incorporate existing Antietam Paper building in left center field for team administration and ticket offices
- Maintains access to the existing truck docks to the Herald Mail building
- Cultural trail has views over the 8' outfield fence (drink rail height) with slight adjustment to the grades
- Field access from the north; semi-truck access will need to be from the right field bullpen
- Player, staff parking off site; No parking on site
- Cultural trail modified adjusted to the east, demo of existing buildings, maintains alley
- Small amount of rock removal/increased site fill

### *Field Level*

- All home team amenities, field maintenance, at field level
- Consider remote ticket window added at right field if admin and ticket are included in a renovated building in left center field
- Field level at 1' above existing grades in left field & right field
- No additional length of left field to accommodate football runouts
- Moves field elevation up 0.5' compared to option one

### *Concourse Level*

- Considers utilization of existing building for Administration and ticket sales in left center field
- Open concourse with views to field
- 360° concourse with change of elevations, cultural trail will be shut down during events
- Kid zone located in cultural trail for 365-day use
- All seating below concourse
- Buildings along Summit Ave at concourse and 20' off street
- Visitor clubhouse at grade and below concourse but not at field level
- Home plate area respects the granite outcropping (undetermined how to activate)
- Access via ramp, stairs, elevator; two gates – left center field and right field
- Summit Ave façade could be opened for vendors, neighbors to view in
- Commissary located below club lounge for easy access to event facilities

*Suite Level*

- Event space, club along 1<sup>st</sup> base allows for focused views to downtown
- Commissary located below club and suites
- Reduces vertical presence along Summit Ave (residential side)
- Expansion could occur along 3<sup>rd</sup> base line

Concept Option 4 Pros	Concept Option 4 Cons
<ol style="list-style-type: none"> <li>1. Home team, grounds keeping &amp; maintenance facilities at field level</li> <li>2. Maintains service drive to the Herald Mail building</li> <li>3. Opportunity to locate team offices, ticketing &amp; team store are located off site in renovated building in left center field</li> <li>4. Team store &amp; ticketing located where the majority of spectators are coming from</li> <li>5. Allows for open area along Summit Ave for vendor trucks and visual connection between the street and the activity within</li> <li>6. Commissary close to club/event/suite spaces</li> <li>7. Expansion along 3<sup>rd</sup> base at suite level</li> <li>8. Minimal rock removal</li> <li>9. Views from cultural trail maintained with no obstructions</li> <li>10. Minimum MiLB field dimensions are met with football running home plate to 3<sup>rd</sup> base</li> </ol>	<ol style="list-style-type: none"> <li>1. Team offices, ticketing &amp; team store are assumed to be located away from stadium</li> <li>2. Likely a remote ticketing &amp; team store in right field</li> <li>3. No player runouts for football</li> <li>4. Concert truck access at right field</li> </ol>

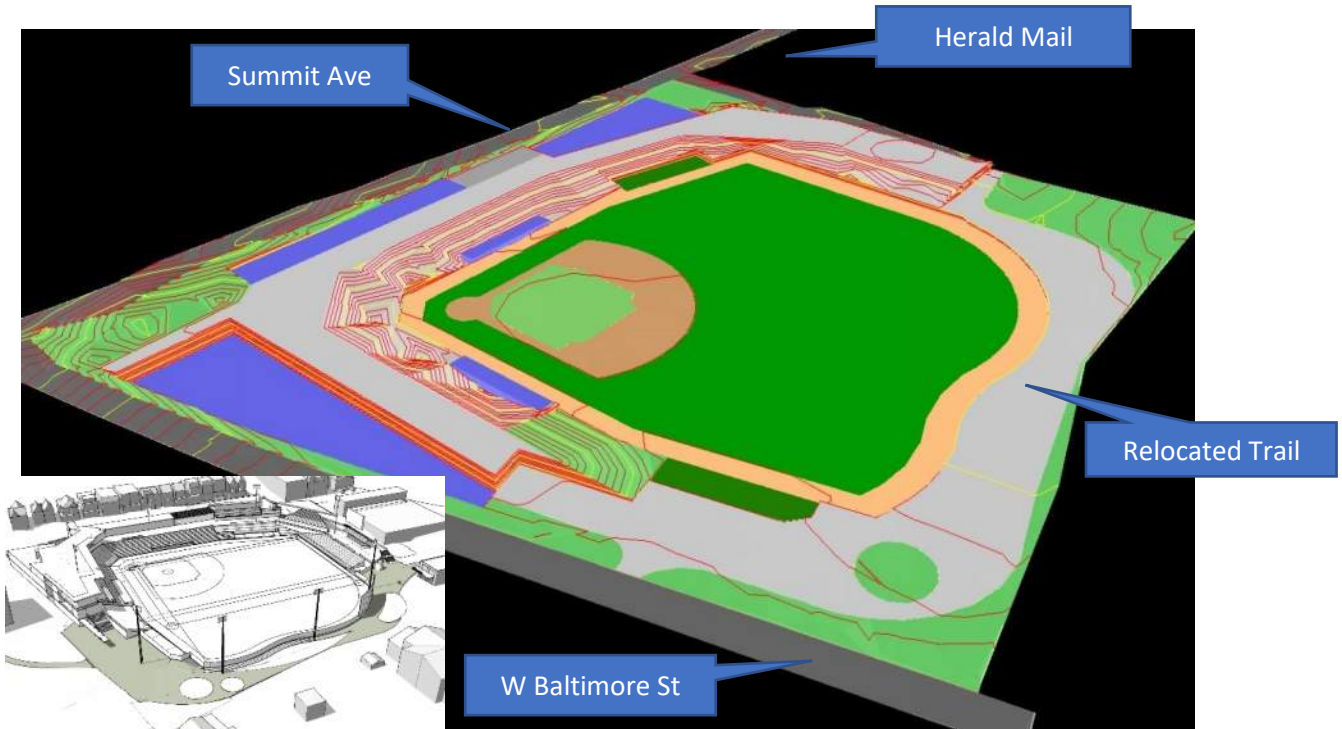


Figure 9 – Layout 4, Grading Model

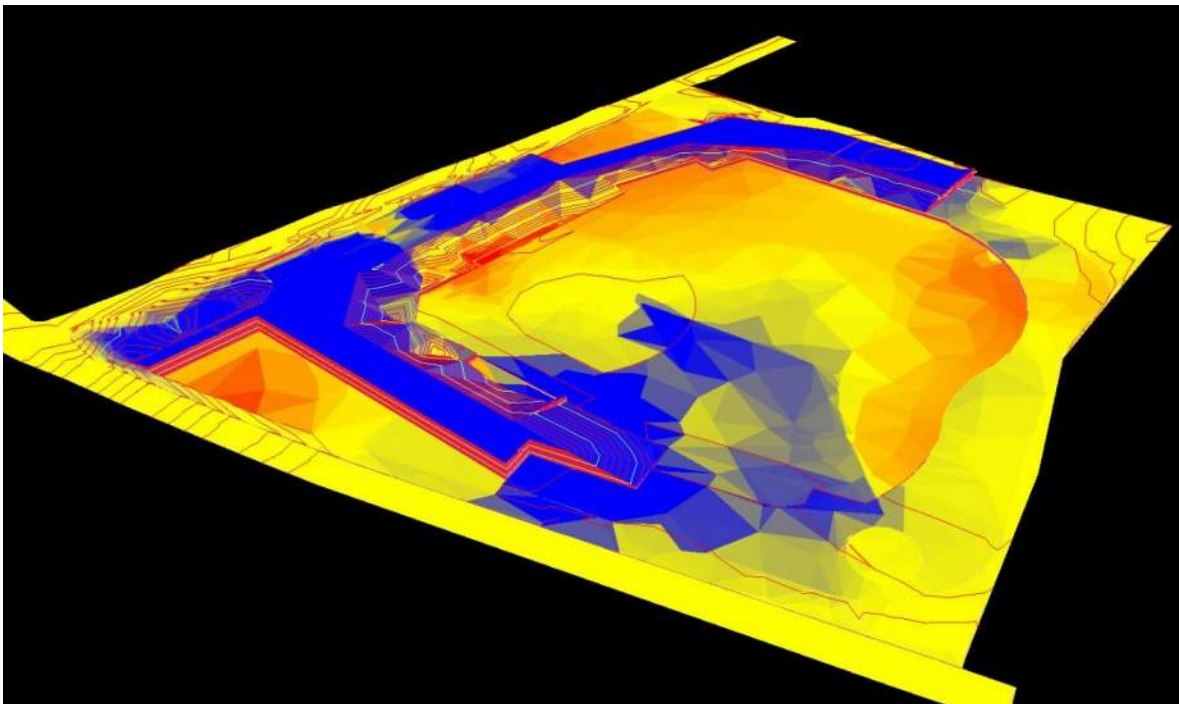


Figure 10 – Cut/Fill Model (Cut: Red, Fill: Blue, No Change: Yellow)

## IX. Recommendations/Next Steps

- City of Hagerstown to select one of the four proposed concepts for development into a schematic design package.
- Engage a surveyor to develop a detailed topographic survey and subsurface utility investigation for design beyond the schematic design package.
- Evaluate the existing buildings which are to be demolished for hazardous materials, including asbestos. If either are discovered, they will increase the time and cost for demolition.
- Complete a utility capacity analysis to determine if adequate utility capacity exists within the public utility systems to support the proposed site improvements.
- Complete an updated detailed parking and traffic analysis to determine the full extent of impacts and prepare appropriate mitigation strategies. This should include updated traffic and turning movement counts after traffic returns to normal post COVID-19 or utilizing recent traffic counts prior to March 2020. The analysis should include evening and weekend modeling during expected game/event times.
- Mechanical trenching is recommended in the northeast, northwest, and southeast corners of the property to document possible in situ cultural features and contexts. In addition, mechanical trenching is recommended in the center of the property to assess the degree to which construction activity related to the railroad impacted that portion of the Study Area.
- Engage a qualified Architectural Historian to conduct a viewshed once the final concept plan of the facility is adopted in order to evaluate potential adverse effects to the surrounding historic districts and numerous individual historic structures in the vicinity.
- Since the Phase I ESA is more than eight years old, an updated Report is recommended to examine current Site conditions and review any new environmental documentation, such as the records of the onsite UST removals conducted in 2018.
- The project management team should determine with its stakeholders if oversight from MDE is needed during the construction process. While the contaminants identified during the previous investigation may not require state regulatory involvement, there can be value to the project by enrolling the Site into an MDE-overseen program. The decision should be based upon the project's ownership structure, financial partners, tenant expectations and project timing.

## X. Appendices

- A – Architectural Concept Renderings
- B – Real Estate Acquisition Plan
- C – Utility Availability Maps
- D – Parking and Traffic Plan
- E – Archeological Investigation Report
- F – Environmental Impact Review
- G – Geotechnical Assessment
- H – Building Program
- I – Workshop Notes

Appendix A  
Architectural Concept Renderings



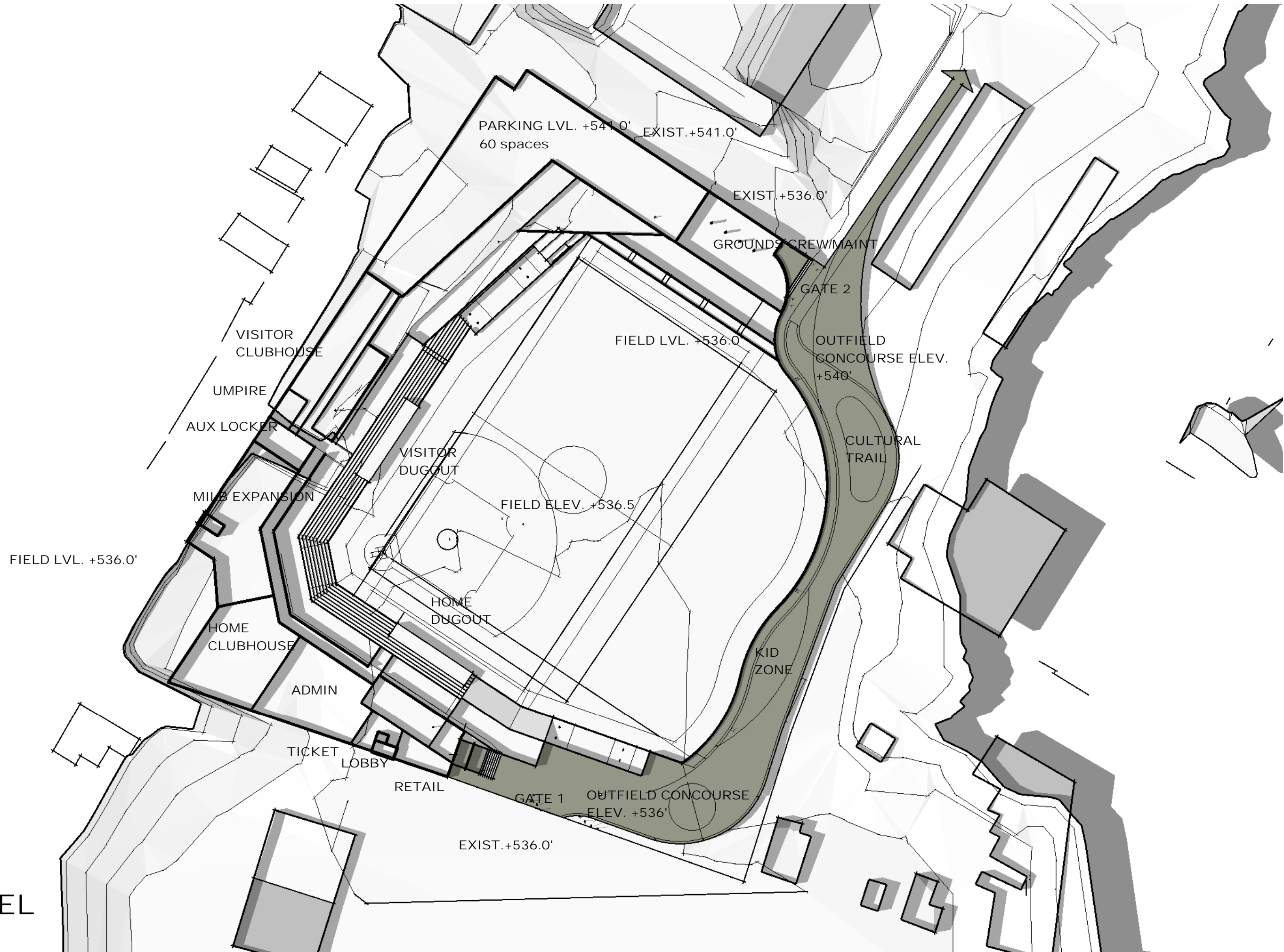




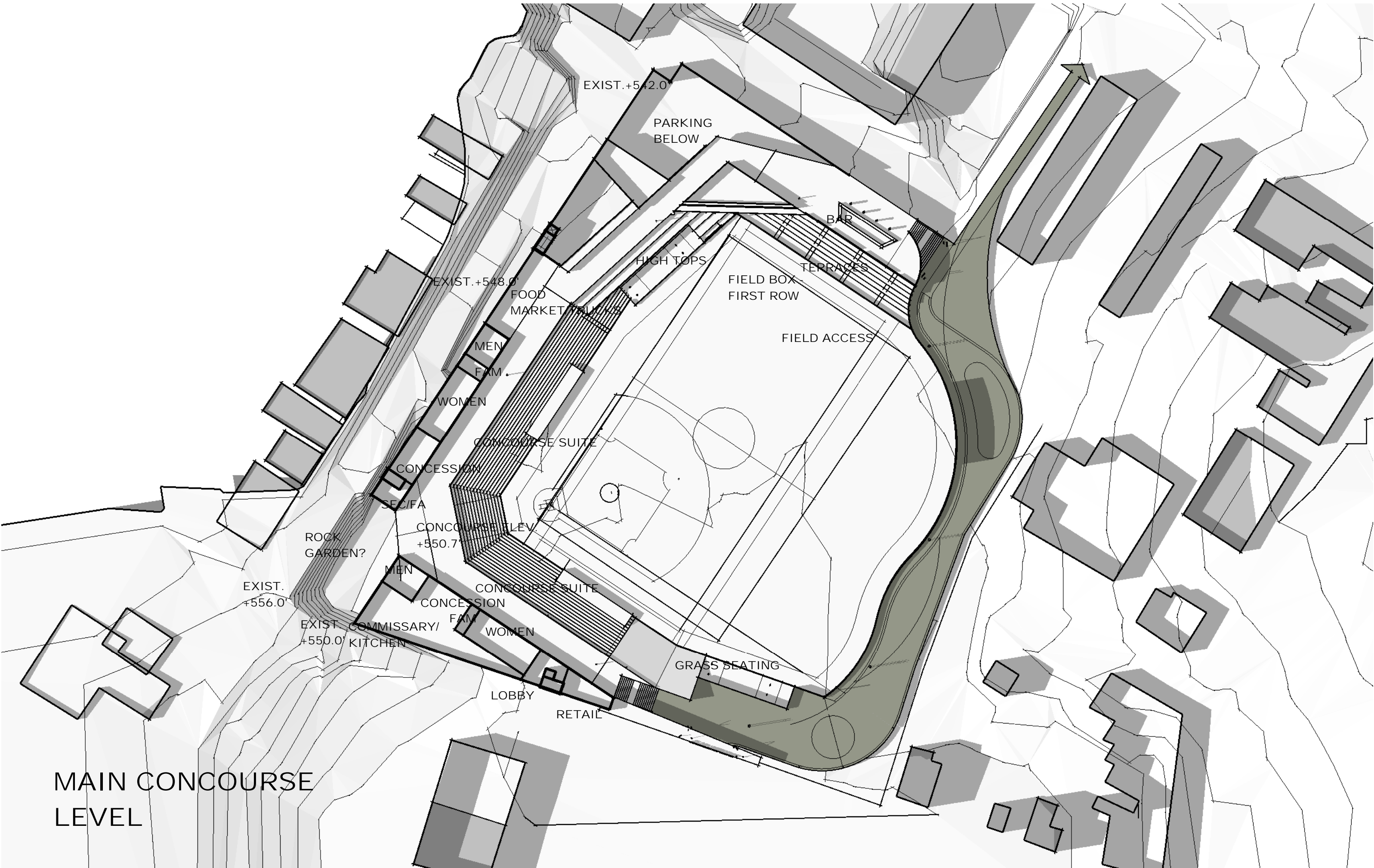
HAGERSTOWN MULTI-PURPOSE SPORTS AND EVENTS FACILITY  
CONCEPT ONE



# FIELD LEVEL







EXIST.+542.0

PARKING  
BELOW

EXIST.+548.0

FOOD  
MARKET

HIGH TOPS

FIELD BOX  
FIRST ROW

BAR

TERRACES

FIELD ACCESS

MEN

FAM

WOMEN

CONCOURSE SUITE

CONCESSION

SEC/FA

CONCOURSE ELEV.  
+550.7

ROCK  
GARDEN?

MEN

CONCOURSE SUITE

CONCESSION

EXIST.  
+556.0

EXIST. COMMISSARY/  
KITCHEN

FAM

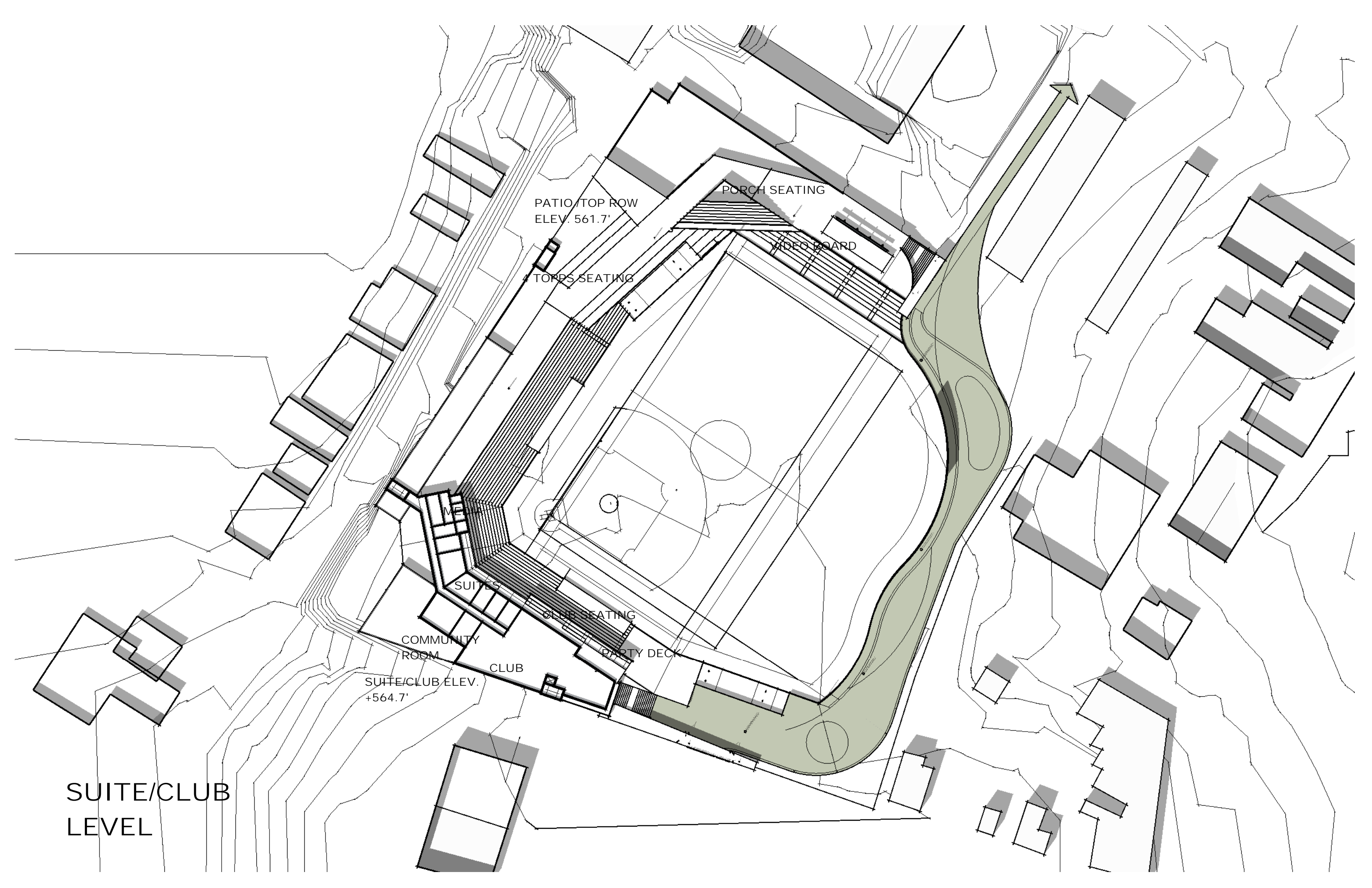
WOMEN

GRASS SEATING

LOBBY

RETAIL

MAIN CONCOURSE  
LEVEL



PATIO / TOP ROW  
ELEV. 561.7'

PORCH SEATING

VIDEO BOARD

TOP ROW SEATING

SUITE/CLUB

CLUB SEATING

COMMUNITY  
ROOM

PARTY DECK

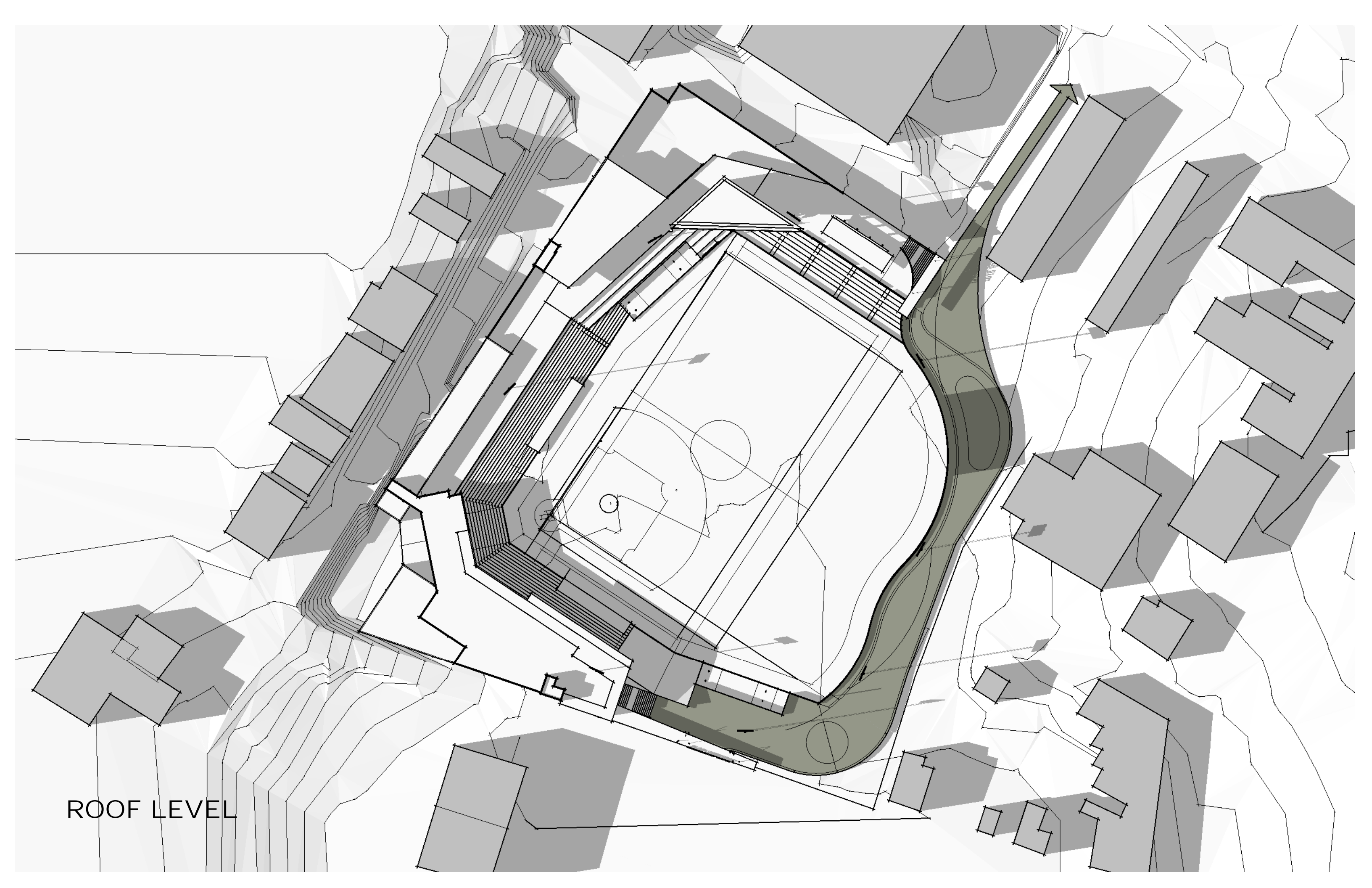
CLUB

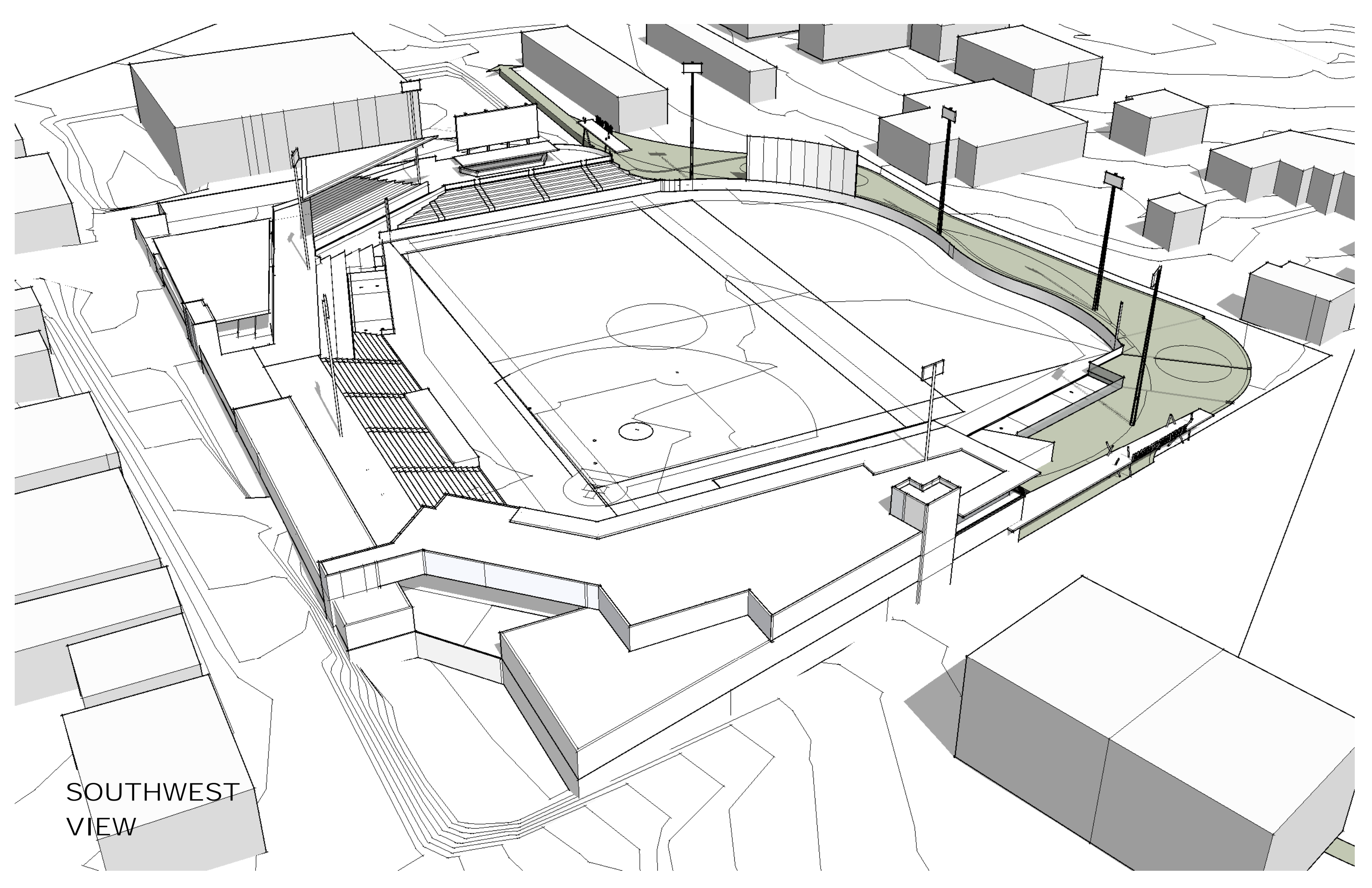
SUITE/CLUB ELEV.  
+564.7'

SUITE/CLUB  
LEVEL



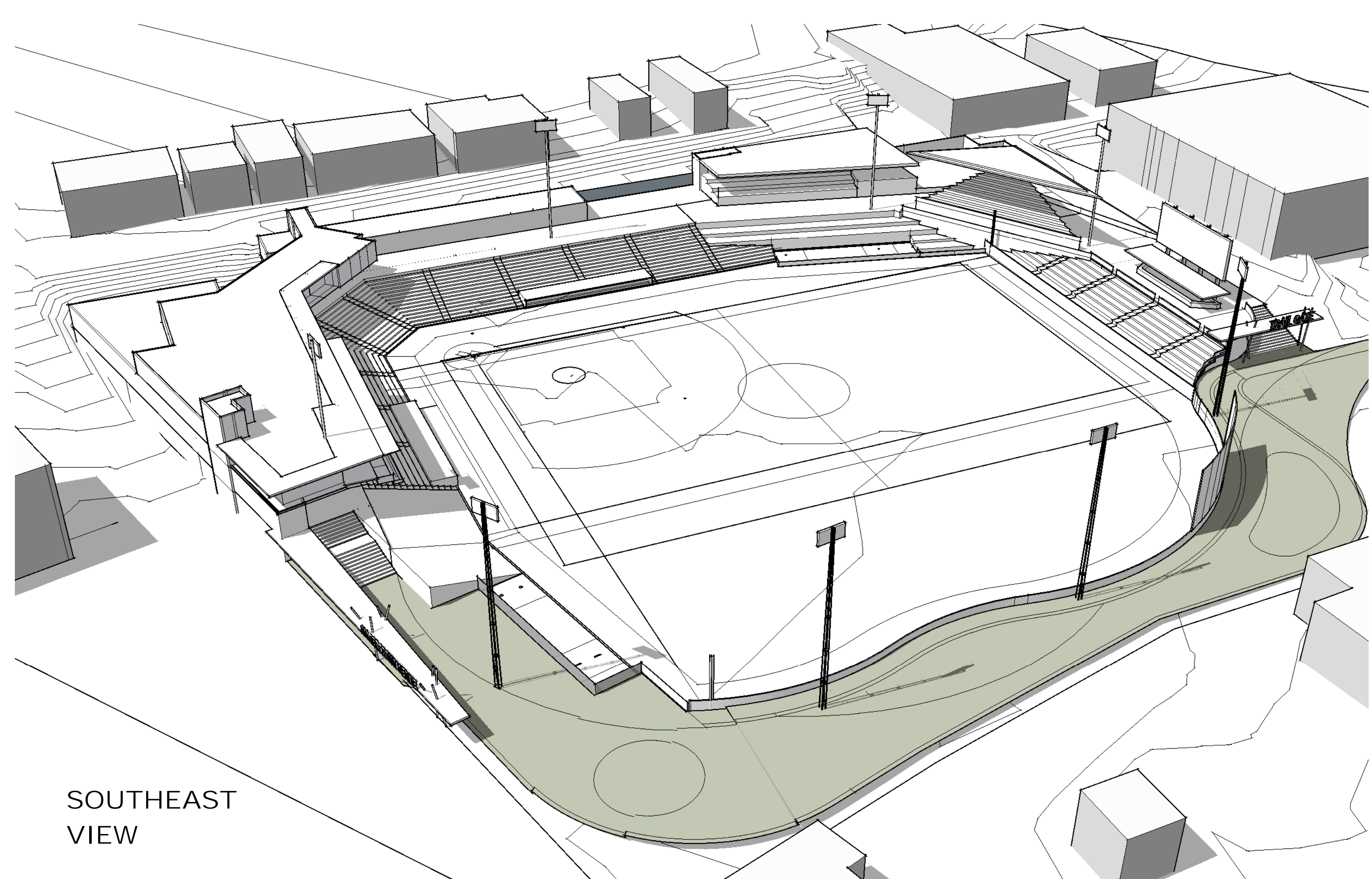
ROOF LEVEL



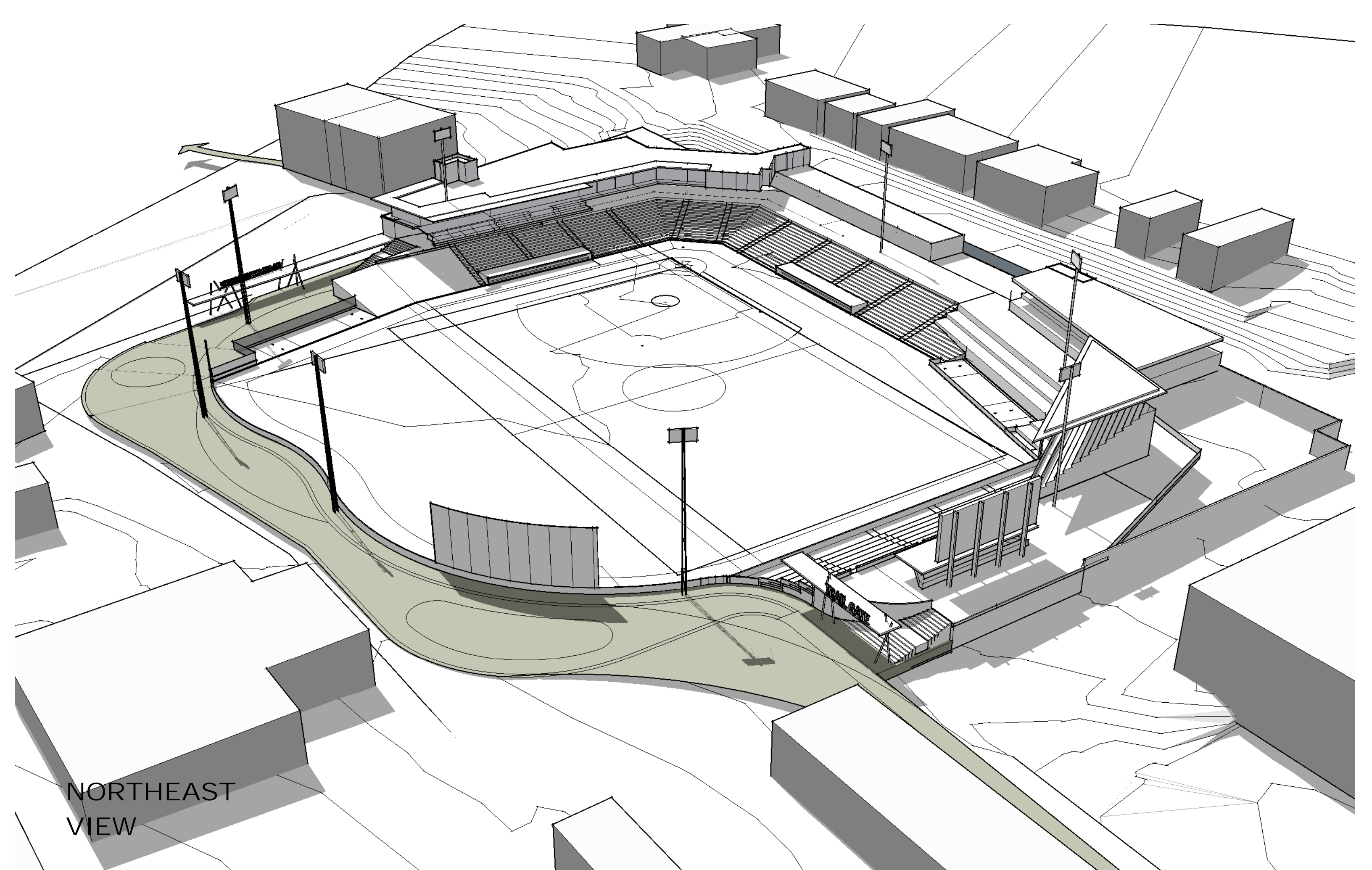


SOUTHWEST  
VIEW



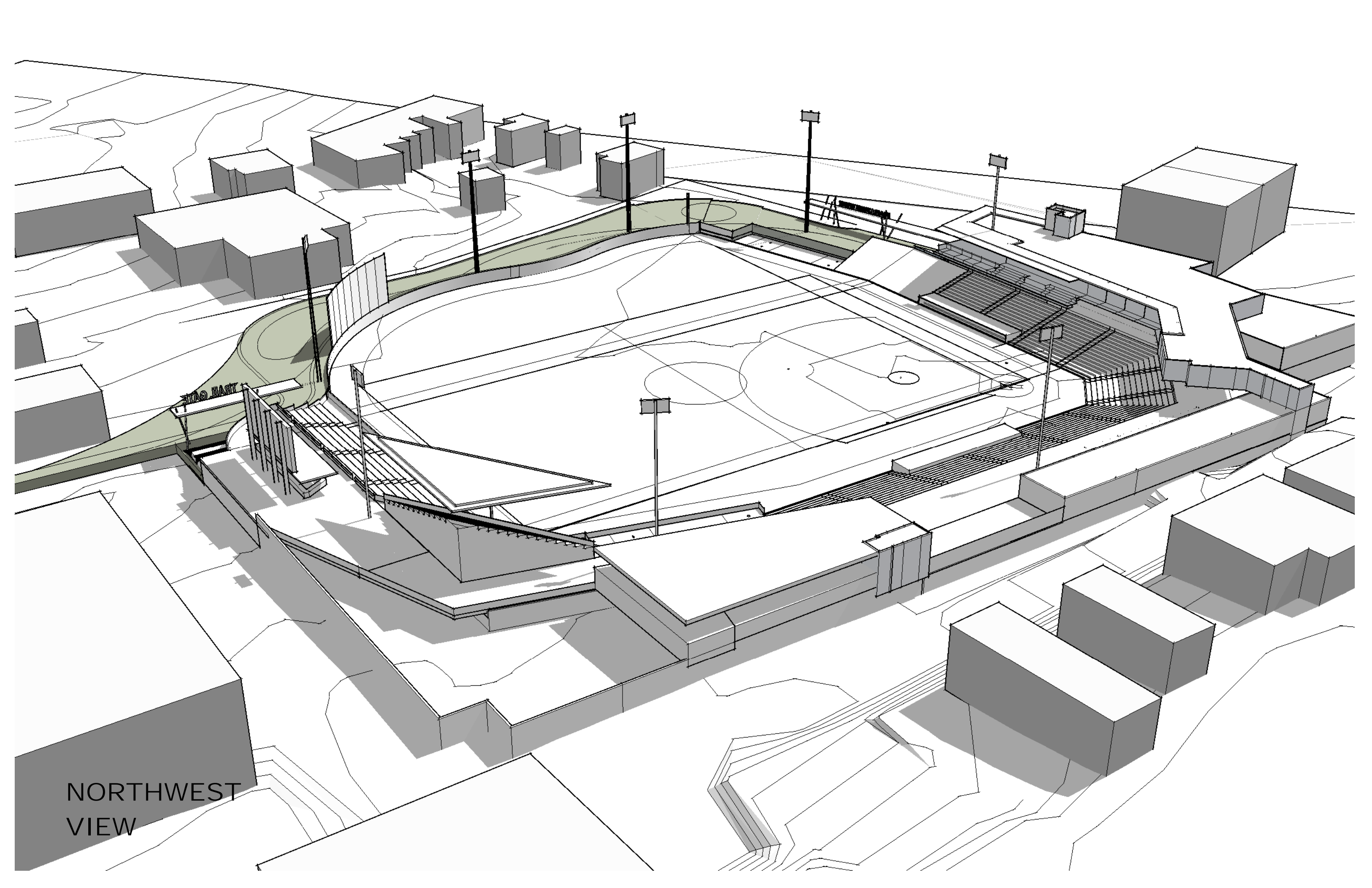


SOUTHEAST  
VIEW

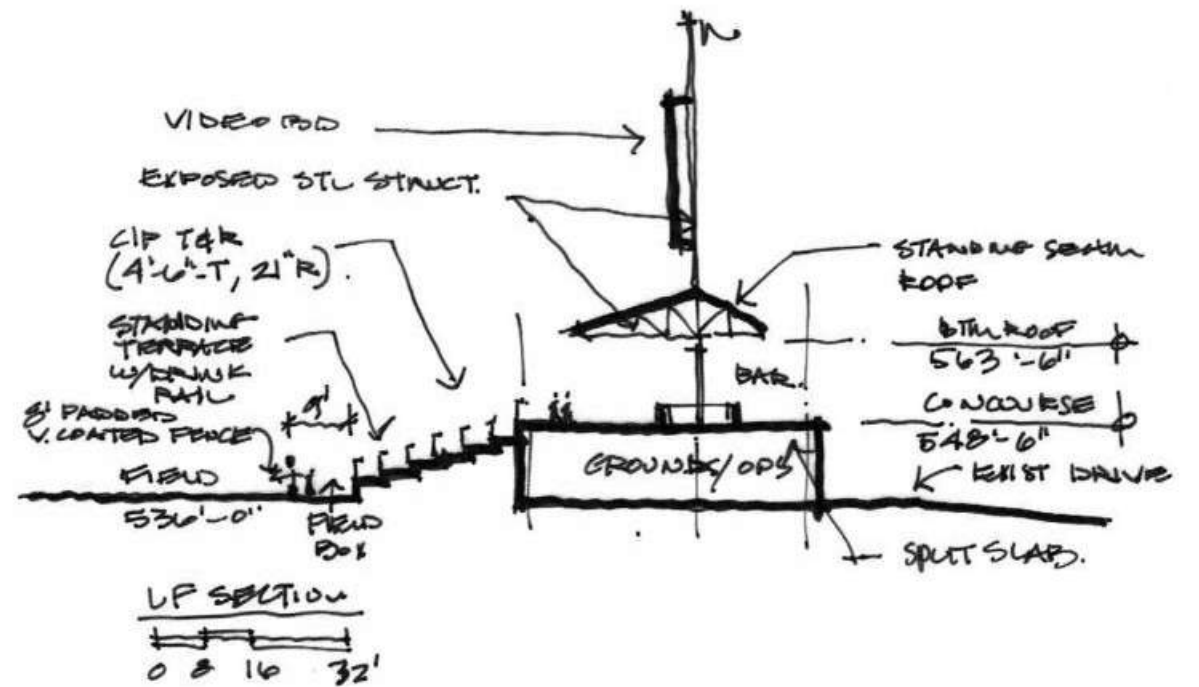
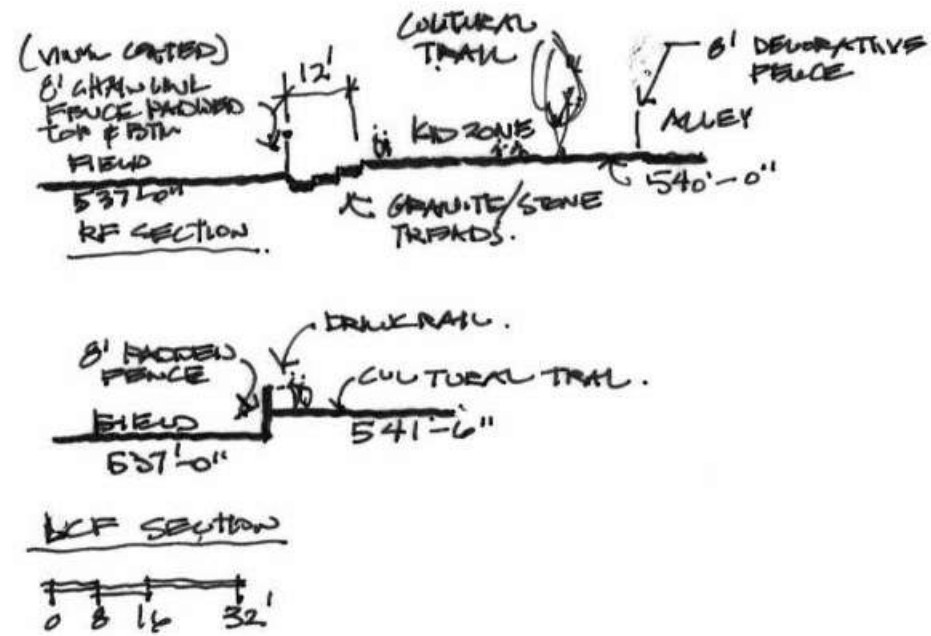
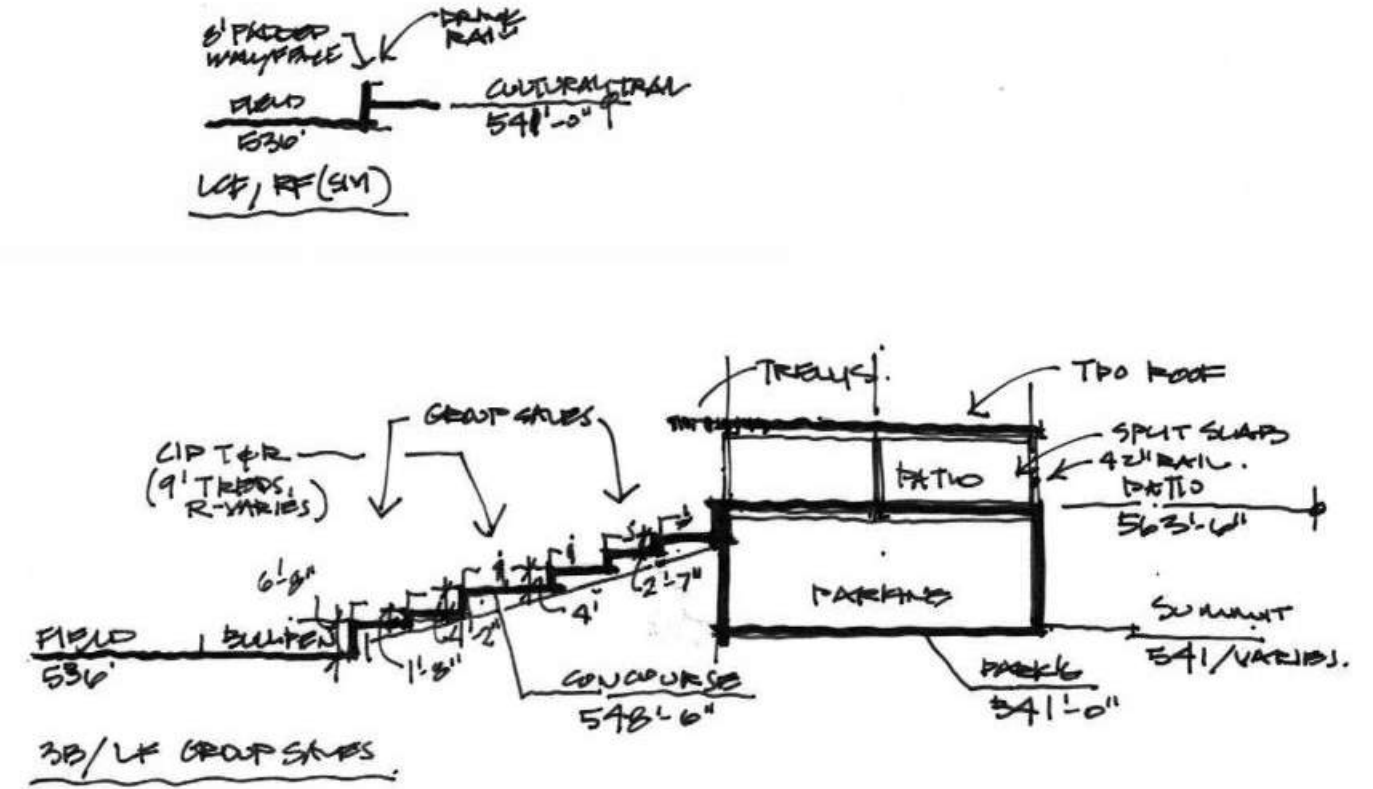
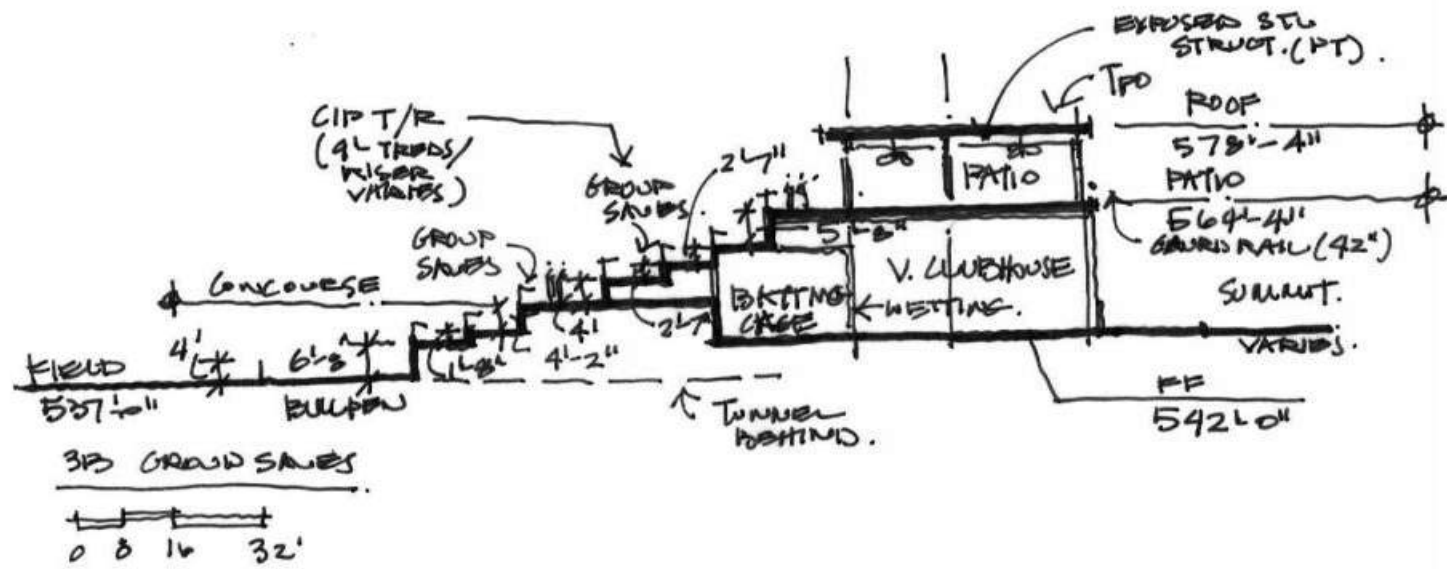


NORTHEAST  
VIEW





NORTHWEST  
VIEW



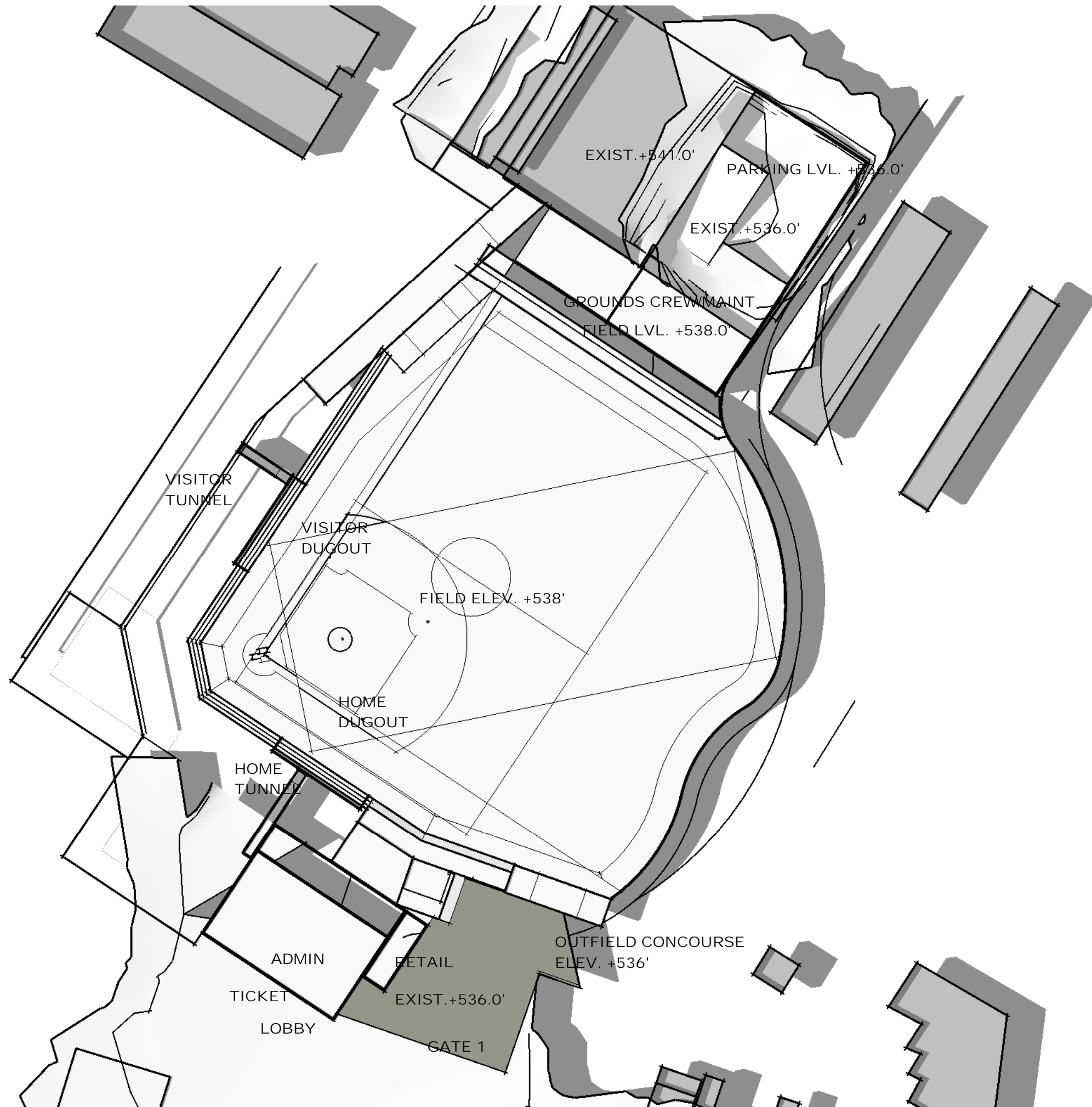
SECTIONS





HAGERSTOWN MULTI-PURPOSE SPORTS AND EVENTS FACILITY  
CONCEPT TWO

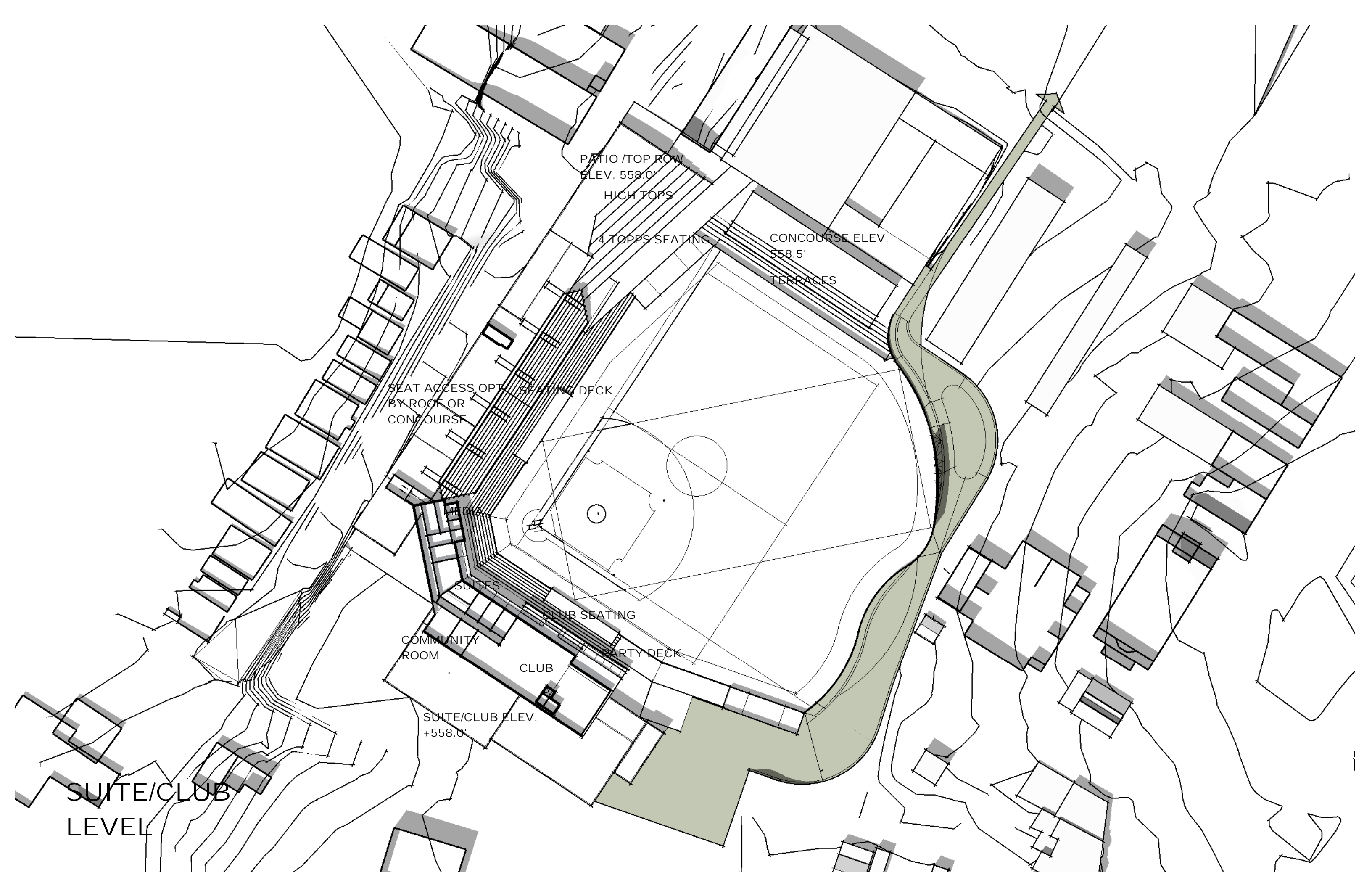




FIELD LEVEL







PATIO / TOP ROW  
ELEV. 558.0'

HIGH TOPS

4 TOPPS SEATING

CONCOURSE ELEV.  
558.5'

TERRACES

SEAT ACCESS OPT. / SEATING DECK  
BY ROOF OR  
CONCOURSE

SUITES

CLUB SEATING

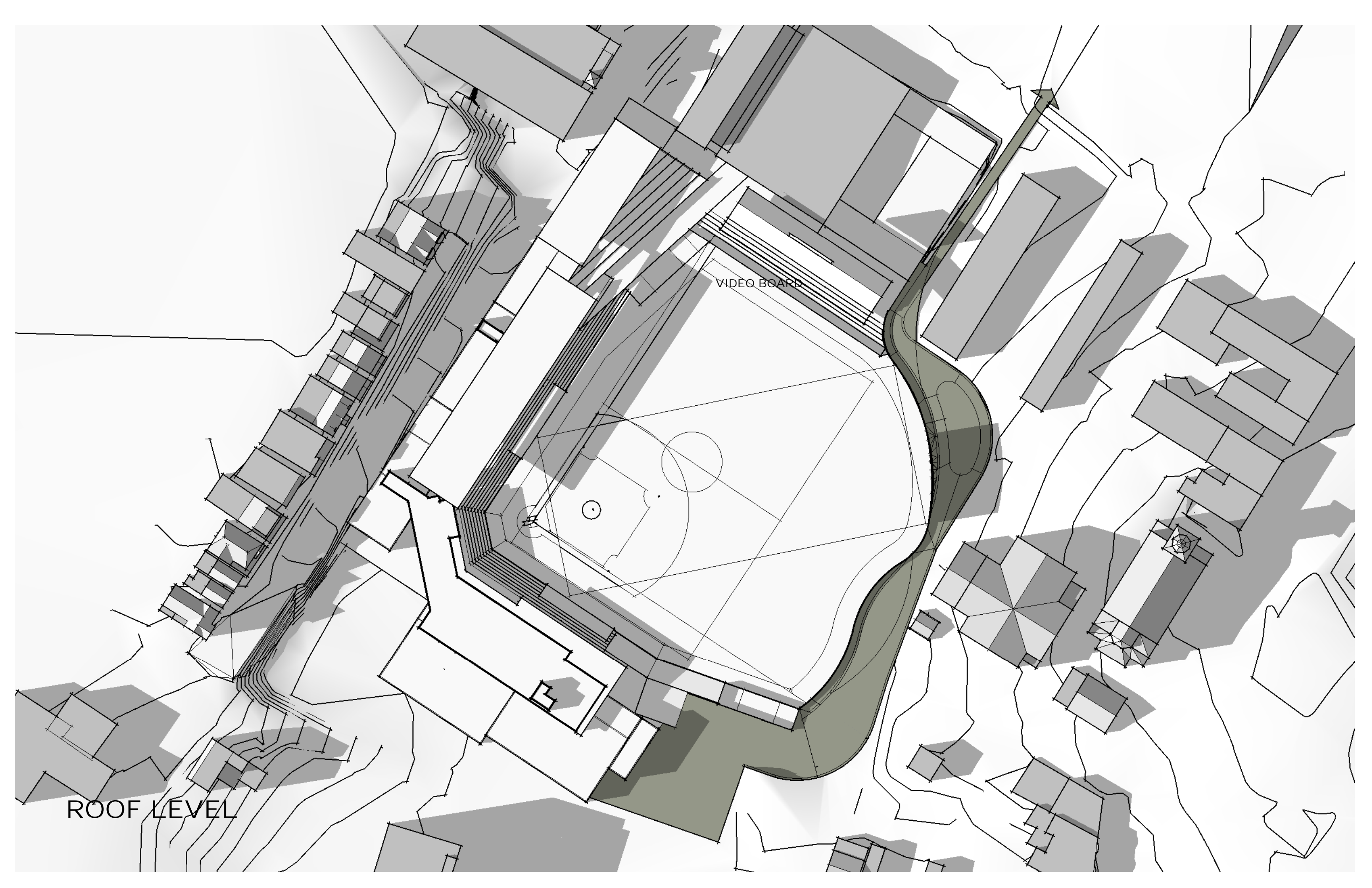
COMMUNITY  
ROOM

CLUB

PARTY DECK

SUITE/CLUB ELEV.  
+558.0'

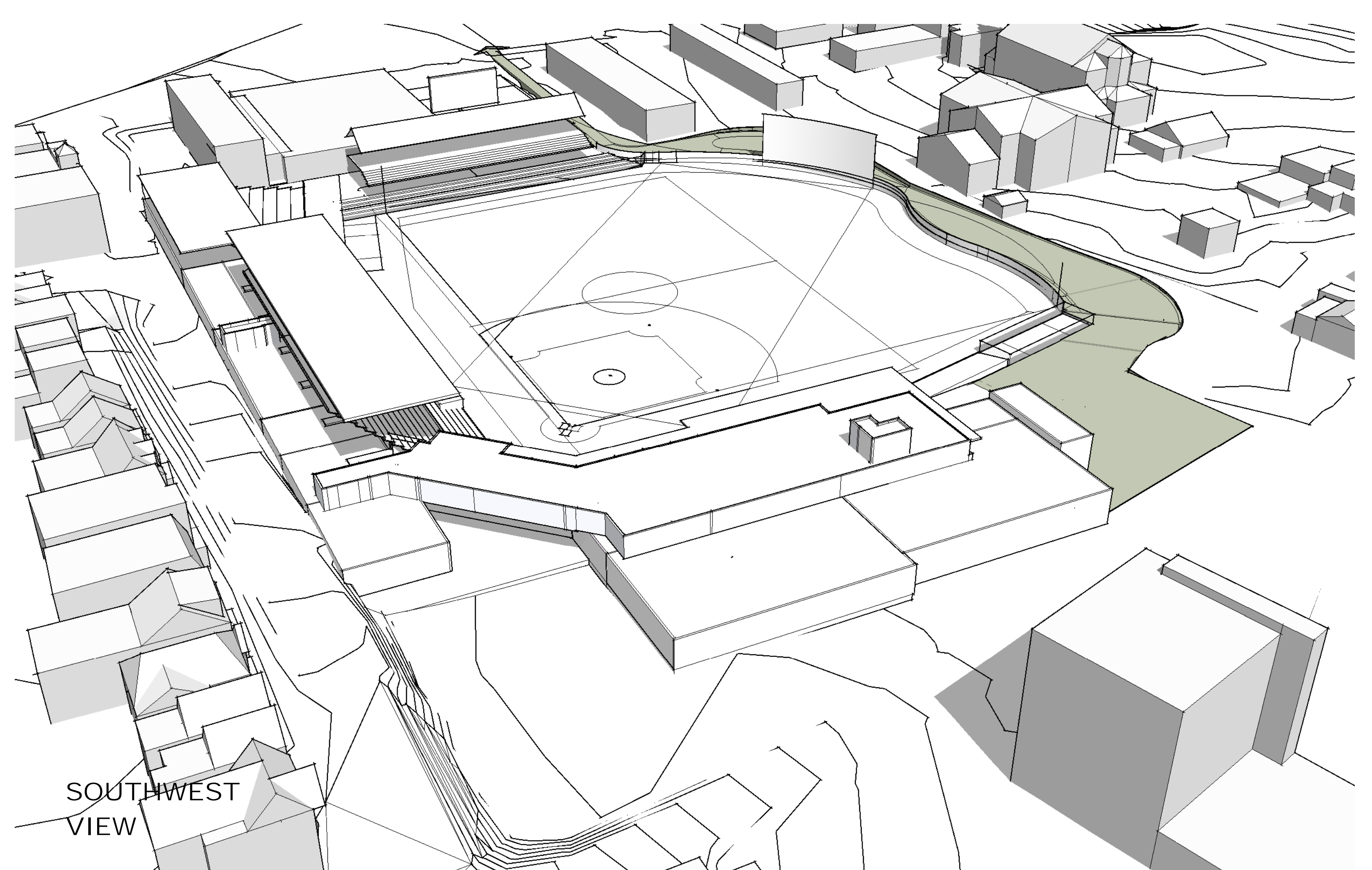
SUITE/CLUB  
LEVEL



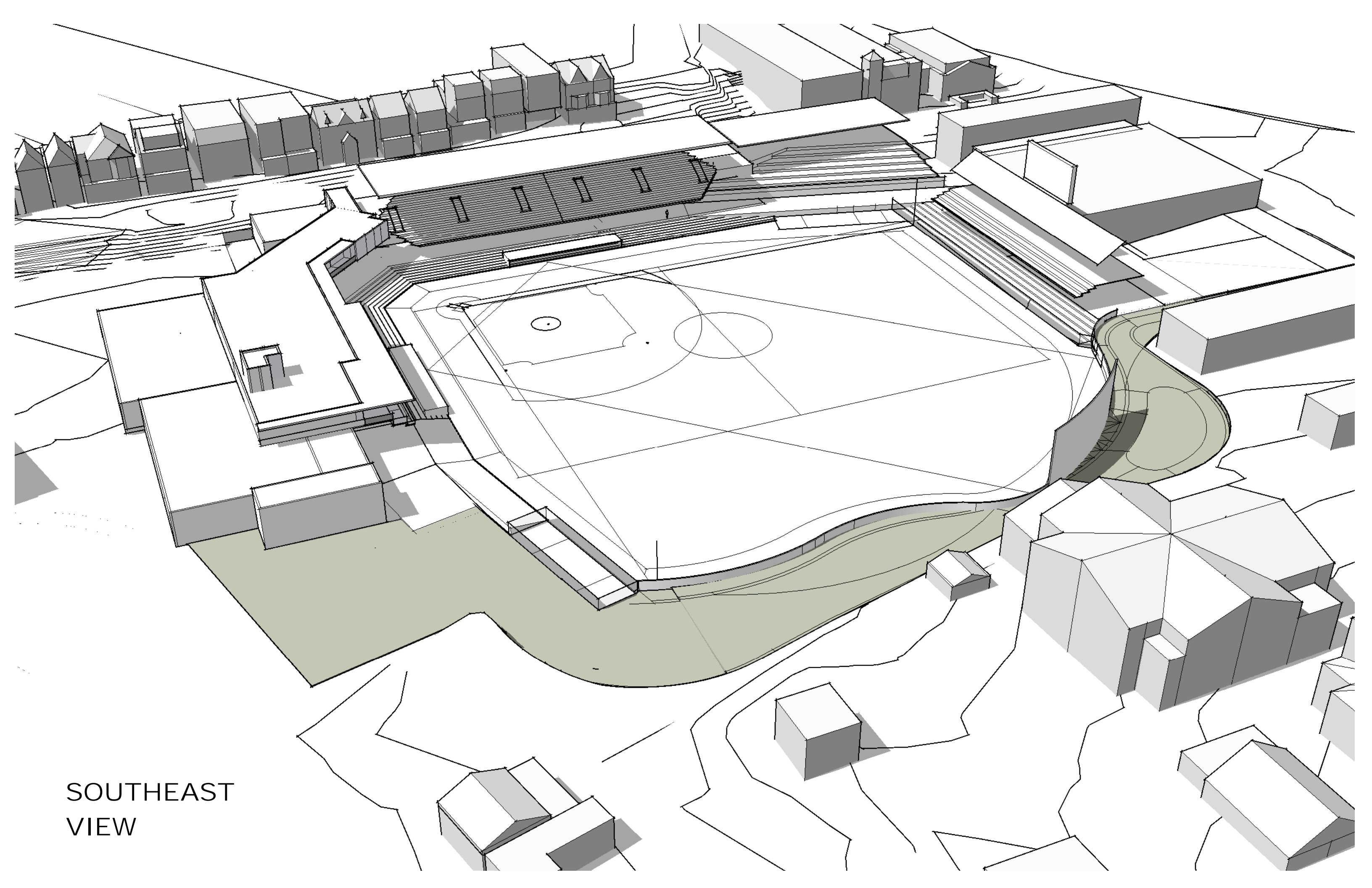
VIDEO BOARD

ROOF LEVEL



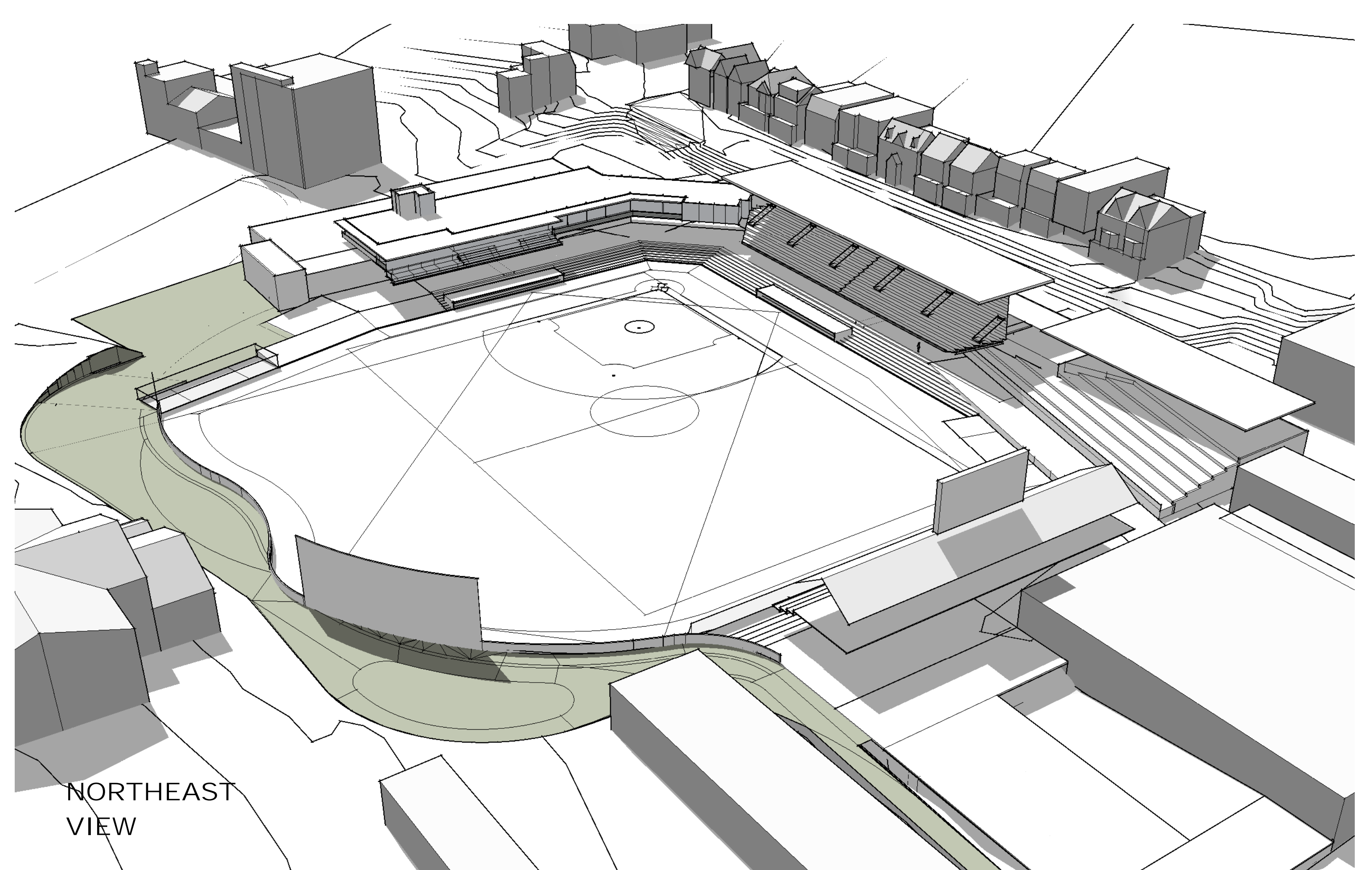


SOUTHWEST  
VIEW



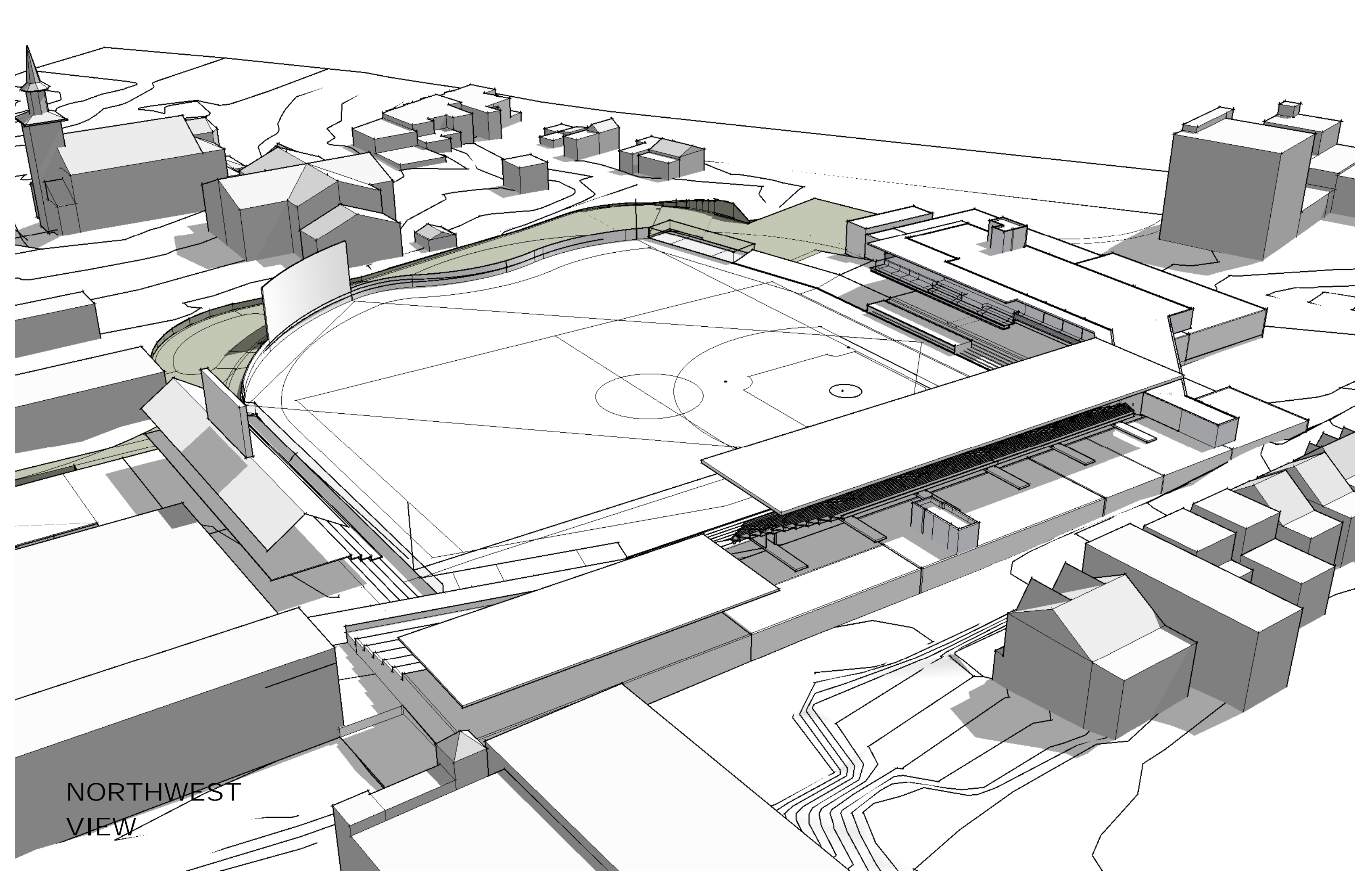
SOUTHEAST  
VIEW





NORTHEAST  
VIEW

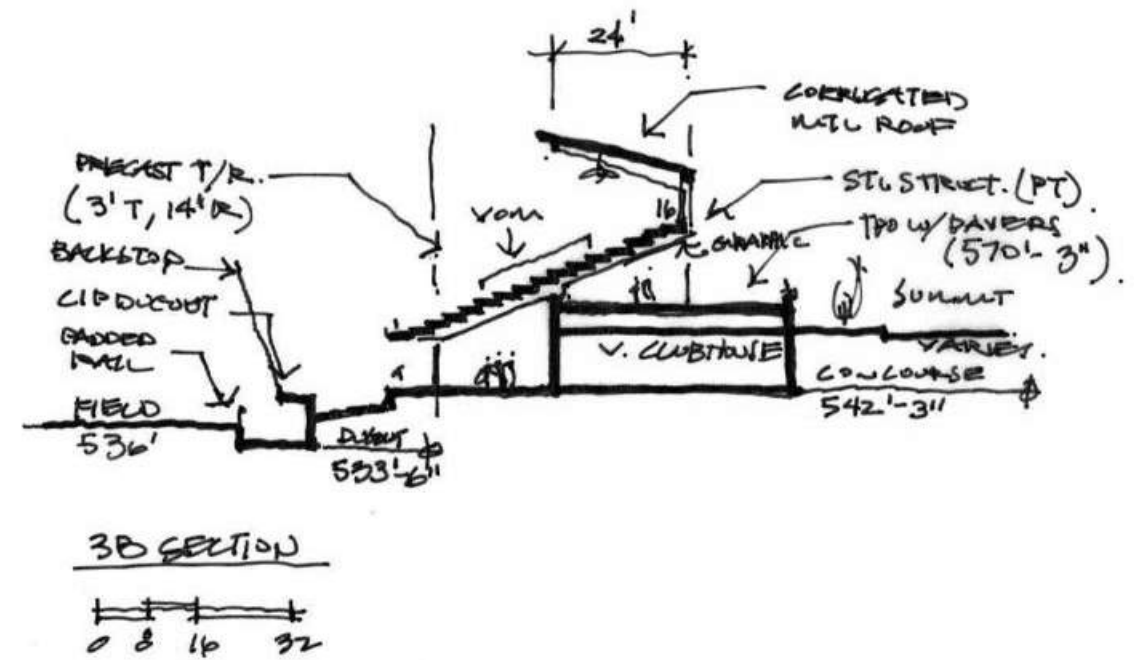
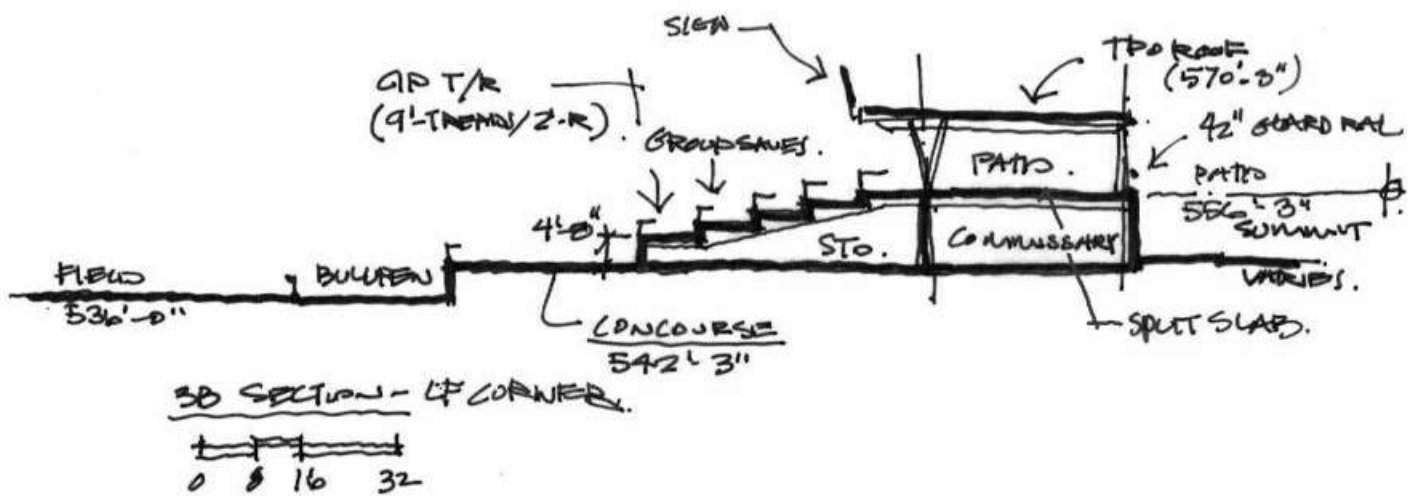
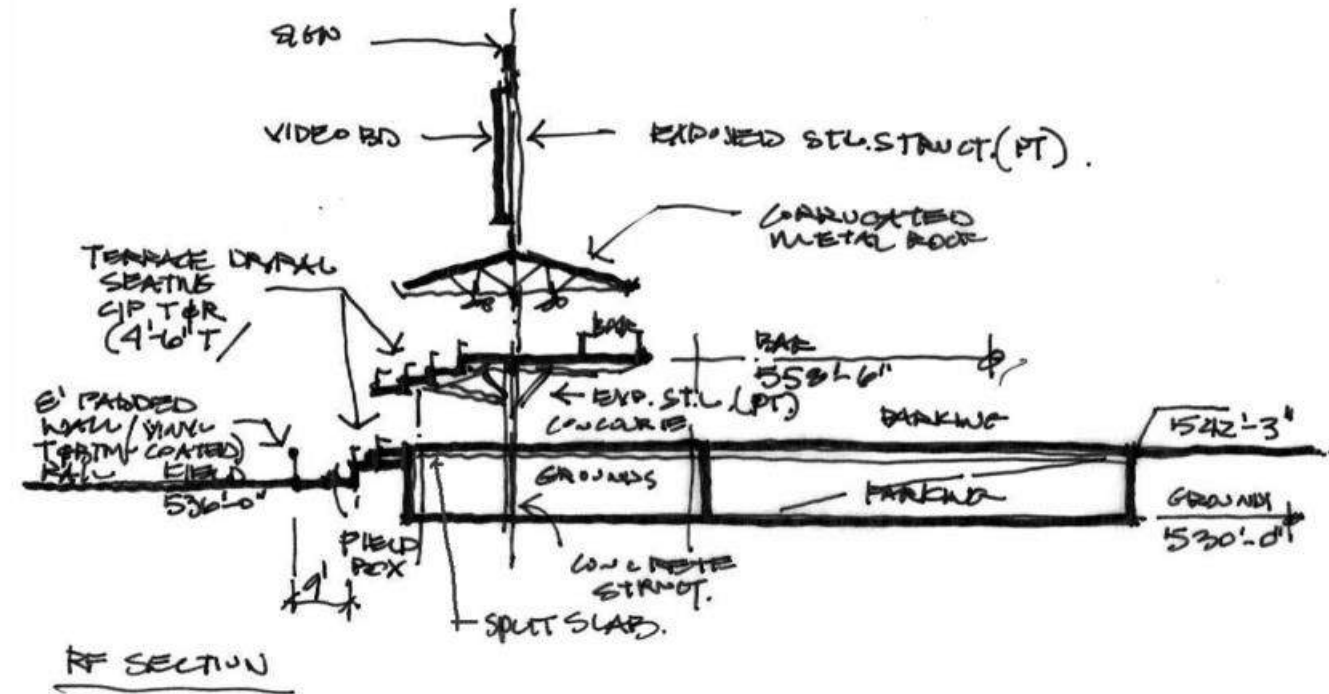
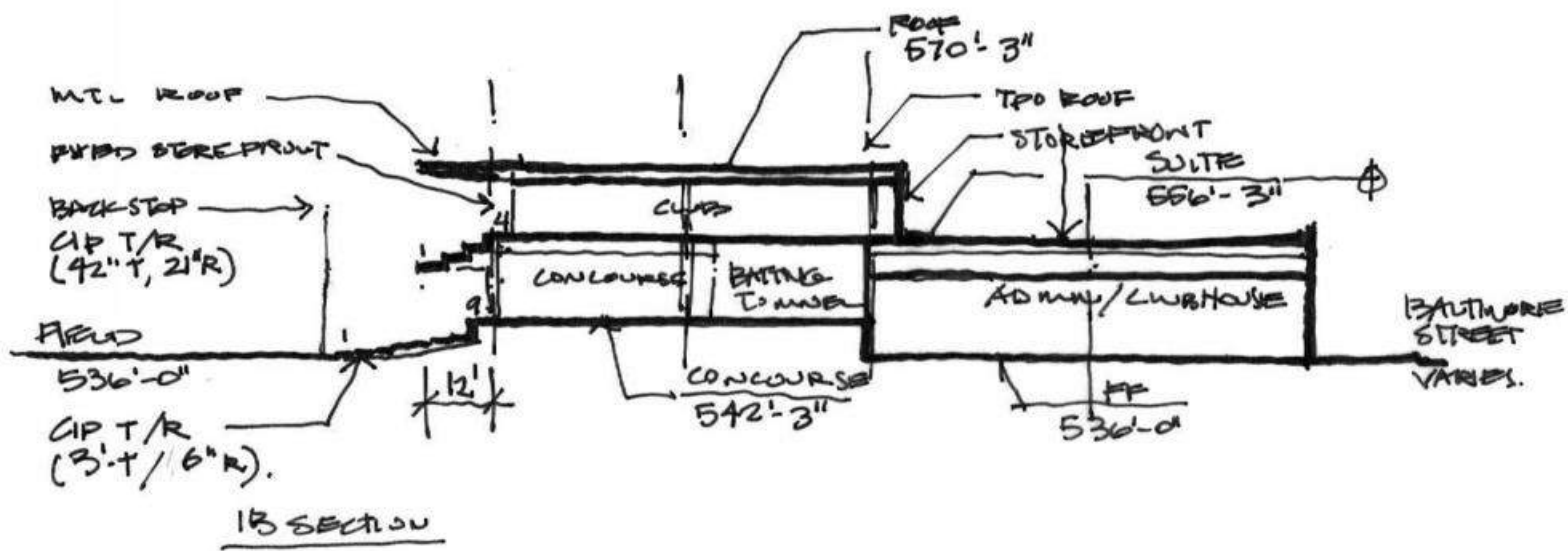




NORTHWEST  
VIEW



NORTHWEST  
VIEW - FUTURE



SECTIONS

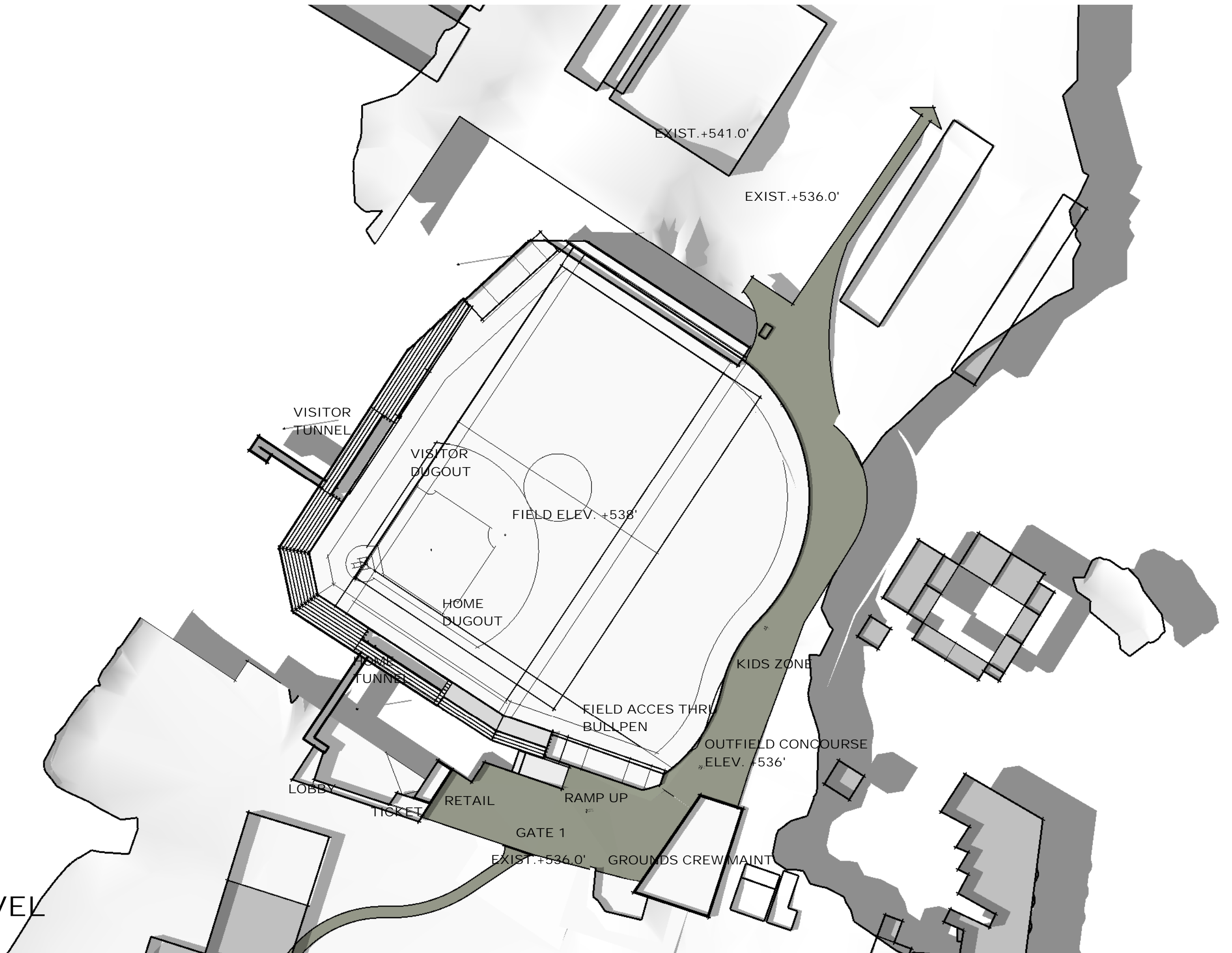




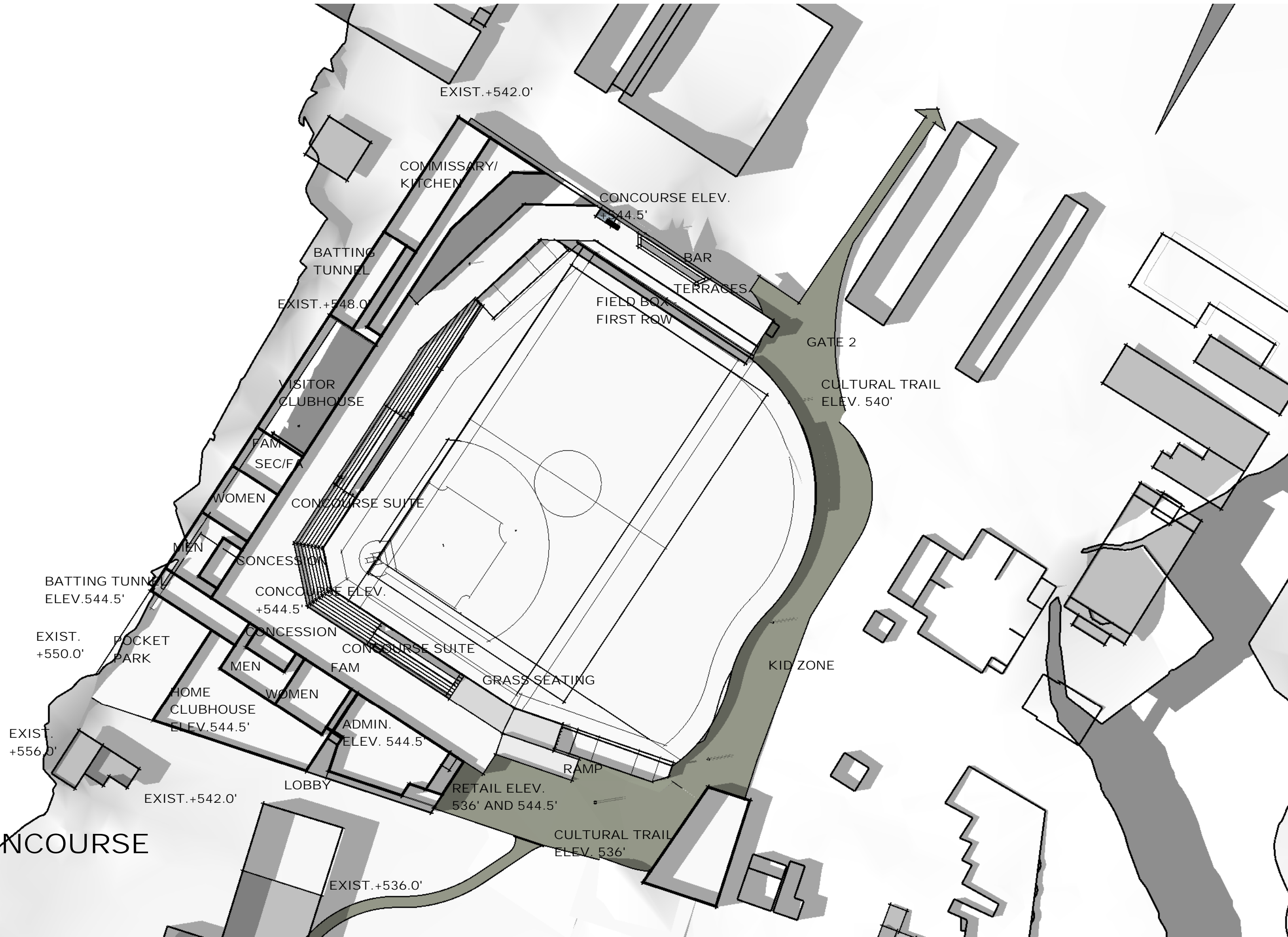
HAGERSTOWN MULTI-PURPOSE SPORTS AND EVENTS FACILITY  
CONCEPT THREE

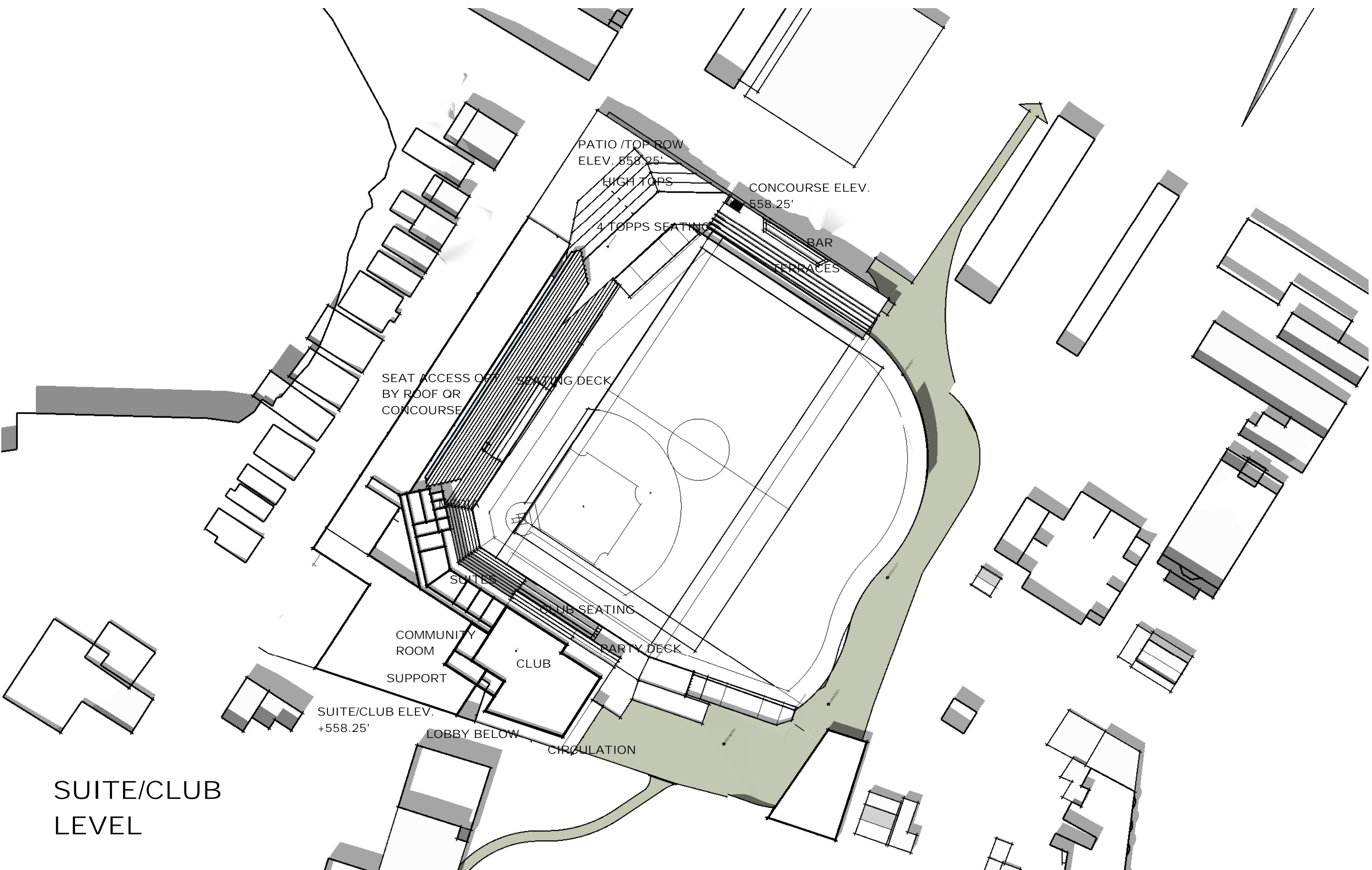


FIELD LEVEL



# MAIN CONCOURSE LEVEL





PATIO / TOP ROW  
ELEV. 558.25'

HIGH TOPS

CONTOUR ELEV.  
558.25'

4 TOPPS SEATING

BAR

TERRACES

SEAT ACCESS OFF  
BY ROOF OR  
CONCOURSE

SEATING DECK

SUITES

CLUB SEATING

COMMUNITY  
ROOM

PARTY DECK

CLUB

SUPPORT

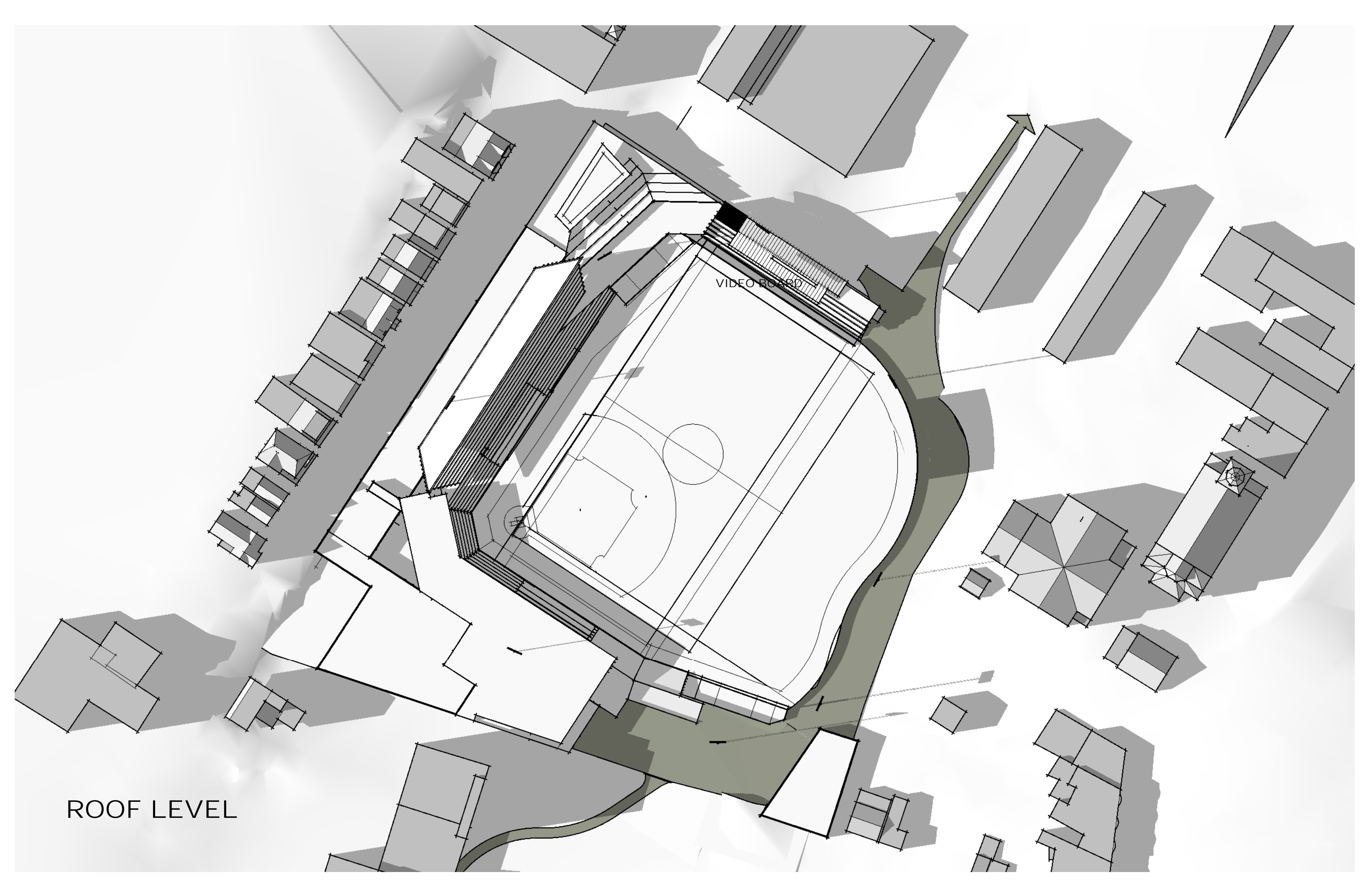
SUITE/CLUB ELEV.  
+558.25'

LOBBY BELOW

CIRCULATION

SUITE/CLUB  
LEVEL

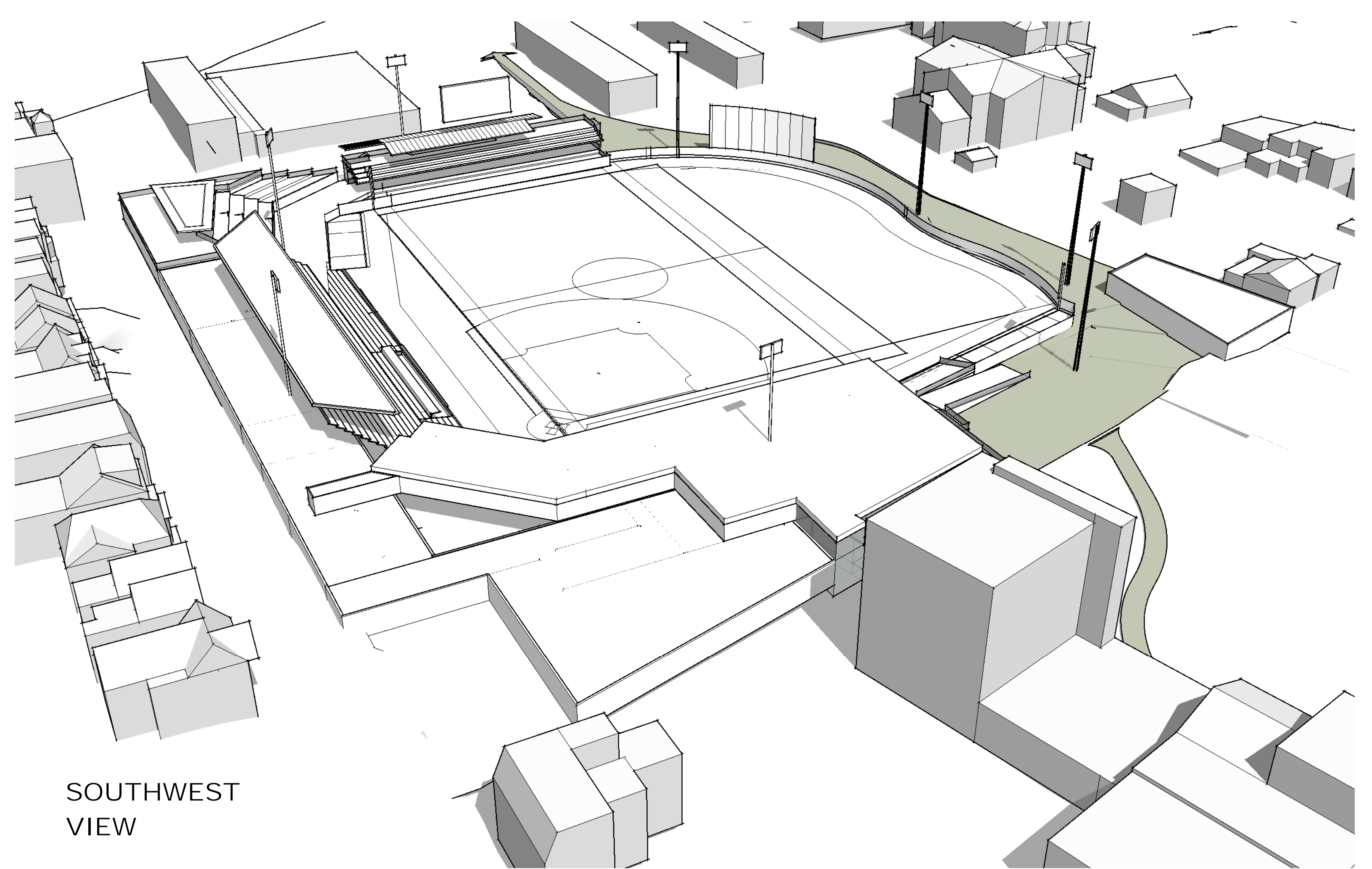




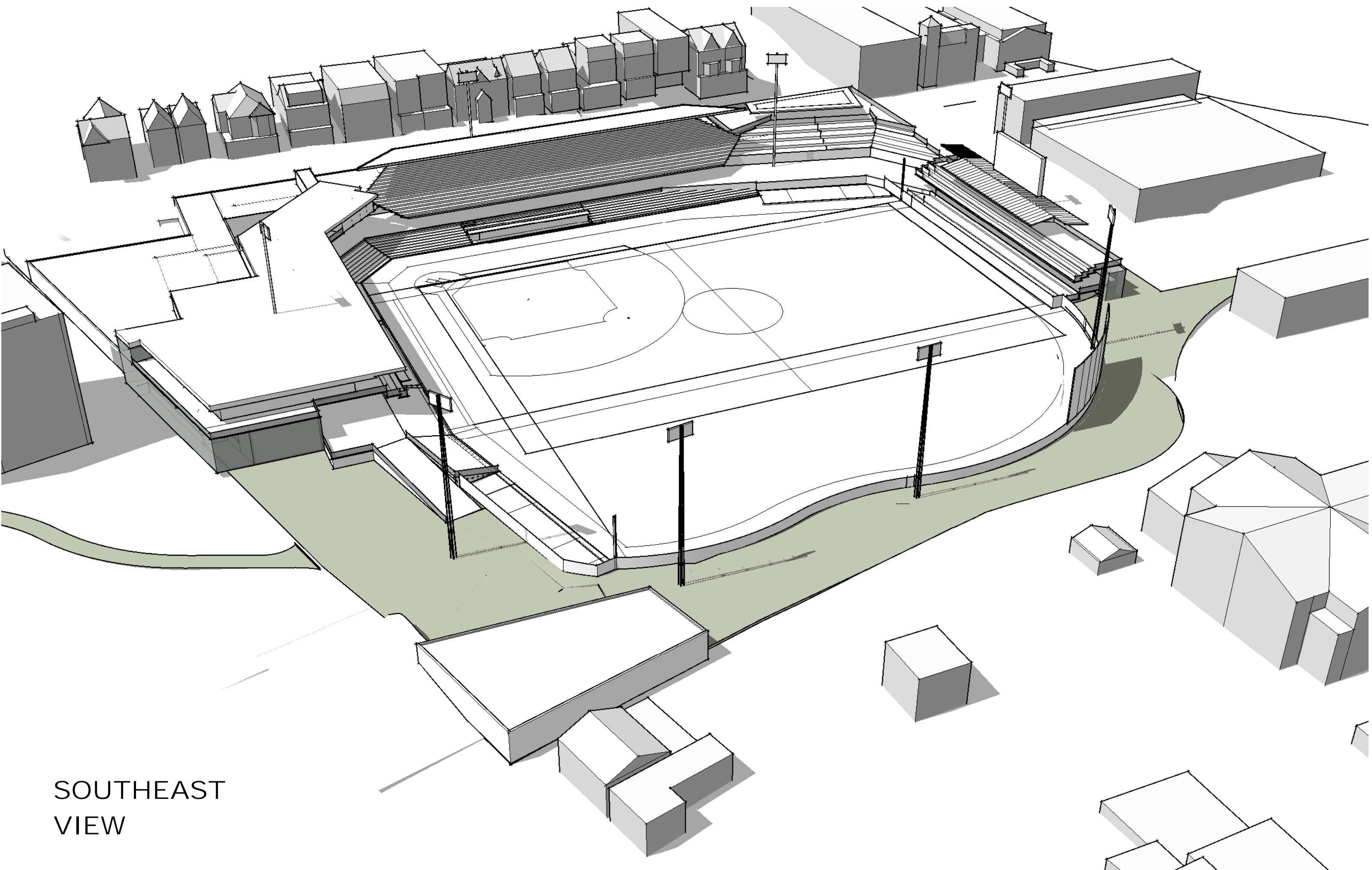
VIDEO BOARD

ROOF LEVEL

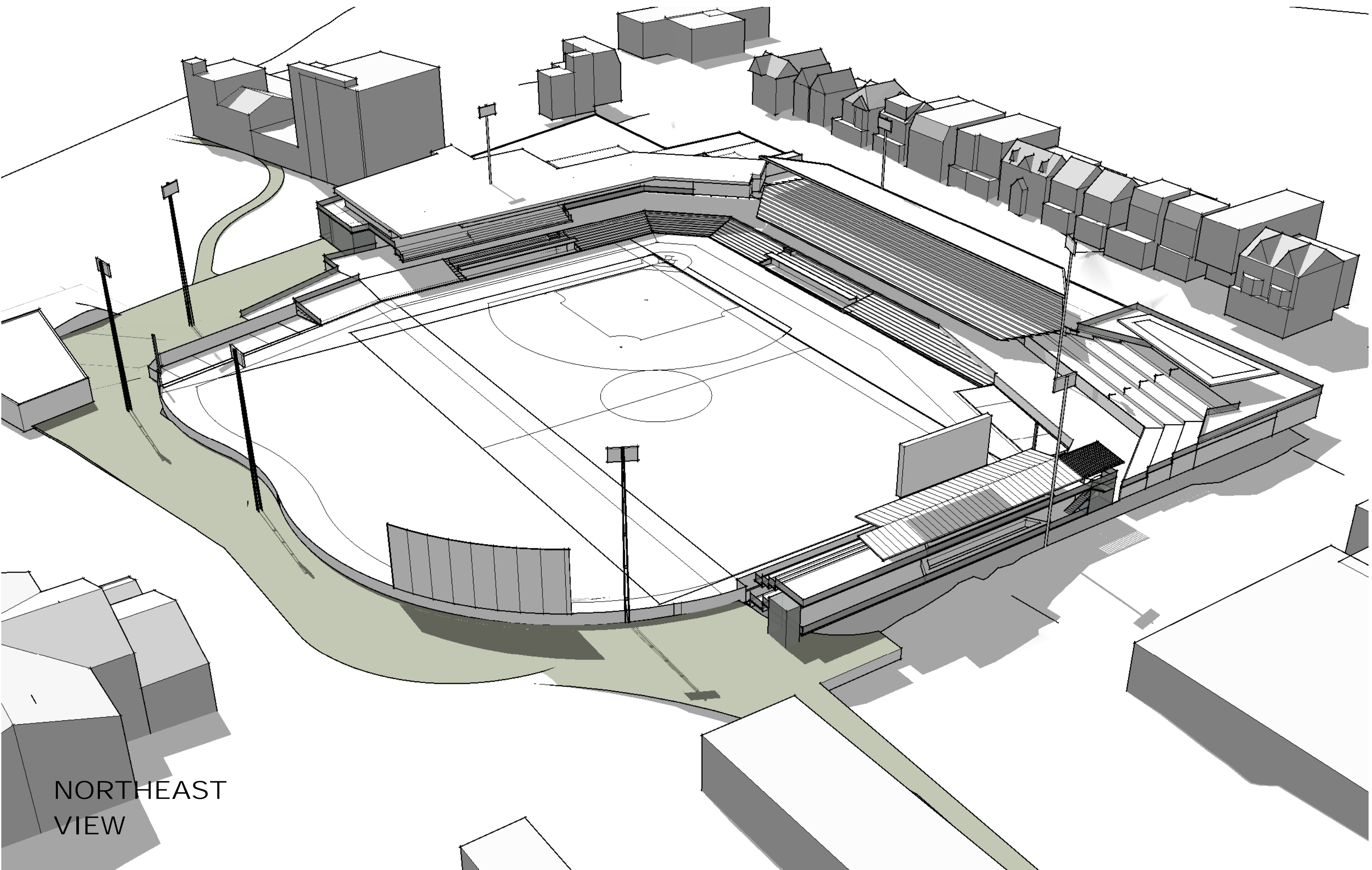




SOUTHWEST  
VIEW

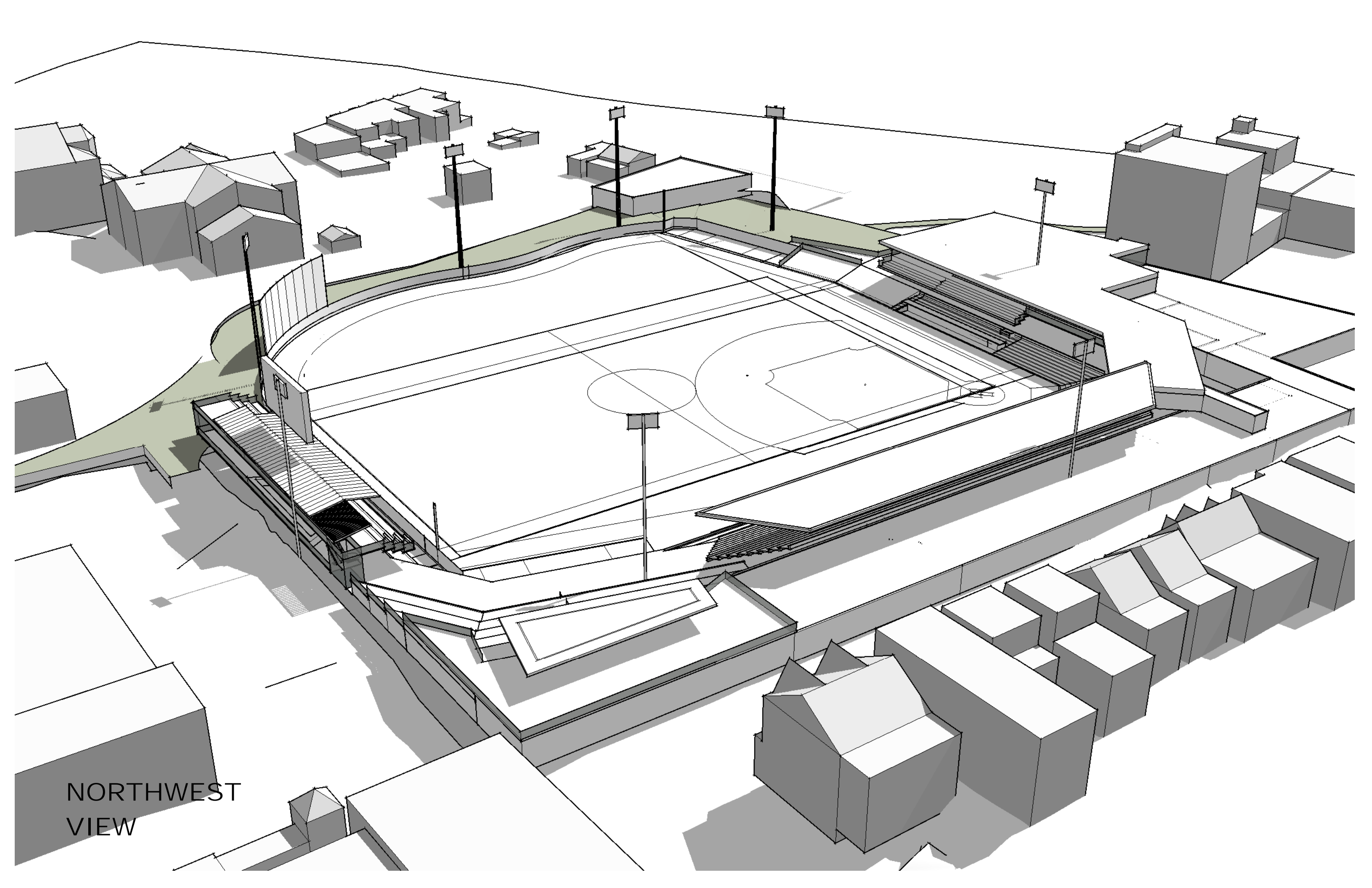


SOUTHEAST  
VIEW

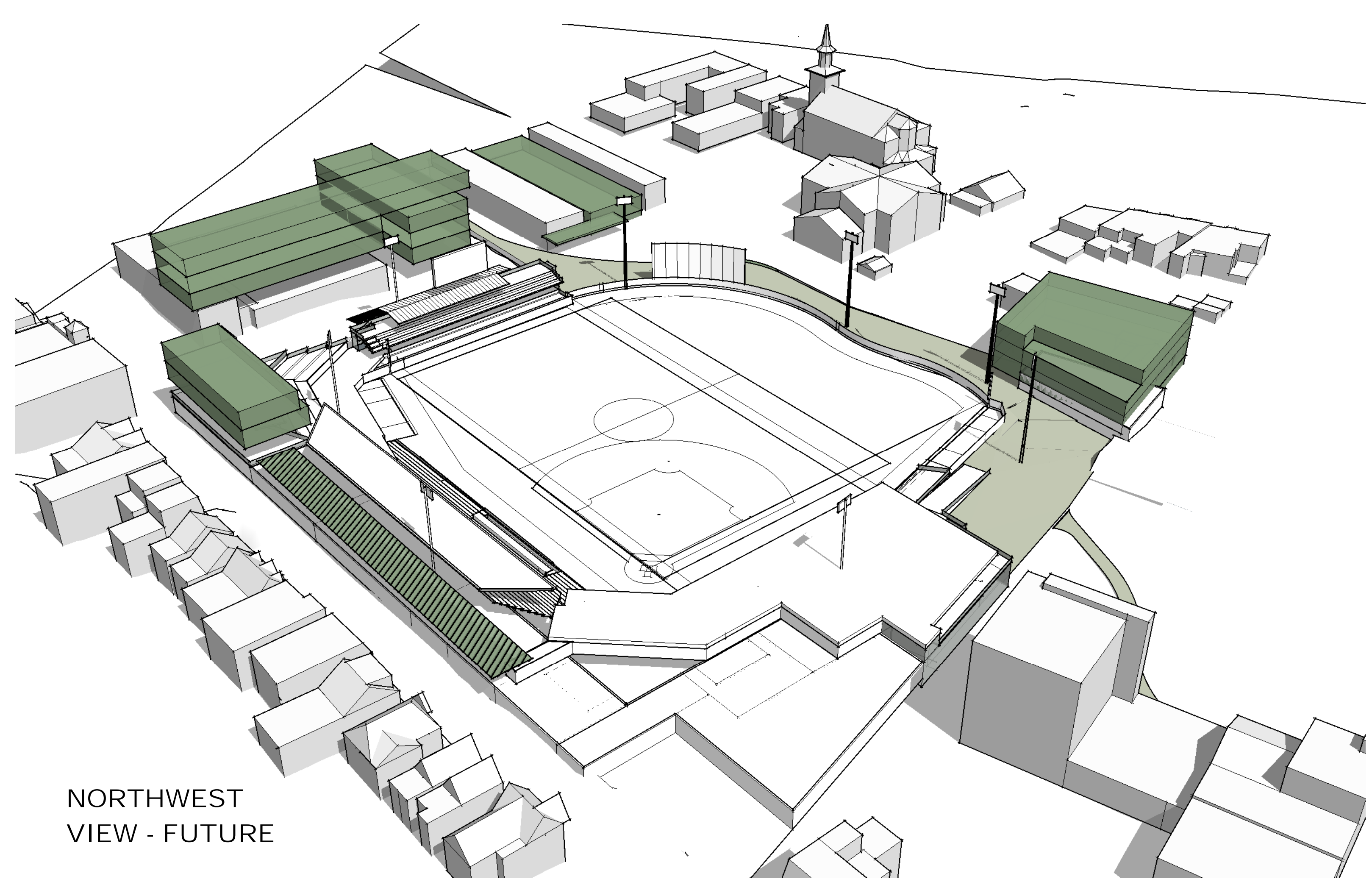


NORTHEAST  
VIEW

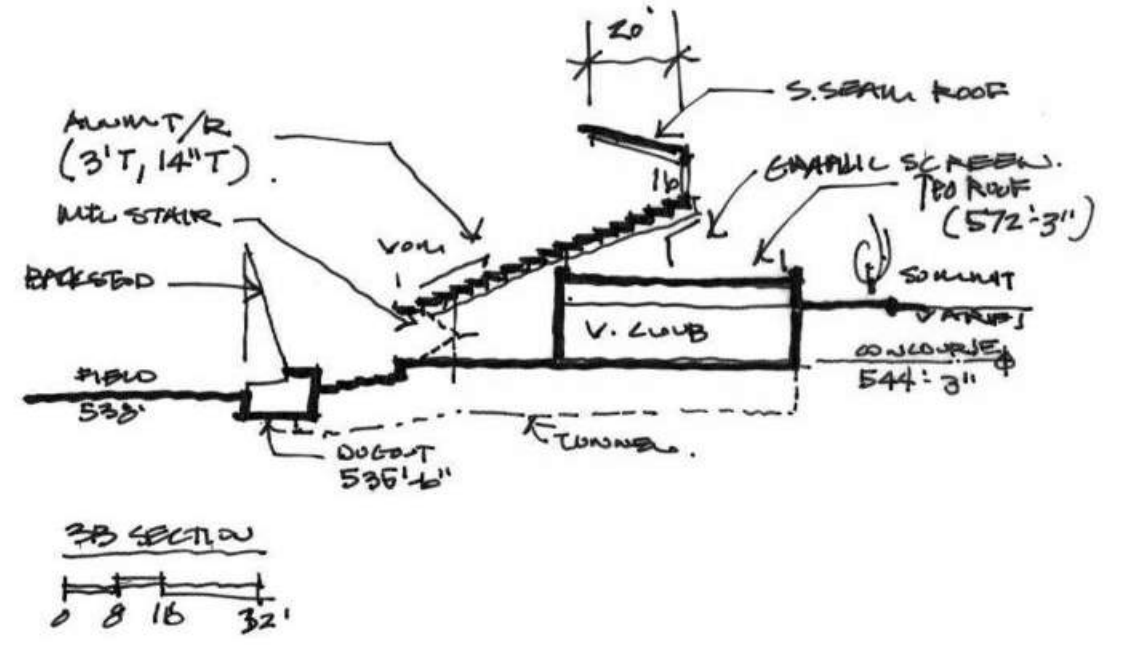
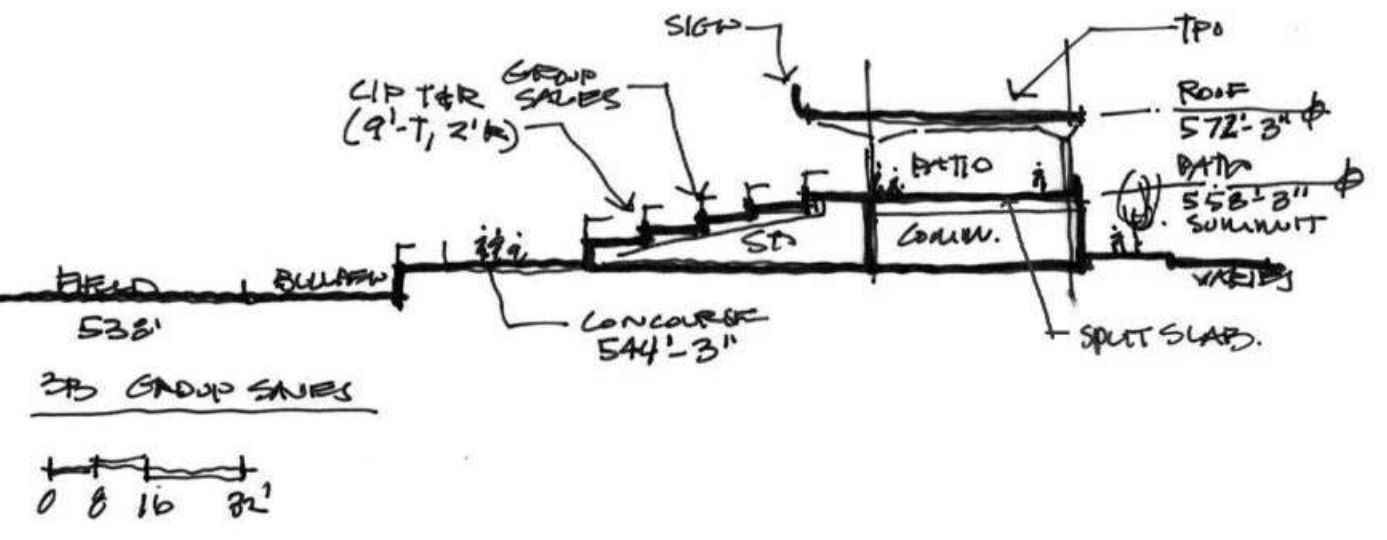
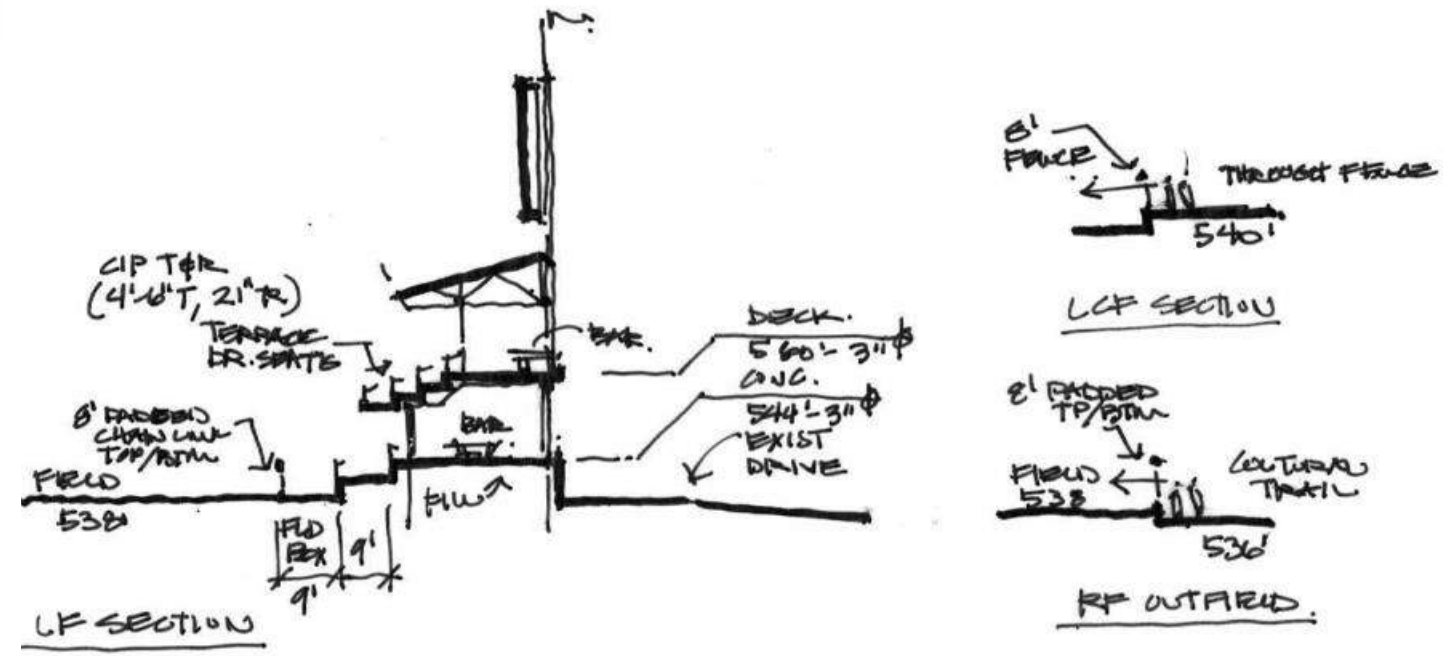
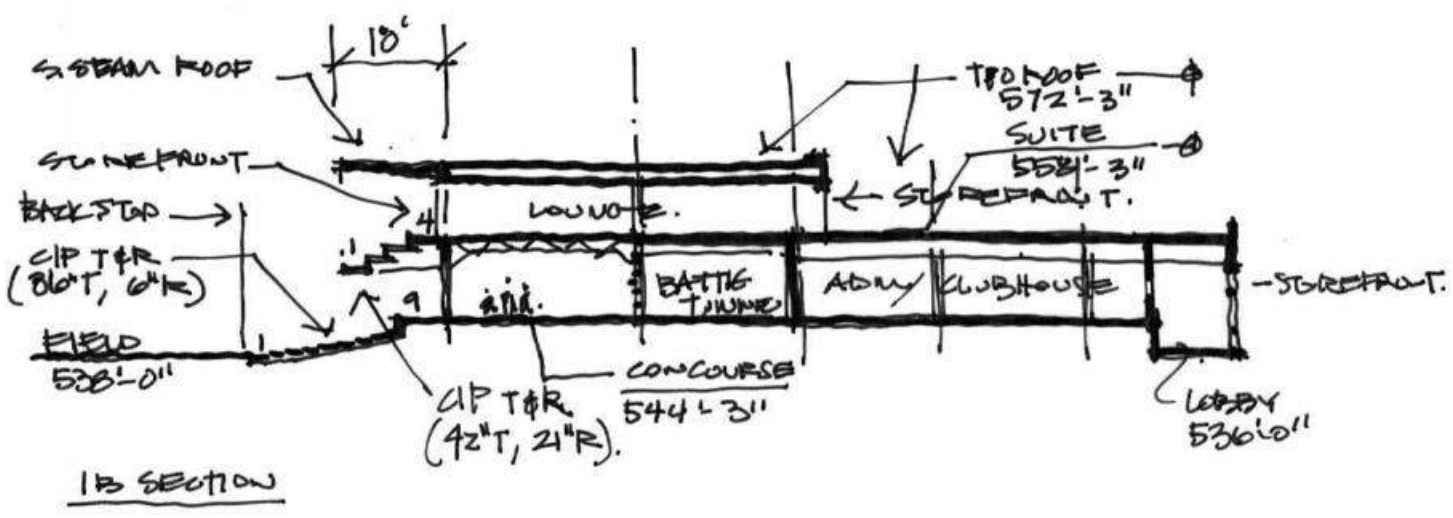




NORTHWEST  
VIEW



NORTHWEST  
VIEW - FUTURE



SECTIONS

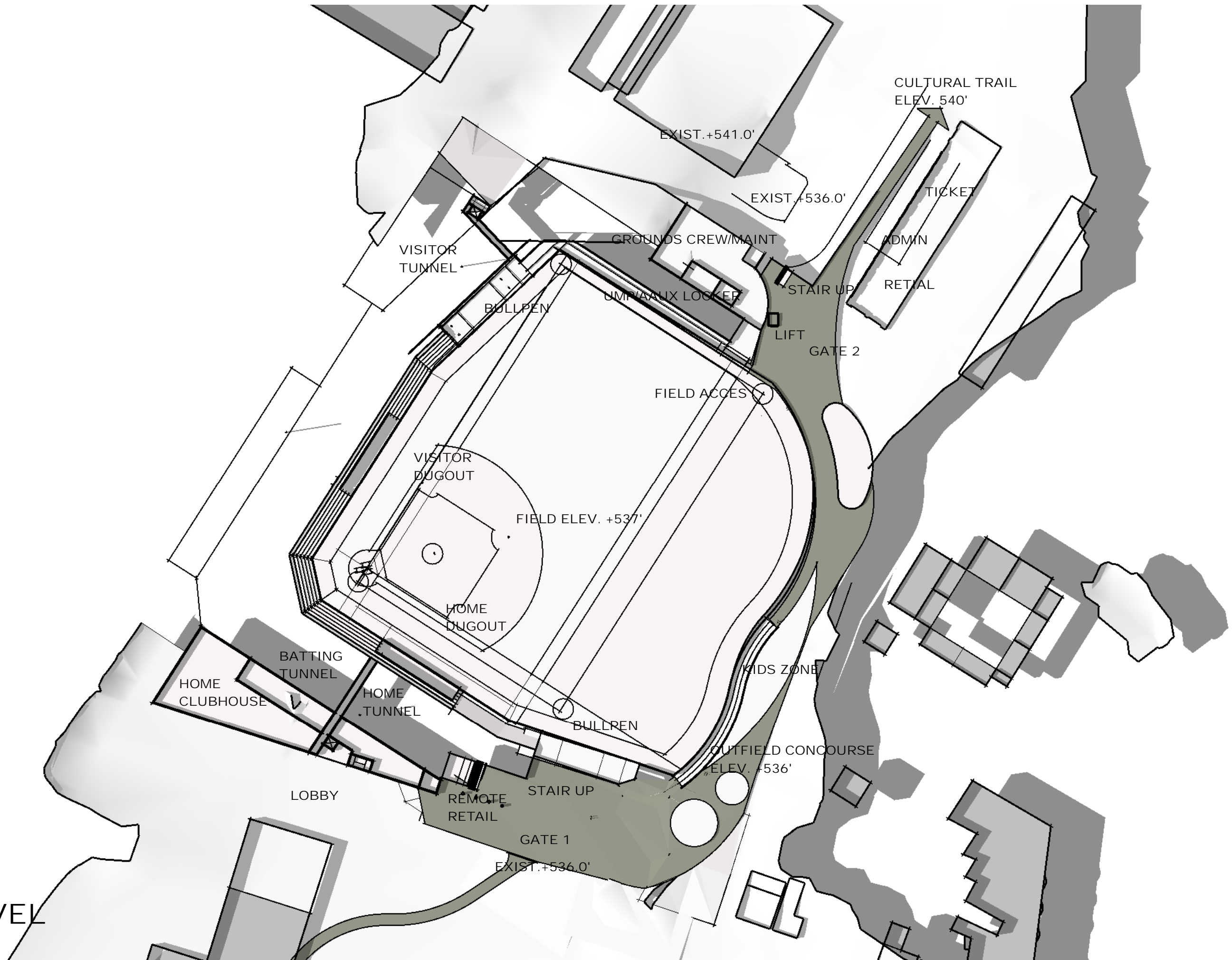




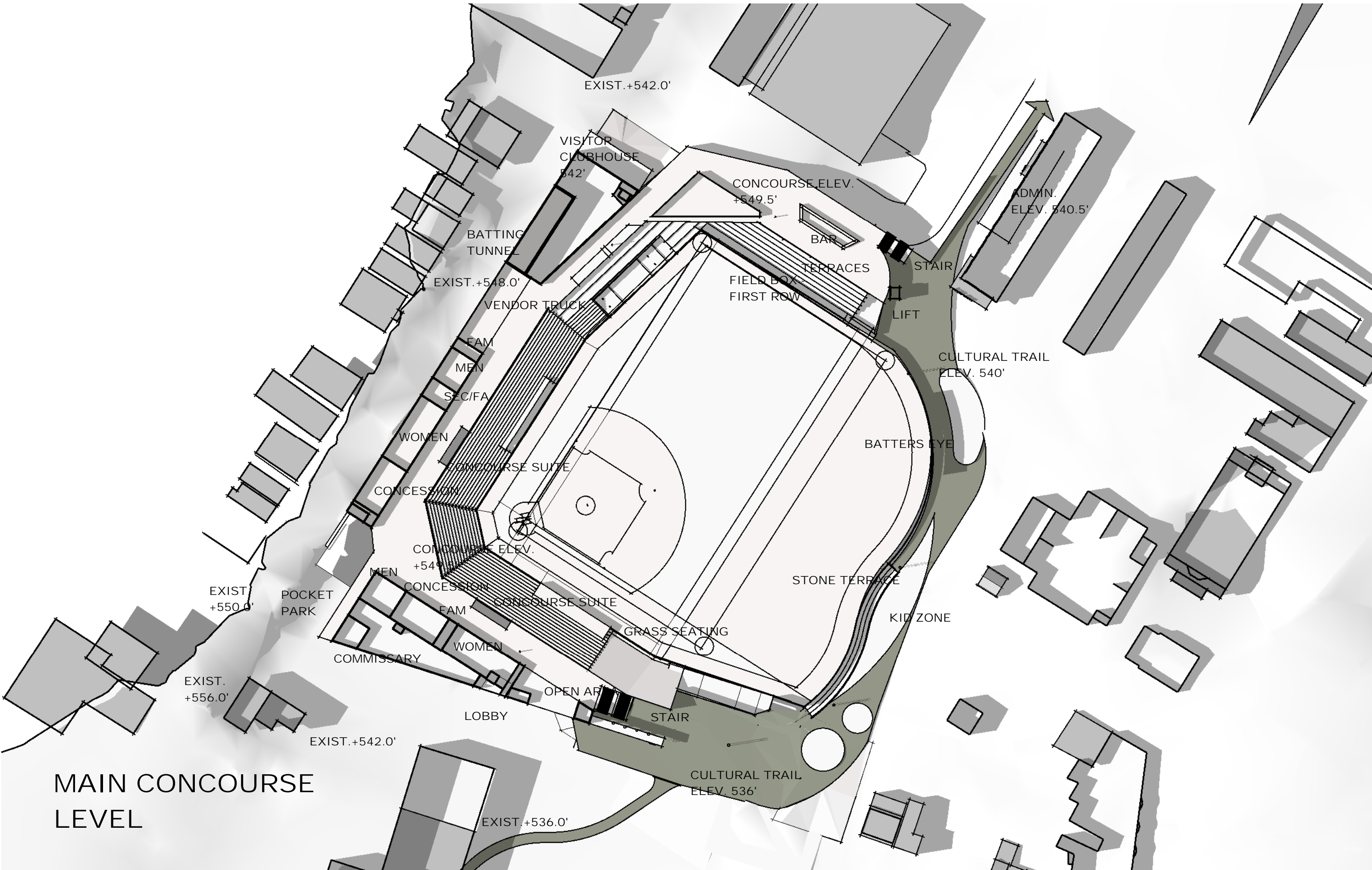
HAGERSTOWN MULTI-PURPOSE SPORTS AND EVENTS FACILITY  
CONCEPT FOUR



FIELD LEVEL







EXIST.+542.0'

VISITOR CLUBHOUSE  
542'

CONCOURSE ELEV.  
+549.5'

ADMIN.  
ELEV. 540.5'

BATTLING  
TUNNEL

BAR

STAIR

EXIST.+548.0'

FIELD BOX  
FIRST ROW

TERRACES

LIFT

VENDOR TRUCK

CULTURAL TRAIL  
ELEV. 540'

FAM

MEN

SEC/FA

BATTERS EYE

WOMEN

CONCOURSE SUITE

CONCESSION

CONCOURSE ELEV.  
+549.5'

STONE TERRACE

MEN

CONCESSION

CONCOURSE SUITE

EXIST.  
+550.0'

POCKET  
PARK

GRASS SEATING

KID ZONE

FAM

WOMEN

COMMISSARY

OPEN AREA

STAIR

EXIST.  
+556.0'

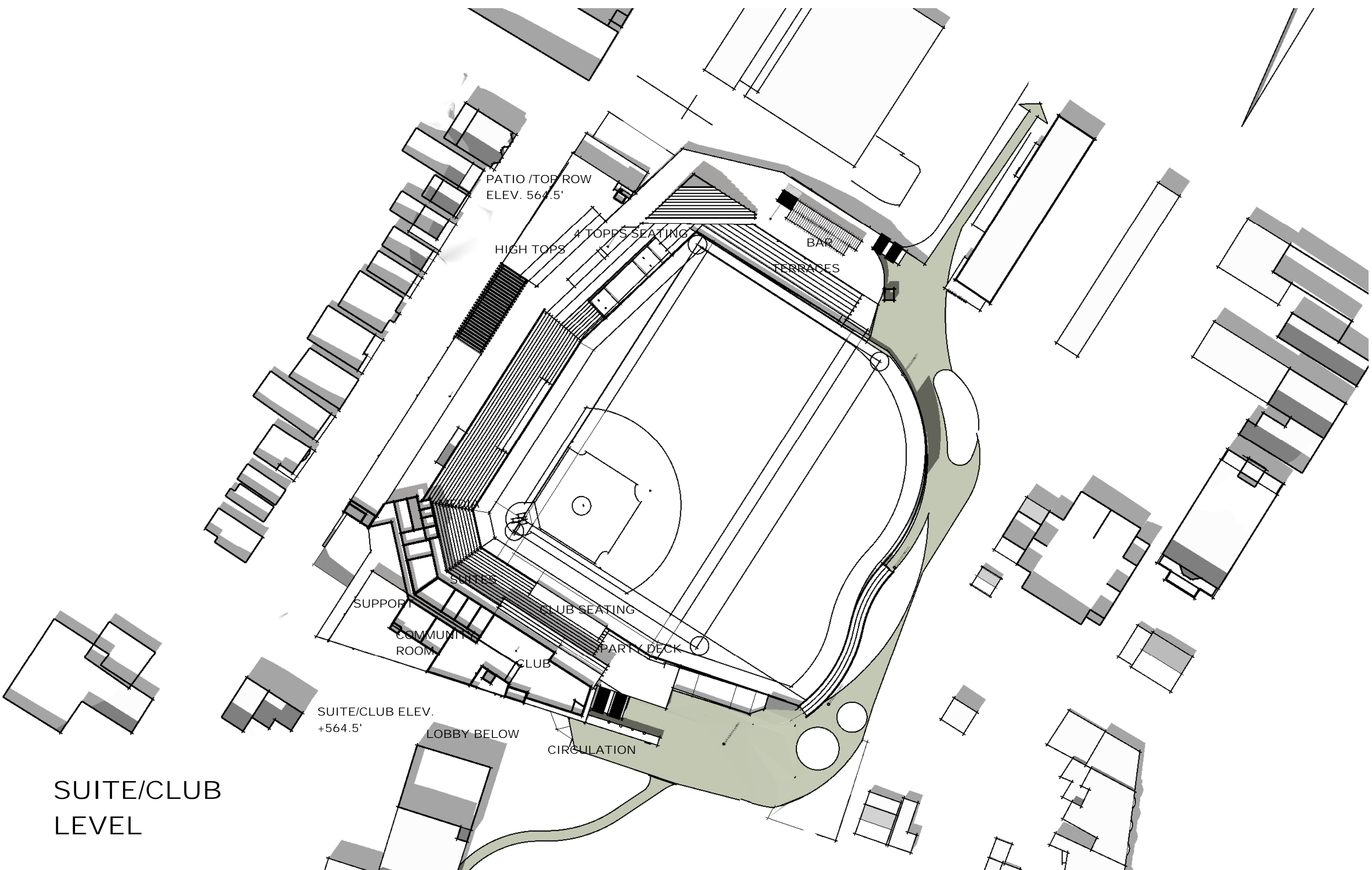
LOBBY

CULTURAL TRAIL  
ELEV. 536'

EXIST.+542.0'

EXIST.+536.0'

# MAIN CONCOURSE LEVEL



PATIO / TOP ROW  
ELEV. 564.5'

4 TOPPS SEATING

HIGH TOPS

BAR

TERRACES

SUITES

SUPPORT

COMMUNITY  
ROOM

CLUB SEATING

CLUB

PARTY DECK

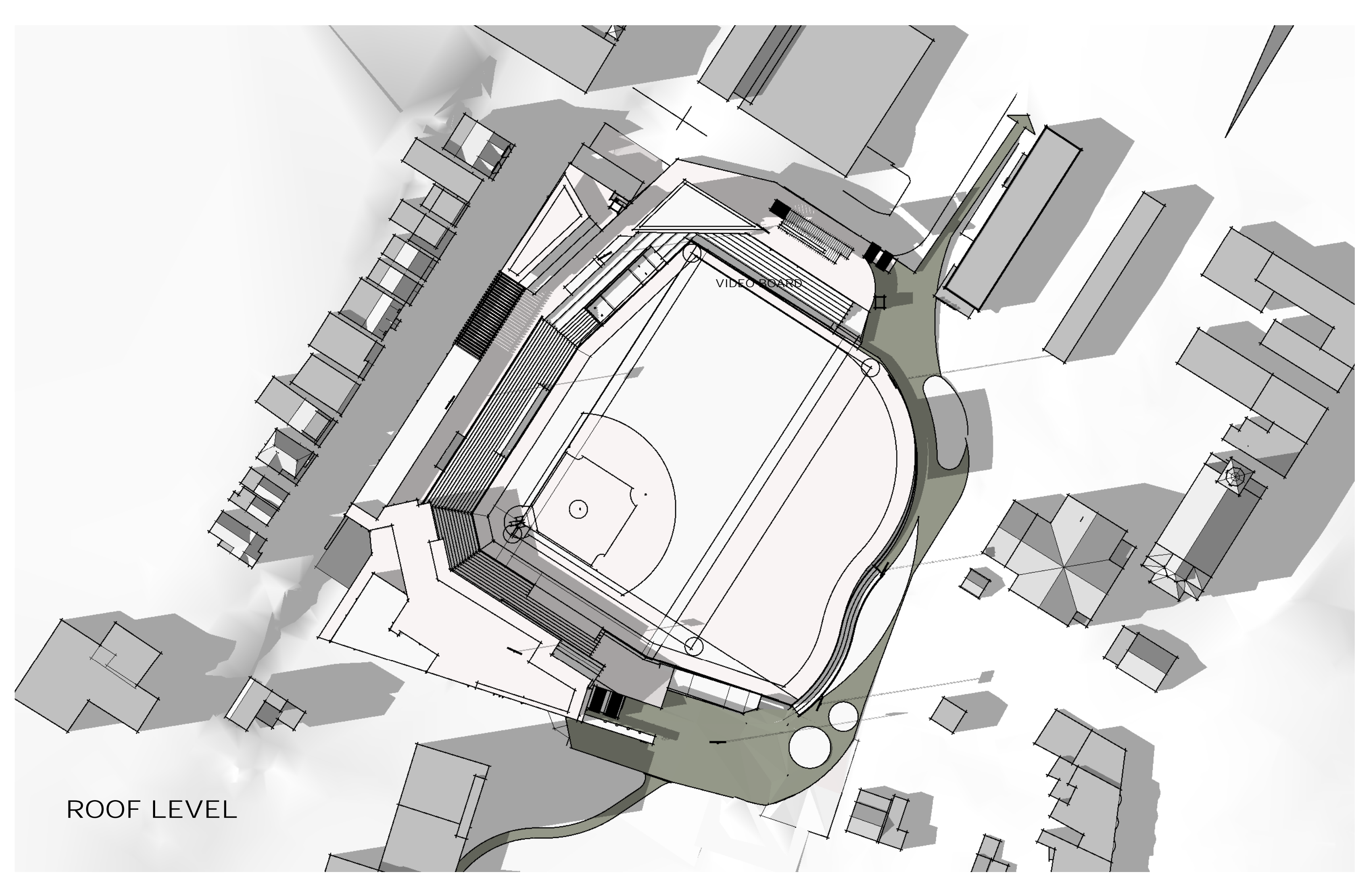
SUITE/CLUB ELEV.  
+564.5'

LOBBY BELOW

CIRCULATION

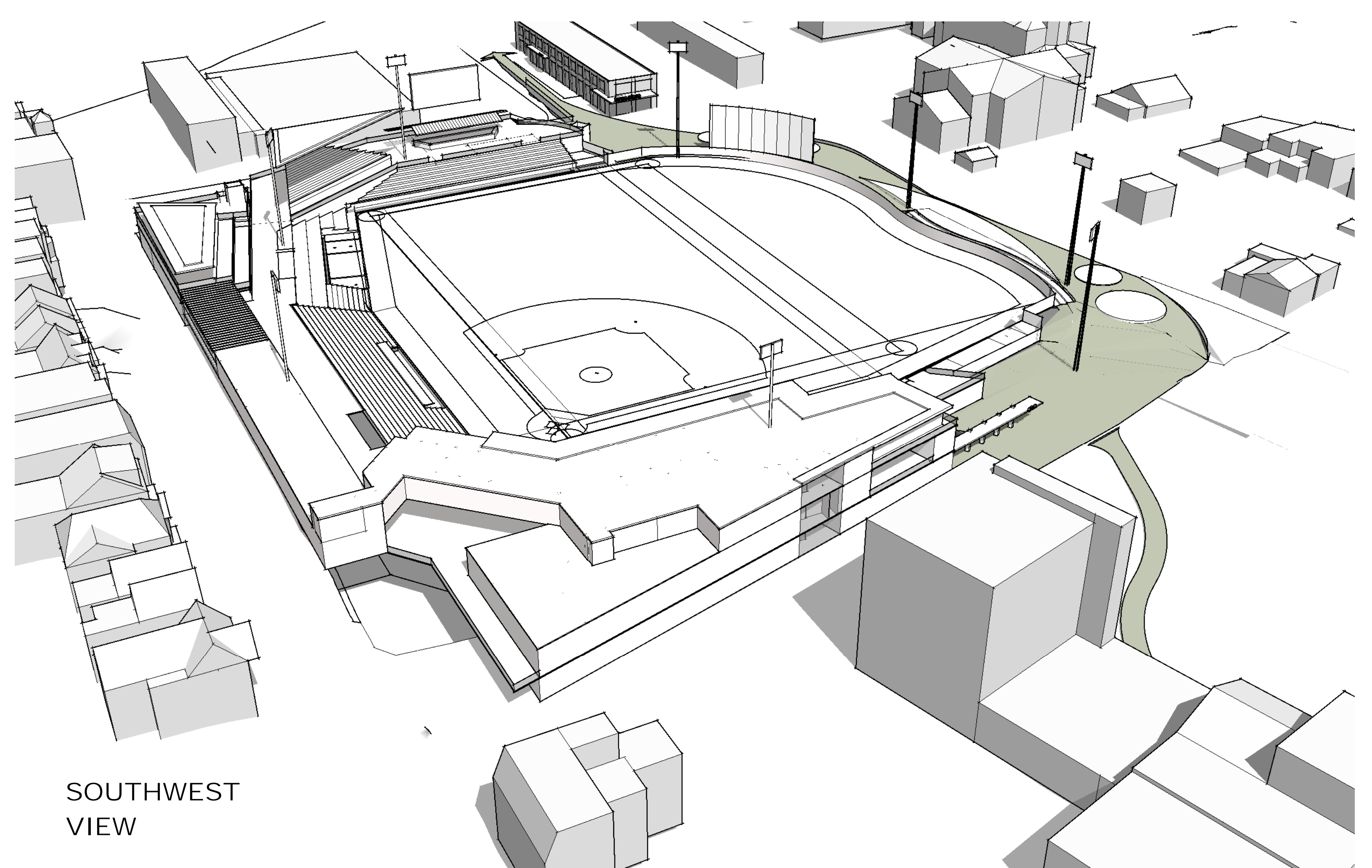
SUITE/CLUB  
LEVEL





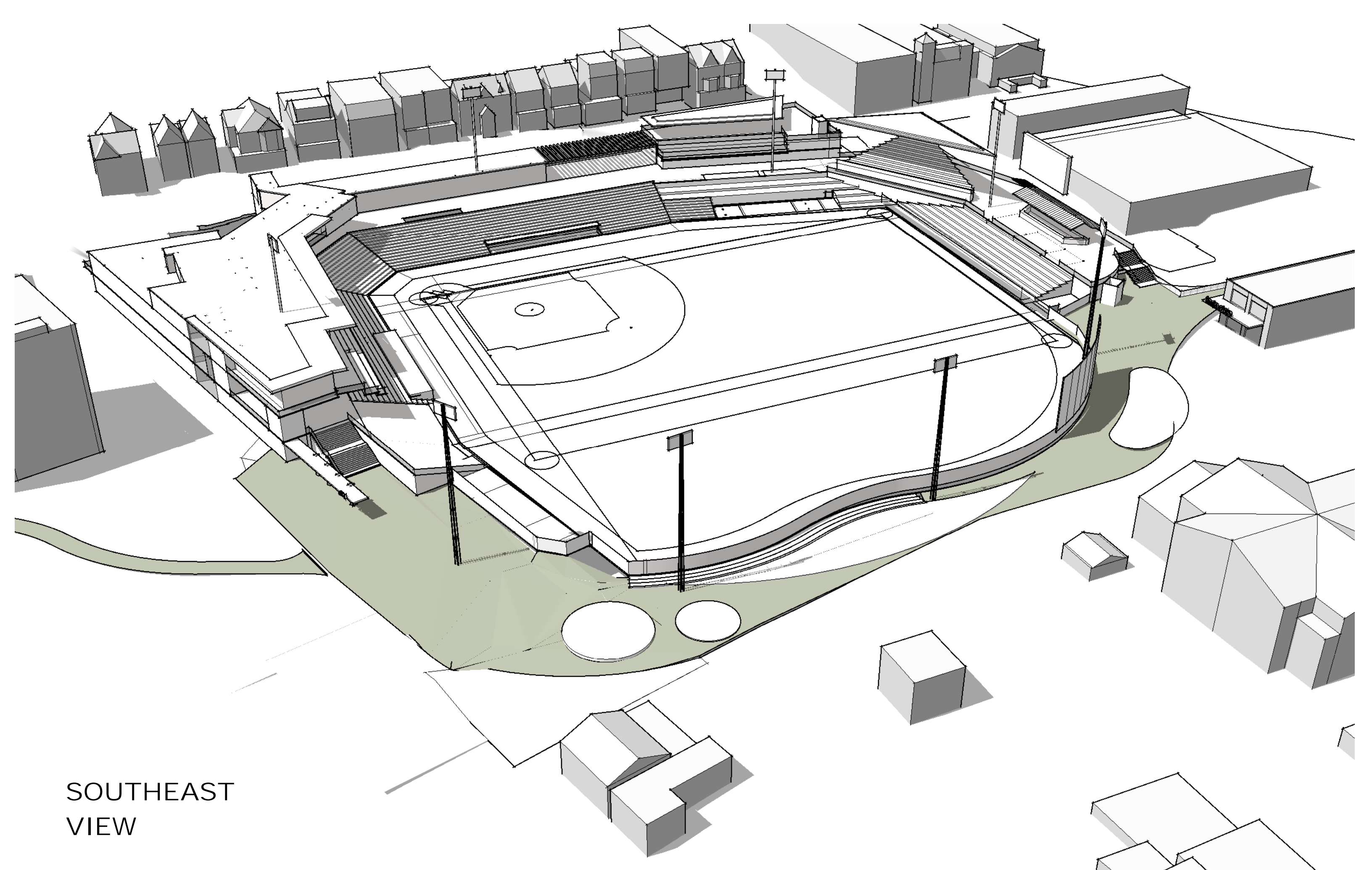
VIDEO BOARD

ROOF LEVEL

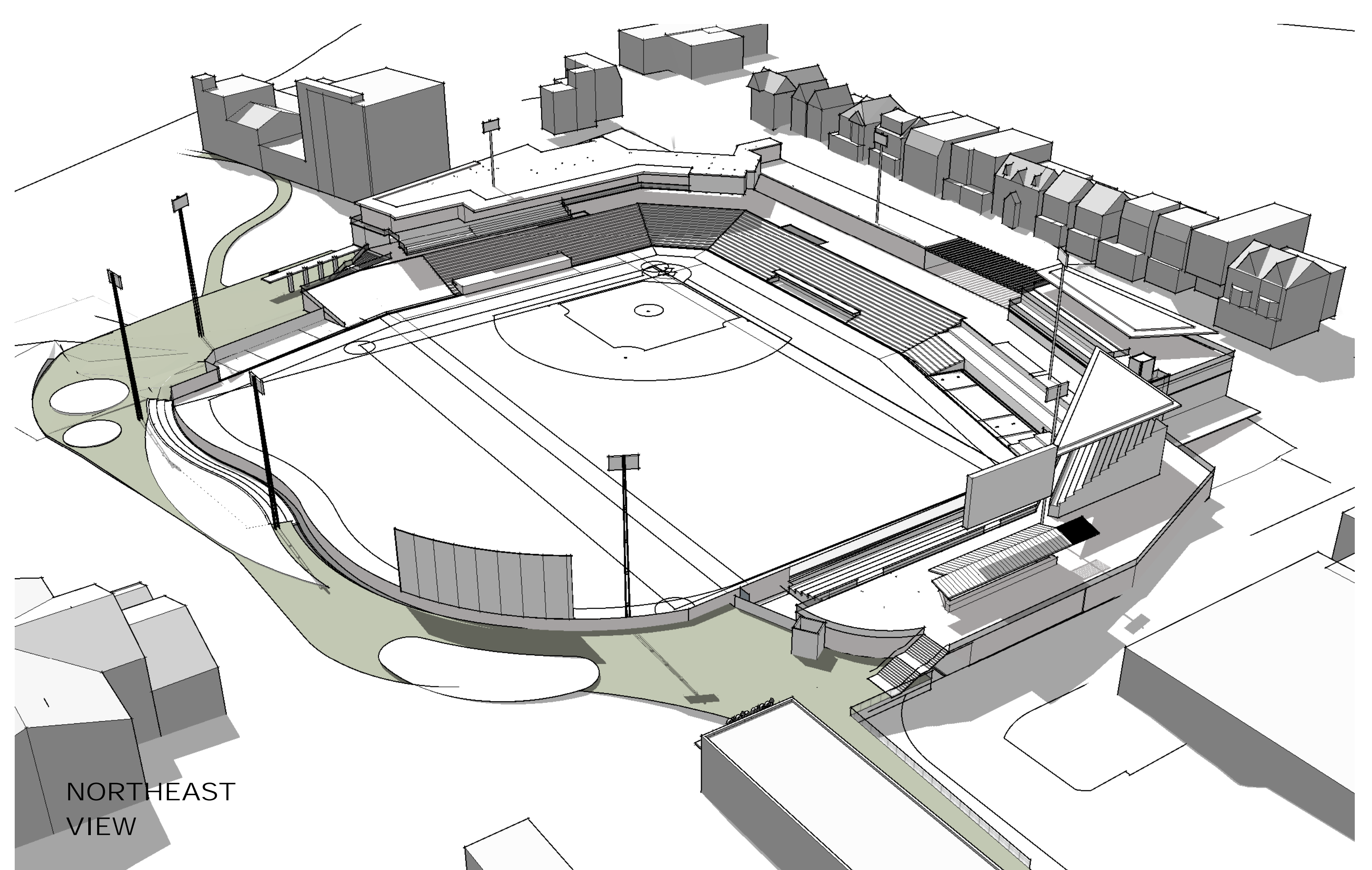


SOUTHWEST  
VIEW



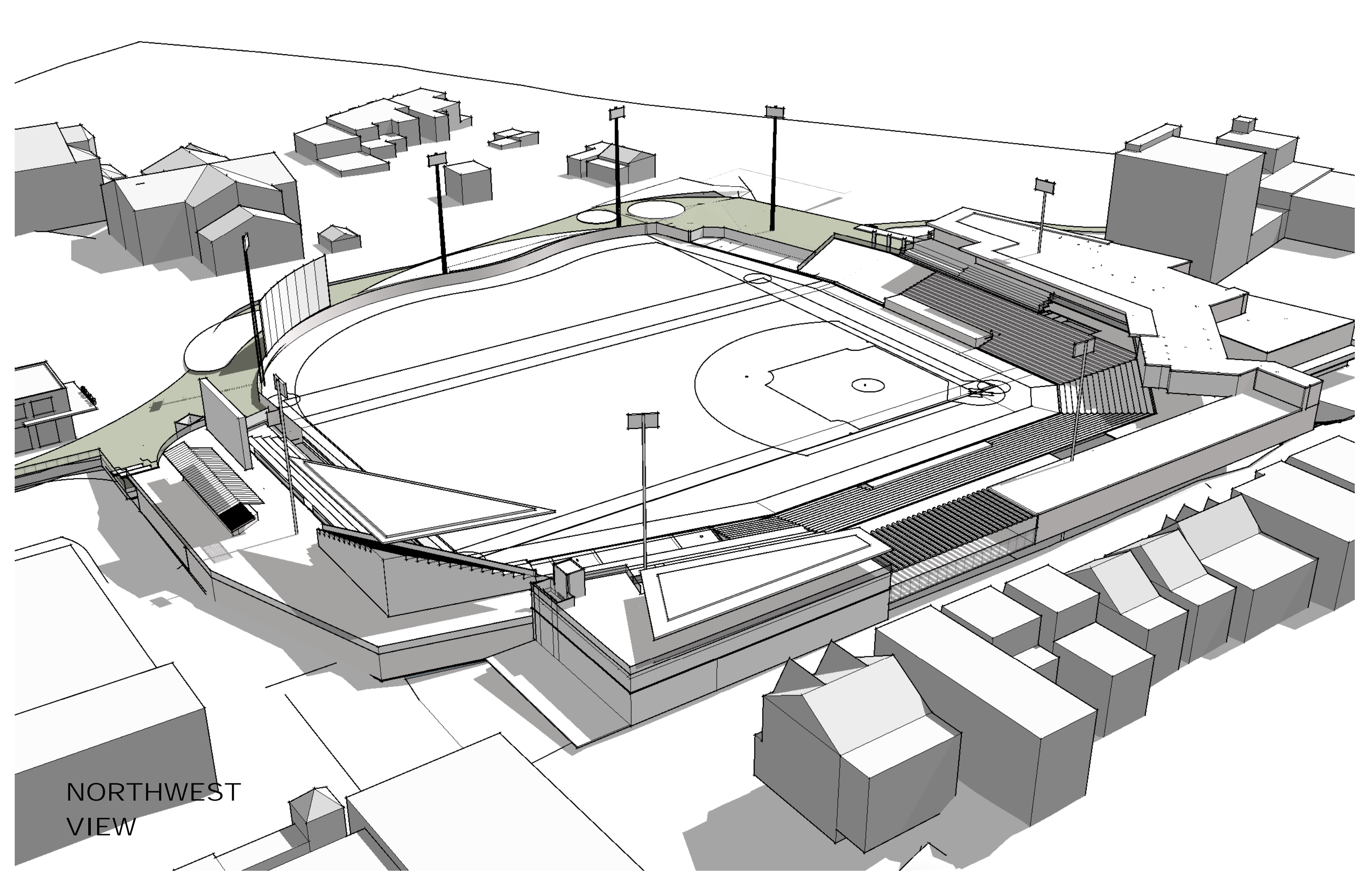


SOUTHEAST  
VIEW

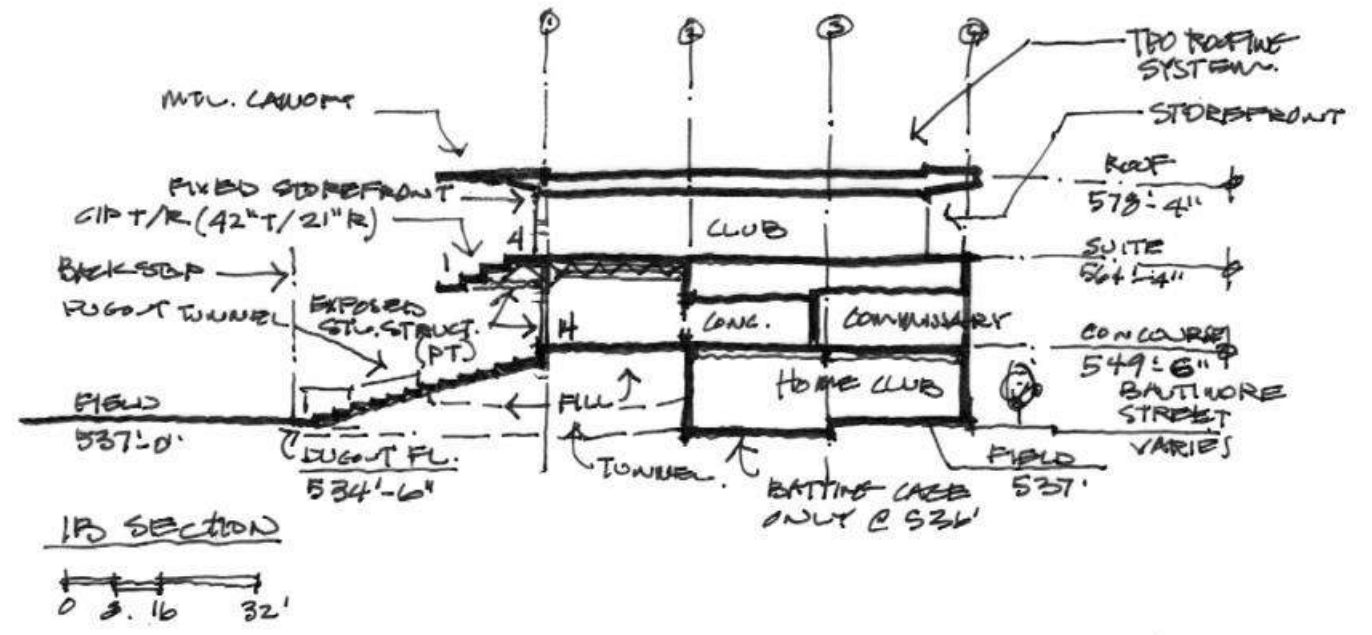
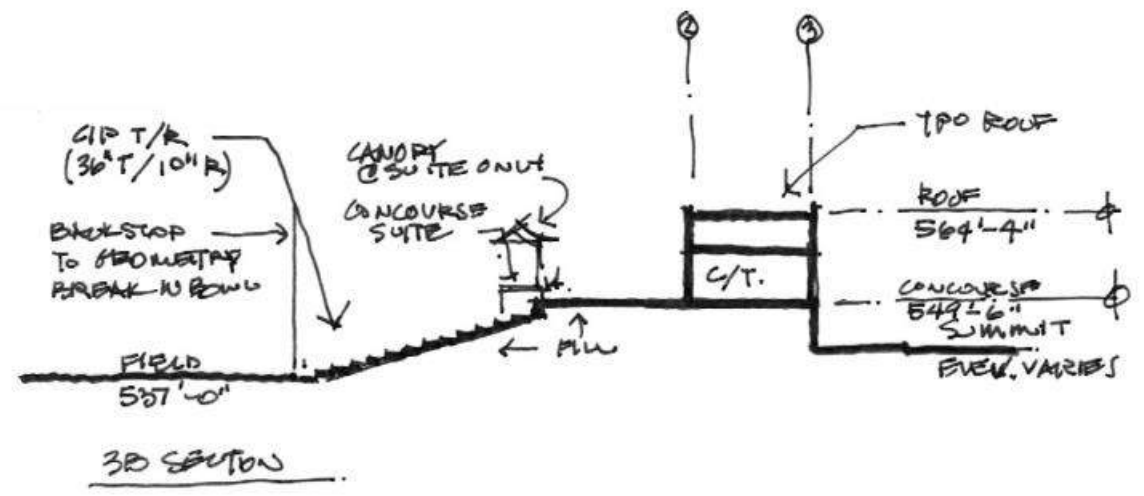
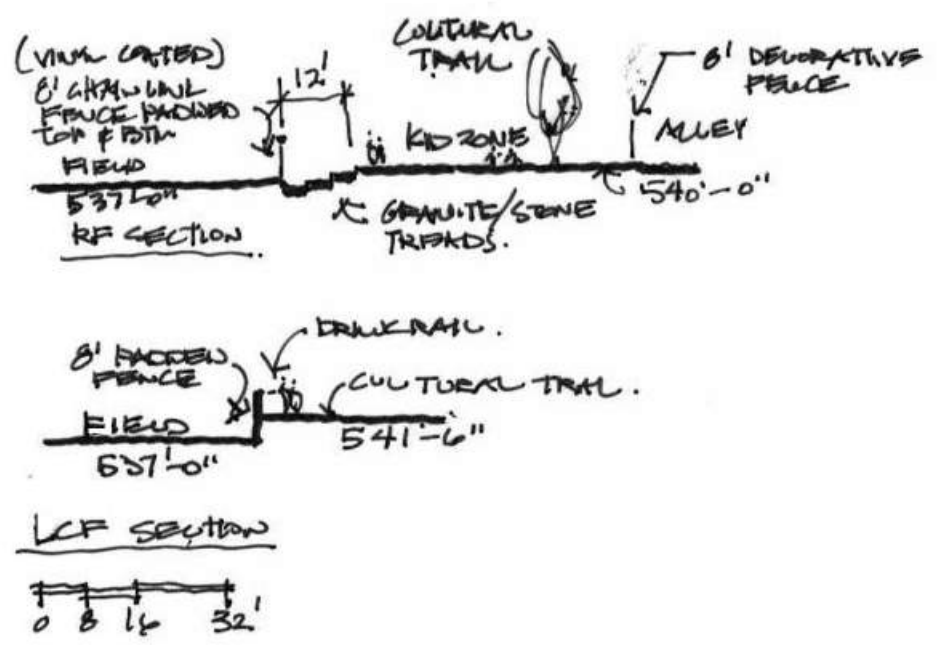
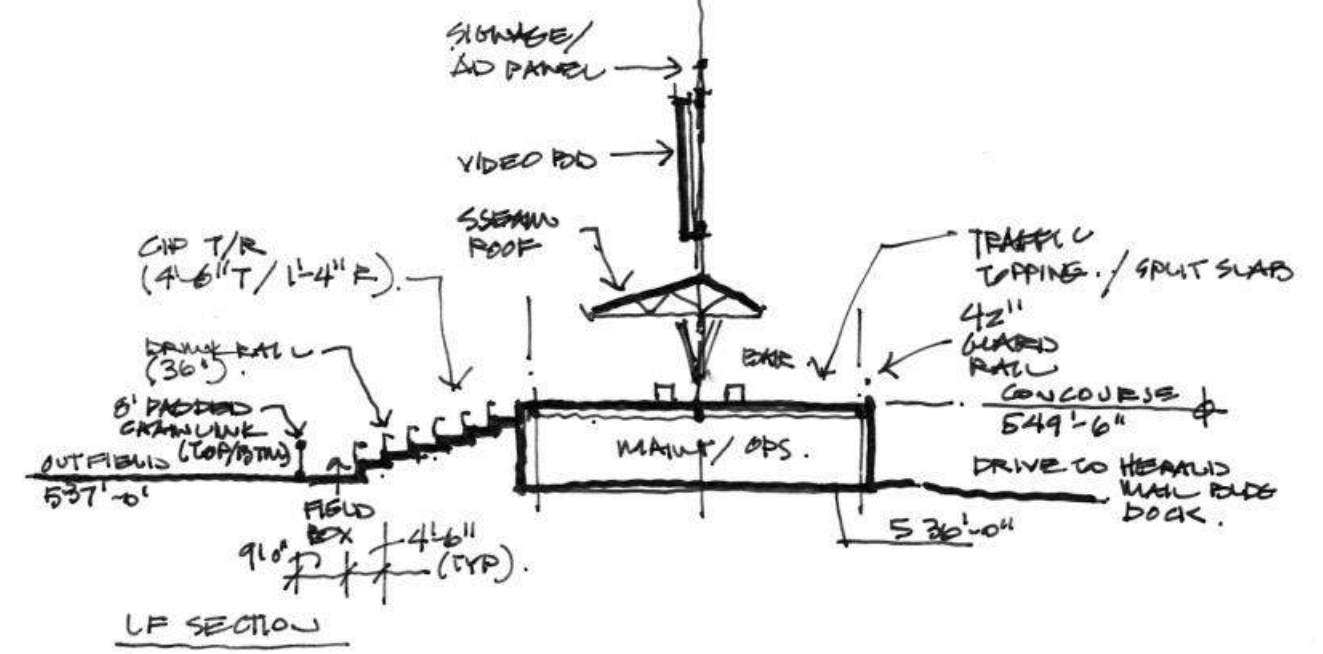
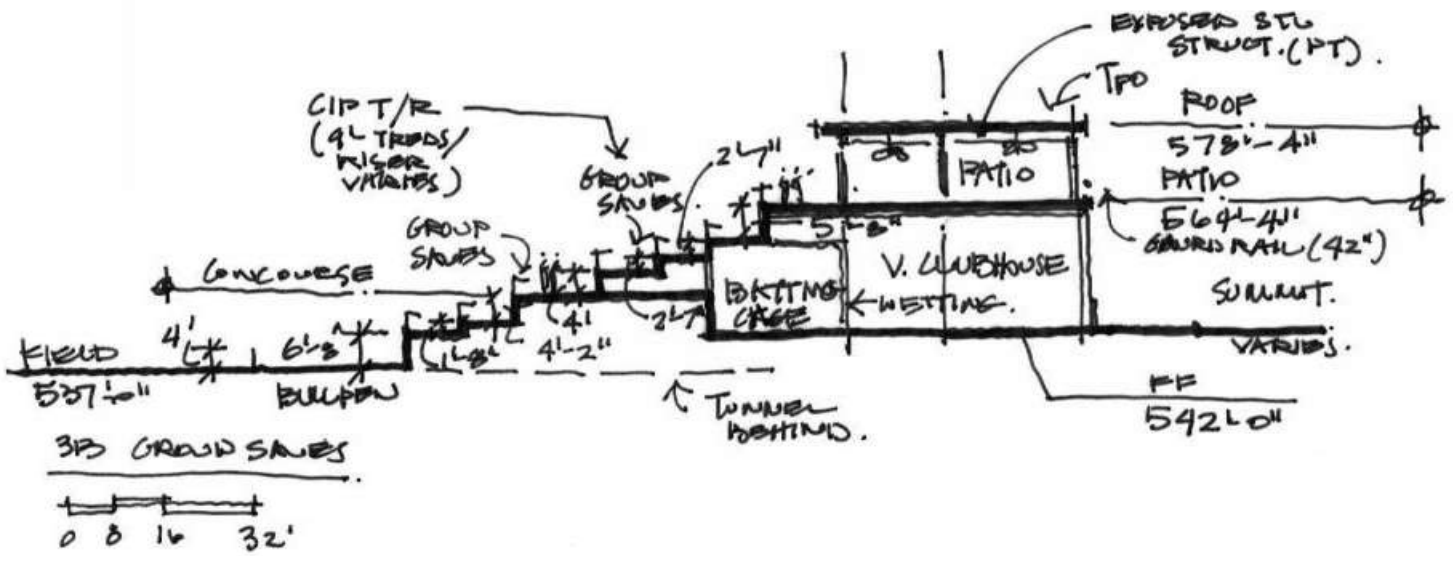


NORTHEAST  
VIEW



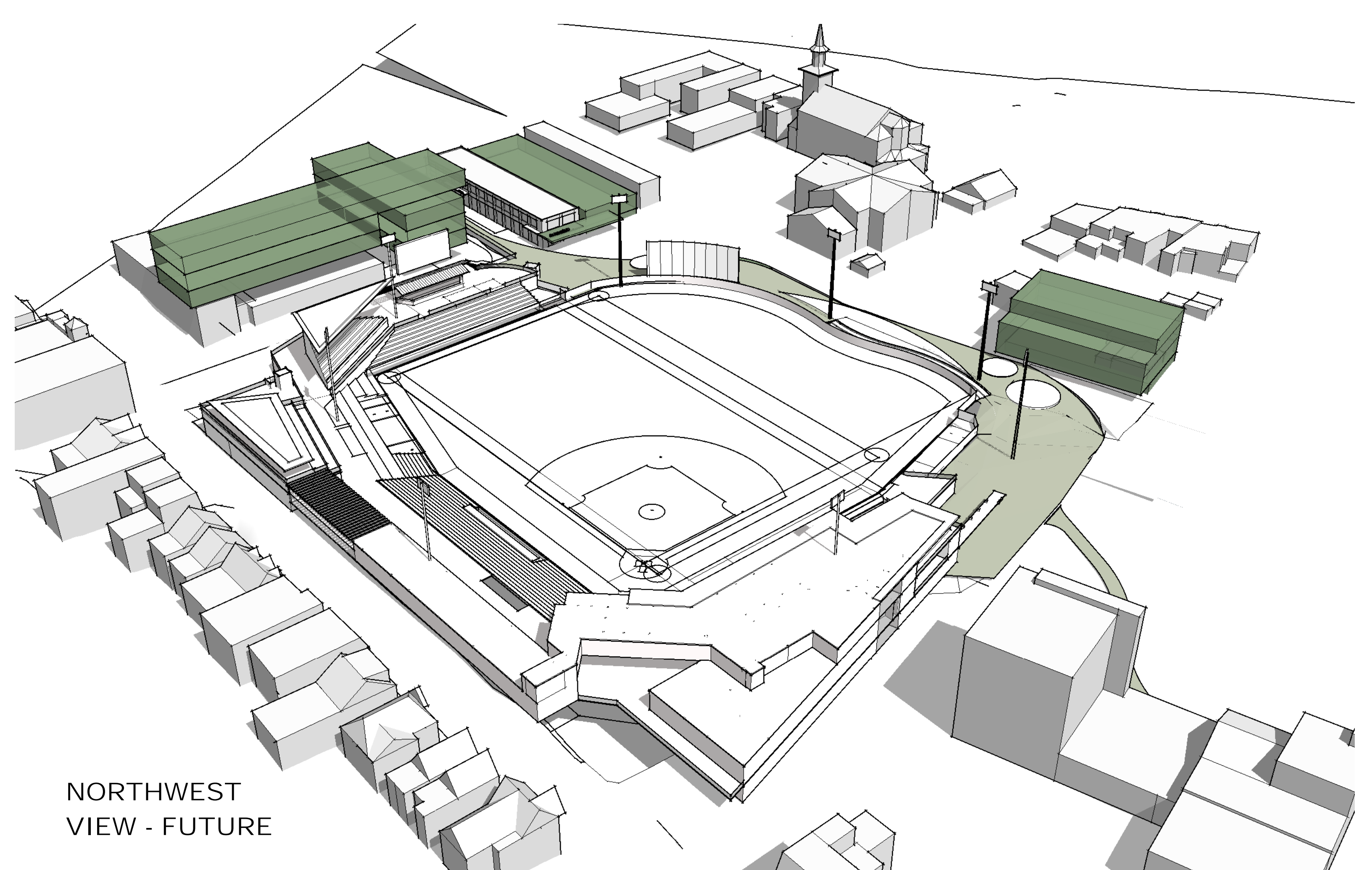


NORTHWEST  
VIEW



SECTIONS





NORTHWEST  
VIEW - FUTURE

Appendix B  
Real Estate Acquisition Plan





# Real Estate Exhibit



Property Address	Owner	Acquisition Type	Affected Section	Relocation Estimate*	Acquisition Range
<b>140 Summit Avenue</b> Hagerstown, MD 21740	Sweeney Bros Properties, LLC	Full	--	TBD	TBD
<b>100 Summit Avenue</b> Hagerstown, MD 21740	Gatehouse Media Maryland Holdings Inc.	Partial	Southern Lot	TBD	TBD
<b>32 W Baltimore Street</b> Hagerstown, MD 21740	WLR Residential Properties Inc.	Full	--	TBD	TBD
<b>80 E Baltimore Street</b> Hagerstown, MD 21740	Washing County Commissioners	Full	--	TBD	TBD
<b>0 Hood Street</b> Hagerstown, MD 21740	City of Hagerstown	None	--	TBD	TBD
				Total: \$950,000-\$1,800,000	\$4,650,000-\$8,100,000

\* Based on Exterior Inspection Only.

### Legend

- Project Site
- Parcels

0 25 50 100 150 200 Feet

1 inch = 50 feet

Date: 4/28/2021



## Appendix C Utility Availability Maps



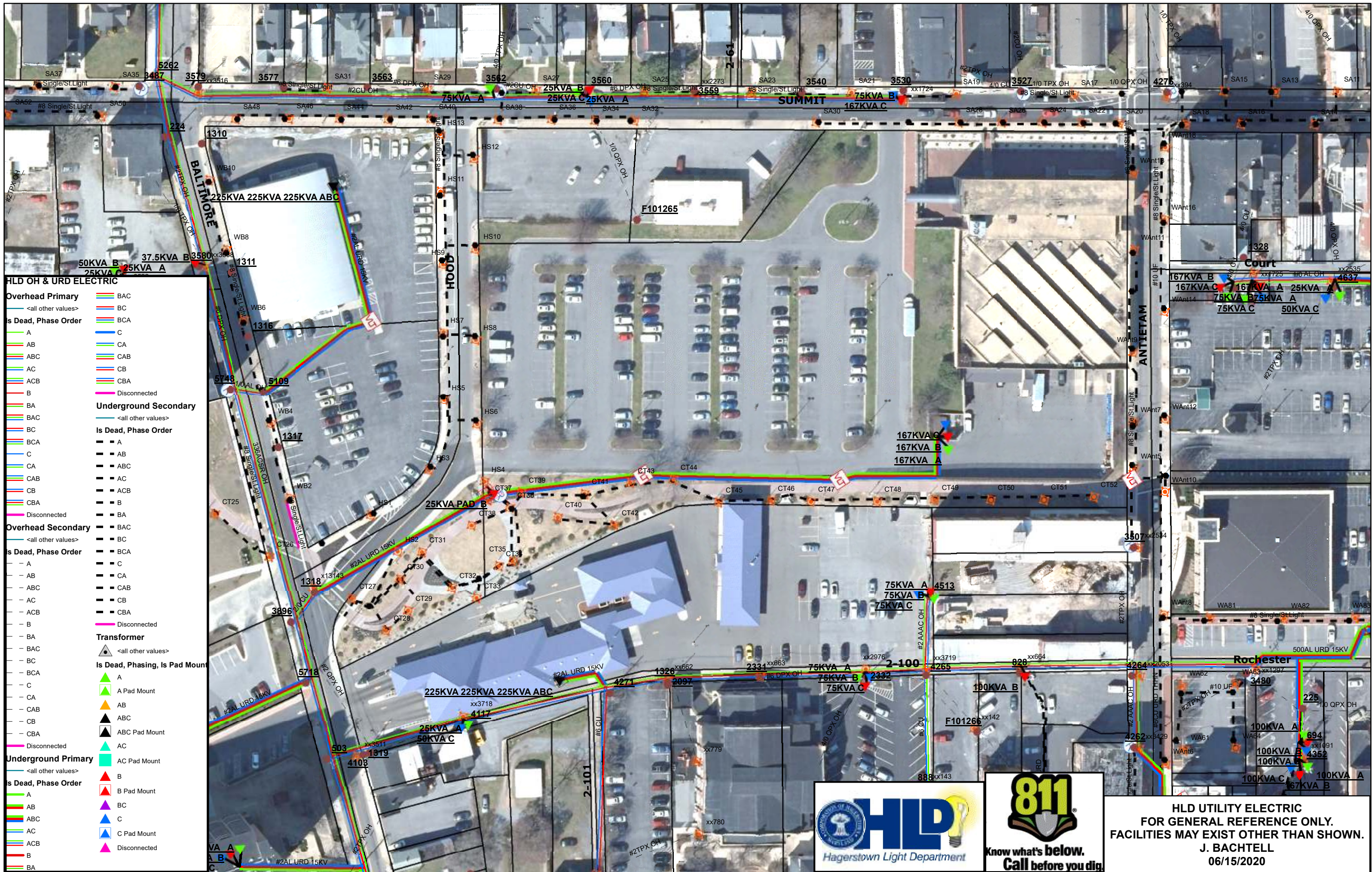












**HLD OH & URD ELECTRIC**

<b>Overhead Primary</b>	— BAC
<all other values>	— BC
<b>Is Dead, Phase Order</b>	— BCA
— A	— C
— AB	— CA
— ABC	— CAB
— AC	— CB
— ACB	— CBA
— B	— Disconnected
— BA	
— BAC	
— BC	
— BCA	
— C	
— CA	
— CAB	
— CB	
— CBA	
— Disconnected	
<b>Overhead Secondary</b>	— BAC
<all other values>	— BC
<b>Is Dead, Phase Order</b>	— BCA
— A	— C
— AB	— CA
— ABC	— CAB
— AC	— CB
— ACB	— CBA
— B	— Disconnected
— BA	
— BAC	
— BC	
— BCA	
— C	
— CA	
— CAB	
— CB	
— CBA	
— Disconnected	
<b>Transformer</b>	▲ <all other values>
<b>Is Dead, Phasing, Is Pad Mount</b>	▲ A
— A	▲ A Pad Mount
— AB	▲ AB
— ABC	▲ ABC Pad Mount
— AC	▲ AC
— ACB	▲ AC Pad Mount
— B	▲ B
— BA	▲ B Pad Mount
— BAC	▲ BC
— BC	▲ C
— BCA	▲ C Pad Mount
— C	▲ Disconnected
— CA	
— CAB	
— CB	
— CBA	
— Disconnected	
<b>Underground Primary</b>	— BAC
<all other values>	— BC
<b>Is Dead, Phase Order</b>	— BCA
— A	— C
— AB	— CA
— ABC	— CAB
— AC	— CB
— ACB	— CBA
— B	— Disconnected
— BA	



**HLD UTILITY ELECTRIC**  
 FOR GENERAL REFERENCE ONLY.  
 FACILITIES MAY EXIST OTHER THAN SHOWN.  
 J. BACHTTELL  
 06/15/2020



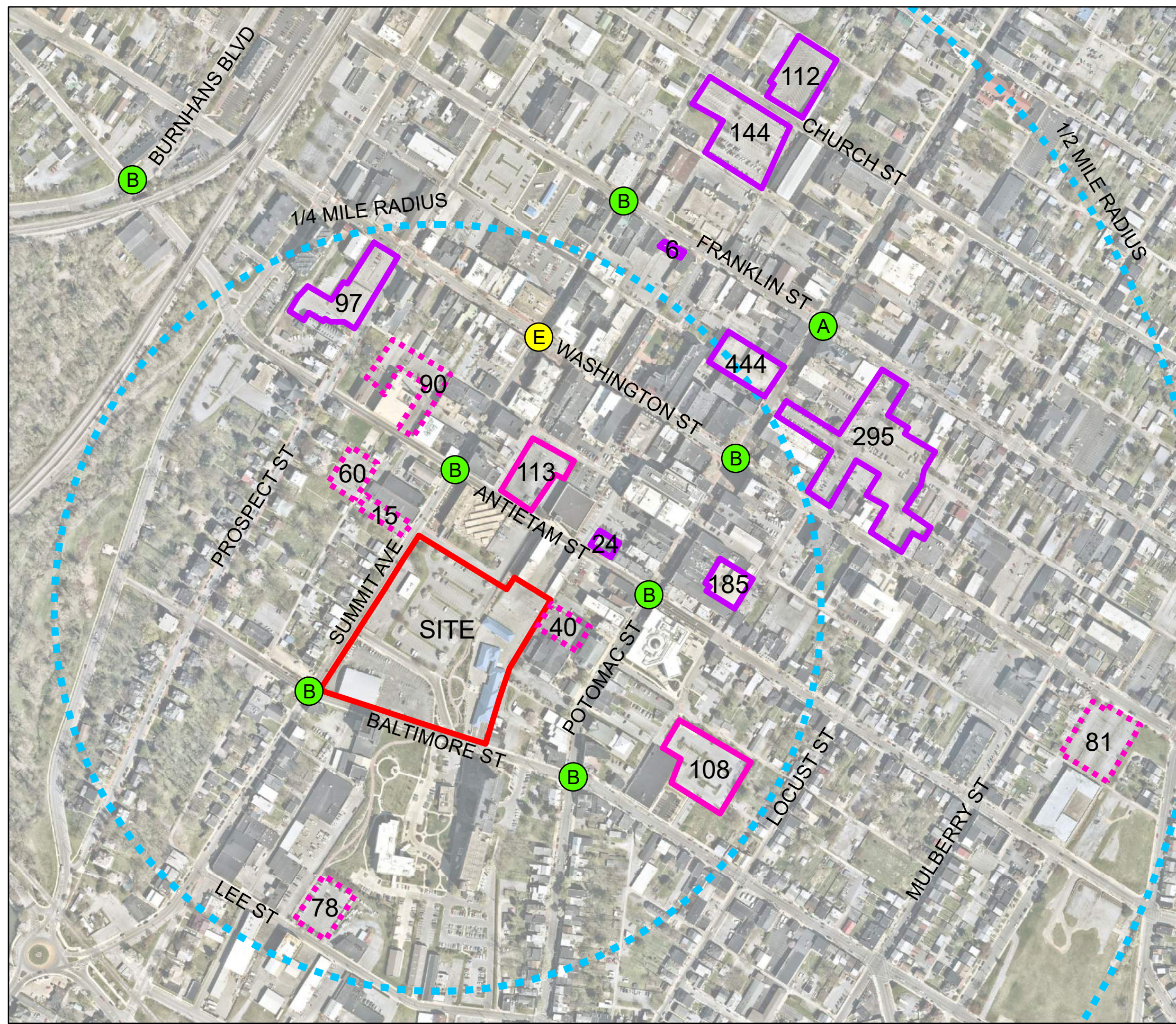
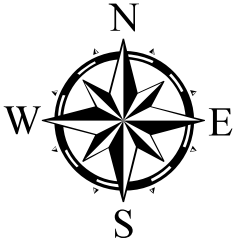
Appendix D  
Parking & Traffic Map





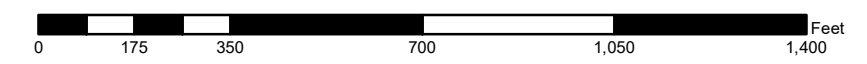
# PARKING AND TRAFFIC LEVEL OF SERVICE EXHIBIT

Date: 9/18/2020



## Future LOS During Weekday Evening Games

- LOS A-D
- LOS E
- LOS F
- Private Potential Lot
- Public Pay to Park Lot
- Private Pay to Park Lot
- Travel Distance
- Project Site



1 inch = 350 feet



## Appendix E Archeological Investigation Report





**A PHASE IA INVESTIGATION  
OF THE  
HAGERSTOWN MULTI-USE SPORTS AND EVENTS  
FACILITY PROPERTY  
HAGERSTOWN, WASHINGTON COUNTY, MARYLAND**

**Prepared For**

**RK&K Engineering  
700 East Pratt Street, Suite 500  
Baltimore, MD 21202**

**Applied Archaeology and History Associates, Inc.  
615 Fairglen Lane  
Annapolis, Maryland 21401  
(410) 224-3402  
FAX (410) 224-3470**

**June 2020**



**A PHASE IA INVESTIGATION  
OF THE  
HAGERSTOWN MULTI-USE SPORTS AND EVENTS  
FACILITY PROPERTY**

**HAGERSTOWN, WASHINGTON COUNTY, MARYLAND**

By  
W. Brett Arnold, RPA  
Mandy Melton, RPA  
Celia Engel  
Patrick Walters

Jeanne A. Ward, RPA – Principal Investigator

**Prepared For**

**RK&K Engineering  
700 East Pratt Street, Suite 500  
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FAX (410) 224-3470**

**June 2020**

## **ABSTRACT**

From February to May 2020, Applied Archaeology and Historic Associates, Inc. (AAHA) conducted a Phase IA archaeological assessment of the Hagerstown Multi-Use Sports and Events Facility property in Hagerstown, Washington County, Maryland. The Maryland Stadium Authority and City of Hagerstown are working under a Memorandum of Understanding for MSA to provide architectural/engineering services related to the potential development of the facility at the ca. 6.25-acre Baltimore Street site (Study Area) in Hagerstown, Washington County, Maryland. The overall objectives of the archaeological assessment were to identify previously recorded archaeological sites and architectural properties in the vicinity of the Study Area that may be significant to regional and national cultural heritage, and to determine the effects of future activities on those properties. The Phase IA archaeological assessment included an intensive background investigation to provide a determination of archaeological probability for the property.

The Study Area is located southeast of historic downtown Hagerstown, just outside the Hagerstown Historic District (WA-HAG-158) and Hagerstown Commercial Core District (WA-HAG-143). It is bounded by West Antietam Street, Summit Avenue, West Baltimore Street, and Ayers Alley, and is currently occupied by commercial buildings and parking lots. Both neighboring historic districts are listed on the National Register of Historic Places (NRHP). Although there are no documented historic properties located within the Study Area, the Baltimore and Ohio (B&O) railroad depot servicing Hagerstown was once located at the corner of West Antietam Street and Summit Avenue just outside the Study Area's north corner. It is located in Maryland Archaeological Research Unit 19, the Antietam Creek and Conococheague Creek Drainages

Three archaeological sites with precontact components and two with historic components have been identified within one mile of the Study Area, along with 123 documented historic properties within one quarter mile of it. The Study Area is located near the heart of historic Hagerstown and served a vital function as a freight yard that fostered its economic growth and industry during the nineteenth and early twentieth centuries. Historic maps and records document extensive industrial and transportation infrastructure on the property, but also extensive twentieth-century construction disturbance.

Precontact sites tend to contain perishable materials that do not survive the kind of extensive disturbance created by large construction episodes. Historic features tend to be more durable and may have survived the twentieth-century construction. While modern demolition and construction may have further disturbed archaeological resources in the center of the property, there is a moderate probability that intact archaeological resources exist in the corners of the property where clusters of structures are depicted on late nineteenth and early twentieth century historic maps. Traditional hand excavation methods of archaeological survey are unlikely to be effective in this environment, however, carefully conducted mechanical trenching under the close supervision of an archaeologist has been successful in identifying intact contexts in urban environments such as the Study Area. As such, mechanical trenching is recommended in the northeast, northwest, and southeast corners of the property to document possible in situ cultural

features and contexts. In addition, mechanical trenching is recommended in the center of the property to assess the degree to which construction activity related to the railroad impacted that portion of the Study Area.

The cemetery associated with St. John's Evangelical Lutheran Church is generally shown on historic maps outside the Study Area and multiple records indicate that it was moved, however no records could be found of the number of individuals who were originally buried there or disinterred. It is possible that burials might be present along the southeastern boundary of the Study Area where it borders the St. John's Evangelical Lutheran Church property. Archaeological monitoring is recommended in that area to assure that human remains are not disturbed by the proposed ground disturbing activity.

Finally, it is recommended that a viewshed analysis be conducted by a qualified architectural historian once the final concept plan of the facility is adopted in order to evaluate potential adverse effects to the surrounding historic districts and numerous individual historic structures in the vicinity.



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## 1. INTRODUCTION

From February to May 2020, Applied Archaeology and History Associates, Inc. (AAHA) conducted a Phase IA archaeological assessment of the Hagerstown Multi-Use Sports and Events Facility property in Hagerstown, Washington County, Maryland. The Maryland Stadium Authority (MSA) and the City of Hagerstown (City) are working under a Memorandum of Understanding for MSA to provide architectural/engineering services related to the potential development of the facility at the ca. 6.25-acre Baltimore Street site (Study Area). The overall objectives of the archaeological assessment were to identify previously recorded archaeological sites and architectural properties in the vicinity of the Study Area that may be significant to regional and national cultural heritage, and to determine the effects of future activities on those properties. The Phase IA archaeological assessment included an intensive background investigation to provide a determination of archaeological probability for the property.

The investigation consisted of archival, literature, and background research, as well as ongoing consultation with the MSA and City. All work was conducted in accordance with the Secretary of the Interior's *Standards and Guidelines for Archaeology and Historic Preservation* and the Maryland Historical Trust (MHT) *Standards and Guidelines for Archaeological Investigations in Maryland* (Shaffer and Cole 1994) and where appropriate, *Technical Update Number 1* (Revised 2005). Fulfillment of this study complied with the Maryland Environmental Policy Act, the Maryland Archeological Resources Act, and Section 106 of the National Historic Preservation Act of 1966, as amended and implemented in 36 CFR Part 800. The background research was conducted by W. Brett Arnold, RPA with the assistance of Celia Engel and Mandy Melton, RPA. Jeanne A. Ward served a principal investigator and Patrick Walters served as project manager.

The Study Area is located southeast of historic downtown Hagerstown, just outside the Hagerstown Historic District (WA-HAG-158) and Hagerstown Commercial Core District (WA-HAG-143) (Figure 1-3). It is bounded by West Antietam Street, Summit Avenue, West Baltimore Street, and Ayers Alley, and is currently occupied by commercial buildings and parking lots. Both neighboring historic districts are listed on the National Register of Historic Places (NRHP). Although there are no documented historic properties located within the Study Area, the Baltimore and Ohio (B&O) railroad depot servicing Hagerstown was once located at the corner of West Antietam Street and Summit Avenue just outside the Study Area's north corner. This depot directly influenced the placement of the Antietam Fire Hall (WA-HAG-195) and Former Post Office (WA-HAG-196) across the street. It is located in Maryland Archaeological Research Unit 19, the Antietam Creek and Conococheague Creek Drainages (Figure 4).

This report presents four (4) chapters and a list of references cited. Following this introduction, which includes a brief description of the project, Chapter 2 provides an overview of the environmental conditions. Chapter 3 discusses the cultural context and previous research within the Study Area, as well as the results of the background investigation. Chapter 4 summarizes the findings and provides recommendations. References cited are followed by appendices presenting the Chain of Title (Appendix A) and Qualifications of the Investigators (Appendix B).



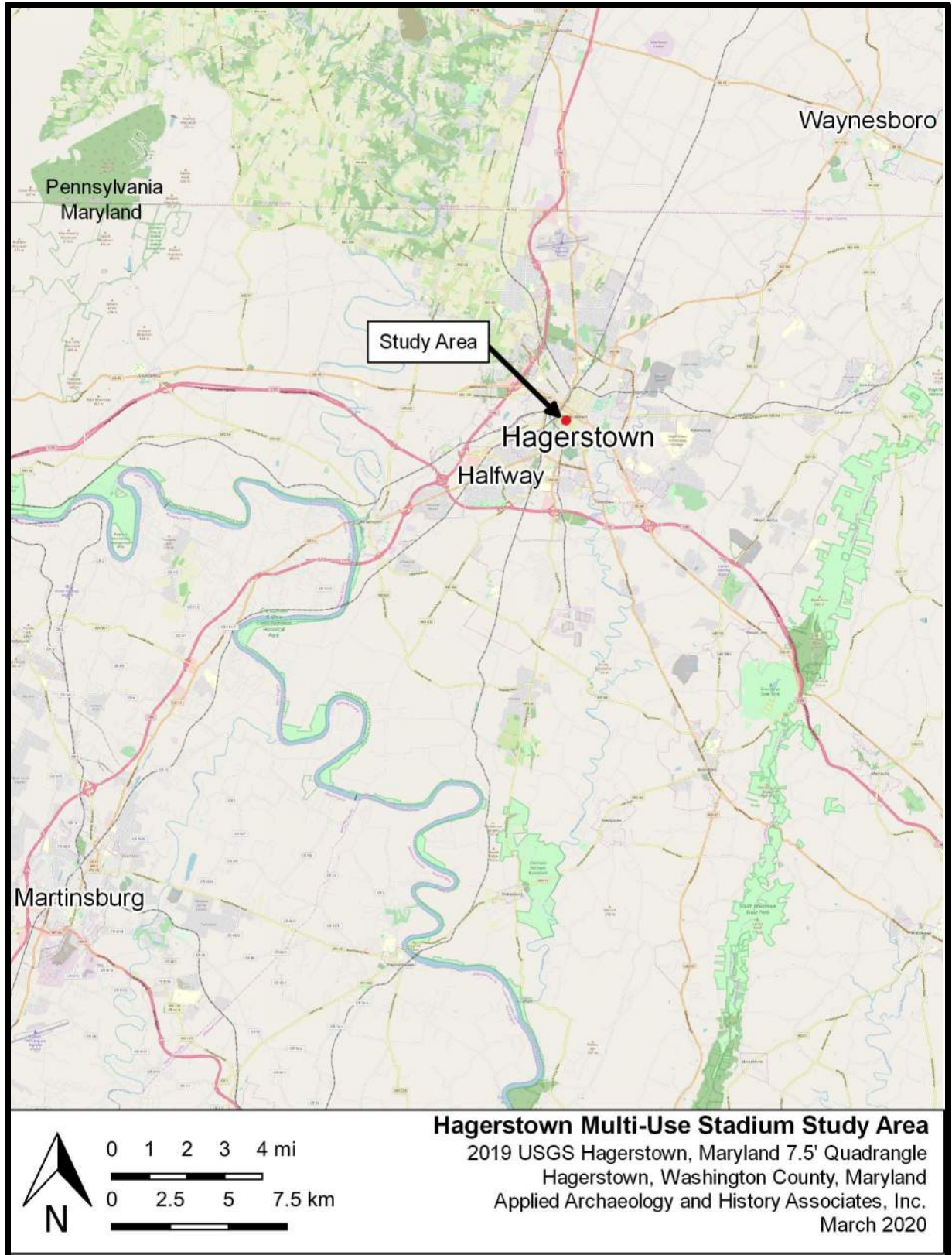


Figure 1. Location of the Study Area in Hagerstown, Maryland on the 2016 Open Street Map basemap.



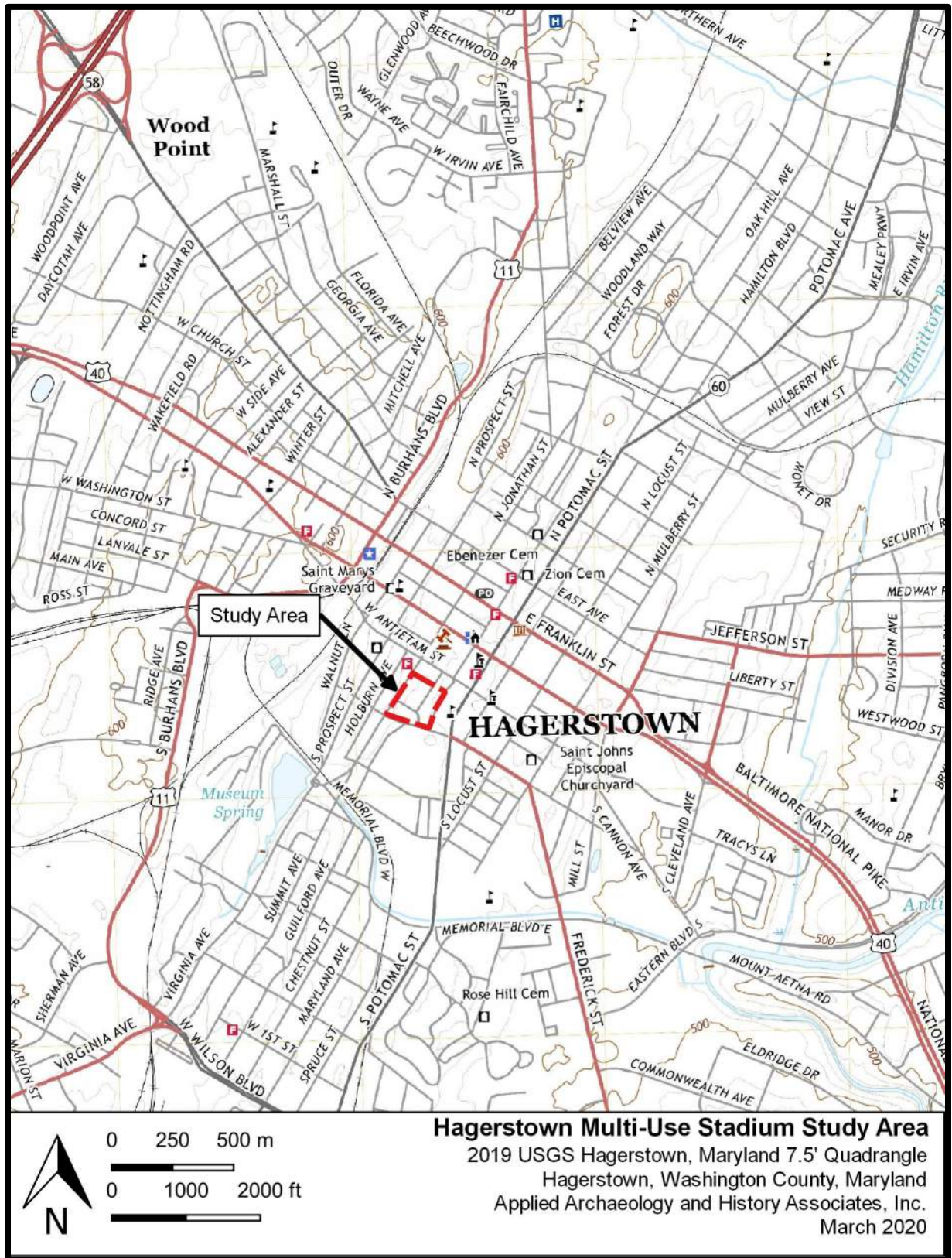


Figure 2. Location of the Study Area in Hagerstown, Maryland on the 2019 USGS *Hagerstown, Maryland* 7.5-minute quadrangle (USGS 2019).





Figure 3. Aerial photograph showing current conditions in the Study Area.



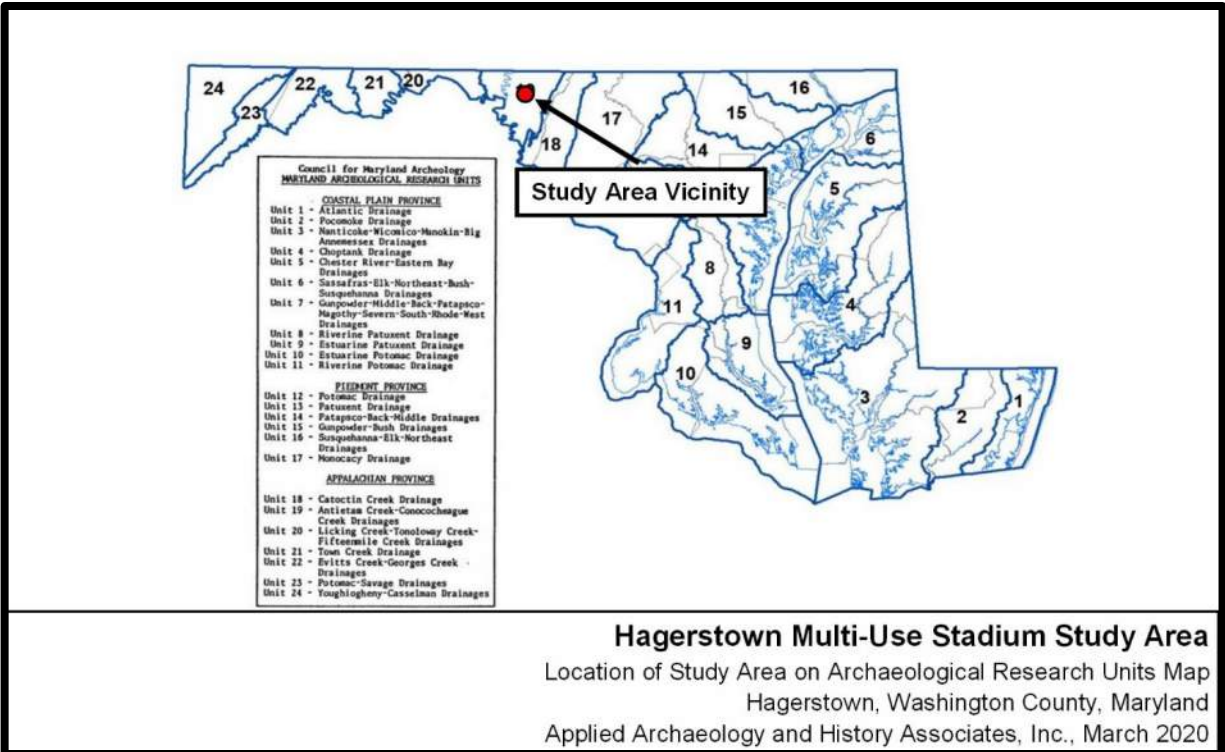


Figure 4. Map of Maryland Archaeological Research Units showing the Study Area in Unit 19, the Antietam Creek-Conococheague Creek Drainages.

## 2. ENVIRONMENTAL CONTEXT

The Study Area is located on a ca. 6.25-acre property bounded by Summit Avenue to the west, West Baltimore Street to the south, and Ayers Alley to the east. It is crosscut by Hood Street in the southwest quadrant of the property, extending from Summit Avenue to West Baltimore Street. The property is almost entirely covered by parking lots, walkways, landscaping, and commercial or civic buildings, including the Washington County Zoning Appeals, D&P Coin Op Laundromat, and the Hagerstown Auto Spa.

### Physiography and Geology

The Study Area is located in the Great Valley subprovince of the Valley and Ridge Physiographic Province (Figure 5). The Great Valley is a relatively flat, agriculturally rich region, characterized by complexly folded and faulted Cambrian and Ordovician shale (Lessing 1996). The Study Area is relatively flat with an elevation of about 164 meters (m) (538 feet [ft]) above mean sea level (amsl). Geological strata underlying the Study Area are included within the Stonehenge Limestone Formation. Stonehenge Limestone formations are composed of light to dark gray, fine-grained limestone containing sandy laminae. These deposits date to the Ordovician period. The region contains local outcrops of high-quality cryptocrystalline lithic materials such as jasper, chalcedony, and chert. The deposits in the project region are of particular interest as they provided lithic source material for the manufacture of stone tools during the precontact period. (Cleaves et al. 1968).

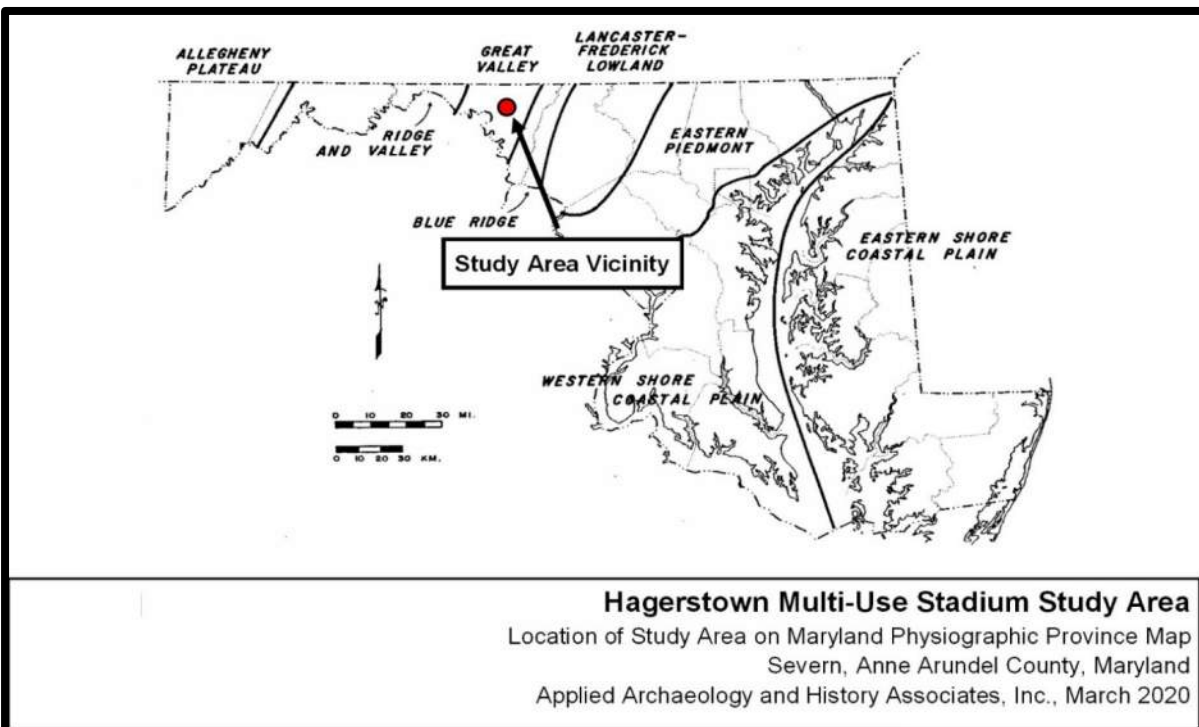


Figure 5. Map of physiographic provinces in Maryland showing the Study Area vicinity in the Great Valley subprovince of the Valley and Ridge Physiographic Province.

The Ridge and Valley Physiographic Province in Maryland is characterized by high ridges of faulted sedimentary rocks cut by the Great Valley, which contains large sources of limestone and dolomite (Maryland Geological Survey 2020). There is an abundance of quartz, quartzite, and rhyolite in this area, all of which were highly utilized as toolmaking materials on local precontact sites. Rhyolite is a preferred material, both for its material properties and widespread availability. In the Ridge and Valley Physiographic Province, large rhyolite quarries have been identified within the stream cuts and gaps leading out from interior portions of the Blue Ridge (Stewart 1989). Rhyolite could have also been sourced in western Maryland by waterways extending from the Potomac River, and traded from quarries located in south-central Pennsylvania (Dent 1995). Flint-like materials, such as cherts and jaspers, are also not uncommon.

### **Soils**

Soil analysis utilized the USDA Web Soil Survey (WSS) as seen in Figure 6. Soils in the Study Area consist entirely of Urban land (Ub). Urban land has been disturbed by urban development and rarely maintains subsurface integrity. It may have been cut and/or filled to reach its current ground surface level. Urban land is often impervious to water and has a very high runoff classification. It can include a mix of textural constituents, but is most often clay. Urban land is typically compacted and often contains gravel inclusions. Slopes in the Study Area range from 0-8%. Although the likelihood for encountering intact natural surfaces is relatively low, the fill deposits in Urban land is not necessarily modern and may preserve significant historic resources related to the development of the Study Area in the nineteenth or early twentieth centuries.

### **Paleoenvironment**

The more than 11,000 years of human occupation of the region are divided into two broad climatic periods. The earlier, before 8,000 BC, is the Pleistocene. The period after 8,000 BC is referred to as the Holocene. The seasons of the Pleistocene produced a mosaic vegetation pattern which is a species-diverse, patchy arrangement of plant and animal communities. Pleistocene conditions ended in most areas of the world around 11,000 BC (Delcourt and Delcourt 1983, 1985; Watts 1979, 1980); however, due to the wasting of the Laurentide ice sheet, near ice-age conditions reappeared in the Northeast (Broecker and Denton 1990; Fitting 1974). The grandest of these cold episodes followed 9000 BC, when runoff from the melting glacier suddenly shifted from the Mississippi River to the St. Lawrence River (Broecker and Denton 1988). The rush of cold water from the St. Lawrence River disrupted the Gulf Stream's warm northward current, returning the North Atlantic basin to ice age-like conditions for about 700 years. During the Holocene, the glacier retreated and finally disappeared.

Describing the past environments of the region is based on limited paleoenvironmental work in the region over the past four decades. Reconstruction of late glacial- and post-glacial-period environments is based on pollen core evidence from a number of sites (Carbone 1974; Delcourt 1979; Delcourt and Delcourt 1981) including Buckles Bog near Meadow Mountain in Garrett County, Maryland (Maxwell and Davis 1972). Pollen evidence from Buckles Bog documents the presence of tundra adapted plant species between 19,000 and 12,700 BP *Cyperaceae* (sedge)



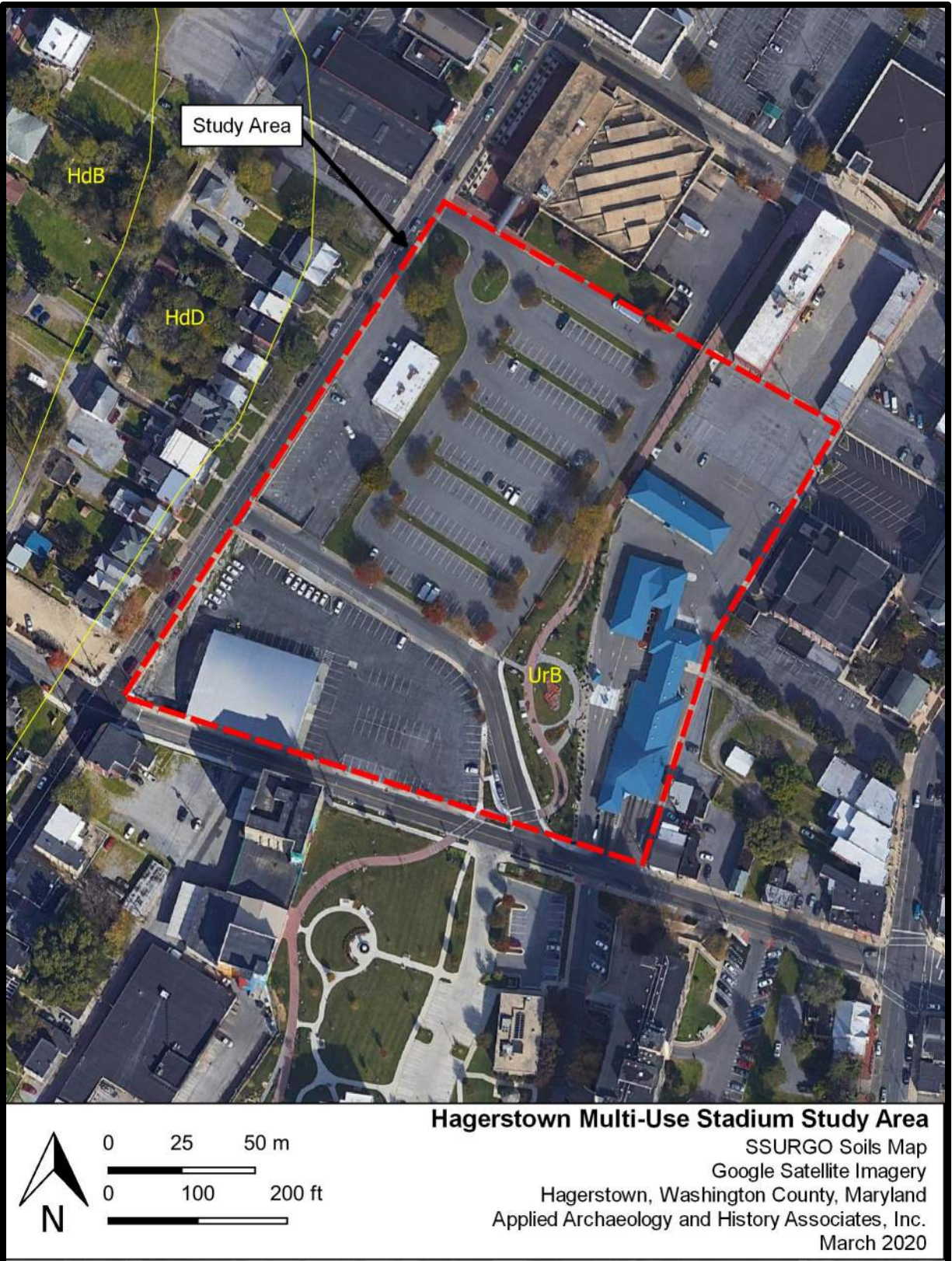


Figure 6. Aerial photograph showing soils and soil complexes in the Study Area.

and grasses predominate in the pollen record with lower percentage values of spruce and pine (Maxwell and Davis 1972:515). Species represented in the late-glacial-period zone from Buckles Bog are similar to those from early herb assemblages at sites on glaciated terrain and pollen influx values are similar to measurements of contemporary pollen rain in arctic tundra (Maxwell and Davis 1972:516). A significant change in flora is evident in zone BB-2 at Buckles Bog. Dated at 12,700 BP, the zone shows a sharp increase in tree pollen counts marking a change from tundra to boreal woodland.

The Holocene once was thought to be a period of relatively uniform climate; however, current research indicates that the Holocene was composed of global climatic episodes (e.g., mid-postglacial xerothermic) that translated into local climates of some duration. The definition of these episodes has to be refined for each region, as the translation from global conditions to local can be quite complex. Empirical evidence to provide at least a rough outline of Holocene episodes has been accumulating in the Mid-Atlantic for some time (Carbone 1974). Overlapping the Middle Holocene (ca. 8200–5000 BP), a mesic period characterized by hemlock and oak appeared in the mountains, and xeric conditions may have prevailed on the Coastal Plain (Carbone 1974; Watts 1979, 1980).

### **Modern Climate**

Modern climate in Hagerstown, Maryland experiences an average of 39.46 inches (in) of precipitation per year. Snowfall averages 16 in. Average daily maximum temperature is 66 degrees Fahrenheit and the average daily minimum temperature is 45 degrees Fahrenheit (USClimateData 2020). The growing season lasts for an average of 228 days (WeatherSpark 2016).

### **Flora and Fauna**

Animal life along the Chesapeake Bay region reported by early explorers at the time of contact included deer, squirrels, badgers, opossums, rabbits, bears, beavers, otters, foxes, martins, minks, weasels, and numerous fish and bird species (Hughes 1980:66). At present, the region is characterized by three different habitats: terrestrial, wetland, and aquatic. Wildlife commonly found in the terrestrial habitats includes songbirds, red fox, white-tailed deer, woodchuck, raccoon, gray squirrel, eastern chipmunk, Virginia opossum, and black rat snake. The aquatic and wetland habitats are home to a variety of birds (great blue heron, mallard, wood duck, red-winged black bird), muskrat, bullfrog, common musk turtle, and northern water snake. Freshwater streams provide a spawning environment for migratory fish species such as white and yellow perch, herring, and alewife. Resident species include largemouth bass, chain pickerel, and blue spotted sunfish. Seasonally abundant species such as migratory waterfowl were also common.

### 3. BACKGROUND RESEARCH

#### Cultural Context

##### *Precontact Context*

The precontact chronology of the Middle Atlantic region is commonly divided into three chronological periods: Paleoindian (circa 13,000 to 7,500 BC), Archaic (7,500 to 1000 BC), and Woodland (1000 BC to AD 1600). These periods are also commonly subdivided into Early, Middle, and Late subperiods: Early Archaic (7,500 to 6,000 BC), Middle Archaic (6,000 to 4,000 BC), Late Archaic (4,000 to 1,000 BC), Early Woodland (1,000 to 300 BC), Middle Woodland (300 BC to AD 900), and Late Woodland (AD 900 to 1607). The periods mark cultural development from largely nomadic hunter-gatherers during the Paleoindian period to fairly sedentary villagers in the Late Woodland period.

##### Paleoindian Period (13,000-7500 B.C.)

During the latter part of the last glacial period, known as the Wisconsin, ending about 14,000 BC, most of northern North America was deeply buried beneath thick sheets of ice. The vast amounts of water contained in these continental glaciers lowered ocean levels by as much as 130 m. Large expanses of the currently submerged continental shelf were exposed, with dry land extending for many kilometers beyond the present shorelines. The glaciers did not flow as far south as present-day Maryland, and the Chesapeake Bay of today existed only as the ancestral Susquehanna River Valley. The Wisconsin Ice Sheet stopped about 300 kilometers north of Western Maryland.

Glacial recession 11,000 years ago (ca. 9,000 BC) raised the sea level and inundated the ancestral river valleys. By 3,000 years ago, the Chesapeake Bay and the inundated portion of the Potomac River reached their present limits and modern climactic and biotic regimes developed to their present state. Oysters and a variety of benthic and pelagic fishes occupied newly created niches in what is now one of the richest estuarine environments in the world. In Western Maryland tundra vegetation covered much of the Appalachian Plateau until after approximately 10,700 BC, when the vegetation began shifting to boreal woodland (Wall 1981).

Diagnostic Paleoindian artifacts include the fluted, lanceolate Clovis point, manufactured from a wide variety of cryptocrystalline lithic material such as jasper, chalcedony, and chert. A projectile point chronology for the Upper Ohio Valley begins with Clovis and changes to unfluted or minimally fluted points and ends with Dalton points. A fairly standardized tool kit including graters, endscrapers, denticulates, spokeshaves, perforators, knives, pièces esquillées, and unifacial flake tools is also associated with the Paleoindian period. Most of the evidence of Paleoindian occupation in the Middle Atlantic region comes from isolated surface finds. Overall population density during the Paleoindian period may have been relatively low, as shown by the infrequent occurrence of sites, the typically low numbers of artifacts, and the general lack of stylistic variation in projectile point styles (Wall 1981; 2013).

The Paleoindian settlement model, based on Gardner's (1974; 1977) research in the Ridge and Valley physiographic province of Virginia, is applicable to the upper Potomac Region. His model



consists primarily of five functionally related site types: quarries, quarry reduction areas, quarry-related base camps, base camp maintenance stations, and outlying hunting sites (Wall 1981: 17; Wall 2013). Paleoindians occupied a broad range of upland and lowland settings, invariably close to a water source (Dent 1995; Custer 1989). Paleoindian site types in the central Appalachian region include base camps near high-quality lithic sources and hunting camps located in diverse habitats (Wall 1981; 2013). Paleoindian settlement in the upper Potomac Valley also includes base camps located on well drained upland surfaces near the river and its tributaries and in upland settings near high quality lithic sources. In this region, high quality Shriver cherts are common (Wall 2013).

Paleoindian fluted points in western Maryland are evidenced by isolated finds, including one found at the Barton Site (18AG13), located south of the project area. Another fluted point is reported to have been found near Oldtown. Fluted points have also been found in western Maryland along the upper Youghiogheny near Oakland, Maryland, on Pleistocene terraces of the Youghiogheny near Friendsville, Maryland, and near the Glades, an upland swamp and peat bog in the headwaters of the Casselman River (Wall 1981; 2013). Excavations at the Barton Site, just over two miles south of the project area, have revealed deeply buried Holocene occupation layers beneath an Early Archaic occupation; no diagnostic projectile points have yet been identified within those strata (Child et al. 2001; Wall 2013; Wall and Kollman 2009). In eastern Maryland, however, stratified Paleo and Early Archaic components have been identified. The Maryland State Highway Administration has excavated a Paleoindian component at the deeply stratified Higgins site (18AN489) in Anne Arundel County (Ebright 1992). The site is located along a small drainage that appears to have shifted its course and overflowed its banks many times. Waterborne silts and drifting dunes covered the Paleoindian component. The Higgins site is exceptional in its preservation of Paleoindian and Early Archaic components.

The Paleoindian period in the greater region is best represented by Meadowcroft rockshelter located southwest of Pittsburgh, Pennsylvania. Meadowcroft contains some of the earliest radiocarbon dated occupation layers in North America and a Paleoindian occupation layer contained an unfluted, lanceolate projectile point and a collection of other stone tools, although there was little evidence of tool manufacturing (Wall 1981; 2013). Meadowcroft's location lends itself to comparison with the western Maryland Paleoindian period; however, the Flint Run complex sites located in the Shenandoah Valley may provide a better point of comparison and model for mid-Atlantic Paleoindian settlement (Wall 1981:17).

#### Archaic Period (7500 B.C. - 1000 B.C.)

The Archaic period is marked by the gradually rising temperatures and sea levels of the Holocene. The Archaic period is divided into the Early, Middle, and Late Archaic. During the Middle Archaic, the environment reached modern conditions. Megafauna were replaced by browsers including deer, elk, and moose (Sarudy et al. 2001).

The Early Archaic is marked by continuity in the tool kit with the Paleoindian period, except for projectile points. Early Archaic Indians began producing notched and stemmed base points, rather than the fluted points associated with the Paleoindians (Sarudy et al. 2001; Wall 1981). This is

attributed to the shift from hand thrown spears to the spear thrower. The Early Archaic projectile point sequence draws on the results from the excavation of stratified sites in North Carolina (Coe 1964), the Kanawha River in West Virginia (Broyles 1971), and in the Shenandoah Valley of Virginia (Gardner 1974) and begins with Palmer and continues with Charleston, Amos, Kirk, Hardaway, Kessel, and Warren types (Wall 1981:17; Wall 2013). Additions to the Early Archaic toolkit include ground stone tools and chipped stone axes (Dent 1995).

Raw material preferences continue to include high-quality chert, but expand to include local chert. Exploitation of rhyolite, a lithic resource of the Blue Ridge province, is first seen in the Early Archaic. In Western Maryland, the rhyolite sources utilized were secondary deposits from streams draining from the Blue Ridge (Wall 1981; 2013).

Early Archaic settlement continues to reflect Paleoindian settlement patterns: they organized into small bands that set off on hunting and foraging trips from base camps located near critical natural resources. Early Archaic peoples made extensive use of uplands and even Appalachian summit areas, while also utilizing floodplains of major rivers and their tributaries (Wall 1981; 2013).

According to site information for the Ridge and Valley province, settlement during the first part of the Early Archaic focused on river terraces of high order streams and upland swamp edges, particularly rich environmental areas. Later in the Early Archaic settlement patterns shifted to focus more exclusively on uplands (Wall 2013).

The Middle Archaic period (6,000 to 4,000 BC) was marked by a warming trend. The Middle Holocene was warmer and wetter than the Early Holocene. The climate contributed to the increased diversification of the subsistence patterns of Middle Archaic peoples; they began exploiting new and greater numbers of seasonal resources during this period (Custer 1989).

The transition from the Early to Middle Archaic was marked by the shift from notched to stemmed projectile points (Custer 1989; Wall 2013). Some argue, however, that the early Middle Archaic is defined by diagnostic bifurcate projectile points (Gardner 1977; Wall 2013). Common projectile point styles throughout the Middle Archaic include: Stanly Stemmed, Morrow Mountain I and II, Guilford, and Halifax/Vernon (Wall 2013). The lithic materials utilized during the Middle Archaic were similar to those used during the Early Archaic, although there was a decreasing reliance of cryptocrystalline lithic resources. Rhyolite became more common along the Potomac Valley and non-local Blue Ridge sources for the rhyolite more commonly exploited (Wall 1981; 2013).

Middle Archaic settlement patterns reflect the increasing diversification of subsistence resources. Middle Archaic peoples made increasing use of smaller stream environments in many more upland settings. Site types generally fall into five categories: quarry sites, quarry reduction areas, base camps, hunting/exploitative camps, and individual hunting sites/isolated finds; sites are found in major and minor floodplains, swamp margins, and open valleys. Floodplains along the Potomac River contain numerous Middle Archaic projectile point finds; those floodplains, and especially those at confluences, would have been ideal for base camps (Gardner 1987; Wall 1981; 2013).

The Late Archaic Period (4,000 to 1,000 BC) marked a significant increase in the population as indicated by an increase in identified sites of all kinds, an increase in site size, and an increase in the utilization of more ephemeral environments. These changes are likely the result of full adaptation of a broad range of diverse subsistence strategies and exploitation of seasonal variations. The Late Archaic was marked by warmer, drier climatic conditions and the full transition from a boreal to deciduous climate (Wall 2013).

The Late Archaic period is characterized by a variety of stemmed and notched projectile points that maintain many similarities over wide regions. They include Bare Island and Buffalo stemmed points, broad blades including Savannah River, Susquehanna, and Perkiomen, and Orient fishtail and Dry Brook points. The tool kit also includes grinding implements, polished stone tools, scrapers, stone adzes and celts, net sinkers, anvil stones, and carved steatite stone bowls. Late Archaic peoples made more use of local lithic resources: quartz, quartzite, and rhyolite. By the terminal Archaic much of the rhyolite came from South Mountain (the Blue Ridge) (Wall 2013).

Settlement during the Late Archaic concentrated on riverine settings. Late Archaic communities exploited areas along streams, rivers, and estuaries more intensively than in the past. Base camps are located with lower order streams or floodplain swamps, for example the Buffalo site in West Virginia and in the Shenandoah Valley. Upland zones were also critical for the Late Archaic settlement and subsistence patterns, which were more broad-based than in the past. Late Archaic peoples made periodic and increased use of higher order stream environments and the mountain zones in the Ridge and Valley province were more populated in the Late Archaic than ever before (Wall 1981, 2013).

#### Woodland Period (1000 B.C. – A.D. 1600)

The Early Woodland period in the Middle Atlantic Region, between 1,000 BC and 300 BC, is characterized by a continuation of many of the cultural traditions and subsistence and settlement patterns established in the Late Archaic (Gardner 1982). There was a pronounced decline in trade and exchange networks with fewer exotic materials being found on sites of this period relative to those of earlier periods, although Ohio cherts appear on Early and Middle Woodland sites in the region. Based on the limited evidence available, it is inferred that subsistence/settlement systems for the Early Woodland period in the region involved a concentration on seasonally available resources, with a settlement focus on floodplain locations. A number of these Early Woodland period open camps and shelter sites have been recorded in eastern Kentucky (Adovasio 1982). Limited horticulture has been demonstrated for Early Woodland occupations in the Ohio Valley and evidence from Meadowcroft Rockshelter demonstrates the use of Cucurbita and 16 row zea mays yielding radiocarbon dates of 870 ±75 B.C. to 705 ±120 B.C. for the former and 375 to 340 ± 90 B.C. for the latter (Adovasio and Johnson 1981). It is possible, however, that these cultigens may not have been as intensively utilized in more marginal upland regions of the Appalachians until much later. There is presently no evidence of cultigens used in western Maryland at such an early date. It is assumed that Early Woodland populations subsisted mainly by hunting, gathering, and fishing, in a manner not unlike their Late Archaic period predecessors.



Western Maryland is located between two Early Woodland cultural manifestations: the Adena to the west in the area of the Ohio Valley and Meadowood to the north in western and central New York. Adena mound complexes are found just west of Garrett County; there is some evidence of mound building in the South Branch of the Potomac River in Moorefield, West Virginia and small earthen and stone mounds are reported along the Monongahela River, including Pollack's Hill, Linn Mound, and the Cheat River. Meadowood exhibits some Adena influences and is characterized by individual burial pits located on knolls (Wall 1981; 2013).

Generally, there is still limited settlement data regarding the Early Woodland period in western Maryland. Adena and Meadowood artifacts have been recovered from western Maryland, primarily from rockshelters and as isolated finds. Early Woodland period settlement in western Maryland appears to be focused on riverine floodplains (Wall 1981; 2013). The practice of limited horticulture has been recovered from Early Woodland occupations in the Ohio Valley and from Meadowcroft Rockshelter, but no such evidence has been recovered yet in western Maryland.

The Early Woodland period is marked by the development of ceramics. Western Maryland Early Woodland period ceramics include both the "thick" wares common in the Ohio Valley and the steatite-tempered pottery more common to the east. Examples of the "thick" wares have been recovered from the Hagerstown Valley and include Vinette I-like ceramics from Chickadee Rock Shelter and Bushey's Cavern and from Ridge and Valley province sites in Pennsylvania. Vinette I pottery, a crushed quartz ceramic, has been recovered from 18AG240, part of the Barton Business Park sites just over two miles south of the project area (Maymon and Child 2003; Wall, 1981; 2013). A variant of Adena Fayette thick ceramic type has also been found on some western Maryland sites (Wall 1981). Marcey Creek, a steatite-tempered pottery, is more uncommon in western Maryland. Marcey Creek ceramics are molded (as opposed to coiled) and they are tempered with crushed steatite. Pot forms imitate steatite vessel forms of the terminal Late Archaic. They are undecorated and usually lack lug handles. Examples of Marcey Creek ceramics are found on sites throughout the Delaware and Susquehanna River valleys and in the Coastal Plain and Piedmont provinces of Maryland and Virginia, with some occurring in New York State. Selden Island wares also are found in association with Marcey Creek ceramics. They have thinner walls, steatite tempering, and cord marking on exterior surfaces. Marcey Creek has been recovered from the Barton Site (18AG3) (Wall 2013). Projectile points from this phase are the Holmes/Bare Island, Claggett, Dry Brook, and Orient Fishtail points, all of which made their first appearance in the terminal Late Archaic.

The Middle Woodland period (300 BC to AD 900) in western Maryland is not well understood in comparison to regions in the Ohio Valley, Hagerstown Valley, New York, and to the east. In the Ohio Valley, the Middle Woodland is characterized by the Hopewell manifestations, which represent the further elaboration of the Adena. Earthworks increased in size, quantity, and complexity. Material culture changes included the introduction of the platform pipe and the bow and arrow. Trade networks intensified to include mica, obsidian, galena crystals, and marine shells as well as cache blades and gorgets. These items were regularly exchanged in western Maryland. There is no evidence of burial mounds or earth works in western Maryland (Wall 1981, 2013).

Evidence from the Hagerstown Valley indicates that, while there was little change in subsistence settlement patterns from the Early Woodland, there was an intensification in the exploitation of certain environmental zones. Generally, there appears to be a decrease in the number of hearths in Middle Woodland base camps and the locations of those base camps shift to the edges of backwater swamps. Overall, the Middle Woodland period represents a shift to the exploitation of floodplain zones, likely related to intensification of horticulture practices, and potentially, a decrease in the use of mountain environmental zones (Wall 1981).

In western Maryland and its adjacent regions, the Middle Woodland is characterized by Jacks Reef and Chesser projectile points and Watson and other variant cord marked ceramics with high percentages of crushed rock temper. Such crushed-rock tempered ceramics have been recovered from stratified deposits at the Barton site (Wall 2013).

The Late Woodland period (AD 900-1600) in western Maryland is similar to other regions: represented by cord marked ceramics and triangular points and an incipient horticultural economy supplemented by hunting and gathering. Western Maryland Late Woodland period sites are located in upland rockshelters and open alluvial floodplain and terrace settings (Wall 2013). The Late Woodland in western Maryland and the Upper Potomac Valley differs from elsewhere in the state by virtue of its location at the intersection of several differing regional traditions (Maymon and Child 2003). The predominate influences during the Late Woodland in western Maryland were Fort Ancient, from the central Ohio Valley and spreading east into the West Virginia panhandle, and the Monongahela, centered in southwestern Pennsylvania near the junction of the Monongahela and Youghiogheny Rivers (Wall 1981).

In western Maryland, the Late Woodland period brought changes in material culture: locally sourced lithic material is chosen to the exclusion of non-local materials, an elaboration of bone-tool industry, and the introduction of shell-tempered, decorated ceramics (Wall 2013). Ceramics recovered in western Maryland and the Upper Potomac Valley during the first part of Late Woodland period are typically limestone-tempered Page ware with smaller amounts of crushed rock tempered Clemson Island ware. As the Late Woodland progressed, the types of ceramics recovered shifted to include mostly shell-tempered Keyser ware (Maymon and Child 2003: 20-21). Projectile points recovered from Late Woodland occupations in the Upper Potomac and western Maryland include the typical Late Woodland points: Madison, Levanna, and other triangular points (Maymon and Child 2003: 20).

Evidence of the Late Woodland period in western Maryland generally comes from multicomponent sites located on floodplains or terraces. Late Woodland period settlement, focused on these floodplains and terraces, likely reflects the growing reliance of horticulture, deemphasis of hunting and gathering, and a sedentary way of life (Wall 2013). Maize horticulture was established throughout eastern North America by AD 1300. There is, however, little evidence of this cultural development in western Maryland. There is, however, evidence of villages located along the North Branch of the Potomac River. The Cresaptown Site (18AG119) is a multicomponent site located 0.75 miles to the east of the project area along the North Branch of the Potomac River (Wall 1989, 1997a). While cultural materials dating from the Early Archaic through Late Woodland were identified over a larger area associated with the site, an un-palisaded Late Woodland village

site consisting of numerous structures, hearths, and burials was also identified. The ceramics recovered were overwhelmingly limestone-tempered and the lithics were nearly all locally-sourced gray chert and chert-like siltstone. Two palisaded villages in the region are the Moore Village (18AG43), located along the North Branch of the Potomac River near Oldtown, and the Barton Site (18AG3), located just over two miles southeast of the project area along the North Branch (Pousson 1983; Wall 1997b; Wall and Kollman 2009).

### *Historic Context*

Although European exploration in the Chesapeake region began as early as the sixteenth century, forays further inland remained limited until the eighteenth century. European settlement of Maryland was initially focused on the Chesapeake Bay shorelines and spread along coastal tributaries and rivers in the late seventeenth and early eighteenth century. It was not until over a century later that European colonists established their first settlements in Western Maryland.

Originally part of Prince George's county then later Frederick County, Washington County was established in 1776. Prior to permanent settlement, the fur trade played the primary role of European involvement in the region. One of the first permanent settlements in Western Maryland is believed to be a trading post and inn established by Thomas Cresap, a Captain in the Maryland Militia, who originally patented land in the mid-1730's (Papenfuse and Patterson 2009; Franz and Bodor 2017:16). Colonists, many of them of German, Scottish or English descent, pressed westward in search of productive farmland and what would become Washington County experienced an initial period of growth during the late 1730's (Kraft 2003; Franz and Bodor 2017:16). Many of these immigrants entered the colonies from Philadelphia and moved westward following the Great Valley Road along the Appalachians into Maryland (Franz and Bodor 2017:16). These immigrants retained much of their cultural backgrounds, influencing architecture, industry and culture in the region. From 1750 to 1754, and again from 1760 to 1764, Washington County experienced peaks, over 200, in the number of land patents followed by decreases below 100 (McDermott 2009). These fluctuations are likely related to the French and Indian War, and tensions between Native American groups and the colonists in the region.

Like other frontier areas in the colonies, the draw to the region, and more specifically the Hagerstown region, was the availability of land despite the dangers of being isolated in territory contested over by Native Americans, the French, and the English. In 1756, Fort Frederick was constructed on the north side of the Potomac River. The fort was used throughout the century as protection for colonists in the area during the French and Indian War (1754-1763), Pontiac's Rebellion (1763), and as a prison camp during the American Revolution (1775-1783).

In 1762, Johnathan Hager founded Elizabethtown, now Hagerstown, named in honor of his wife. In 1787, Williamsport was created and would become the second of the County's commercial centers just six miles southwest of Hagerstown (MIHP Form WA-HAG-158; Franz and Bodor 2017:16). Both towns grew due to their proximity to water and land transportation, especially their locations along the Great Wagon Road, which connected the Pennsylvania Piedmont to points as far south as North Carolina and Georgia (Franz and Bodor 2017:16). From 1800, both towns were important commercial centers in the region (Kraft 2003: 15).



Elizabethtown was officially renamed Hagerstown in 1776, and was originally located on the west bank of Antietam Creek. Hager divided the town into 520 lots and strategically placed it over the intersections of well-traveled roads and water-powered mills. The location enabled easy processing and transport of the county's agricultural produce which primarily consisted of grain (MIHP Form WA-HAG-158). Soils in the region well suited to farming (Kraft 2003:18) Unlike planters in Southern Maryland counties, farmers in Washington County were faster to develop a diversified agricultural economy, including various grains, orchard fruits, and livestock (Steiner 1902:6). As focus on grain agriculture increased, Washington County transitioned from a frontier to a community reliant on commercial milling and agricultural production.

The nutrient-rich soils of the valley continued to fuel the agricultural development of Washington county and the commercial success of Hagerstown during the second half of the eighteenth century (Kraft 2003:18). Grist and flour mills processed locally grown grains, and the location of Hagerstown in proximity to both water and developed roads leading to the large port cities of Baltimore and Philadelphia further encouraged economic development (MIHP Form WA-HAG-158). In the same year Washington County was formally established (1776), Hagerstown became the county seat of government in addition to its main commercial center.

In most respects, Washington County remained rural, and its economy continued to be primarily agriculturally based throughout the nineteenth and twentieth centuries. By the early 1800s, Hagerstown served as a distribution hub of local agricultural products (grains, apples, honey) and goods (ceramics and clothing) (MIHP Form WA-HAG-158; Kraft 2003:15). A boom in the development of turnpikes provided additional regional access to Hagerstown through Baltimore and Cumberland (Klein and Mejewski 2008; MIHP Form WA-HAG-158). Scharf (1882) identified a wide range of professions in Hagerstown during this period, the most common being merchants and tavern/inn keepers.

The first half of the nineteenth century brought multiple population increases; however, the number of land patents remained stable as westward movement increased (McDermott 2009). By the mid-nineteenth century, a number of railroads had connected to Hagerstown. The first was the Cumberland Valley Railroad in 1841, followed by the Baltimore and Ohio (1867), the Western Maryland (1872), and the Norfolk and Western (1880s) (MIHP Form WA-HAG-158). The importance of the growth of railroads in relationship to the increasing urbanization of Washington County and Hagerstown during the nineteenth century is relative, however, the presence of the railroads in such close proximity to Hagerstown undoubtedly increased the town's economic success.

Although Washington County's agricultural economy was less reliant on slavery, enslaved African Americans were present in the region. At the close of the eighteenth century 1,286 slaves were recorded in the census for Washington County (WHILBR:xvi). Historians suggest the lower number of enslaved people in Western Maryland compared with the rest of the state may be a reflection of a reliance on lower maintenance crops such as grains, and the religious beliefs of its large German population (Wallace 2003:13, WHILBR:xi). Grain agriculture was far less labor intensive than growing tobacco and slave labor was less economically advantageous than hiring seasonal labor (WHILBR:xi). Additionally, a more diverse economy meant that those who were

enslaved were more likely to learn a trade skill and could earn extra money that could later be used to purchase freedom (WHILBR:xi).

A large proportion of western Maryland colonists were of German descent belonging to religious groups that denounced slavery (Wallace 2003:14). Some members of these churches are reported to have purchased slaves with the intent to free them. David Long and Samuel Mumma Sr., members of the Church of the Brethren, both purchased slaves at auction and then made provisions for their freedom (Wallace 2003:15). It seems likely that a combination of religious practice and extra income earned from trades contributed to the relatively low numbers of enslaved peoples.

Despite the broad abolitionist population, by 1820, the number of enslaved African Americans in Washington County had more than doubled, bringing the total to 3,201. While the county accounted for only 2.5% of the entire state's enslaved population, it is notable that four slave markets existed there, two of which were located in Hagerstown in the mid- 1800's. Its geographic location created a tense dynamic with the free state of Pennsylvania to the north, and the slave state of Virginia to the south.

The narrow geographic borders of Washington County provided an ideal route for fugitive slaves headed north to free states. Five routes on the Underground Railroad ran through Washington County two of which connected Hagerstown to Cumberland and to Chambersburg, Pennsylvania (WHILBR: xii; Switala 2004: 100-104). As with other aspects of Washington County's success, the intersection of numerous railroads and roads also encouraged travel through the area.

Free African Americans also contributed to the development Washington County. In 1790, there were just 64 free African Americans recorded in the county. By 1860, the population of free African Americans was higher than those who were enslaved (1,435 vs. 1,677) (WHILBR:xvi).

Washington County and Hagerstown were key locations in Western Maryland during the Civil War. Several important railroads converged near the city and played an important role in access to supplies and transportation of troops during the Civil War. The Battle of Antietam was fought in Sharpsburg, Washington County, in 1862 and had a profound impact on the local economy and society. Crops, livestock, and property were destroyed throughout the County, while barns, houses, and any other available structures were often used as makeshift hospitals (Washington County Library n.d.:5). In July of 1863, as Confederate Gen. Robert E. Lee retreated from Gettysburg, his forces skirmished United States troops through the streets of Hagerstown and met again west of the town at the Battle of Hagerstown (also called the Battle of Falling Waters or the Battle of Williamsport) (Hagerstown Newspaper Index:5). Throughout the Civil War, Hagerstown was occupied and/or invaded several times, including by Confederate forces led by Lt. Gen. James Longstreet in 1862 and Union forces led by Maj. Gen. Robert Patterson in 1861.

The turn of the twentieth century saw the population of Hagerstown increase by roughly 10,000 in just 30 years between 1880 and 1910. Merely a decade later, population had increased to 28,064 (Bruchey 1974:431, WA-HAG-158). The rapid population growth was a result of Hagerstown's role as an increasingly industrial city. By the end of the nineteenth century and the

first half of the twentieth century, Hagerstown was home to railroad repair shops, mills, furniture, and textile production (WA-HAG-158). In addition, Hagerstown was a produced farm equipment, bicycles, organs, and automobiles into the first half of the twentieth century (Frye 2010).

The Industrial Era was the most lucrative and influential period in the development of Hagerstown and as the twentieth century progressed the town's commercial success diminished. During the second half of the twentieth century railroads merged and failed, and factories moved production elsewhere. By the 1960s, three of the four major railroads which once served Hagerstown had shut down or been bought out by other companies.

## **Hagerstown Multi-Use Sports and Events Facility Baltimore Avenue Property**

### *Land Records*

The Study Area is located at the edge of historic Hagerstown, originally created by Jonathan Hager out of three parcels in the eighteenth century and called "Elizabeth Town" in honor of his late wife. The three patents included "Hager's Choice" in 1739, and "The Land of Prospect" and "New Work" in 1765. "Elizabeth Town" consisted of 520 lots that were 82 feet wide by 240 feet long and the first lots were sold by Hager in 1768. In 1773, Hager sold four non-contiguous tracts to John Rohrer, a farmer from Pennsylvania, including 30 acres of "New Work" (Frederick County Land Record [FC Land Rec] S:137). Two days later, John Rohrer sold 476 acres of property to his brother Jacob Rohrer for 650 pounds (FC Land Rec S:143). It is unclear if this is how Jacob Rohrer acquired the property later known as "Rohrer's Addition to Hagerstown," where the Study Area is located. Rohrer and Hager were both Pennsylvania Germans, representative of the largely German population moving through the Great Valley into Maryland, Virginia, and North Carolina.

The chain of title can be traced back to properties owned by Samuel Finley and Melcher Beltzhoover, a butcher, both of whom acquired their property from Jacob Rhorer or Jonathan Hager. The deed conveying four acres from Hager to Finley could not be located. Beltzhoover acquired his property in three separate deeds, one from Hager in 1774 (FC Land Rec V:625), one from Rhorer in 1774 (FC Land Rec V:420), and the final property from Rhorer in 1777 (Washington County Land Records [WC Land Rec] A:125). It is unclear what the land was used for during the early nineteenth century. One lot just east of the Study Area contained St. John's Lutheran Church and its schoolhouse. The first hose company of Hagerstown was also located on the property of the Lutheran Church, as seen in 1865 Martenet Map of Maryland (see below).

The parcels belonging to Beltzhoover and Finley were divided and sold multiple times throughout the early nineteenth century until the bulk of the property, extending south from the corner of Summit Avenue and West Antietam Street to Hood Street, was acquired by the Washington County Railroad Company between 1867 and 1891 (Table 1). The Washington County Railroad Company leased the property to the B&O Railroad in the late nineteenth century as part of the Western County Branch, connecting Hagerstown and Weverton. The property was primarily used as a freight and stock yard, with one passenger station located at the corner of Summit Avenue and West Antietam Street. The Western Maryland Railroad Company also had a freight depot within the Study Area, located on a parcel that was leased from the Vogeler family.



**TABLE 1. LAND GRANTS IN THE STUDY AREA TO THE WASHINGTON COUNTY RAILROAD COMPANY**

<b>Grantor</b>	<b>Year</b>	<b>Reference</b>
Presbyterian Church of Hagerstown	1867	I.N. 18:702
Susan Firey	1867	I.N. 18:702
Church Council of the Evangelical Lutheran Congregation	1867	I.N. 18:705
Alpheus R. Appleman	1867	W. McKK 1:26
Robert Fowler	1868	W. McKK 1:29
William T. Hamilton	1868	W. McKK 1:31
Presbyterian Church of Hagerstown	1871	W. McKK 4:295
Samuel H. Miller	1889	92:612
Church Council of the Evangelical Lutheran Congregation	1891	81:522

By the late nineteenth century, most of the properties within the Study Area not used by the railroad appear to have been used primarily for industrial purposes, likely encouraged by the freight yard's proximity. In the 1880s, Jacob C. Dayhoff acquired property adjacent to the railroad from the St. John's Lutheran Church and A. R. Hemmeburger and opened a lumber yard on the property (WC Land Rec 82:564; 96:295). The Dayhoff Lumber Yard is noted on the Sanborn maps from 1887, 1892, and 1897 (see below). The remainder of the properties east of the railroad yard are divided among multiple owners and were also used for industrial purposes. By 1892, the property appears to have been occupied by a lumber storage yard, a printing company, and the Shuyler Electric Light Company. A synagogue is also noted in 1892 Sanborn map within the Study Area. Whether this synagogue is related to the B'nai Abraham synagogue, which was established along Baltimore Street in 1892 and lies outside the Study Area, is unclear, but the B'nai Abraham synagogue is the only historically documented synagogue in this portion of Washington County. There was only one residential property within the Study Area, at the corner of Summit Avenue and West Baltimore Street, which was owned by the Firey family from 1821 until 1943 (WC Land Rec II:345, WC Land Rec 223:614).

The railroad stopped transporting passengers in 1949 and, by 1976, the Washington County Railroad Company had sold the bulk of their property to the Herald Mail Company (WC Land Rec 5564:179). The Herald Mail Company building was erected where the B&O passenger station formerly stood. It is unclear what methods were used to remove the railroad tracks. In 1941, the Antietam Paper Company acquired the northern half of Dayhoff's property, fronting Antietam Street, which it retains to the present (WC Land Rec EO 214:537). The southwest portion of the Study Area has been owned by the Board of County Commissioners of Washington County since 2000 (WC Land Rec 1601:481).

### Historic Maps

The earliest maps of Maryland focused on the towns directly adjacent to the Chesapeake Bay, and Washington County is not depicted on these maps. Although the Study Area is not shown in detail, the 1794 Dennis Griffith map shows the location of Hagerstown, then known Elizabethtown, and the Study Area would have been located in the southwest part of the town (Figure 7). The Study Area is visible in the 1849 map of Hagerstown within a city block bounded by Jonathan Street to the west, Antietam Street to the north, and South Potomac Street to the east (Figure 8). The Study Area fronts on South Jonathan Street and separated from other public roads by a total of 14 parcels. It is unclear if these parcels contained structures. A small alleyway or footpath is shown along the eastern extent of the Study Area, connecting to Antietam Street behind the parcels fronting South Potomac Street.

Simon Martenet's 1865 Map of Hagerstown depicts the Study Area and surrounding areas in greater detail and shows four labelled structures within the city block, but the size of the buildings is unclear (Figure 9). An iron foundry is the only structure within the Study Area, located in the northwest corner. Three other labelled structures are shown directly outside of the Study Area, including a Lutheran Church and a "Hose Company" (an early private fire department) fronting South Potomac Street and a proposed depot for the Washington County Railroad north of the Study Area. The parcels from the 1849 map of Hagerstown are now depicted with definite structures, however their function remains unclear.

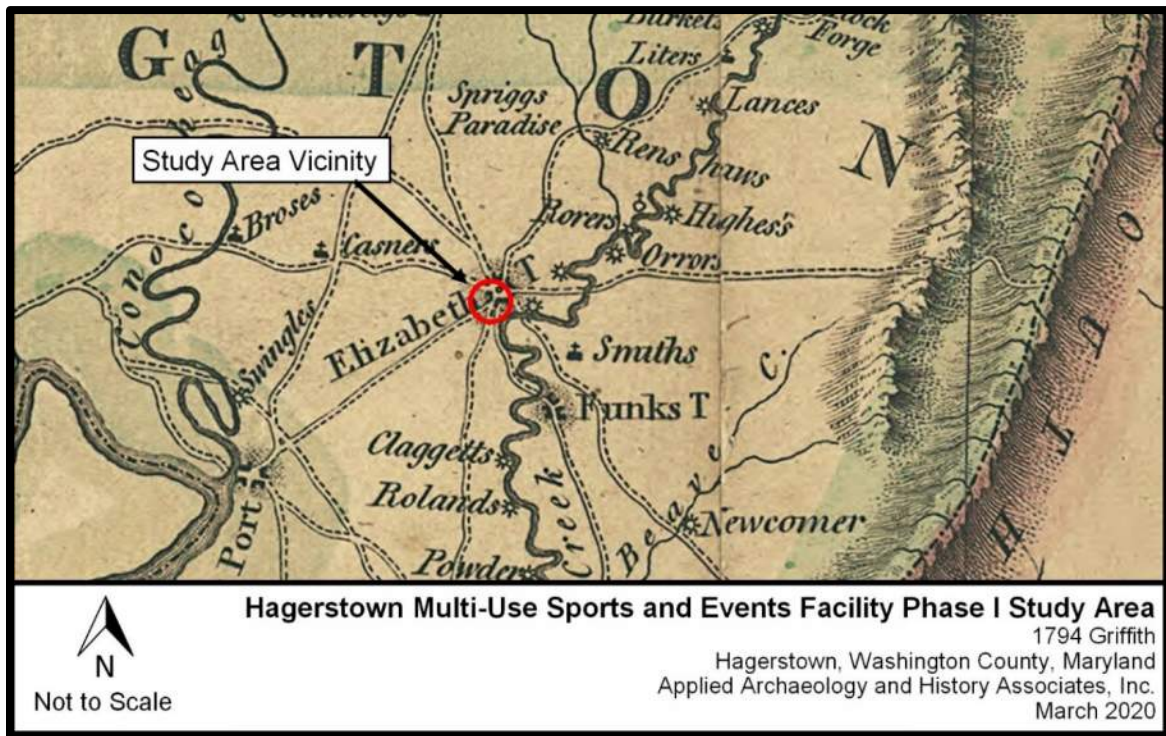


Figure 7. Location of the Study Area Vicinity on a detail of Dennis Griffith's 1794 Map.

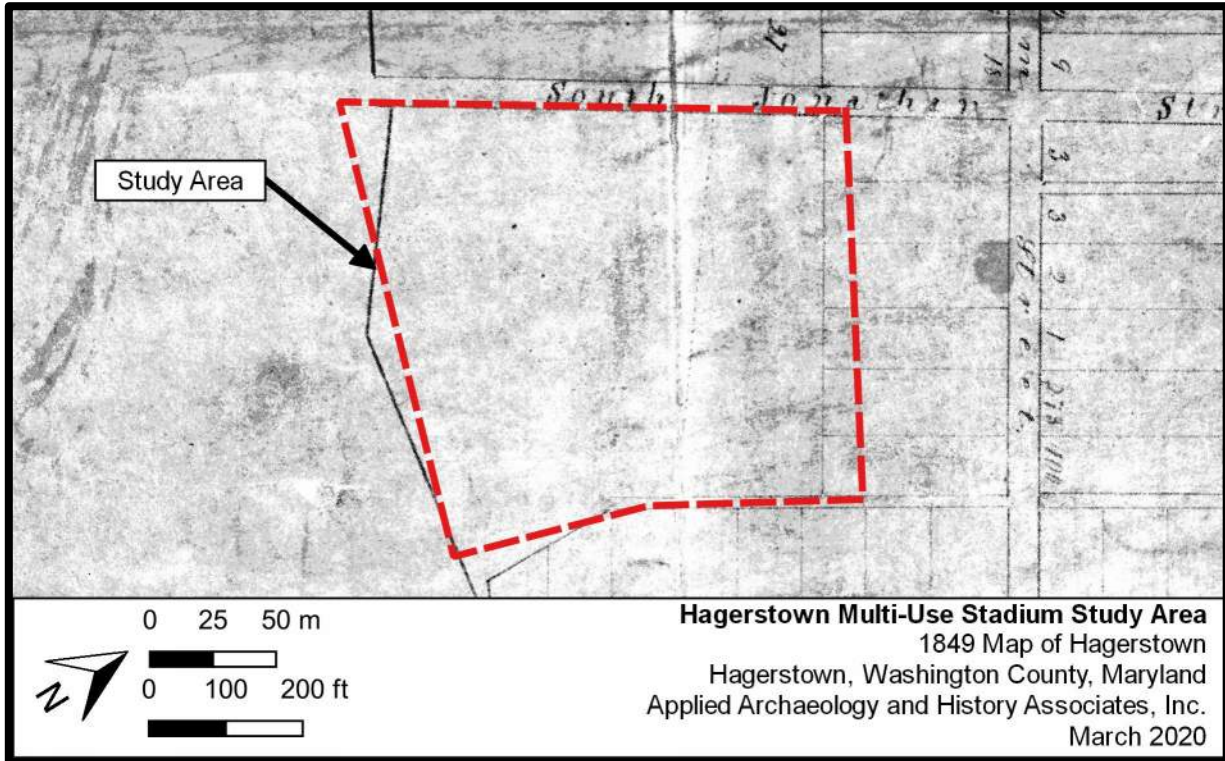


Figure 8. Location of the Study Area on a detail of the 1849 Map of Hagerstown.

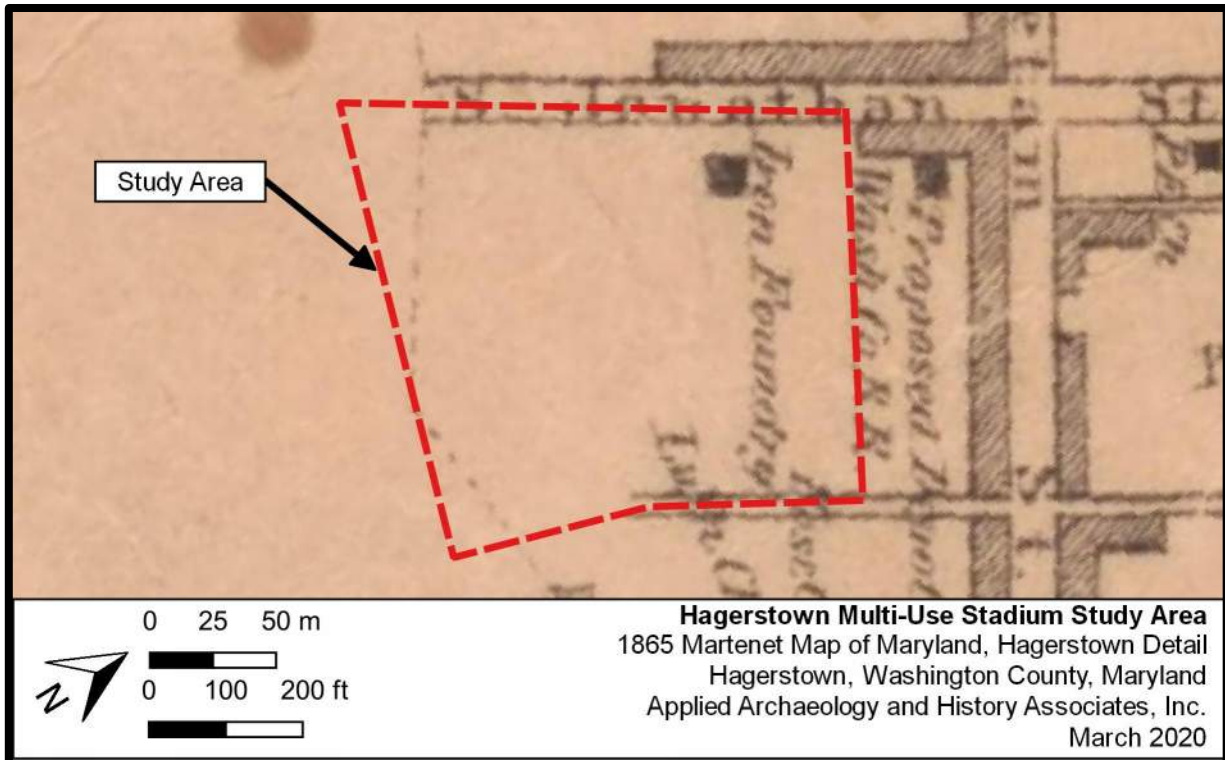


Figure 9. Location of the Study Area on a Hagerstown detail of the 1865 Martenet Map of Maryland.



The 1873 map of Hagerstown, Annapolis, and Frederick shows a massive spike in development, with the city expanding outward in nearly every direction between 1865 and 1873. The Study Area was impacted by this development with the addition of West Baltimore Street bounding the Study Area to the South (Figure 10). An addition to the alley/footpath seen on earlier maps cuts through the city block and connects West Baltimore Street to Antietam Street. The proposed depot for the Washington County Railroad was constructed as planned on the northwest corner of the city block. The Washington County Railroad is shown terminating at the newly constructed railroad depot and continued south from the Study Area out of Hagerstown.

Major alterations to the Study Area and surrounding area occurred between the next two years, as depicted in the 1875 hand drawn map of surveys made by S.S. Downin (Figure 11). Many of the structures fronting Antietam Street and South Jonathan Street were demolished, most likely to create space for the Washington County Railroad Depot and freight yard, which, by 1875, encompassed about half of the Study Area. The Study Area is shown extending across four parcels, including an unmarked parcel in the northeast corner, a parcel on the corner of Antietam Street and West Baltimore Street marked "Mrs. Fivey", and the Washington County Railroad Depot in the northwest corner.

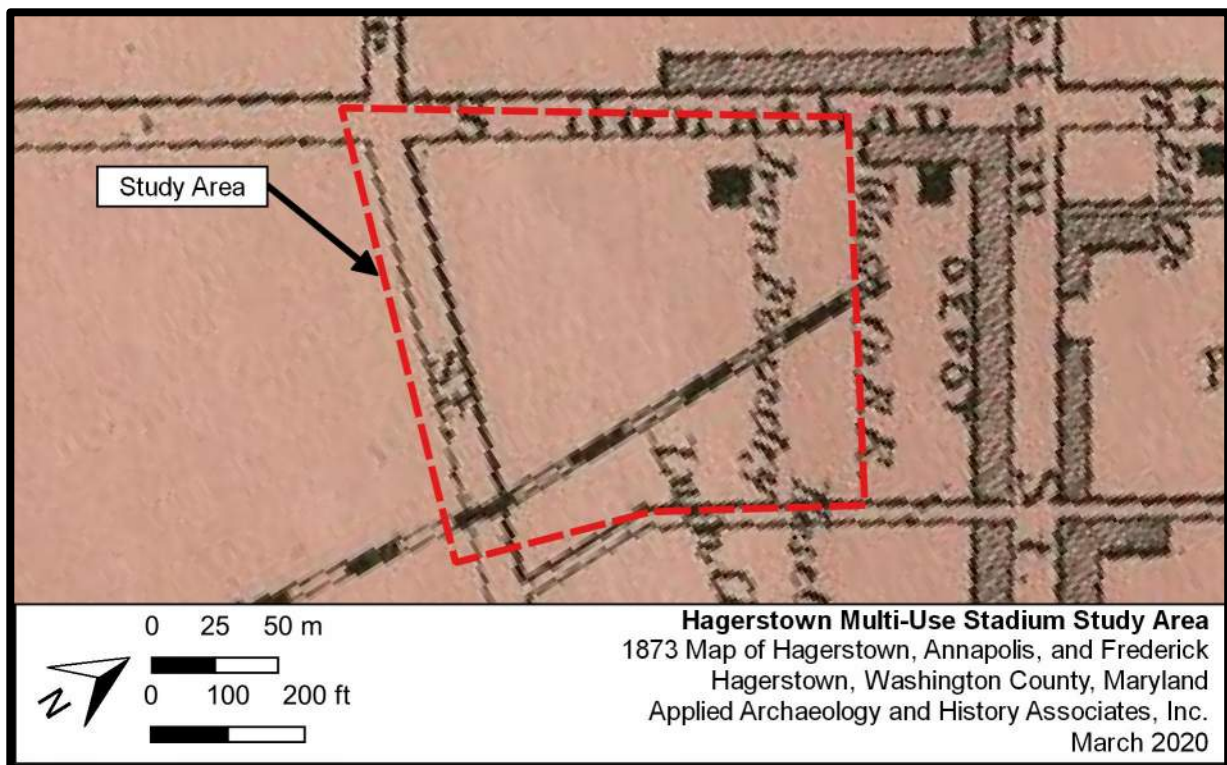


Figure 10. Location of the Study Area on a detail of the 1876 Map of Hagerstown, Annapolis, and Frederick.

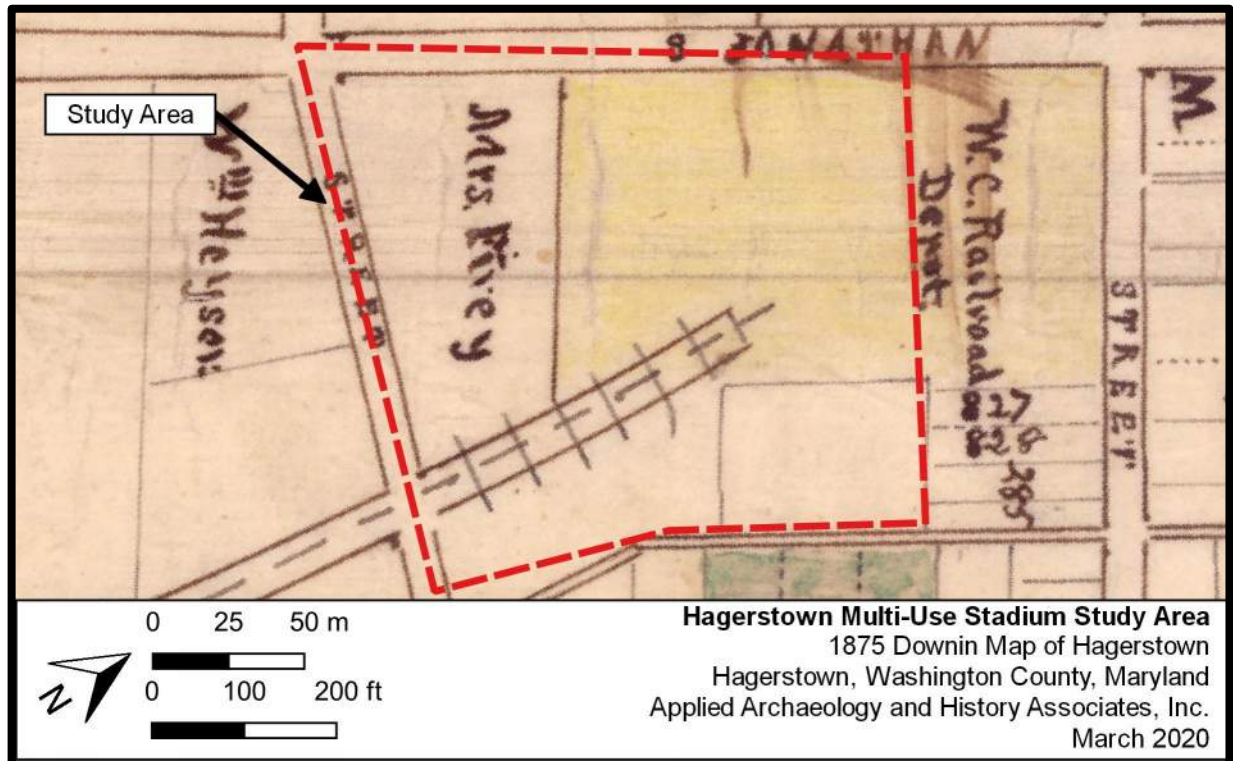


Figure 11. Location of the Study Area on a detail of the 1875 Downin Map of Hagerstown.

Detailed depictions of urban features become more apparent in the Sanborn Fire Insurance Maps of the late nineteenth and early twentieth centuries. Comparing the 1875 Downin map with the 1887 Sanborn Fire Insurance map, an increase in commercial and industrial development related to the railroad can be seen throughout the Study Area (Figure 12). The northwest portion of the Study Area contained structures associated with the B&O Railroad. There were nine structures on the railroad property, one of which was a dwelling. The northeast portion of the Study Area contained structures associated with the J.C. Dayhoff Lumber Yard. There were five defined structures in this area, two of which are labelled as sheds. The only other building with a labelled function is the carpenter's building in the far northeast corner of the Study Area.

The southeast portion of the Study Area contained six buildings, four of which are clearly labelled. Fronting West Baltimore Street in the Study Area's southeast corner was a complex containing a book bindery and a hand printing building with a skating rink, marked "not used," behind them. Adjacent to these buildings to the West was a dwelling and an unmarked outbuilding. Continuing to the West was another structure, but its purpose is unclear. Continuing west into the southwest quadrant of the Study Area, a new railroad spur was constructed for the Western Maryland Railroad (WMRR). The freight depot for this railroad was constructed fronting West Baltimore Street. Hood Street is now depicted coming extending to the WMMR freight depot from South Jonathan Street, cutting off the residential area on the corner of South Jonathan Street and West Baltimore Street from the rest of the block. This area, labeled Mrs. Fivey in the 1875 Downin map, contained seven structures. Only the structure that fronts South Jonathan Street on the corner of South Jonathan Street and West Baltimore Street is clearly marked as a dwelling.

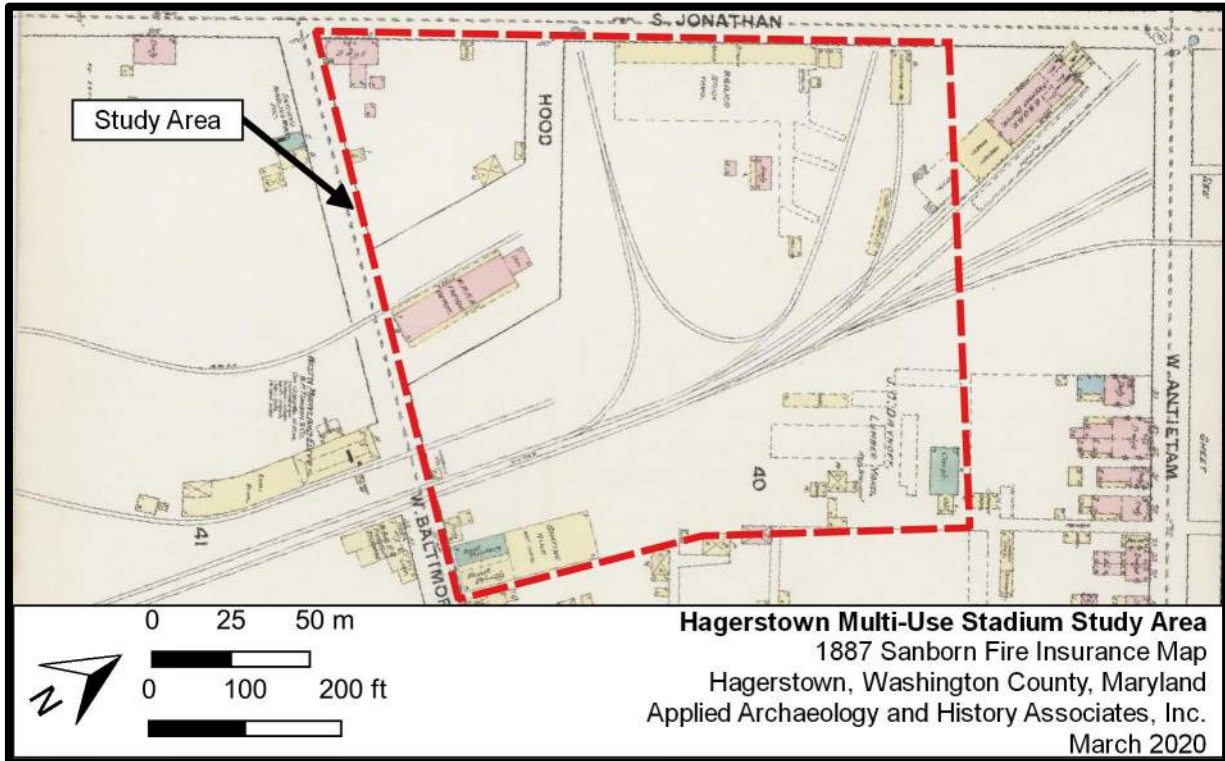


Figure 12. Location of Study Area on a detail of the 1887 Sanborn Fire Insurance Map.

Alterations to the Study Area between 1887 and 1892 were mainly made to the railroad and associated buildings, the lumberyard, and the commercial buildings in the southeast corner (Figure 13). Many of the structures associated with the railroad in the northwest appear to have been demolished, including the residential dwelling, to make room for an expansion of the railroad yard and construction of a new passenger depot. The total number of structures in this area by 1892 was five. Lumber yard operations are shown to have expanded by 1892 and were no longer confined to the northeast corner of the Study Area. The previous carpenter's building received several additions by 1892 and was relabeled as J.C. Dahoff & Co. Saw and Planing Mill. The saw and planing mill yards extended from the northeast corner of the Study Area to the commercial structures fronting West Baltimore Street. What was previously depicted as an ice rink on the 1887 Sanborn map was converted into a lumber storage building for the saw and planing mill by 1892. Both commercial buildings were converted as well. The hand printing building was converted into another, illegible commercial building and the book binding operation was converted into a synagogue. Both the dwelling and possible related outbuilding adjacent to the 1887 book binding building remained through 1892. The Schuyler Electric Light Company building was the only other addition to this area and was constructed beside the lumber storage building. The only alteration that occurred in the southwest quadrant of the Study Area appears to have been the eastward expansion of Hood Street and the lot associated with the Western Maryland Railroad.

Another noteworthy feature appearing on the Sanborn Fire Insurance Maps is the St. John's Lutheran Church cemetery, depicted in an open space along the eastern boundary of the Study



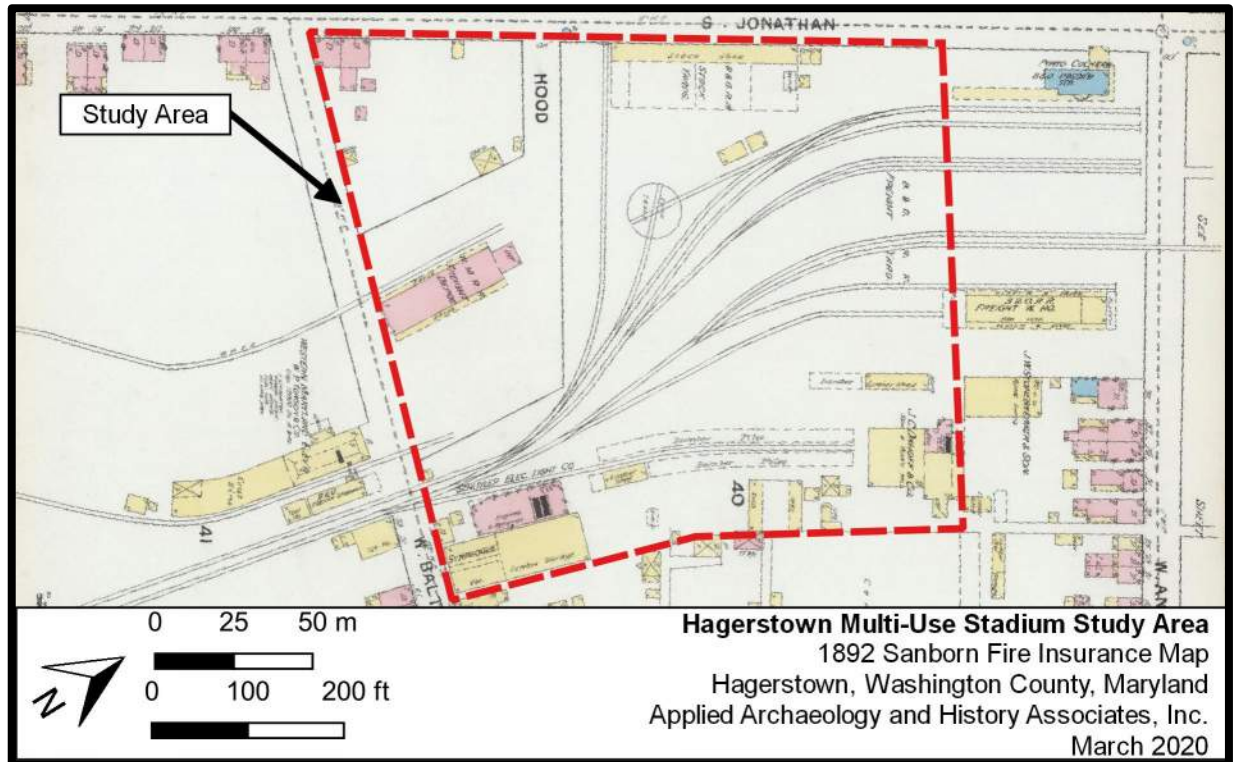


Figure 13. Location of the Study Area on a detail of the 1892 Sanborn Fire Insurance Map.

Area. The cemetery was separated from the Study Area by what appears to be a private alley accessing the lumber yard from West Antietam Street, and church records indicate that it was the original parish burial ground, filled by 1836 (St. John's Evangelical Lutheran Church n.d.:14). At that point, the church purchased additional lots on Baltimore Street and new burials were interred there. The cemetery is not labeled in the 1887 Sanborn map, but undoubtedly existed at that time, and is labeled in later maps. In 1922, the extant brick educational building was constructed in the former location of the cemetery, which had been "removed" to make room for it (MIHP Form WA-HAG-079). Church records indicate that the headstones were moved to Rose Hill Cemetery, but says nothing about the final dispositions of the bodies (St. John's Evangelical Lutheran Church n.d.:14). Because both historic maps and church records associate the cemetery with the extant education building, it is unlikely that the Lutheran church's burials extended into the Study Area.

By 1897, the B&O Railroad stock yards and stock shed that ran along South Jonathan Street had been demolished (Figure 14). Three of the smaller stock buildings remained, and one additional building had been constructed. In the northeast quadrant of the Study Area, two small buildings had been demolished, and two lumber sheds had been converted into horse sheds. The lumber shed in the southeast quadrant was either demolished or converted into a basket weaving house. The lumber storage, synagogue, and illegible third business were demolished, leaving only the Schuyler Electric Light Company building and the small structure that was previously a dwelling in the Southeast quadrant. The dwellings next to Hood Street and the Western Maryland Railroad Depot remained unchanged. USGS maps were consulted but show the Study Area in comparatively little detail (Figure 15-16).

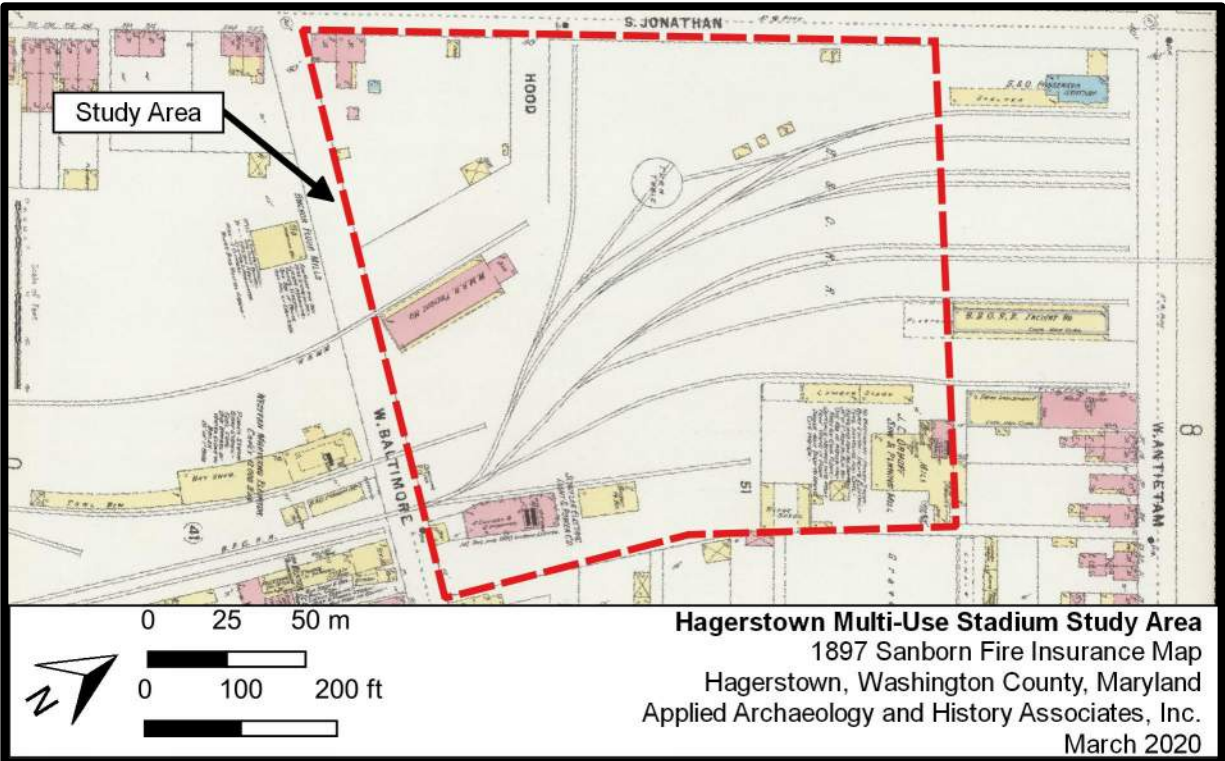


Figure 14. Location of the Study Area on a detail of the 1897 Sanborn Fire Insurance Map.

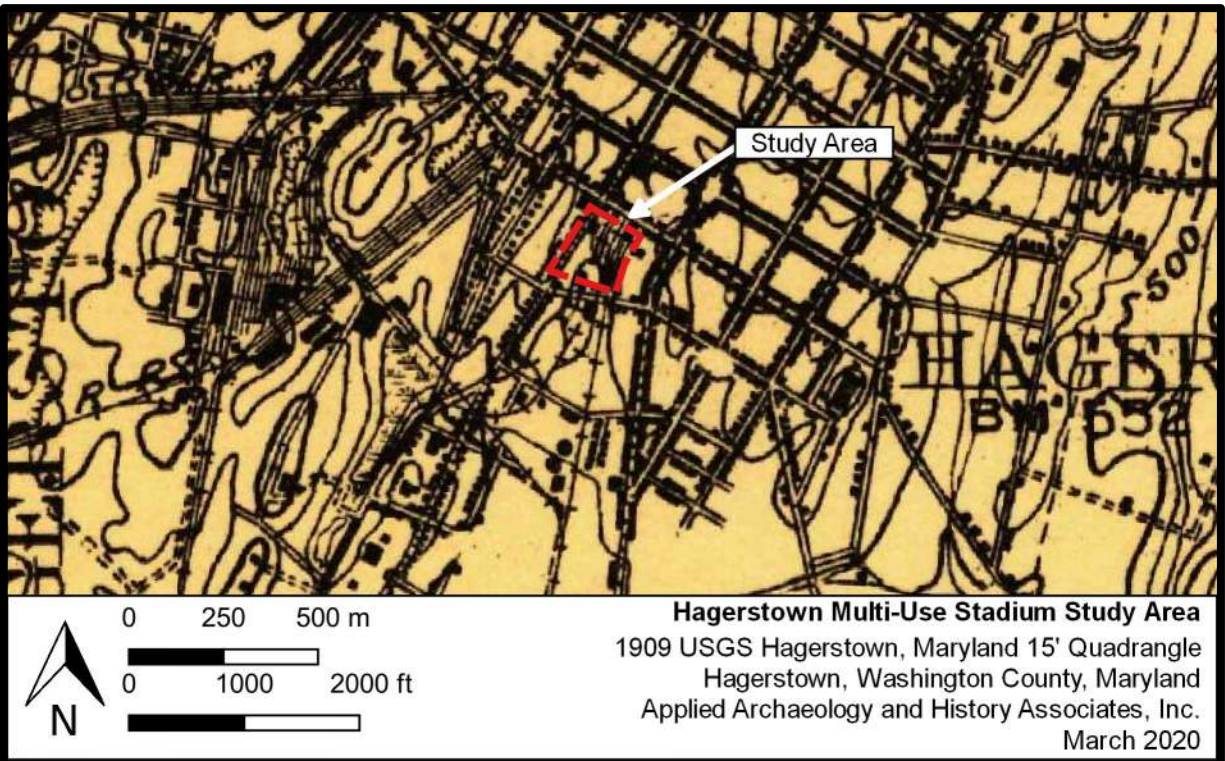


Figure 15. Location of the Study Area on a detail of the 1909 USGS Hagerstown 15-minute quadrangle (USGS 1909).



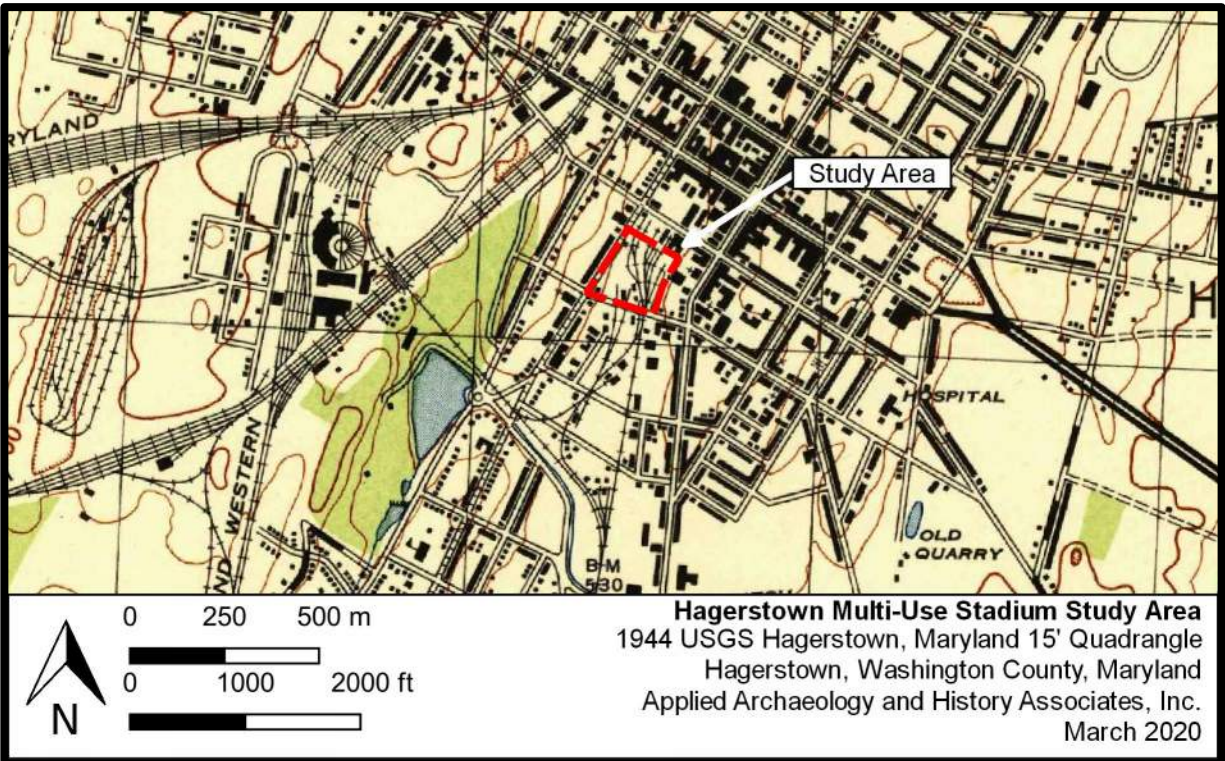


Figure 16. Location of the Study Area on a detail of the 1944 USGS Hagerstown 15-minute quadrangle (USGS 1944).

### Previous Research and Recorded Sites

Five archaeological investigations have been conducted within 0.5 miles of the Study Area (Table 2). None of the surveys were conducted within or in the immediate vicinity of the Study Area. Four of the five surveys were conducted within Hagerstown City Park, located 0.16 miles from the Study Area. The first two surveys were conducted from 1992 to 1993 by Shepard College. These surveys included a Phase I and a Phase II investigation for the Fine Arts Museum Expansion project. The Phase I incorporated a shovel test survey which identified one historic archaeological site (18WA451) with four activity areas (MHT Call #: WA43). The historic components ranged in dates from 1760-1930. Of the activity areas identified, Area A was considered potentially significant due to its spatial and temporal relation to the adjacent Hager House Site (18WA16). Area A was focus of the subsequent Phase II investigation which incorporated a systematic surface collection and test unit excavations (MHT Call #: WA58). The survey ultimately found that the stratigraphic integrity of the site was severely compromised with all of the artifacts recovered from disturbed fill horizons. As such, the site was deemed ineligible for the NRHP.

In 1994 Frostburg State University sponsored a field school at the Hager House Site (18WA16), which represents the archaeological resources associated with a circa 1739 house (MHT Call #: WA64). The investigation incorporated test unit excavations designed to identify the site boundaries and to assess the site's integrity. The study encountered intact subsurface stratigraphy as well as various historic and prehistoric features. As such, the site was determined to be eligible for listing in the NRHP.



**TABLE 2. ARCHAEOLOGICAL SURVEYS WITHIN ONE HALF MILE OF THE STUDY AREA.**

MHT Call #:	Title	Author, Year	Company	Survey Type
WA43	A Phase I Archaeological Survey of the Washington County Fine Arts Museum Expansion Project, Hagerstown, Maryland	Hulse, Charles A., 1993	Department of Social Sciences, Shepherd College	Phase I
WA58	A Phase II Archaeological Investigation of 18WA451, Washington County Museum of Fine Arts Expansion Project, Hagerstown, MD	Hulse, Charles A., 1993	Department of Social Sciences, Shepherd College	Phase II
WA64	Preliminary Archaeological Investigations at Hager's Fancy (18WA16), Washington County, Maryland	Hulse, Charles A., 1994	Frostburg State University	Phase I
WA67	City Park, Hagerstown, Maryland Phase I Archeological Survey	Weber, Carmen, Susan M. Travis, and Janet Friedman, 1995	Dames & Moore Cultural Resource Services	Phase I
WA102	Archeological Monitoring for the Hagerstown Streetscape Project, Hagerstown, Washington County, Maryland. SHA Archeological Report No. 214	Fehr, April L., Ellen Saint Onge, and Carol Ebright, 2000	R. Christopher Goodwin & Assoc. Inc.	Monitoring

The following year, the entire City Park underwent a Phase I survey by Dames and Moore, Inc. Cultural Resources Services (MHT Call #: WA67). The investigation incorporated a shovel test survey which identified three new archaeological sites (18WA458, 18WA459, and 18WA460) and further expanded the boundaries of the Hager House Site (18WA16). The newly identified sites ranged temporally from 2500 B.C. to the 1920's. All of the sites ultimately were deemed potentially eligible for listing in the NRHP.

The final investigation was conducted in 2000 by R. Christopher Goodwin and Associates. This project involved archaeological monitoring for the Hagerstown Streetscape Project located approximately 0.23 miles northeast of the Study Area (MHT Call #: WA102). This investigation monitored various roadway improvement activities including milling and resurfacing, drainage improvements, and sidewalk replacement and repair. During the investigation three nineteenth-century brick arch drain features were identified. The features were all functioning aspects of the city's drainage system and were documented and remained intact or were repaired as necessary.

Three archaeological sites are previously recorded within one half mile of the Study Area (Table 3). None of the sites are situated within the Study Area. All of the sites exhibit precontact components while two exhibit historic components.

Site 18WA458 consists of a large precontact artifact scatter within an intact buried A horizon identified 20-30 cms. The sites artifact assemblage includes mostly rhyolite debitage as well as one quartz tempered non-diagnostic pottery sherd and one possible Late Archaic projectile point. Jasper, chert, and quartz debitage also was recovered. The initial Phase I survey of the site concluded that the site likely represents a transitional Archaic to Woodland site based on the surrounding environment and artifact assemblage (Weber 1995; MHT Call #:67). No additional archaeological investigations have occurred at the site.

Site 18WA451 mostly represents a historic domestic artifact scatter dating between 1760-1850. The prehistoric component is reflected by a full-grooved groundstone axe that was found by city maintenance workers. The site underwent a Phase I and Phase II investigation which ultimately concluded that the entire site was extensively disturbed with topsoil having been removed, mixed with subsoil, and redeposited (MHT Call#: 43, 58). The investigation further suggested that the soil may have been imported fill considering archival research indicated that no structures were present at the location. Nevertheless, due to the lack of intact soil, features, and evidence of structures at the location, the site was determined unlikely to yield valuable historic archaeological data.

**TABLE 3. PREVIOUSLY RECORDED ARCHAEOLOGICAL SITES WITHIN ONE HALF MILE OF THE STUDY AREA**

Site #	Site Name	Site Type	Topographical Setting	Investigation Summary	NRHP Status
18WA16	Hagers Fancy	Middle-Late Archaic small base camp, 18th-20th century standing house	Hillslope	Phase I, II close-interval shovel testing and test units	
18WA451	Area A	19th century possible structure, Prehistoric isolate artifact	High Terrace	Phase I shovel testing; Phase II test units and surface collection	
18WA458	City Park I	Late Archaic, Early Woodland lithic scatter	Low Terrace	Phase I systematic shovel testing	Not evaluated

Site 18WA16 represents archaeological remnants of a farmstead surrounding the original location of the ca. 1740 Hager House, a NRHP listed property. Excavations at the site identified excellent stratigraphic integrity including well-defined historic strata underlain by a significant prehistoric component. Historic and precontact features were encountered including multiple historic postholes, a historic sheet midden, and a precontact firepit and ash deposits.

There are 123 historic properties listed on the Maryland Inventory of Historic Properties (MIHP) within one quarter mile of the Study Area (Table 4). Most are properties contributing to the Hagerstown Commercial Core Historic District (MIHP WA-HAG-143), the Hagerstown Historic District (MIHP WA-HAG-158), and the Potomac-Broadway Historic District (MIHP WA-HAG-159). These three districts include much of Hagerstown, representing both the town as a whole and individual parts of the town that developed at different points in the town’s history. Contributing properties include 76 commercial or commercial/residential buildings, 17 individual dwellings, four religious buildings, one industrial building, and government or service buildings including firehouses, a post office, and the former site of Hagerstown’s demolished town hall. This rich array of structures was constructed between the eighteenth and twentieth centuries and reflects the unique development of Hagerstown as an industrial and transportation center.

**TABLE 4. DOCUMENTED MIHP PROPERTIES WITHIN ONE QUARTER MILE OF THE STUDY AREA.**

MIHP #	Site Name	Date	Type	NRHP Status
WA-HAG-038	111 North Potomac Street	19 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-080	128 South Potomac Street	Ca. 1810	Dwelling	Not evaluated
WA-HAG-016	D. Ramaciotti Building	19 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-186	121 East Franklin Street	Ca. 1890	Dwelling	Not evaluated
WA-HAG-012	125-127 North Locust Street	19 <sup>th</sup> century	Dwelling	Not evaluated
WA-HAG-049	138-140 North Potomac Street	20 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-052	Albert Building	Mid-19 <sup>th</sup> to mid-20 <sup>th</sup> century	Commercial	Eligible
WA-HAG-108	Washington County Office Building	Ca. 1936	Commerce	Not evaluated
WA-HAG-106	Kohler Building	Ca. 1900	Commercial	Not evaluated
WA-HAG-103	Eyerly Building	20 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-028	36-40 North Potomac Street	Mid 19 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-035	106-108 North Potomac Street	Early 19 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-228	Church of the Brethren	No Data	No Data	Not evaluated
WA-HAG-089	Alexander Inn	Early 20 <sup>th</sup> century	Commercial	Not evaluated



MIHP #	Site Name	Date	Type	NRHP Status
WA-HAG-025	29-33 North Potomac Street	Ca. 1820	Civic (Demolished)	Not evaluated
WA-HAG-069	38-40 South Potomac Street	Ca. 1890s	No Data	Not evaluated
WA-HAG-072	Hager Hotel	20 <sup>th</sup> century	Commercial	Eligible
WA-HAG-226	Otterbein United Methodist Church	No Data	No Data	Not evaluated
WA-HAG-178	Washington County Almshouse	19 <sup>th</sup> century	Social/Humanitarian	Not evaluated
WA-HAG-116	Earles Building	Ca. 1926	Commercial	Not evaluated
WA-HAG-104	21-23-25 West Washington Street	Late 19 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-020	11-15 North Potomac Street	Ca. 1910	Commercial	Not evaluated
WA-HAG-055	210-212 North Potomac Street	19 <sup>th</sup> century	Dwelling	Not evaluated
WA-HAG-005	The Roslyn	Ca. 1880s	Commercial/Dwelling	Not evaluated
WA-HAG-076	Sekula Property	Ca. 1820s or 1830s	Commercial	Eligible
WA-HAG-110	Updegraff Building	Ca. 1882	Commercial	Not evaluated
WA-HAG-001	Award Beauty School	19 <sup>th</sup> century	Industrial	Not evaluated
WA-HAG-150	Fleisher Building	Mid 19 <sup>th</sup> to early 20 <sup>th</sup> century	Commercial	Eligible
WA-HAG-034	Junior No.3 Firehouse	19 <sup>th</sup> century	Firehouse	Not evaluated
WA-HAG-158	Hagerstown Historic District	18 <sup>th</sup> century to 20 <sup>th</sup> century	District	Listed
WA-HAG-161	Colonial Theater	Late 18 <sup>th</sup> century to early 19 <sup>th</sup> century	Dwelling	Not evaluated
WA-HAG-074	Heist Building	Late 1880s	Commercial	Not evaluated
WA-HAG-006	Samuel A. Suter Double House	19 <sup>th</sup> to 20 <sup>th</sup> century	Dwelling	Not evaluated
WA-HAG-118	Maryland National Bank Building	Ca. 1900	Commercial	Not evaluated
WA-HAG-007	55 East Franklin Street	Mid 19 <sup>th</sup> century	Dwelling	Not evaluated
WA-HAG-039	114-116 North Potomac Street	Ca. 1870s	Commercial	Not evaluated
WA-HAG-189	128-130 East Franklin Street	Ca. 1890	Dwelling	Not evaluated
WA-HAG-078	Odd Fellows Temple	No Data	No Data	Not evaluated
WA-HAG-018	5-9 North Potomac Street	Ca. 1908	Commercial	Not evaluated

MIHP #	Site Name	Date	Type	NRHP Status
WA-HAG-240	Hagerstown Bus Terminal	20 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-045	130-132 North Potomac Street	Ca. early 19 <sup>th</sup> century	No Data	Not evaluated
WA-HAG-056	Trinity Lutheran Church	20 <sup>th</sup> century	Religion	Not evaluated
WA-HAG-023	24-28 North Potomac Street	Ca. 1883-1884	Commercial	Not evaluated
WA-HAG-029	41-45 North Potomac Street	Early to mid 19 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-112	Farmers and Merchants Bank Building	Ca. 1915-1920	Commercial	Not evaluated
WA-HAG-075	Masonic Temple	Late 19 <sup>th</sup> century	Social/Humanitarian	Not evaluated
WA-HAG-063	Maryland Theatre	Early 20 <sup>th</sup> century	Entertainment	Listed
WA-HAG-229	First Brethren Church	No Data	No Data	Not evaluated
WA-HAG-187	117 East Franklin Street	Ca. 1890	Dwelling	Not evaluated
WA-HAG-113	60-62 West Washington Street	Ca. 1938	Commercial	Not evaluated
WA-HAG-109	Updegraff's Hat, Glove, and Fur Manufactory	19 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-100	14-16 West Washington Street	Ca. 1936	Commercial	Not evaluated
WA-HAG-024	25-27 North Potomac Street	Ca. 1919	Commercial	Not evaluated
WA-HAG-030	44-46 North Potomac Street	Ca. mid 20 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-051	142-144 North Potomac Street	Ca. Late 1870s	Dwelling	Not evaluated
WA-HAG-017	2-4 North Potomac Street	Ca. 1830s to 1840s	Commercial	Not evaluated
WA-HAG-180	Foltz Manufacturing & Supply Company	19 <sup>th</sup> to 20 <sup>th</sup> century	Commercial/Industry	Not evaluated
WA-HAG-239	Hagerstown's Market House	20 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-050	Albert-Kraiss House	Ca. 1894	Social/Humanitarian	Not evaluated
WA-HAG-117	Hagerstown Trust Company Building	Ca. 1890s	Commercial	Not evaluated
WA-HAG-066	32-36 South Potomac Street	Early to Mid 19 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-070	Majestic Restaurant & Union Hall	Ca. 1920s	Commercial	Eligible
WA-HAG-064	25-29 South Potomac Street	Ca. 1870s to 1880	Commercial	Not evaluated
WA-HAG-033	Hotel Patterson	19 <sup>th</sup> century	Commercial	Not evaluated

MIHP #	Site Name	Date	Type	NRHP Status
WA-HAG-115	Katz/Jewelers/Twig Shop	Ca. 1820s	Commercial	Not evaluated
WA-HAG-079	St. John's Evangelical Lutheran Church	18 <sup>th</sup> and 19 <sup>th</sup> century	Religion	Not evaluated
WA-HAG-019	6-12 North Potomac Street	Mid 20 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-022	17-19 North Potomac Street	Mid 20 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-004	City Hall	1939-1940	Government	Not evaluated
WA-HAG-052	146-148 North Potomac Street	19 <sup>th</sup> century	Commercial/Dwelling	Not evaluated
WA-HAG-101	15 West Washington Street	Late 19 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-041	119 North Potomac Street	Early to mid 19 <sup>th</sup> century	Commercial	Eligible
WA-HAG-185	Homestead Apartment Building	18 <sup>th</sup> century to 20 <sup>th</sup> century	Domestic	Not evaluated
WA-HAG-114	Farmers and Merchants Bank Annex	1975	Commercial	Not evaluated
WA-HAG-059	Moose Lodge	Early to mid 19 <sup>th</sup> century	Entertainment	Not evaluated
WA-HAG-008	Knights of Pythias Castle	1907	Commercial	Not evaluated
WA-HAG-048	135 North Potomac Street	1885	Commercial/Apartments	Not evaluated
WA-HAG-159	Potomac-Broadway Historic District	19 <sup>th</sup> to 20 <sup>th</sup> century	District	Listed
WA-HAG-071	Modern Shoe Building	19 <sup>th</sup> century	Commercial	Eligible
WA-HAG-077	Colonial Hotel	Early 20 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-223	Pioneer Hook & Ladder Company	No Data	No Data	Not evaluated
WA-HAG-042	120 North Potomac Street	19 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-011	111-123 North Locust Street	19 <sup>th</sup> century	Townscape	Not evaluated
WA-HAG-143	Hagerstown Commercial Core Historic District	Late 19 <sup>th</sup> century	District	Listed
WA-HAG-154	13-15 West Franklin Street	Ca. 1890	Commercial/Dwelling	Eligible
WA-HAG-224	Trinity Bible Church	No Data	No Data	Not evaluated
WA-HAG-047	134-136 North Potomac Street	Ca. 1820s to 1830s	Dwelling	Not evaluated
WA-HAG-060	7-11 South Potomac Street	Ca. 1904	Commercial	Not evaluated



MIHP #	Site Name	Date	Type	NRHP Status
WA-HAG-026	32-34 North Potomac Street	Late 19 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-090	10 Public Square	19 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-027	35-39 North Potomac Street	Ca. 1890s	Commercial	Not evaluated
WA-HAG-107	Routzahn Building, Baldwin House, and Warehouse	Late 19 <sup>th</sup> to early 20 <sup>th</sup> century	Commercial	Eligible
WA-HAG-044	John Wesley United Methodist Church	Late 19 <sup>th</sup> century	Religious	Not evaluated
WA-HAG-062	Edison Apartments	20 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-193	51 East Antietam Street	Late 19 <sup>th</sup> to early 20 <sup>th</sup> century	Dwelling	Not evaluated
WA-HAG-157	U.S. Post Office	Mid 20 <sup>th</sup> century	Government	Not evaluated
WA-HAG-188	113-115 East Franklin Street	Ca. 1890	Dwelling	Not evaluated
WA-HAG-033	46-48 East Street	Ca. 1880s	Townscape	Not evaluated
WA-HAG-111	McCrory Building	Mid to late 20 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-102	Glick's Shoe Store Building	Ca. 1924	Commercial	Not evaluated
WA-HAG-031	Max Simon Building	Ca. 1915	Commercial	Eligible
WA-HAG-099	4-6 West Washington Street	Late 19 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-091	12-16 Public Square	Ca. 1880s	Commercial	Not evaluated
WA-HAG-036	109 North Potomac Street	Ca. 1914-1915	Commercial	Not evaluated
WA-HAG-046	John Wesley United Methodist Church Parsonage	Early 20 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-119	Hamilton Hotel	Mid 1880s	Commercial	Eligible
WA-HAG-065	28 South Potomac Street	Ca. 1916	Commercial	Not evaluated
WA-HAG-142	Hagerstown Charity School	19 <sup>th</sup> century	Nursery	On National Register
WA-HAG-037	110-112 North Potomac Street	Ca. 1890	Commercial	Not evaluated
WA-HAG-068	First Hose Fire Company	19 <sup>th</sup> century	Firehouse	Not evaluated
WA-HAG-081	130 South Potomac Street	19 <sup>th</sup> century	Dwelling	Not evaluated
WA-HAG-013	135-137 North Locust Street	19 <sup>th</sup> century	Dwelling	Not evaluated
WA-HAG-040	115 North Potomac Street	Ca. 1870s	Commercial/Offices	Eligible

<b>MIHP #</b>	<b>Site Name</b>	<b>Date</b>	<b>Type</b>	<b>NRHP Status</b>
WA-HAG-021	16 North Potomac Street	Ca. 1781	Dwelling	Not evaluated
WA-HAG-043	W.O.W. Building	Ca. 1921	Commercial/Offices	Not evaluated
WA-HAG-057	Professional Arts Building	Early 20 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-105	Hays Building	Ca. 1905	Commercial	Not evaluated
WA-HAG-032	51-53 North Potomac Street	Ca. 1820s to 1830s	Commercial	Not evaluated
WA-HAG-054	Zion Evangelical and Reformed Church	19 <sup>th</sup> century	Religious	Not evaluated
WA-HAG-088	Peoples Drug Store	Ca. 1958	Commercial	Not evaluated
WA-HAG-073	Moss Building	Late 19 <sup>th</sup> century	Commercial	Not evaluated
WA-HAG-058	2-4 South Potomac Street	Ca. 1870s	Commercial	Not evaluated
WA-HAG-053	YMCA Building	Ca. 1920	Educational/Entertainment/Religious	Not evaluated

## 4. SUMMARY AND RECOMMENDATIONS

### Summary

From February to May 2020, AAHA conducted a Phase IA archaeological assessment of the proposed Hagerstown Multi-Use Sports and Events Facility property in Hagerstown, Washington County, Maryland. The MSA and City are working under a Memorandum of Understanding for MSA to provide architectural/engineering services related to the potential development of the facility at the ca. 6.25-acre Baltimore Street site in Hagerstown, Washington County, Maryland. The overall objectives of the archaeological assessment were to identify previously recorded archaeological sites and architectural properties in the vicinity of the Study Area that may be significant to regional and national cultural heritage, and to determine the effects of future activities on those properties. The Phase IA archaeological assessment included an intensive background investigation to provide a determination of archaeological probability for the property. All work was conducted in accordance with the Secretary of the Interior's *Standards and Guidelines for Archaeology and Historic Preservation* and the Maryland Historical Trust (MHT) *Standards and Guidelines for Archaeological Investigations in Maryland* (Shaffer and Cole 1994) and where appropriate, *Technical Update Number 1* (Revised 2005).

The Study Area is located southeast of historic downtown Hagerstown, just outside the Hagerstown Historic District (WA-HAG-158) and Hagerstown Commercial Core District (WA-HAG-143). It is bounded by West Antietam Street, Summit Avenue, West Baltimore Street, and Ayers Alley, and is currently occupied by commercial buildings and parking lots. Both neighboring historic districts are listed on the National Register of Historic Places (NRHP). Although there are no documented historic properties located within the Study Area, the Baltimore and Ohio (B&O) railroad depot servicing Hagerstown was once located at the corner of West Antietam Street and Summit Avenue just outside the Study Area's north corner. This depot directly influenced the placement of the standing Antietam Fire Hall (WA-HAG-195) and Former Post Office (WA-HAG-196) across the street.

### Archaeological Potential of the Study Area

Three archaeological sites with precontact components have been identified within one mile of the Study Area. Although it has been modified, the Study Area originally would have occupied a flat space near an unnamed tributary of Antietam Creek that would have provided access to both terrestrial and riverine food resources. The Great Wagon Road, a vital historic transportation corridor through the Great Valley, runs through Hagerstown and was built over an existing Native American trail system. Due to these factors, the Study Area would normally have a high potential for precontact archaeological resources; however, the classification of this area as Urban land indicates that Precontact archaeological resources would likely not retain sufficient integrity or would have been removed altogether as a result of the extensive historic development.

Two archaeological sites with precontact components have been identified within one mile of the Study Area and 123 documented MIHP properties are located within one quarter mile of it. The



Study Area is located near the heart of historic Hagerstown and served a vital function as a freight yard that fostered its economic growth and industry during the nineteenth and early twentieth centuries. Industrial, commercial, and residential activity is documented within and adjacent to the Study Area, all of which may have left imprints in the archaeological record. A cemetery associated with St. John's Evangelical Lutheran Church was located along the eastern edge of the Study Area. The Study Area is currently occupied by commercial structures and parking lots and classified as Urban land, but the degree to which these historic resources remain intact beneath the modern development is unknown.

## **Recommendations**

Historic maps and records document extensive construction disturbance within the Study Area beginning in the early twentieth century and continuing to the construction of the extant commercial buildings and parking lots. This included grading and track-laying for the railroad and freight yard, as well as its eventual decommissioning, which would have severely impacted site integrity in the center of the Study Area. Precontact sites tend to contain perishable materials that do not survive the kind of extensive disturbance created by large construction episodes. Historic features, on the other hand, tend to be more durable and may have survived the twentieth-century construction. While modern demolition and construction may have further disturbed archaeological resources in the center of the property, there is a moderate probability that intact archaeological resources exist in the corners of the property where clusters of structures are mapped on late nineteenth and early twentieth century historic maps. Traditional hand excavation methods of archaeological survey are unlikely to be effective in this environment, but carefully conducted mechanical trenching under the close supervision of an archaeologist has been successful in identifying intact contexts in comparable urban environments. As such, mechanical trenching is recommended in the northeast, northwest, and southeast corners of the property to document possible in situ cultural features and contexts. In addition, mechanical trenching is recommended in the center of the property to assess the degree to which construction activity related to the railroad impacted that portion of the Study Area.

The cemetery associated with St. John's Evangelical Lutheran Church is generally shown on historic maps outside the Study Area and multiple records indicate that it was moved, however no records could be found of the number of individuals who were originally buried there or disinterred. It is possible that burials might be present along the southeastern boundary of the Study Area where it borders the St. John's Evangelical Lutheran Church property. Archaeological monitoring is recommended in that area to assure that human remains are not disturbed by the proposed ground disturbing activity.

Finally, it is recommended that a viewshed analysis be conducted by a qualified architectural historian once the final concept plan of the facility is adopted in order to evaluate potential adverse effects to the surrounding historic districts and numerous individual historic structures in the vicinity.

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**APPENDIX A**

**CHAIN OF TITLE**

## **Parcel A**

### **1601:481 Deed**

**October 2, 2000**

Grantee: Board of County Commissioners of Washington County, Maryland

Grantor: Farmers & Merchants Bank and Trust

Consideration of \$1,125,000. The property is bounded by Summit Avenue to the west, Hood Street to the north, and W Baltimore Street to the south. Being all the same land described in a deed from H. L. Mills Incorporated to Farmers & Merchants Bank and Trust dated 1995 (1203:955). The property contains 1.458 acres.

### **1203:955 Deed**

**March 20, 1995**

Grantee: Farmers & Merchants Bank and Trust

Grantor: H. L. Mills Incorporated

Consideration of \$340,000. The property is bounded by Summit Avenue to the west, Hood Street to the north, and W Baltimore Street to the south. The property is a combined circumference of two properties, one being all the same land conveyed from Herman L. Mills and Alice K. Mills, his wife, to H. L. Mills Incorporated in 1957 (324:604) and the other being the residual portion of Parcel II left after the establishment of Hood Street, conveyed in a deed from Western Maryland Railway Company to H. L. Mills, Inc., in 1965 (427:420) [Parcel A1].

## **Parcel A1**

### **427:420 Deed**

**August 5, 1965**

Grantee: H. L. Mills, Inc.

Grantor: Western Maryland Railway Company

Nominal consideration. The land consists of two parcels. Parcel I, which is not included in the Study Area, consists of 4.1 acres. Parcel II contains 1.1 acres and is described as being on the north marginal side of Baltimore Street, 252.7 feet from the intersection of Baltimore Street and Summit Avenue (formerly Jonathan Street), and is bounded in the east by the "right of way of the Baltimore and Ohio Railroad (*now Hood Street*). Reserving unto the grantor, for purpose of maintaining and operating 2 existing railroad tracks. Being the same parcel of land known as Lot No. 4 conveyed by deed dated 1909 from Safe Deposit and Trust Company of Baltimore to the Western Railway Company (133:103).

### **133:103 Deed**

**December 15, 1909**

Grantee: Western Maryland Railway Company

Grantor: Safe Deposit and Trust Company of Baltimore, trustee, H. Elise Buck, formerly H. Elise Vogeler, Walter H. Buck, her husband, and Charles G. W. Vogeler all of Baltimore City.

The Grantor is the owner of the revisionary interest in four lots, as trustee by virtue of two deeds of trust. The first deed was made by H. Elise Buck, formerly H. Elise Vogeler, from 1909 (116:172), conveying an undivided half interest in the property, and the other being the deed of Charles G. W. Vogeler, conveying the other undivided half interest in 1904 (120:65). The property being conveyed has been held by the Western Maryland Railroad Company under the terms of a lease from Minnie A. Vogeler, from 1884 (86:110), and an agreement of said lease from 1899 (111:138). With the consent of H. Elise Buck and Charles A. W. Vogeler, the trustees are conveying four lots of ground to the railroad company for \$30,000. The lot within the Study Area is Lot 4, described as being on the north marginal line of Baltimore Street and contains one acre and 23 perches.

**116:172 Deed of Trust****June 26, 1902**

Grantee: the Safe Deposit and Trust Company

Grantor: H. Elise Vogeler of Baltimore City

Nominal consideration. The Grantee is conveying the rights to her estate to the Safe Deposit and Trust Company. The deed includes multiple parcels of land in Baltimore City and Washington County. The property in question consists of Elise Vogeler's right, title, and interest in four lots of ground in Washington County which are particularly described in the deed of partition between William H. Vogeler and others and H. Elise Vogeler in 1902 (116:34).

**120:65 Deed****April 14, 1904**

Grantee: Safe Deposit and Trust Company of Baltimore, trustee

Grantor: Charles A. W. Vogeler of Baltimore City

Nominal consideration. The Grantee is conveying the rights to his estate to the Safe Deposit and Trust Company. The deed includes multiple properties in Maryland and Washington, D.C. The property in question consists of Charles A. W. Vogeler's right, title, and interest in four lots of ground in Washington County which are particularly described in the deed of partition between William H. Vogeler and others and H. Elise Vogeler in 1902 (116:34).

**116:34 Deed of Partition****April 17, 1902**

Grantee: Minnie D. Bruce, formerly Minnie D. Vogeler and Luther Bruce, her husband of the second part, H. Elise Vogeler of the third part and Charles A. W. Vogeler of the fourth part

Grantor: William H. Vogeler

Nominal consideration. The said parties have agreed upon a division of the property that they own as tenants in common. The parties of the second part grant unto H. Elise Vogeler and Charles A. W. Vogeler all the right, title, and interest of the said William H. Vogeler and Minnie Bisu, the following four lots of ground. The property in question is lot No. 4 which is begins on the north marginal line of Baltimore Street, about 230 feet southeast of the intersection of Baltimore Street and Jonathan Street. The property follows the boundary of Baltimore Street to the intersection with Hood Street, then follows Hood Street to the intersection of Jonathan Street and then follows Jonathan Street to the property of B. F. Firey. Being the same property described in a lease from Minnie A. Vogeler to the Western Maryland Railroad Company in 1884 (86:110) and an agreement of said lease from 1899 (111:138).

**111:138 Agreement****June 30, 1899**

Grantee: Minnie A. Devries, formerly Minnie A. Vogeler, and Charles A. W. Vogeler of the third part

Grantor: Western Maryland Railroad Company

The Railroad company is indebted to Minnie A. Devries, guardian of Charles A. W. Vogeler, William J. Vogeler, Caroline M. Vogeler, H. Elise Vogeler and Minnie Vogeler in the sum of \$30,000 loaned to said company by Minnie A. Vogeler (now Minnie A. Devries) under an order of the Orphans Court of Baltimore County, which loan is secured by a certain ground rent accounting to \$1,650 per year, payable semi-annually, under a lease from 1884 (86:110). This agreement is extending the period of payment of the loan a further 15 years.

**86:110 Lease****June 30, 1884**



Grantee: The Western Maryland Railroad Company

Grantor: Minnie A. Vogeler of Baltimore County

Consideration of \$30,000. Four lots are being conveyed in this lease with lot No. 4 being the property in question. The lot contains 1 acre and 23 perches and has the same bounds as the other deeds above. Being the same parcels of land that were conveyed to Minnie A. Vogeler by John M. Hood and wife. For the next 15 years the railroad company must pay a rent of \$1,650 to Minnie and her heirs.

**86:107 Deed**

**June 30, 1884**

Grantee: Charles A. W. Vogeler, William J. Vogeler, Caroline M. Vogeler, H. Elise Vogeler, and Minnie Vogeler

Grantor: Minnie A. Vogeler of Baltimore County

Consideration of \$30,000 and in pursuance of an order of the Orphans Court of Baltimore County, the said Minnie A. Vogeler doth grant and convey unto the parties of the second part as tenants in common, the four parcels of land in Washington County. The parcel in question is Lot No. 4. Being the same parcels of ground which by deed dated 1884 was devised and leased by Minnie A. Vogeler to the Western Maryland Railroad Company for the term of 15 years at the yearly rate of \$1650 payable half yearly.

**86:104 Deed**

**June 27, 1884**

Grantee: Minnie A. Vogeler of Baltimore County

Grantor: John M. hood and Florence E. Hood, his wife of Baltimore City

Consideration of \$30,000. This property was conveyed to Minnie A. Vogeler by an order of the Orphans Court of Baltimore County passed on June 24, 1884. Minnie A. Vogeler will lease the property to the Western Maryland Railroad Company for the term of fifteen years reserving an annual rent to her of \$1,650 payable semi annually in equal payment of \$825 and the usual covenants contained in such leases. Being the same tracts of land conveyed to John M. Hood to B. F. Firey and wife in 1883 (85:57) [A1.1] and 1884 (85:381) [A1.2].

**A1.1**

**85:57 Deed**

**December 3, 1883**

Grantee: John W. Hood of Baltimore County

Grantor: Benjamin F. Firey and Ann S. Firey, his wife, Laura E. Firey, Helen V. Firey, and Mary S. Firey

Consideration of \$2,000. This deed consists of two parcels which were conveyed to the grantors by Jacob H. Firey in 1879 (78:491). These parcels contain about 165 perches

**A1.2**

**85:381 Deed**

**April 16, 1884**

Grantee: John W. Hood

Grantor: Benjamin F. Firey and Ann S. Firey, his wife, Laura E. Firey, Helen V. Firey, and Mary S. Firey

Consideration of \$650. This property is bounded by Jonathan Road to the west and the east by Parcel A1.1. Being part of the same land conveyed by Jacob H. Firey to the grantors by deed dated 1879 (78.491).

**78:491 Deed**

**September 13, 1879**

Grantee: Ann Sophia Firey, for her life, and to Laura Ellen Firey, Mary Susan Firey and Helen Virginia Susan, in her death

Grantor: Jacob H. Firey

Nominal consideration. Jacob is conveying the property to his mother Ann Sophia for the duration of her life and to his sisters Laura, Mary and Helen in her death. The property is bounded on the west by South Jonathan Street (*now Summit Avenue*), in the south by West Baltimore Street, and in the east by the property of the Washington County Railroad and contains a large, two-story brick dwelling house. The property contains 2 acres and 40 perches. Being part of the property conveyed to Jacob Fiery and Benjamin F. Fiery, trustees, by deed dated 1874 (WMcKK 6:355). *See Parcel A2*

**Parcel A2**

**324:604 Deed**

**June 28, 1957**

Grantee: H. L. Mills, Incorporated

Grantor: Herman L. Mills and Alice K. Mills, of Washington County

Nominal consideration. The property is bounded on the west by Summit Avenue and on the south by West Baltimore Street. Unclear how large the property is. Being the same parcel of land which was conveyed to Herman L. Mills by Charles W. Hoffman and others by deed dated 1950 (254:690).

**254:690 Deed**

**January 5, 1950**

Grantee: Herman L. Mills

Grantor: Charles W. Hoffman and Elizabeth M. Hoffman, his wife, and Leonard G. Mathias and Mildred J. Mathias, his wife of Washington County

Nominal consideration. The property is bounded by Summit Avenue to the west and West Baltimore Street to the south. Being the same parcel of land conveyed to Charles W. Hoffman and Leonard F. Mathias, as tenants in common, by Helen Virginia Firey, unmarried, by deed dated 1943 (223:614).

**223:614 Deed**

**August 26, 1943**

Grantee: Charles W. Hoffman and Leonard G. Mathias

Grantor: Helen Virginia Firey, unmarried, of Hagerstown

Nominal consideration. Helen is conveying the property to Hoffman and Mathias as tenants in common. The property is bounded by Summit Avenue to the west and West Baltimore Street to the South. There is a brick dwelling on the property. Being a part of that parcel of land which was conveyed to Ann Sophia Fiery, mother of the grantor, for her life and at her death to Laura Ellen Fiery, Mary Susan Fiery and the said Helen Virginia Fiery by Jacob H. Fiery by deed dated September 13, 1879 (78:491). Helen is the sole survivor and heir and acquired the entire interest in the property after Ann Sophia's death.

**78:491 Deed**

**September 13, 1879**

Grantee: Ann Sophia Firey, for her life, and to Laura Ellen Firey, Mary Susan Firey and Helen Virginia Susan, in her death

Grantor: Jacob H. Firey

Nominal consideration. Jacob is conveying the property to his mother Ann Sophia for the duration of her life and to his sisters Laura, Mary and Helen in her death. The property is bounded on the west by South Jonathan Street (*now Summit Avenue*), in the south by West

Baltimore Street, and in the east by the property of the Washington County Railroad and contains a large, two-story brick dwelling house. The property contains 2 acres and 40 perches. Being part of the property conveyed to Jacob Fiery and Benjamin F. Fiery, trustees, by deed dated 1874 (WMcKK 6:355).

**WMcKK 6:355 Deed**

**March 17, 1874**

Grantee: Jacob Firey

Grantor: Jacob Firey and Benjamin F. Firey, trustees, of Washington County

Consideration of \$3,000. Jacob and Benjamin were appointed trustees in a circuit court cause of Jacob Fiery and wife and other vs. William Swigley and wife and other No. 2443, in order to sell the real estate of the late Susan Firey. Being the property on which Susan Firey died, seized and possessed. The property contains 2 acres and 44/100 acres. There is a brick dwelling on the property, now occupied by Benjamin Firey. The property begins at the intersection of South Jonathan Street and the newly opened West Baltimore Street, crosses West Baltimore Street and extends south. The property contains 2.44 acres of land.

## **Parcel B and C**

**5890:35**

**December 17, 2018**

Grantee: Sweeney Bros. Properties, LLC

Grantor: D&P Properties

In consideration of \$284,000. The address of the property is 140 Summit Avenue. The property is bounded by Summit Avenue (formerly Jonathan Street) to the west and Hood Street to the south. Being the same property conveyed unto D&P Properties by Confirmatory Deed from Donald W. Baker, G. Philip Mummert and Nancy M. Mummert in 2014 (4744:51).

**4744:51**

**April 15, 2014**

Grantee: D&P Properties

Grantor: Donald W. Baker, G. Philip Mummert, and Nancy M. Mummert all of Washington County, the "Confirming Grantors"

No consideration. Donald Baker and G. Philip Mummert are the only partners of a general partnership named D&P Properties since 1984, each owning an equal share of the partnership property. When they acquired this property in 1991 from H. L. Mills, Inc. (995:999), they mistakenly named the spouse of G. Philip Mummert, Nancy M. Mummert, as a tenant by the entirety of a one-half interest in the property. This deed is to confirm that Nancy M. Mummert is not a partner and has no ownership interest in this property.

**995:999**

**May 31, 1991**

Grantee: Donald W. Baker, G. Philip Mummert, and Nancy M. Mummert, his wife

Grantor: H. L. Mills, Inc.

Consideration of \$200,000. H. L. Mills, Inc. is conveying a ½ interest unto Donald W. Baker and a ½ interest to the Mummerts. The two ½ interests are to be held as tenants in common. Being the same lands and property, which were conveyed unto H. L. Mills, Inc. by Ludwig Motor Service, Inc. by confirmatory deed in 1958 (340:249).

**340:249 Confirmatory Deed**

**October 1, 1958**

Grantee: H. L. Mills, Inc.

Grantor: Ludwig Motor Service, Inc.

Consideration of \$40,000. Ludwig Motor Service, Inc. and H. L. Mills, Inc. have executed Article of Sale and Transfer dated September 22, 1958, and filed for approval with the State Tax Commission of Maryland. Articles of Sale and Transfer were filed for approval with the State Tax Commission on September 25 and have been so duly approved. Being the same property conveyed to the grantor by Mary E. Sherley, widow, et al in 1940 (212:265).

**212:265 Deed**

**May 9, 1940**

Grantee: Ludwig Motor Service, Inc.

Grantor: Mary E. Sherley, widow, Vivian A. Sherley Kuhn and John F. Kuhn, her husband, all of Washington County, Maryland

Nominal consideration and the assumption by the grantees of a mortgage on the property given to the Home Builders Savings and Loan Association of Hagerstown, Washington County, Maryland, on which there is an unpaid balance of \$11,000, with interest (207:701). The property



is bounded by Summit Avenue to the west, the lands now or formerly owned by Susan Firey to the north, and Hood Street to the south.. Being the same property conveyed in a deed from John W. Mysers, et al to Owen D. Sherley in 1919 (155:452). Owen D. Sherley died intestate and the property descended to Mary E. Sherley, his widow, and Vivian A. Sherley, his daughter.

**155:452**

**August 1, 1919**

Grantee: Owen D. Sherley

Grantor: John W. Myers and Carrie C. Myers, his wife, Noah W. Myers and Nora M. Myers, his wife, of Washington County

Consideration of \$8,000. The property is bounded by Summit Avenue to the west, the lands now or formerly owned by Susan Firey to the north, and Hood Street to the south. Being the same lands which were conveyed to John W. Myers and Noah W. Myers, partners trading as J. W. Myers & Co. in 1916 (151:211).

**151:211**

**November 7, 1917**

Grantee: John W. Myers and Noah W. Myers, partners, trading as H. W. Myers & Company

Grantor: The Washington County Railroad Company

Consideration of \$8,000. The property is bounded by Summit Avenue to the west, the lands now or formerly owned by Susan Firey to the north, and Hood Street to the south. Being parts of the same land which were conveyed to The Washington County Railroad Company by Robert Fowler et ux in 1969 (W. McK.K. No 1:29) and by Alpheus E. Appleman et ux in 1967 (W. McK. K. No 1: 26). [*Parcel D2*].

## **Parcel D**

### **5918:156 Special Warranty Deed**

**January 31, 2019**

Grantee: Gatehouse Media Maryland Holdings, Inc.

Grantor: The Herald-Mail Company

Consideration of \$3,312,000. The property has the address of 100 Summit Avenue, Hagerstown, MD 21740. The property is bounded by Summit Avenue to the west and Antietam Street to the north. The property contains 4.77 acres of land. Saving and excepting therefrom all that property conveyed by Donation Agreement (5207:174 WC Land Rec), and deed (5207:187, 5207:198 WC Land Rec), as confirmed by deed (5564:179 WC Land Rec).

### **5564:179 Quitclaim Deed**

**August 3, 2017**

Grantee: The City of Hagerstown

Grantor: The Herald Mail Company

No consideration. The Herald Mail Company is the owner of certain property in Washington Maryland (704:26 WC Land Rec) and the grantor did grant, convey, release, quitclaim, and surrender unto the grantee a portion of the grantors property more particularly described in a Quit Claim Deed from 2016 (5207:198 WC Land Rec). The grantor desires to execute this Quitclaim deed for the purposes of confirming and extending the area quitclaimed and otherwise conveyed to the grantee. 7 square feet of land are being conveyed in this deed.

### **704:26 Deed of Correction**

**July 23, 1980**

Grantee: The Herald Mail Company

Grantor: The Washington County Railroad Company

Whereas, by deed dated May 13, 1976 (614:480 WC Land Rec). The grantor conveyed to the grantee one parcel of land containing 4.77 acres, more or less, in Hagerstown, which deed contains among other provisions, the following covenant: "excepting and reserving unto grantor, Grantor's successors and assigns, the ownership in Track T-D24 (2) and three turnouts located within the parcel herein conveyed, and the right to remove same upon cessation of use, together with a non-exclusive easement for said track and turnouts and the right to operate and maintain same over and across parcel of land, as well as use same for team track operation; said easement area located parallel, adjacent and long the easterly boundary line, containing 22,400 square of .5 of an acre, more or less, as shown on Grantor's Drawing no. RE&IDD-289, which is made a part hereof by record and the right to remove said track and facilities upon cessation of use." The covenant is being amended as follows: " Excepting and reserving unto Grantor, Grantor's successors and assigns, the ownership in Track T-D24(2) where now located within the parcel herin conveyed and the right to remove same upon cessation of use, together with a non-exclusive easement for said track the right to operate and maintain same over and across parcel of land; said easement being parallel to or concentric with and generally eight and one half feet distant from either side of the centerline of said track, containing 11,570 square feet, or .27 acres as shows on grantor's drawing RE&IDD-289, revised June 1980, which is made a part hereof and the right to remove said track and facilities upon cessation of use."

### **614:480 Deed**

**May 13, 1976**

Grantee: The Herald Mail Company

Grantor: Washington County Railroad Company

Consideration of \$450,000. The property is bounded by Summit Avenue to the west and West Antietam Street in the north. The property contains 4.77 acres. Grantor retains the right to .51 acre of the property, ownership of Track T-D24(2) and three turnouts located on the property as well as the right to operate and maintain the track and turnouts and the right to remove them upon cessation of use.

Being all or a portion of the property acquired by the grantor from the following conveyances

1. I.N. 18:702 1867 from Susan Firey
2. W. McKK. 1:26 1867 from Alpheus R. Appleman
3. 92:612 1889 from Samuel H. Miller
4. 81:522 1891 from the Church Council of the Evangelical Luthern Congregation
5. I.N. 18:705 1867 from the Church Council of the Evangelical Luthern Congregation
6. W.McKK 1:29 1868 from Robert Fowler
7. W. McKK 1:31 1868 from William T. Hamilton
8. W. McKK 4:295 1871 from Presbyterian Church of Hagerstown
9. I.N. 18:702 1867 from Presbyterian Church of Hagerstown

**Parcel D1**

**18:702 Deed**

**May 8, 1807**

Grantee: The Washington County Railroad Company

Grantor: Susan Firey of Washington County

Consideration of \$2,000. The roadbed of the Washington Country Railroad Company is extending through the property of Susan Firey. The amount of property being conveyed to the Railroad Company is calculated as 33 feet in each direction at right angles to the centerline of the roadbed, and extending in addition thereto, one foot and a half horizontally for every one vertical foot of any embankment and one foot horizontally for every vertical foot of any cut through the said land.

**Parcel D2.**

**WMcKK 1:26**

**November 25, 1867**

Grantee: Washington County Railroad Company

Grantor: Alpheus R. Appleman

Consideration of \$3,000. Situated on the Hagerstown and Williamsport Turnpike Road and adjoining the lot of ground owned by Robert Fowler, on the north by said Turnpike Road or Jonathan Street in Hagerstown in the west and the property owned or occupied by Mrs. Firey on the south and being the same parcel that was conveyed to Alpheus R. Appleman by John G. Brendel and Susan W. Brendel, his wife in 1866 (LBN 1:383 WC Land Rec)

**LBN 1:353**

**February 16, 1866**

Grantee: Alpheus R. Appleman

Grantor: John G. Brendel and Susan M. Brendel, his wife of Baltimore County, and William A. Minnick and Maria A. Minnick his wife

Consideration of \$1,800. The property is bounded in the north by the property of Robert Fowler, in the west by Jonathan Street and in the south by the property owned or occupied by Mrs. Firey, being the same property now occupied by George Parkhouse containing about 1 acre of land more or less improved upon by a small brick dwelling house, stable and other buildings. John G. and Maria Minnick were the only two children of John Brendel and inherited this

property from their grandfather George Brendel who owned many properties and houses in Hagerstown and devised this specific property to them in his will

**HH:655 Deed**

**November 2, 1825**

Grantee: George Brendel

Grantor: Frederick Stover, Jacob Stover, etc.

Consideration of \$375. Property is within Elizabethtown and is part of lot 284.

**Parcel D3.**

**GBO 92:612**

**January 8, 1889**

Grantee: Washington County Railroad Company

Grantor: Samuel Miller and Sarah A. Miller, his wife of Washington County

Nominal consideration. Being the same land that was conveyed to Samuel and Sarah by the Presbyterian Church of Hagerstown by deed dated 1881 (81:135 WC Land Rec)

**81:135 Lease**

**May 3, 1881**

Grantee: Samuel H. Miller

Grantor: The Presbyterian Church of Hagerstown

The church is leasing the property to Samuel Miller for the term of 99 years and then to be complete and ended. The property is bounded in the east by the lots owned by Samuel H. Miller and a certain David Wolf, on the south by a lot owned by the said Samuel H. Miller, on the west by the lands of the Washington County Railroad Company and on the north by the lot belonging to the Lutheran Church or Congregation. Being part of the same lot or parcel of land devised to the Presbyterian Church or Congregation by Hugh Kennedy in his last will and testament, (D:163 WC Land Rec) and part of the lot of land conveyed to the said Hugh Kennedy by David G. Yost, Trustee of the heirs of Jacob Schull, deceased (O.O:785 WC Land Rec)

**O.O:785 Deed**

**February 6, 1834**

Grantee: David G. Yost of Washington County

Grantor: Hugh Kennedy of Washington County

Nominal consideration. By a decree at a court of equity hearing on July 29, 1833, David G. Yost was appointed trustee and authorized to sell a portion of the real estate of Jacob Sholl, late, of Washington County for the purpose of distributing the proceeds among the heirs. The property was sold to Jacob Scholl on April 2, 1810 by Jonathan Hager (W:77 WC Land Rec). The property being conveyed consists of two lots.

**W:77 Deed**

**April 2, 1810**

Grantee: Jacob Sholl of Washington County

Grantor: Jonathan Hager of Washington County

Consideration of \$1,000. The property being conveyed is part of a larger lot or portion of ground conveyed by Jonathan Hager, deceased, to Samuel Finley, deceased, in 1774. The property is described as being at the southeast corner of the schoolhouse lot belonging to the Lutheran Congregation in Elizabethtown.

**Parcel D4.**

**81:521 Deed**

**September 21, 1881**

Grantee: Washington County Railroad Company



Grantor: The Church Council of the Evangelical Lutheran Congregation of Hagerstown  
Consideration of \$250. The church is conveying 18 square perches to the Washington County  
Railroad Company. Being part of the land conveyed to the Grantor by Samuel Steele and  
Rachel McCurdy, executors of the estate of John McCurdy (IN 4:591 WC Land Rec).

**IN 4:591 Deed**

**May 16, 1849**

Grantee: Church Council of the Evangelical Lutheran Congregation of St. John's Church in  
Hagerstown

Grantor: Samuel Steele and Rachel McCurdy, executors of the estate of John M. McCurdy  
Consideration of \$288. Conveying a lot or parcel of ground being part of the land conveyed to  
the said John McCurdy by James Belt by deed dated 1827 (II:652 WC Land Rec) it being part of  
lot number 285 in Hagerstown as numbered on the original plan thereof and also lot number 4  
of Rohrer's Addition to Hagerstown. Beginning at the northwest corner of lot No. 132 of the lots  
in the general plan of Hagerstown, it being one of the lots on which the Lutheran Church is built  
and running thence with part of said lots conveyed by Samuel Steele and Rachel McCurdy to  
William Brazier by deed dated March 31, 1843 (OHW 1:6) Bounded by Kellers lots to the west  
along West Antietam Street. Also bounded by a property formerly owned by Sholls heirs, now  
owned by the Presbyterian Parsonage. Estimated to be about 1 ¼ acres.

**II:650**

**October 11, 1827**

Grantee: John McCurdy of Washington County

Grantor: James Belt of Prince George's County

Consideration of \$300. Being the same land devised to James Belt by his brother Thomas Belt,  
late, of Washington County in his will dated September 26, 1822. The property is described as  
being on the southwest side of Antietam Street, bounding on the properties of Peter Figely,  
Jacob Sholl's heirs, the Lutheran Schoolhouse, the southern church lot, and Catherine Stover.  
The property contains 2 acres and 10 perches of land.

**EE:378 Deed**

**February 2, 1820**

Grantee: Thomas Belt of Washington County

Grantor: Otho Hollands Williams of Washington County

Consideration of \$6,000. The property is described as lots number 4 and 5 in Rohrer's Addition  
to Hagerstown and part of lot number 285 in Hagerstown. The property is along the southwest  
side of Antietam Street and contains 2 acres and 10 perches.

**BB:207**

**April 3, 1816**

Grantee: Otho H. Williams

Grantor: David Harry

Consideration of \$6,000. Being in and adjoining Hagerstown, being lots number 4 and 5 in  
Rohrer's Addition to Hagerstown and a part of lot number 285 in Hagerstown. The property is  
along the southwest side of Antietam Street and contains 2 acres and 10 perches.

**T:428 Deed**

**July 7, 1809**

Grantee: David Harry

Grantor: George Belzhoover

Consideration of \$600. Beginning at the northeast corner of lot number 285 as known and  
distinguished in the general plan of Elizabethtown. The property is bounded by the street,

Jonathan Hager's lot in Rohrer's Addition to Elizabethtown, the German Lutheran Schoohouse Lot, and the lots of George Brendel and David Harry.

**P:785 Deed**

**May 6, 1804**

Grantee: George Beltzhoover of Elizabeth Town

Grantor: Melcher Beltzhoover, of St. Clair Township in Allegheny and Commonwealth of PA  
Consideration of \$1,000. The property consists of five numbered lots in a general plan of lots, sold by Jacob Rhorer, No. 4, 5, 6, 7, and 8. Being the same five lots which were conveyed to Melcher Beltzhoover from Jacob Rohrer in 1774 (V:420 FC Land Rec). The Grantor is also conveying the land beginning at the southeast corner of the aforesaid five lots and running by the southwest street of said town 164 to the other street of said town. Being the same three lots conveyed to Melcher Beltzhoover by Jacob Rohrer in 1777 (A:124 WC Land Rec). The Grantor is also conveying lot No. 258, numbered in the new general plan of the towns. Being the same lot conveyed to Melcher Beltzhoover from Jonathan Hager in 1774 (V:625 FC Land Rec).

**A:124 Deed**

**December 26, 1777**

Grantee: Melcher Beltzhoover

Grantor: Jacob Roaror

Consideration of ten pounds and the yearly ground rent of nine shillings. The property being conveyed consists of lots No. 18, 19, and 27, numbered in the general plan kept by Jacob Rhorer for his land being called Addition to Elizabethtown.

**V:420 Deed (Frederick County)**

**April 23, 1774**

Grantee: Melcher Beltzhoover

Grantor: Jacob Roaror

Consideration of 69 pounds. All that portion of land in five lots adjoining Jonathan Hager's lines of his town. Being part of a tract of land where on Jacob Rhorer lives and numbered in a general plan by him the said Jacob Rohrer, kept for numbering the lots adjoining Elizabethtown, being lots No. 4, 5, 6, 7, and 8.

**V:625 Deed (Frederick County)**

**May 23, 1774**

Grantee: Melcher Beltzhoover, butcher

Grantor: Jonathan Hagar, gentleman

Consideration of 10 pounds and a yearly ground rent of 4 shillings. All that portion of land adjoining the northwest end of the Lutheran Church lots in Elizabethtown, numbered in the new general plan as lot No. 285.

**S:143 (Frederick County) Deed**

**April 12, 1773**

Grantee: Jacob Rhorer, of Frederick County

Grantor: John Rhorer of Lancaster County, Pennsylvania, farmer

Consideration of 650 pounds. John Rhorer is conveying parts of four different tracts of land, including "Rushia Corner", "Exchange", "Found It Out", and "Hager's Fancy".

**S:137 (Frederick County) Deed**

**April 10, 1773**

Grantee: John Rohrer of Pennsylvania, farmer

Grantor: Jonathan Hagar of Frederick County

Consideration of 230 pounds. Jonathan Hager is conveying part of four different tracts of land, including "Hager's Delight", "Found It Out", "Exchange", and "Stoney Batter Addition to Stoney Batter P. Dickson's Meadows", which is now called "New Work". The property contains over 175 acres.

**MSA S1197-3377**

**May 11, 1765**

New Work 714 acres

Jonathan Hager

*Supposedly the land that he created Elizabethtown out of.*

To resurvey the following tracts or parcels of Land, Stoney Batter \_\_\_\_\_ on he 20<sup>th</sup> of March 1762 granted him for 118 acres under Red A Addition \_\_\_\_\_ Stoney Batter originally on the 9<sup>th</sup> day of March 1763. Granted him for 82 acres, Discksons Meadow originally on 4<sup>th</sup> day of June 1759

**MSA S1197-1508**

**May 20, 1763**

Found it out 62 acres

Jonathan Hager

**MSA S1197-1949**

**August 10, 1753**

Heger's Delight 1780 acres

Jonathan Hager

Resurvey three tracts of land, Hickinbottom's Exchange originally laif out for 100 acres, Dickson's Rest laif out for 100 acres, of Dickson's Fatiguing Joutney laid out for 100 acres.

**Parcel D5.**

**18:705 Deed**

**June 28, 1867**

Grantee: Washington County Railroad Company

Grantor: Church Council of the Evangelical Lutheran Congregation of Hagerstown

Consideration of \$115. The amount of property being conveyed to the Railroad Company is calculated as 23 feet in each direction at right angles to the centerline of the roadbed, and extending in addition thereto, one foot and a half horizontally for every one vertical foot of any embankment.

**6.**

**WMcKK 1:29 Deed**

**January 6, 1868**

Grantee: Washington County Railroad Company

Grantor: Robert Fowler and Susan Fowler his wife of Baltimore County

Consideration of \$7,000. Conveying all the lots of ground lying in "Rohrer's Addition to Hagerstown". Beginning at the southeastern corner of West Antietam Street and south Jonathan Street. Being the same lots or parts of lots conveyed by William F. Hamilton and George W. Smith, trustees to sell the real estate in cause No. 406 in the equity docket of the Circuit Court of Washington County to Robert Fowler by deed from 1853 (INN 8:483).

**IN 8:483 Deed of Trust**

**November 16, 1853**

Grantee: Robert Fowler

Grantor: William T. Hamilton and George W. Smith of Washington County

Nominal consideration. Whereas by a decree of the circuit court for Washington County, sitting as a court of equity in the state of Maryland, passed April 9, 1852 in a cause between John Beaver, executor of John Beaver, deceased, and other complainants, and Philip Keller and other defendants, being in cause No. 706. The property is at the corner of West Antietam Street and Jonathan Street and is bounded by the property of George Brendel, now in possession of Paul Deetor as tenant to the said George, and the property of the Lutheran Parsonage grounds.

**Y:331 Deed**

**May 1, 1812**

Grantee: Philip Keller of Elizabeth Town

Grantor: Nathaniel Rochester

Consideration of \$400. Rochester is conveying the property in "Rohrer's Addition to Elizabethtown". The property is bounded by the property of Samuel Rohrer and David Harry.

**7.**

**WMcKK 1:31 Deed**

**April 7, 1868**

Grantee: Washington County Railroad Company

Grantor: William F. Hamilton, trustee

Consideration of \$1,005. Whereas by a decree of the circuit court, Hamilton was appointed trustee to sell the property situated on West Antietam Street. The property is bounded by the property of the Washington County Railroad Company, the Council of the Evangelical Lutheran Congregation of St. John's Church of Hagerstown, and a 12-foot alleyway. Being the same lot of ground conveyed to George W. Hemmeburger to the Church Council of the Evangelical Lutheran Congregation of St. John Church of Hagerstown in 1850 (IN 4:673 WC Land Rec).

**IN4:673 Deed**

**January 4, 1850**

Grantee: George M. Hemmeberger

Grantor: The Council of the Evangelical Lutheran Congregation of St. John's Church in Hagerstown

Consideration of \$162. Conveying all that lot of ground situated on West Antietam Street. The property is bounded by the property of Philip Keller, the property of the grantor, and a 12-foot alleyway. The grantor reserves the use of the 12-foot alleyway. Being part of the same lot of ground conveyed by Samuel Steele and Rachel McCurdy, executors, in 1847 (IN 4:591).

**IN 4:591 Deed**

**May 16, 1849**

Grantee: Church Council of the Evangelical Lutheran Congregation of St. John's Church in Hagerstown

Grantor: Samuel Steele and Rachel McCurdy, executors of the estate of John M. McCurdy

Consideration of \$288. Being part of the land conveyed to the said John McCurdy by James Belt in 1827, being part of a lot No. 285 in Hagerstown as numbered on the original plan thereof and also lot No. 4 of Rohrer's Addition to Hagerstown. The property contains about 1 ¼ acres. See Parcel D4.

**Parcel D8.1**

**WMcKK4:294 Inquisition Proceeding**

**January 9, 1872**

To Joseph A. Skinner, a Justice of the Peace of the State of Maryland in Washington County

The Washington County Railroad as now located is to pass through and over a certain tract of land adjoining the land of said Washington County Railroad Company and the lands devised to



the officers and congregation of the Presbyterian Church of Hagerstown by Hugh Kennedy, late. A certain part of said land is required by the Railroad Company for the making and construction or repair of said railroad and for depot purposes. An application is hereby made to Joseph N. Skinner Esquire, a justice of the peace to issue a warrant to value the damages which the owners will sustain.

**Parcel D8.2**

**IN18:702 Deed**

**June 21, 1867**

Grantee: Washington County Railroad Company

Grantor: Trustees of Presbyterian Church of Hagerstown

Consideration of \$300. The amount of property being conveyed to the Railroad Company is calculated as 23 feet in each direction at right angles to the centerline of the roadbed, and extending in addition thereto, one foot horizontally for every one vertical foot of any embankment and one foot horizontally for every vertical foot of any cut through the said land.

**IN15:688 Deed**

**September 18, 1861**

Grantee: Trustees of the Presbyterian Church of Hagerstown

Grantor: J. Dixon Roman, trustee

Consideration of \$1,700. J. Dixon Roman was appointed trustee in the case of J. Dixon Roman, guardian of Nancy H. and Lydia H. Kennedy, vs. the First Presbyterian Congregation of Hagerstown, and others. Said cause being No. 1424 in the docket. The property is situate on South Potomac Street, opposite the Presbyterian Church, adjoining the Lutheran Parsonage house on the north and an alley separating it from the lands of George W. Smith on the south. A two-story brick dwelling is located on the property. The property is affronting 82 feet on South Potomac Street and runs back 241 feet. Being the same lot which was conveyed to Hugh Kennedy in 1934 (OO:785 WC Land Rec).

**O.O.:785 Deed**

**February 6, 1834**

Grantee: Hugh Kennedy of Washington County

Grantor: David G. Yost of Washington County

Nominal consideration. By a decree at a court of equity hearing on July 29, 1833, David G. Yost was appointed trustee and authorized to sell a portion of the real estate of Jacob Sholl, late, for the purpose of distributing the proceeds among his heirs. Being the property conveyed to Jacob Sholl by Jonathan Hager in 1810 (W:77 WC Land Rec).

**W:77 Deed**

**April 2, 1810**

Grantee: Jacob Sholl of Washington County

Grantor: Jonathan Hager of Washington County

Consideration of \$1,000. Hager is conveying "all that lot number one being part of a larger lot or portion of ground conveyed by Jonathan Hager deceased to Samuel Finley deceased by deed bearing date May 23, 1774. Beginning at the southeast corner of the school house lot belonging to the Lutheran Congregation in Elizabethtown, running thence north 59 degrees west 240 feet, south 8.5 degrees west 82 feet, south 59 degrees east 240 feet then north 8.5 degrees east 82 feet to the beginning.

## **Parcel E**

### **5564:179 Quit Claim Deed**

**August 3, 2017**

Grantee: The City of Hagerstown

Grantor: The Herald Mail Company

No consideration. The grantor is the owner of a certain property in Washington County (704:26). Whereas, the grantor did grant, convey, release, quitclaim and surrender unto the grantee a portion of the grantor's property as more particularly described in a quit claim deed dated 2016 (5207:198). The grantor desires to execute this quit claim deed for the purposes of confirming and extending the area quitclaimed and otherwise conveyed to the grantee. The property being conveyed contains 7 square feet.

### **704:26 Deed of Correction**

**July 23, 1980**

Grantee: The Herald Mail Company

Grantor: The Washington County Railroad Company

Whereas, by deed dated May 13, 1976 (614:480). The grantor conveyed to the grantee one parcel of land containing 4.77 acres, more or less, in Hagerstown, which deed contains among other provisions, the following covenant: "excepting and reserving unto grantor, Grantor's successors and assigns, the ownership in Track T-D24 (2) and three turnouts located within the parcel herein conveyed, and the right to remove same upon cessation of use, together with a non-exclusive easement for said track and turnouts and the right to operate and maintain same over and across parcel of land, as well as use same for team track operation; said easement area located parallel, adjacent and long the easterly boundary line, containing 22,400 square of .5 of an acre, more or less, as shown on Grantor's Drawing no. RE&IDD-289, which is made a part hereof by record and the right to remove said track and facilities upon cessation of use." The covenant is being amended as follows: " Excepting and reserving unto Grantor, Grantor's successors and assigns, the ownership in Track T-D24(2) where now located within the parcel herin conveyed and the right to remove same upon cessation of use, together with a non-exclusive easement for said track the right to operate and maintain same over and across parcel of land; said easement being parallel to or concentric with and generally eight and one half feet distant from either side of the centerline of said track, containing 11,570 square feet, or .27 acres as shows on grantor's drawing RE&IDD-289, revised June 1980, which is made a part hereof and the right to remove said track and facilities upon cessation of use."

### **614:480 Deed**

**May 13, 1976**

Grantee: The Herald Mail Company

Grantor: Washington County Railroad Company

Consideration of \$450,000. The property is bounded by Summit Avenue to the west and West Antietam Street in the north. The property contains 4.77 acres. Grantor retains the right to .51 acre of the property, ownership of Track T-D24(2) and three turnouts located on the property as well as the right to operate and maintain the track and turnouts and the right to remove them upon cessation of use.

Being all or a portion of the property acquired by the grantor from the following conveyances

1. I.N. 18:702 1867 from Susan Firey
2. W. McKK. 1:26 1867 from Alpheus R. Appleman

3. 92:612 1889 from Samuel H. Miller
4. 81:522 1991 from the Church Council of the Evangelical Luthern Congregation
5. I.N. 18:705 1867 from the Church Council of the Evangelical Luthern Congregation
6. W.McKK 1:29 1868 from Robert Fowler
7. W. McKK 1:31 1868 from William T. Hamilton
8. W. McKK 4:295 1871 from Presbyterian Church of Hagerstown
9. I.N. 18:702 1867 from Presbyterian Church of Hagerstown

See Parcel D

## **Parcel F**

### **5600:202 Deed**

**September 28, 2017**

Grantee: Antietam Paper Building, LLC

Grantor: Hager5, LLC

Consideration of \$365,000. The property is bounded by West Antietam Street to the north, the property owned by the Loyal Order of the Moose to the east, and the property owned by the Baltimore and Ohio Railroad Co. to the west. Parcel A containing 15,564 square feet of land. Property is benefited by an easement for vehicular and pedestrian ingress and egress as more particularly shown and described in a quit claim deed by and between the City of Hagerstown and the grantor dated 2016 (5278:49) and by quit claim deed from grantor to the city of Hagerstown from 2017 (5564:172). Being the same property conveyed to the grantor by Blue Heron Ventures, Inc. in 2006 (2913:147).

### **5564:172 Quit Claim Deed**

**August 4, 2017**

Grantee: The City of Hagerstown

Grantor: Antietam Paper Building, LLC

No consideration. The grantor owns a certain property in Washington County. The grantor did quit claim and surrender unto grantee a portion of the property described in a quit claim deed from 2016 (5278:49). The grantors desires to execute this quit claim deed to confirm and extend the area quit claimed to the grantee. The property conveyed contains 7 square feet.

### **5278:49 Quit Claim Deed**

**June 16, 2016**

Grantee: The City of Hagerstown

Grantor: Antietam Paper Building, LLC

Nominal consideration. The property conveyed is south of West Antietam Street in Hagerstown. The property is fronting on West Antietam Street about 12 feet 1 inch and extending back about the same width 186 feet 7 inches, being bounded on the east by the property of the grantor, and bounded on the west by the Herald Mail Company, Inc. The property is to be used as and remain a public walking trail, public park, or used for passive recreation purposes, to be enjoyed by the public generally. If the grantee fails to use the property as such the property will revert to and re-vest in the grantor. If the grantee shall abandon or relocate the public walking trail the grantee shall be solely responsible for the cost and expense to restore the property. Saving and excepting therefrom an easement for the benefit of the grantor for vehicular ingress and egress from the south side of "Parcel B" to its existing loading docks, and pedestrian ingress and egress to the stairway and building entrance as more fully described in Exhibit A

### **2913:147 Deed**

**January 25, 2006**

Grantee: Antietam Paper Building, LLC

Grantor: Blue Heron Ventures, Inc. (formerly known as Antietam Paper Co. and Antietam Paper Company, Inc.

Consideration of \$510,000. The property is on the south side of West Antietam Street, fronting on West Antietam Street about 37 feet 2 inches and extending back the same width about 187 feet and 6 inches to the property of the Ayers Bros., being bounded on the east by the property owned by Loyal Order of the Moose and on the west by the property of the Baltimore and Ohio



Railroad Co. Being all the same property granted to Antietam Paper Co., Inc. by deed from John E. Stonebraker and Ella B. Stonebraker, his wife, in 1941 (EO214:537)

**EO 214:537 Deed**

**February 21, 1941**

Grantee: Antietam Paper Co., Inc.

Grantor: John E. Stonebraker and Ella B. Stonebraker, his wife, of Hagerstown

Nominal consideration. The property is on the south side of West Antietam Street, fronting on West Antietam Street about 37 feet 2 inches, and extending back the same width about 187 feet and 6 inches to the property of the Ayers Bros., being bounded on the east by the property owned by the Loyal Order of the Moose, and on the west by the property of the Baltimore and Ohio Railroad Co. Being the same property which was conveyed to J. Ellsworth Stonebraker by Jacob C. Dayhoff and Emma S. Dayhoff, his wife, by deed dated March 23, 1891 (96:581). J. Ellsworth Stonebraker died intestate and the property thereby vesting in the said John E. Stonebraker as the only son and heir.

**96:581 Deed**

**March 23, 1891**

Grantee: J. Ellsworth Stonebraker, of Washington County

Grantor: Jacob C. Dayhoff and Emma S. Dayhoff, his wife, both of Washington County

Consideration of \$3,500. A two-story brick dwelling house is on the property. The property is on the south side of West Antietam Street in Hagerstown, fronting on West Antietam Street about 37 feet and 2 inches, and extending back about 187 feet and 6 inches to the property of Jacob C. Dayhoff. Being bounded on the east by the property of John R. Spielman and on the west by the property of Jacob C. Dayhoff conveyed to him by St. John Lutheran Church. Being the same property conveyed to Dayhoff by A. R. Hemmeburger in 1890 (96:292 WC Land Rec).

**96:292 Deed**

**November 16, 1890**

Grantee: Jacob C. Dayhoff

Grantor: A. R. Hemmeburger ?

Consideration of \$3,000. A two-story brick dwelling house is on the property. The property is on the south side of West Antietam Street in Hagerstown, fronting on West Antietam Street about 37 feet and 2 inches, and extending back about 187 feet and 6 inches to the property of Jacob C. Dayhoff. Being bounded on the east by the property of John R. Spielman and on the west by the property of Jacob C. Dayhoff conveyed to him by St. John Lutheran Church, being the same property which was conveyed to William Brazier by John McCurdy's execution, by deed dated March 31, 1843 (O.H.W. 1:6). The property being conveyed is the same property that William Brazier devised to A. R. Hemmeburger in his will (E.570 WC Land Rec).

**OHW 1:6 Deed**

**March 31, 1843**

Grantee: William Brazier of Washington County

Grantor: Samuel Steele and Rachel McCurdy, executors of the estate of John McCurdy

Nominal consideration. Being a part of a tract of land conveyed by James Belt to John McCurdy in 1827. See Parcel D7

## **Parcel G**

### **5940:397 No Consideration Deed**

**January 1, 2019**

Grantee: WLR Residential Properties, Inc.

Grantor: WLR Holding Company, Inc.

No consideration. This conveyance is exempt from Recordation and Transfer Taxes since it is a transfer of title to real property from a subsidiary business entity to its parent business entity for no consideration where the business entity acquires the ownership interest of a subsidiary business entitle which ahs been in existence and has owned the real property for a period of 2 years. This particular conveyance is referred to as "Exhibit G" in the deed. The property consists of 56,746 square feet as shown on a plat of subdivision entitled "Simplified Plat of Subdivision for Parcel "A", Schindle Enterprises-Baltimore Street Limited Partnership" and recorded among the Land Records of Washington County, Maryland in Plat folios 8149 and 8150. The property is known as 32 West Baltimore Street, Hagerstown, Maryland 21740. Being all the same land conveyed unto WLR Holding Company, Inc, A Maryland Corporation, by a deed from Car Wash Real Estate, LLC, a Maryland limited liability company, dated May 29, 2014 (4765:353).

### **4765:353 Deed**

**May 29, 2014**

Grantee: WLR Holding Company, Inc.

Grantor: Car Wash Real Estate, LLC

Consideration of \$1,000,000. The property is known as "Remaining Area" containing 56,746 square feet as shown on a plat of subdivision entitled "Simplified Plat of Subdivision for Parcel "A", Schindle Enterprises-Baltimore Street Limited Partnership" and recorded among the Land Records of Washington County, Maryland in Plat folios 8149 and 8150. Being all the same real estate which was conveyed unto Car Wash Real Estate, LLC, by a deed from Schindel Enterprises – Baltimore Street Limited Partnership, from 2006 (2913:142).

### **2913:142 Deed**

**January 25, 2006**

Grantee: Car Wash Real Estate, LLC

Grantor: Schindel Enterprises – Baltimore Street Limited Partnership

Consideration of \$1,810,000. The property is known as "Remaining Area" containing 56,746 square feet as shown on a plat of subdivision entitled "Simplified Plat of Subdivision for Parcel "A", Schindle Enterprises-Baltimore Street Limited Partnership" and recorded among the Land Records of Washington County, Maryland in Plat folios 8149 and 8150. Being a part of the same real estate conveyed unto Schindel Enterprises – Baltimore Street Limited Partnership, by a deed from Antietam Paper Company, Inc. dated 1990 (964:702).

### **964:702 Deed**

**July 19, 1990**

Grantee: Schindel Enterprises – Baltimore Street Limited Partnership

Grantor: Antietam Paper Company, Inc.

Consideration of \$140,000. The property contains 1.66 acres of land. Being a portion of the land conveyed by the Presbyterian Church of Hagerstown unto the Antietam Paper Company, Inc. by deed dated 1980 (711:547). With reservation for the grantor and its successors and assigns, for the benefit of the owner of the Antietam Paper Company parcel situated in Hagerstown, and more particularly described ay Liber 214 folio 537 in, a non exclusive, perpetual appurtenant easement for access, ingress and egress, by pedestrian and vehicular traffic, to and from the

Paper Company Parcel over the conveyed property. Said easement shall benefit the Paper Company Parcel and shall burden the conveyed property. The owner of the conveyed property shall have the right to relocate said easement with the prior written consent of the Owner of the Paper Company Parcel, which consent shall not be unreasonably withheld.

**711:547 Quit Claim Deed**

**December 30, 1980**

Grantee: Antietam Paper Company, Inc

Grantor: The Presbyterian Church of Hagerstown

No consideration. Pursuant to that Decree of the Circuit Court for Washington County in Equity No. 33,750 dated December 30, 1980, the grantor does hereby quitclaim and transfer the right to the following property. The property is bounded by West Baltimore Street and the property of the Baltimore and Ohio Railroad Company. Being all the same property which was conveyed to the grantee by Leota E. Ayers, Norman H. Ayers and Gladys C. Ayers, by deed dated 1975 (604:644), excepting that strip of land now constituting the public alley running between West Baltimore Street and West Antietam Street, as conveyed by J. Henry Avers, Jr. et al to the City of Hagerstown by deed dated 1967 (450:692).

**604:644 Deed**

**October 24, 1975**

Grantee: Antietam Paper Company, Inc.

Grantor: Leota E. Ayers, Norman H. Ayers and Gladys C. Ayers, as joint tenants, all of Washington County

Nominal consideration. The property is on the north side of West Baltimore Street and is next to the property of the Baltimore Ohio Railroad Company. Being all the property which was conveyed to the Grantors by Paul Ottinger, Trustee, by deed dated 1971 (525:81). Excepting therefrom the alley which was conveyed to the City of Hagerstown by deed dated 1967 (450:692).

**525:81 Deed**

**June 16, 1971**

Grantee: Leota E. Ayers and Norman H. Ayers and Gradys C. Ayers, his wife

Grantor: Paul Ottinger, trustee

Nominal consideration. Ottinger is the trustee for the sole purpose of reconveying the property to the grantees as joint tenants and not as tenants in common. The property is east of the property of the Baltimore and Ohio Railroad Company, between West Antietam Street and West Baltimore Street and consists of 3 parcels

Parcel No 1. Having a frontage on the north side of West Baltimore Street and is bounded by the Baltimore and Ohio Railroad Company to the west and the property of the St. John's Lutheran Church to the east.

Parcel No. 2. Adjoining parcel 1 on the north, bounded by the northwest corner of the property of the St. John's Lutheran Church, the east marginal line of the 12 foot alley which extends southward from West Antietam Street about 240 feet, and the east boundary of the property og the Baltimore and Ohio Railroad Company

Parcel No. 3 – Described in a plat recorded at Liber 283 folio 43.

Saving and excepting therefrom the alley which was conveyed to the City of Hagerstown in 1966. Being all the property which was conveyed to the Grantor in the deed immediately preceding this one. Parcels 1 and 2 being the same property which was conveyed to the

Grantees by Edward Oswald, Jr., Assignee by deed dated 1937 (205:460). Parcel three was conveyed to the Ayers by deed of exchange dated 1954 (283:42)

**525:79 Deed**

**June 17, 1971**

Grantee: Paul Ottinger

Grantor: Norman H. Ayers and Leota E. Ayers

Nominal consideration. Norman and Leota are conveying the property to Paul Ottinger as trustee for the sole purpose of re-conveying the same to Leota E. Ayers and Norman H. Ayers and Gladys C. Ayers, his wife, as joint tenants and not as tenants in common. The property consists of 3 parcels described in the more modern deed above. Saving and excepting therefrom the alley which was conveyed to the City of Hagerstown in 1966. Being all the property which was conveyed to J. Henry Ayers, Jr. who died in Washington County, Maryland, on November 19, 1969, and Norman H. Ayers and Leota E. Ayers, except for the aforesaid conveyance to the City of Hagerstown, by Paul Ottinger, Trustee, by deed dated May 13, 1957 (323:115).

**323:115 Deed**

**May 13, 1857**

Grantee: J. Henry Ayers, Hr. and Norman H. Ayers and Leota E. Ayers

Grantor: Paul Ottinger, Trustee

Nominal consideration. In the deed immediately preceding this deed, J. Henry Ayers and Norman H. Ayers conveyed this property to Paul Ottinger as trustee for the sole purpose of re-conveying the property to J. Henry Ayers, Jr. and Norman H. Ayers and Leota E. Ayers as joint tenants and not as tenants in common. The property consists of 3 parcels. Being all of the same property which was conveyed to the grantor in the deed immediately preceding this deed. The aforesaid conveyance is subject to an easement granted unto the aforesaid St. John's Evangelical Church of Hagerstown by the said J. Henry Ayers, Jr. and Norman H. Ayers in the Deed of exchange dated June 21<sup>st</sup> 1954 (282:42).

**323:112 Deed**

**May 13, 1957**

Grantee: Paul Ottinger, Trustee

Grantor: J. Henry Ayers, Jr. and Norman H. Ayers

Nominal consideration. J. Henry Ayers, Jr. and Norman H. Ayers are conveying the property to Paul Ottinger, trustee, for the sole purpose of re-conveying the property to J. Henry Ayers, Jr. and Norman H. Ayers and Leota E. Ayers as joint tenants and not as tenants in common. The property consists of three parcels situated in Hagerstown, east of the property of the Baltimore and Ohio Railroad Company, between West Antietam Street and West Baltimore Street. Being the same property which was conveyed to the grantors by a deed of exchange dated 1954 between St. John's Evangelical Lutheran Church of Hagerstown and the grantors (283:42). The aforesaid conveyance is subject to an easement granted unto the aforesaid St. John's Evangelical Lutheran Church of Hagerstown by the said J. Henry Ayers, Jr. and Norman H. Ayers in the deed of exchange.

**283:42 Deed of Exchange**

**June 21, 1954**

Grantee: J. Henry Ayers, Jr. and Leota G. Ayers, his wife, Norman H. Ayers and Gladys C. Ayers, his wife,

Grantor: St. John's Evangelical Lutheran Church of Hagerstown

Nominal consideration. The Church is the owner of a parcel of land on the west side of South Potomac Street between West Antietam Street and West Baltimore Street and the grantees are



the owners as joint tenants of a parcel of land lying immediately west of the property owned by the Church. The parties would like to straighten the boundary line by having the Church convey unto the Ayers a portion of their property and thereafter to create a right-of-way or easement for the benefit of the Church over the property so owned by the Ayers along the entire west boundary line of said Church property.

**205:460 Deed**

**November 27, 1937**

Grantee: J. Henry Ayers, Jr. and Norman H. Ayers

Grantor: Edward Oswald, Jr., assignee

Consideration of \$15,900. At a public sale on October 26, 1937, by Edward Oswald, Jr., assignee, under the power of sale contained in a certain mortgage from John B. Fleming, Anna N. Fleming, his wife, and Lewis L. Bowers to Norman B. Scott, Jr. dated May 1920 (158:25), which said sale was made after default had occurred in said mortgage. After bond had been duly filed and approved in Equity Case No. 13582 in the Circuit Court for Washington County, the parcels of real estate were sold unto Herman L. Mills, who was then the highest bidder for the sum of \$15,900. By an order of the aforesaid court passed in the above mentioned equity cause on November 20, 1937, J. Henry Ayers, Jr. and Norman H. Ayers were substituted as the purchasers of said parcels of real estate, as joint tenants. The property consists of two parcels  
Parcel 1: Having a frontage on the north side of West Baltimore Street, bounded by the Baltimore and Ohio Railroad to the west and the property of St. John's Lutheran Church to the east.

Parcel 2: Property of Baltimore and Ohio Railroad to the west, Parcel 1 to the south and St. John Lutheran Church to the east.

The property is a part and practically all of the same property which was conveyed from Norman B. Scott, Jr. to the said John B. Fleming and Lewis L. Bowers by deed dated 1920 (158:24). And shown on the Plat of "Property East of the Baltimore and Ohio R.R. between Antietam and Baltimore Streets, Hagerstown, Maryland"

**158:24 Deed**

**May 1, 1920**

Grantee: John B. Fleming and Lewis L. Bowers

Grantor: Norman B. Scott, Jr.

Nominal consideration. The property is between West Antietam Street and West Baltimore Street and made up of several contiguous parcels of land. Containing about 1 3/4 acres including an alley fronting 12 feet on the south side of West Antietam Street and running back therefrom a distance of 186 feet just west of and along the property of J. Elsworth Stonebraker and being between said property and that of the Washington Rail Road. The property is bounded on the north by the property of Ellen Boward, Charles B. Rauth, Elmer Cornerman, J. E. Stonebraker and said West Antietam Street. On the west by the land of the Washington County Railroad, on the south by West Baltimore Street and on the east by the properties of O. Scott Snook of D. Ramaciotti and St. John's Lutheran Church, the said parcel going to make up real estate particularly described in a deed from George C. Snyder and wife to Norman B. Scott, Jr. dated 1906 (125:29) and is the same real estate mentioned in a deed from Alexander Armstrong, assignee, to Norman B. Scott, Jr. dated 1917 (152:437). The aforesaid alleyway being conveyed subject to terms and conditions of an agreement, or an alleged agreement, made with reference thereto by J. C. Dayhoff and wife, J. E. Stonebraker and the Washington County Railroad said agreement being referred to in the aforesaid deed from Snyder and wife to Norman B. Scott. The said grantors do also hereby grant to the said grantees as tenants in common, the

alleyway about 12 feet wide and running from West Antietam Street between the properties of Ellen Boward on the west and Mary Danzer, the order of Odd Fellows and E. A. Firey on the east to connect with the real estate. Said alleyway being the same mentioned in a deed from James C. Ingram and wife and others to Norman B. Scott, Jr. dated 1917 (150:621). Said alleyway is subject to the right of way of over it of E. A. Firey his heirs and assigns, Francis H. Miller, his heirs and assigns, Mary Danzer, her heirs and assigns, and Ellen Boward, her heirs and assigns.

**152:437 Deed**

**November 30, 1917**

Grantee: Norman H. Scott, Jr.

Grantor: Alexander Armstrong, Assignee

Sale of the property occurred on February 15, 1916, in pursuance of the special power and authority vested in him, as assignee, in and by a certain mortgage from Norman B. Scott, Jr. to John D. Keller, dated August 21, 1906 (120:31). Sale was made after default had occurred under said mortgage and after bond had been duly filed in the Circuit Court for Washington County in a proceeding No. 7,771 on the Equity Docket of the Court. Norman B. Scott, Jr. was the highest bidder at \$15,000. The property is between West Antietam Street and West Baltimore Street, consisting of 5 contiguous parcels and containing about 1 ¼ acres and including an alley fronting twelve feet on the south side of West Antietam Street and running back therefrom a distance of 186 feet just west of and along the property of J. Elsworth Stonebraker. The property is bounded in the north by the property of Norman B. Scott, Jr., of Charles W. Rauth, of the Order of Eagles, of J. E. Stonebraker, and by West Antietam Street, on the west by the lands of the Washington County Railroad Company, on the south by West Baltimore Street, and on the east by an alley and the properties of D. Ramacciotti and St. John. Lutheran Church and is the same land described in a deed from George C. Snyder and wife to Norman B. Scott, Jr. dated 1906 (125:29).

**125:29 Deed**

**August 21, 1906**

Grantee: Norman H. Scott, Jr.

Grantor: George C. Snyder and Catherine R. Snyder, his wife, of Washington County

Consideration of \$19,000.

Parcel No 1. Being situated east of the property of the Washington County Railroad Company and adjoined in the east property of St. John's Evangelical Lutheran Church and beginning for the others thereof at the northwest corner of the Lot No. 13 on the map of Hagerstown and at the southern corner of a lot now owned by Emma S. Dayhoff and running thence north 57.5 degrees west 148 feet to the southwest corner of a lot now owned by J. Ellsworth Stonebraker thence with the west side thereof south 34.5 degrees east 186 feet and the south side of West Antietam Street thence with the south side of said street 57 degrees west 12 feet south 34.5 degrees west 186 feet south 33.5 degrees west 153 feet thence south 53.5 degrees east 167 feet to the land of the said Lutheran Church, north 31 degrees east 158 feet more or less to the place of beginning. Containing 94 square perches of land. The entrance to the West Antietam Street is the 12 foot wide, 186 deep alleyway that fronts the street. Alleyway use subject to agreement in a deed from the Church to George A. Hammeberger (IN 4:673)..

Parcel No. 2: Being all that lot of land situate south of and adjoining parcel no. 1 beginning for the outlincs thereof at the end of the fiftieth on the south thirty three and one half degree west one 158 feet line of parcel No. 1 on of the deed from the Church to Jacob C. Dayhoff dated

December 12, 1881 (82:564) and running thence with the south line of said deed south 56.5 degrees east 109 feet thence in a straight line 60 feet to the lands formerly belonging to H. H. Miller to a point 109 feet thence in a straight line 60 feet to the lands formerly belonging to C. H. H. Miller to a point 109 feet east of the land of the Washington County Railroad Company, thence with the northwestern boundary line of the land formerly belonging to said Miller and in a line parallel with the first line of this parcel north 56.5 degrees west to the line of the land of the said Railroad Company, thence with the same boundary line of the said Railroad Company property 60 feet to the place of beginning. Together with a right-of-way over and upon a 12 foot alley from West Antietam Street to the property above described and hereby conveyed for all the use and purposes pertaining to the above two parcels of land hereby conveyed the said alley being along the east side of the lot now owned and occupied by the said Emma S. Dayhoff. Together with all the rights ways easements and privileges thereto. Being the same land conveyed to the said George C. Snyder by J. C. Dayhoff and Emma S. Dayhoff, his wife, by deed dated March 15 1899 (110:98).

Parcel No. 3: Being all that lot on the northside of West Baltimore Street in Hagerstown and fronting the said street 53 feet and extending back therefrom northerly about the same about 136.5 feet to the south marginal line of the parcel described in the deed as Parcel No. 4 it being bounded on the east by the property of Lillie V. Miller and on the west by the property formerly belonging to the Old Electric Light Company and \_\_\_\_\_ in connection with this parcel the alleyway ten feet wide leading from this parcel to the property of the Washington County Railroad. Said alleyway being \_\_\_\_\_ north of the said property formerly owned by said Old Electric Light Company.

Parcel No. 4: Being all the interest of the grantor herein and to all that lot on Parcel of land situate east of and adjoining the property of the Washington County Railroad Company and beginning for the same at a corner formed by the east marginal line of the property of said Railroad Company and the north marginal line of this alleyway conveyed as part of Parcel No. 3 and running thence south 58.5 degrees east 121 feet thence north 27.25 degrees east 156.25 feet thence north 56 degrees west 61.5 feet thence north 34 degrees and 27 feet thence north 51.5 degrees west 168.5 feet to the east marginal line of the place of the beginning. Being the same land conveyed to George C. Snyder by H. H. Miller and Lillie E. Miller his wife on Mar 3, 1899 (110:525)

Parcel No. 5: Being all that lot of land situate on the north side of West Baltimore Street having a frontage thereon of 25 feet and running back therefrom on the west side 156.5 feet and on the east side 139 feet 7 inches. The width of the said lot of the north side thereof having 68.5 feet. Said lot being bounded on the east and north by a lot was formerly the Miller property and on the west by the lands of the Railroad Company, it being the same land conveyed to the said George C. Snyder by Christian M. Lynch (?) and others by deed dated April 1, 1905 (121:655) and also by deed from said Christian M. Lynch and others dated January 1906 (123:203)

**Parcel G1**

**110:98 Deed**

**March 1, 1899**

Grantee: George C. Snyder

Grantor: Jacob C. Dayhoff and Emma S. Dayhoff, his wife

Consideration of \$10,250. The Dayhoffs are conveying several parcels to Snyder. The land is called "Dayhoff Factory or Planning Mill Property". Being all that tract of land situate on the east side of the Washington County Railroad and adjoined on the east by the property of the St. John's Evangelical Lutheran Church. Being part if the same land conveyed to Emma S. Dayhoff by Robert Bridges and wife in 1895 (103:32 WC Land Rec) and being the same which is fully descried in a deed from the St. John's Evangelical Lutheran Church to the said J. C. Dayhoff in 1881 (82:564 WC Land Rec). The property contains 94 perches. Parcel G2 is also conveyed in this deed.

**82:564 Deed**

**May 12, 1882**

Grantee: Jacob C. Dayhoff

Grantor: St. John's Evangelical Lutheran Church of Hagerstown

Consideration of \$561. Being part of the land conveyed to the church by Samuel C. Steele and Rachel McCurdy, executors of the estate of John McCurdy, deceased (I.N. 4:591 WC Land Rec). The property contains 94 perches

**IN 4:591 Deed**

**May 16, 1849**

Grantee: Members of the Church Council of the Evangelical Congregation of St. John's Church in Hagerstown

Grantor: Samuel Steele, Executor of the estate of John McCurdy of Washington County and Rachel McCurdy, executor of the estate of John McCurdy

Consideration of \$288. Being part of the same land conveyed to John McCurdy by James Bely in 1827 (II:650 WC Land Rec), being part of lot No. 285 in Hagerstown, numbered on the original plan. See Parcel D4

**Parcel G2**

**110:98 Deed**

**March 1, 1899**

Grantee: George C. Snyder

Grantor: Jacob C. Dayhoff and Emma S. Dayhoff

Consideration of \$10,250. The Dayhoffs are conveying several parcels to Snyder. The land is called "Dayhoff Facroty or Planning Mill Property". Being all that lot of land situated south of and adjoining parcel No. 1 and being adjoined in the south by the property of H. H. Miller, on the west by that of the Washington County Railroad Company and on the east by St. John's Church. Being part of the land conveyed to the said Emma S. Dayhoff by Robert Bridges and wife and the same land which was conveyed to the said J. C. Dayhoff by the Church. Being the same which is fully described in a deed from St. John's Evangelical Church of Hagerstown to the said J. C. Dayhoff in 1881 (82:564 WC Land Rec).

**82:564 Deed**

**May 12, 1882**

Grantee: Jacob C. Dayhoff

Grantor: St. John's Evangelical Lutheran Church of Hagerstown

Consideration of \$561. Being part of the land conveyed to the church by Samuel C. Steele and Rachel McCurdy, executors of the estate of John McCurdy, deceased (I.N. 4:591 WC Land Rec). The property contains 94 perches

**IN 4:591 Deed**

**May 16, 1849**

Grantee: Members of the Church Council of the Evangelical Congregation of St. John's Church in Hagerstown



Grantor: Samuel Steele, Executor of the estate of John McCurdy of Washington County and Rachel McCurdy, executor of the estate of John McCurdy  
Consideration of \$288. Being part of the same land conveyed to John McCurdy by James Bely in 1827 (II:650 WC Land Rec), being part of lot No. 285 in Hagerstown, numbered on the original plan. See Parcel D4

**Parcel G4**

**110:525 Deed**

**May 3, 1899**

Grantee: George C. Snyder

Grantor: Hamilton H. Miller and Lillie E. Miller

Consideration of \$5,000. The property is situated on the north side of West Baltimore Street, fronting on said street 53 feet and extending back about the same about 136.5 feet. Being bounded on the east by the property of Lille E. Miller and in the west by the Old Elextric Light Plat. Also being bounded by the alleyway leading from the east to the Washington County Railroad Company being immediately north of said Electric Light Plat. Being the same property conveyed to the said Lille E. Miller by Hamilton H. Miller in 1898 (107:592 WC Land Rec).

**Parcel G4.1**

**107:345 Deed**

**November 11, 1897**

Grantee: Lillie E. Miller

Grantor: Hamilton H. Miller

Consideration of \$2,900. The property is on the north side of West Baltimore Street, fronting said street about 66 feet and extending back 148 feet to the property of the heirs of Samuel H. Miller, deceased. Being the same property which was conveyed to the said Hamilton H. Miller by Samuel H. miller and wife in 1886 (88:361 WC Land Rec).

**88:361 Deed**

**January 1, 1886**

Grantee: Hamilton H. Miller

Grantee: Samuel H. Miller and Sarah A. Miller, his wife

The property is north of West Baltimore Street, fronting on said street for 99 feet and extending back north 148 feet to the old Presbyterian Church lot. Being a part of the same property which was conveyed to the said Samuel H. Miller by George W. Smith, Jr., executor in 1878 (77:182 WC Land Rec).

**77:182 Deed**

**March 29, 1878**

Grantee: Samuel H. Miller

Grantor: George W. Smith, Jr., executor of the estate of George W. Smith

Consideration of \$2,500. The property is on the west side of Potomac Street with a two-story dwelling house with a back building. Being lot No. 214 on Downin Map of Hagerstown and fronting about 82 feet on said South Potomac Street and running back about 240 feet. Being the same property which was conveyed by William Walker and wife to the said George W. Smith, deceased, in 1845 (OHW 2:874 WC Land Rec), also all that parcel of land along the southwest corner of the above described lot and fronting about 99 feet on West Baltimore Street. Also all that alleyway leading the Washington County Railroad to the east, conveyed by W. W. Walker and others to Smith in 1870 (WMcKK 2:538 WC Land Rec)

**WMcKK 2:538 Deed**

**April 18, 1870**

Grantee: George W. Smith

Grantor: William W. Walker and Annie M. Walker his wife, Thomas J. Mill and Elizabeth J. Mill, his wife, George W. Walker and Margaret Walker, his wife, of Washington County  
Consideration of \$80. The property extends from the lot now owned by George W. Smith and purchased by heirs from Mrs. Firey to the Washington County Railroad, along the south line of the lot belonging to the Presbyterian Church, being 10 feet in width, forming an alleyway.

**Parcel G4.2**

**107:592 Deed**

**January 24, 1898**

Grantee: Lille E. Miller

Grantor: Hamilton H. Miller, executor of the last will of Samuel H. Miller

Consideration of \$1,500. As the executor of the estate, at a public sale, Hamilton sold the property to his wife Lille E. Miller. The land is east of and adjoining the property of the Washington County Railroad and lies north of Baltimore Street. Being the same property which was conveyed to Samuel H. Miller in 1881 (81:135 WC Land Rec).

**81:135 Lease**

**May 3, 1881**

Grantee: Samuel H. Miller

Grantor: The Presbyterian Church of Hagerstown

The church is leasing to Samuel Miller for the term of 99 years. The property is bounded in the east by the lots of Samuel H. Miller and a certain David Wolf, on the south by a lot owned by the said Miller, on the west by the lands of the Washington County Railroad Company and in the north by the lot belonging to the Lutheran Church. Being part of the same lot devised to the Presbyterian Church by Hugh Kennedy in his last will and testament recorded in will book D at folio 163 and part of the lot of land conveyed to Kennedy by David G. Yost, trustee of the heirs of Jacob Sholl, deceased (OO:785 WC Land Rec). See Parcel D3.

**Parcel G5**

**121:655 Deed**

**April 1, 1904**

Grantee: George C. Snyder

Grantor: Christian W. Lynch and Caroline B. Lynch, his wife, William Jennings and Belle West Jennings, his wife of Harrisburg Pennsylvania

Consideration of \$2,000. The parcel being conveyed is on the north side of West Baltimore Street, having a frontage of 25 feet and running back on the west side 156 feet and on the east side 139 feet. The property is bounded by the property of the Washington County Railroad and the property formerly owned by Samuel Miller. Being the same land conveyed to Christian W. Lynch and William Jennings by Powell Evans in 1898 (108:97 WC Land Rec).

**108:97 Deed**

**February 28, 1898**

Grantee: C. Lynch and William Jennings

Grantor: Powell Evans of the City of Philadelphia and by H. Hughes

Nominal consideration. Being the land conveyed to the grantors (104:162 WC Land Rec).

**104:162 Deed**

**November 18, 1895**

Grantee: Powell Evans of the City of Philadelphia

Grantor: Schuyler Electric Company

Consideration of \$100. Being bounded in the north by Samuel Miller and on the west by the Washington County Branch of the Baltimore and Ohio Railroad Company. Being the same lot conveyed to the grantor by John M. Stonebraker and wife in 1889 (101:36).

**101:39 Deed**

**April 3, 1889**

Grantee: Schuyler Electric Company

Grantor: John M. Stonebraker and Laura L. Stonebraker his wife of Washington County  
Consideration of \$1000. Property is at the northeast corner of the intersection of West Baltimore Street and the Washington County Railroad in Hagerstown. Having a frontage of about 25 feet along the north side of West Baltimore Street and extending north along the east side of the Railroad 156 feet and being bounded on the north by the property of Samuel H. Miller and on the east by the property of Hamilton Miller being the same property which was conveyed by Jacob C. Dayhoff in 1885 (92:44), being the same premises upon which the electric light plant is now located.

**92:44 Deed**

**December 12, 1885**

Grantee: Jason M. Stonebraker

Grantor: Jacob C. Dayhoff and Emma S. Dayhoff his wife of Washington County  
Consideration of \$1,000. Being on the north side of West Baltimore Street, having a frontage of 25 feet and running back on the west side of the lot 156 feet and on the east side of the lot 139 feet and the width at the north end of the lot is 68 feet. Being bounded on the east and north by the lands of Samuel Miller and on the west by the lands of the Washington Branch of the Baltimore and Ohio Railroad Company a. Being the same lot conveyed to Dayhoff by Thomas E. Mittag executor in 1885 (87:632).

**87:632 Trustees Deed**

**July 14, 1885**

Grantee: Jacob C. Dayhoff

Grantor: Thomas E. Mittag, executor of the will of Mary Coney  
The will of Mary Coney is recorded in Liber Y Folio 343

## **APPENDIX B**

### **QUALIFICATIONS OF INVESTIGATORS**



**W. Brett Arnold, M.S., R.P.A.**  
**RPA 28887637**  
**APPLIED ARCHAEOLOGY AND HISTORY ASSOCIATES, INC.**  
**615 FAIRGLEN LANE**  
**ANNAPOLIS, MD 21401**  
**410.224.3402**

Mr. W. Brett Arnold serves as a project archaeologist at Applied Archaeology and History Associates, Inc. (AAHA). He received his B.A. in Archaeology and German Studies from the College of Wooster, graduating cum laude. He received his M.S. in Anthropology from the University of Wisconsin—Milwaukee, where he studied under European prehistorian Dr. Bettina Arnold. Mr. Arnold has experience conducting archaeological compliance and research projects for a variety of agencies, with duties including overseeing Phase I and II cultural resources surveys, construction monitoring, GIS and total station survey, and testing buried soil horizons in urban environments. He also has experience with burial excavation and recovery at historic cemeteries. Mr. Arnold's professional qualifications meet all U.S. Department of the Interior criteria for archaeologists and historians (36 CFR 61) and he is a member of the Register of Professional Archaeologists.

**EDUCATION**

*Master of Science in Anthropology*

2011 - 2014 University of Wisconsin, Milwaukee, Milwaukee, WI.

*Bachelor of Arts in Archaeology and German Studies*

2007 - 2011 College of Wooster, Wooster, OH.

**ARCHAEOLOGICAL FIELD EXPERIENCE AND EMPLOYMENT**

2018-Present PROJECT ARCHAEOLOGIST, Applied Archaeology and History Associates, Inc., Annapolis, Maryland, USA  
2016-2018 PROJECT ARCHAEOLOGIST, Commonwealth Heritage Group, Inc., Alexandria, Virginia, USA  
2014-2016 RESEARCH ARCHAEOLOGIST, Lost Towns Project/Anne Arundel County, Annapolis, Maryland, USA  
2013-2014 FIELD TECHNICIAN, Applied Archaeology and History Associates, Inc., Annapolis, Maryland, USA  
2013 FIELD TECHNICIAN, Historic Resources Management Service, Milwaukee, Wisconsin, USA  
2011-2013 PAID INTERN/FIELD TECHNICIAN, Commonwealth Cultural Resources Group, Inc., Milwaukee, Wisconsin, USA  
2011 LAB TECHNICIAN, Great Lakes Archaeological Research Center, Milwaukee, Wisconsin, USA

**PROFESSIONAL MEMBERSHIPS**

Register of Professional Archaeologists – 28887637

**MANDY MELTON, M.A., R.P.A.**  
**APPLIED ARCHAEOLOGY AND HISTORY ASSOCIATES, INC.**  
**31 OLD SOLOMONS ISLAND ROAD**  
**ANNAPOLIS, MD 21401**  
**410.224.3402**

Mandy Melton is an archaeologist for Applied Archaeology and History Associates, Inc. (AAHA). Melton has six years of professional archaeological experience and has received her M.A. in Archaeology and Heritage from the University of Leicester and holds a B.S. in Sociology and Anthropology from Towson University. She has extensive experience in prehistoric and historic archaeological site identification, evaluation, and data recovery in the Mid-Atlantic region. As a former independent archaeological consultant, she has piloted and contributed to research projects funded by numerous local, state and federal organizations including the Maryland State Highway Administration, the National Park Service, and the Maryland Historical Trust. Her work has involved, in addition to archaeological surveys, public engagement, mentoring volunteers and interns, architectural documentation and survey, magnetometer surveys, and managing/coordinating small-medium scale projects. In the compliance sector, Melton has been involved in numerous monitoring, field surveys, and mitigation projects for pipelines and superfund sites across the Mid-Atlantic and portions of the northeast region. She is also experienced in using GPS, total station data, and GIS in archaeological contexts. Melton meets the professional qualifications of the U.S. Department of the Interior criteria for archaeologists and historians and she is a member of the Register of Professional Archaeologists.

#### **EDUCATION**

- 2014 M.A. IN ARCHAEOLOGY AND HERITAGE**, University of Leicester, Leicester, U.K.  
**2011 B.S. IN SOCIOLOGY, ANTHROPOLOGY, AND CRIMINOLOGY**, Towson University, Towson, MD.

#### **ARCHAEOLOGICAL FIELD EXPERIENCE AND EMPLOYMENT**

- 2019 - Present** PROJECT ARCHAEOLOGIST, Applied Archaeology and History Associates, Inc. Annapolis, MD.  
**2017 - 2019** ASSISTANT PROJECT MANAGER, R. Christopher Goodwin & Associates, Inc. Frederick, MD.  
**2016 - 2017** FIELD TECHNICIAN (INDIVIDUAL SURVEYS), TRC Environmental. Lanham, MD.  
**2016** FIELD TECHNICIAN (INDIVIDUAL SURVEYS), Commonwealth Heritage Group, Inc. Alexandria, VA.  
**2013 - 2017** INDEPENDENT ARCHAEOLOGICAL CONSULTANT, Anne Arundel County's Lost Towns Project. Annapolis, MD.

#### **SELECTED CULTURAL RESOURCES PROJECTS**

*Archaeological Assessment of the National Institute of Standards and Technology (NIST) Gaithersburg Campus, Gaithersburg, Maryland.* Submitted to Metropolitan Architects & Planners (2019).

*Archaeological Monitoring for the Parking Lot Installation at St. Paul's Episcopal Church, Point of Rocks, Frederick County, Maryland.* Submitted to Vestry of St. Paul's Parish (2018).

*Phase I Archaeological Survey for the Proposed Whitewood Farm Mitigation Bank, The Plains, Fauquier County, Virginia.* Submitted to Mogensen Mitigation, Inc (2018).

*Excavations at the Aldridge Site (18AN1500). Emergency Excavation and Documentation of Five Endangered Archaeological Sites in Anne Arundel County, Maryland.* Submitted to the Maryland Historical Trust (2017).

*Anne Arundel County's Historic Beach Destinations: Report for the Learn S'Mores History Project: A Heritage Research and Public Outreach Initiative, focusing on Anne Arundel County's early 20th Century Beach Resorts and Communities.* Submitted to the Anne Arundel County Trust for Preservation (2016).

**JEANNE A. WARD, RPA**  
**APPLIED ARCHAEOLOGY AND HISTORY ASSOCIATES, INC.**  
**615 FAIRGLEN LANE**  
**ANNAPOLIS, MD 21401**  
**410.224.3402**

*Ms. Jeanne A. Ward, RPA*, a cultural resources management consultant with over 40 years of professional experience, is President of Applied Archaeology and History Associates, Inc. (AAHA). Ms. Ward's academic credentials include a BA in anthropology from the University of Georgia and an MA in anthropology from the University of Tennessee, Knoxville. Her experience encompasses both historic and prehistoric archaeology and historic structure identification and evaluation. Projects have ranged from cultural resource sensitivity studies, through location/identification surveys, evaluations of significance, National Register of Historic Places nominations, and large-scale data recovery excavations. Ms. Ward's professional qualifications exceed all U. S. Department of the Interior criteria for archaeologists and historians (36 CFR 61). In addition, she is a Registered Professional Archaeologist (RPA), a national evaluation and certification of professional qualifications. Ms. Ward is the author, co-author, or contributor to over 350 cultural resources management reports and has presented numerous papers at professional conferences.

**EDUCATION**

**1985 M.A. IN ANTHROPOLOGY**, University of Tennessee, Knoxville, TN.

**1978 B.A. IN ANTHROPOLOGY**, University of Georgia, Athens, GA.

*Cum Laude*

**ARCHAEOLOGICAL FIELD EXPERIENCE AND EMPLOYMENT**

**2000 - Present** PRESIDENT, Applied Archaeology and History Associates, Inc. Annapolis, MD.

**1998 – 1999** SOLE PROPRIETOR, Applied Archaeology and History Associates, Annapolis, MD

**1995 – 1998** SENIOR ARCHAEOLOGIST/HISTORIAN/WETLANDS SCIENTIST, IMA Consulting, Inc., Minneapolis, MN.

**1994 - 1995** PRESIDENT, Jeanne A. Ward, Inc. Consultant, Stony Creek Mills, Reading, PA.

**1991 - 1993** SOLE PROPRIETOR, Archaeologist and Cultural Resources Consultant, in Private Practice, Stony Creek Mills, Reading, PA.

**1989 - 1991** PROJECT ARCHAEOLOGIST, John Milner Associates, Inc., West Chester, PA.

**1986 - 1989** ASSISTANT ARCHAEOLOGIST, John Milner Associates, Inc., West Chester, PA.

**1984 - 1986** EDITORIAL ASSISTANT, Institute for Community and Area Development, University of Georgia, Athens, GA.

**1982 - 1984** FIELD DIRECTOR, University of Florida, Gainesville, FL.

**1982 - 1983** FIELD ARCHAEOLOGIST, Jeffrey Brown Institute of Archaeology, University of Tennessee, Chattanooga, TN.

**1979 - 1981** LABORATORY TECHNICIAN, University of Tennessee, Knoxville, TN.

**1977 - 1980** FIELD ARCHAEOLOGIST,

**PROFESSIONAL MEMBERSHIPS**

Society for Historical Archaeology

Council for Maryland Archaeology (Secretary – 2000 to 2004)

Council for Northeast Historical Archaeology

Preservation Maryland

Civil War Trust

American Cultural Resources Association (Board of Directors – 2001 – 2007, Executive Board 2008 - 2012)

# Appendix F Environmental Impact Study







## Draft Environmental Document Review

Hagerstown Multi-Use Sports and Events Facility  
**100 Summit Avenue, 140 Summit Avenue, 80 West  
Baltimore Street, 32 West Baltimore Street, and 37 West  
Antietam Street**  
Hagerstown, Maryland 21740

*Prepared For:*

**RK&K**  
700 East Pratt Street, Suite 500  
Baltimore, Maryland 21202

September 2020

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## 1.0 INTRODUCTION

On behalf of RK&K, Urban Green Environmental, LLC (Urban Green) has prepared this Environmental Document Review report for the property located at 100 Summit Avenue, 140 Summit Avenue, 80 West Baltimore Street, 32 West Baltimore Street, and 37 West Antietam Street in Hagerstown, Maryland (Site).

This document was prepared to assist with the potential development of a multi-use sports and events facility at the Site. The purpose of the report is to review and summarize all client provided documentation, identify data gaps in the existing due diligence efforts and potential remedial actions, evaluate potential regulatory oversight strategies, and to provide recommendations for next steps

Phase I and Phase II Environmental Site Assessments (ESAs) completed at the Site in 2012 and 2013 identified several environmental issues at the Site parcels. The Phase I ESA identified four *recognized environmental conditions (RECs)* related to historic Site operations: the historic use of the Site as a railroad yard, automotive repair, and printing facility; evidence of three prior gasoline filling stations across the Site; the presence of an out-of-use 1,000-gallon heating oil underground storage tank (UST); and the presence of a former dry cleaner. Further, vent and fill pipes, indicative of the presence of potential heating oil tanks, were identified on the exterior of two Site buildings, but those buildings could not be inspected, so the presence of tanks could not be confirmed.

A Phase II ESA was conducted to evaluate the potential for the RECs to have impacted the environmental condition of the Site. In total, 26 soil borings were advanced across the Site and 22 soil samples and three groundwater samples were collected from those soil borings and three temporary wells. Samples were analyzed for volatile organic compounds (VOCs), total petroleum hydrocarbons diesel range organics and gasoline range organics (TPH DRO/GRO), semi-volatile organic compounds (SVOCs), priority pollutant list (PPL) metals, and polychlorinated biphenyls (PCBs). Concentrations of arsenic and TPH DRO/GRO were identified in the soils above the Maryland Department of the Environment (MDE) Non-Residential Cleanup Standards, and concentrations of arsenic, benzene, beryllium, chromium, lead, mercury, naphthalene, nickel, 1,3,5-trimethylbenzene, and TPH DRO/GRO were detected above the MDE cleanup standards for groundwater. In addition, the Phase II report identified four areas of the property where additional study would be prudent due to the laboratory results and the elevated levels of VOCs identified using field screening equipment during the investigation.

This report was prepared for RK&K by Urban Green Environmental, LLC and is based in part on third party information not within the control of RK&K or Urban Green Environmental, LLC. While it is believed that the third-party information contained herein will be reliable under the conditions and subject to the limitations set forth herein, neither RK&K nor Urban Green Environmental, LLC guarantee the accuracy thereof.



## **2.0 SITE LOCATION AND DESCRIPTION**

### **2.1 Site Location and Description**

As described in the prior investigations, the approximately 7.5-acre Site consists of the parcels located at 140 Summit Avenue, 80 West Baltimore Street, 32 West Baltimore Street, and 37 West Antietam Street, and a portion of the 100 Summit Avenue property, in Hagerstown, Maryland. The Site is zoned as City Center-Mixed Use. At the time of the most recent environmental report completed in 2013, the Site contained the following improvements:

- 100 Summit Avenue: Herald Mail Company parking area
- 140 Summit Avenue: D&P Coin op Laundry
- 80 West Baltimore Street: Washington County Commissioners
- 32 West Baltimore Street: Baltimore Street Station Car Wash
- 37 West Antietam Street: Antietam Paper Company

According to online records, the Site is serviced by municipal water provided by the City of Hagerstown Water Division, sewer provided by the Hagerstown Wastewater Division, electric service by the City of Hagerstown Light Department and natural gas provided by Columbia Gas of Maryland.

The Site is accessed by Summit Avenue, which adjoins the Site to the west, West Antietam Street, which adjoins the Site to the north and West Baltimore Street which adjoins the Site to the south.

A Site plan is presented as Figure 1.

### **2.2 Environmental Setting**

#### **2.2.1 Topography**

As noted in the Phase I ESA (ECS 2012) as determined from the 7.5-minute USGS Topographic Map of the Hagerstown, MD/PA Quadrangle dated 1953 and photorevised in 1985, Site elevation is approximately 564 feet above mean sea level. The Site was noted to slope from the west to the east, and surface drainage on the Site appears to be directed to storm drains located on West Antietam Street, Summit Avenue, and West Baltimore Street.

As observed on Google Earth Pro, the nearest surface water body, an unnamed tributary of Antietam Creek, is located approximately 1,400 feet south of the Site.

## 2.2.2 Geology

As noted in the 2013 Phase II (Triad 2013), and according to the Geologic Map of Washington County, Maryland (1978), the Site lies within the Hagerstown Valley of the Valley and Ridge physiographic province and is underlain by the Stonehenge Limestone Formation. The general lithology of the Stonehenge Limestone Formation is described as gray, thin-bedded, coarse grained to conglometric oolitic calcarenite, with some dolomite. The lower layer is described as gray, thickbedded, fine grained algal limestone.

## 2.2.3 Lithology / Hydrogeology

Based on field observations made during the 2013 Phase II investigation, soil lithology at the Site consisted primarily of fill materials (coal dust, gravel) to depths of one to 6.5 feet below grade. Below the fill was generally silty clay and clay underlain by limestone. Drilling refusal on limestone was encountered between two and 24 feet below grade. Perched overburden groundwater was encountered in five of the soil borings advanced at the Site between seven and 16 feet below grade.

No information regarding groundwater flow was identified within the 2013 Phase II investigation report. It is noteworthy, that given the observed limestone bedrock, groundwater flow at the Site is anticipated to be complex and dictated by the karst aquifer system which would be anticipated to be highly connected to any nearby surface waters, affected by hydrological cycles, and as voids and channels within the limestone bedrock solubilizes, may change over time.

## 2.3 Site History

Based on a review of historic records included in the Phase I ESA, the majority of the Site was owned and operated by the Washington County Railroad Company from 1967 through 1980. Historic fire insurance maps showed the property contained numerous gas and oil tanks, railroad spurs and industrial use. According to online records maintained by the State Department of Assessment and Taxation, the southwestern Site building located at 80 West Baltimore Street (Washington County Commissioners) was constructed in 1950, the western Site building addressed as 140 Summit Avenue (D&P Coin Op Laundry) and northeastern Site building addressed as 37 West Antietam Street (Antietam Paper Company) were constructed in 1900, and the southeastern Site building, addressed as 32 West Baltimore Street (Baltimore Street Station Car Wash) was constructed in 1990.

## 2.4 Prior Environmental Investigations

### 2.4.1 Phase I ESA (2012)

In July 2012, ECS Mid-Atlantic, LLC completed a Phase I ESA (ECS 2012) at the Site. The scope of work of the Phase I ESA included a visual site survey, historic records review, and regulatory records review. As identified within the Phase I ESA, ECS identified four RECs, one *historic recognized environmental condition (HREC)*, and three Business Environmental Risks, as follows:

**RECs:**

- **Historic Site Use:** The majority of the Site was historically owned and operated by the Washington County Railroad Company from 1867 to 1980. The historic Sanborn fire insurance maps also revealed a history of numerous gas and oil tanks, railroad spurs (including a turntable), and industrial use. Railroad tracks are noted to often be associated with creosote timbers, herbicide applications, and possible fuel spills as part of the railroad operation. The historic use of the Site as a railroad yard, automotive repair, and printing (37 West Antietam Street) was considered to be a REC.
- **Historic Filling Stations:** Three filling stations were observed on the northwestern (Herald Mail Building), western (near D&P Coin Op), and southeastern portion of the subject on the 1951 Sanborn map. Historic gas stations operated with little, if any, regulation and are commonly associated with some degree of petroleum contamination.
- **Underground Storage Tank:** One 1,000-gallon heating oil UST was listed as out of use at the 140 Summit Avenue property (Coin-Op Laundry) and was recommended for removal.
- **Former Dry Cleaner:** A former dry cleaner operated at 140 Summit Avenue from prior to 1978 until approximately 2000.

**HRECs:**

- **Prior Leaking Underground Storage Tanks (LUSTs):** Two Site addresses were listed in the LUST database. The 100 Summit Avenue property (case number 96-0561WA) was identified with a case closed listing. Further, ECS noted that the MDE frequently closes cases with low levels of petroleum contamination present that are not a risk to human health or the environment. Future development grading activities and/or excavations may encounter petroleum contaminated material at the former tank location. If so, impacted material should be properly handled and disposed.

The 80 West Baltimore Street property (case number 95-2029WA) was listed as closed by MDE with no release or cleanup noted.

**Business Environmental Risks:**

- **Fill and Vent Pipes:** Fill and vent pipes were observed along the exterior walls of 25 and 37 West Antietam Street. Fill and vent pipes are commonly associated with heating oil aboveground storage tanks (ASTs) located in the basement of the structures. ECS was not

granted access to the buildings and could not assess the conditions of the tanks. ECS recommended assessing the AST conditions prior to redevelopment activities at the Site.

- **Age of Site Structures:** Given the age of construction of some onsite structures (buildings constructed prior to 1978), asbestos-containing materials and lead-based paint are possible. ECS recommended an asbestos and lead-paint survey for the subject prior to any demolition or renovation.
- **Radon:** The property is located in an EPA radon Zone 1, which means the area has a predicted average indoor radon screening level greater than 4 picocuries per liter (pCi/L). A level above 4 pCi/L is considered an environmental concern. ECS recommended mitigation be incorporated into future development plans.

Based on the identified RECs, ECS recommended a Phase II ESA consisting of soil and groundwater sampling within areas of concern at the Site. In general, Urban Green concurs with the results of the ECS Phase I ESA. However, in addition to the recommendations provided, it is noteworthy, that in accordance with the Code of Maryland Regulations (COMAR) Section 26.10, Urban Green would have recommended that any inactive UST present at the Site should be evaluated and closed in accordance with local, state, and federal requirements.

#### 2.4.2 Phase II ESA (2013)

In March 2013, Triad Engineering, Inc., completed a Phase II ESA (Triad 2013) at the Site to further evaluate the RECs identified in the Phase I ESA. The scope of the investigation consisted of the advancement of 26 soil borings (B-1 through B-26) to depths up to 24 feet below grade and the collection of 22 soil samples and three groundwater samples from across the Site. The soil borings were biased towards areas of the historic Site uses, suspected ASTs, the UST, and across the Site to provide general Site characterization.

Select soil samples were collected from 22 soil borings and submitted for fixed laboratory analysis of volatile organic compounds (VOCs), total petroleum hydrocarbons diesel range organics and gasoline range organics (TPH DRO/GRO), semi-volatile organic compounds (SVOCs), priority pollutant list (PPL) metals, and/or polychlorinated biphenyls (PCBs). Three grab groundwater samples were collected from the temporary groundwater monitoring wells and submitted for fixed laboratory analysis of VOCs, TPH DRO/GRO, SVOCs, PPL metals and/or PCBs.

Grab soil samples were collected from each soil boring and field screened for total VOCs using a photo ionization detector (PID). Elevated PID readings were observed in soil borings B-1, B-3, B-4, B-5, B-8, B-9, B-10, B-13, B-15, B-16, B-25, and B-26, ranging from 11 parts per million volume (ppmv) to 3,613 ppmv. One soil sample was collected from 22 of the 26 soil borings (no samples were collected from borings B-2, B-4, B-5, or B-11). Samples sent for fixed laboratory analysis were selected by



choosing the depth interval exhibiting the highest PID reading or the soil sample at the depth of refusal.

Following the collection of soil samples, soil borings B-8, B-9 and B-25 were completed as temporary groundwater monitoring wells at depths of 10, 13 and 18.5 feet below grade, respectively.

Results of the investigation identified concentrations of arsenic, mercury, TPH DRO, and TPH (C06-C10) in the soils above the 2018 MDE Cleanup Standards for Non-Residential Soil or the anticipated typical concentration (ATC). Arsenic was detected in concentrations in excess of the MDE Cleanup Standard for Non-Residential Soil of 3 milligrams per kilogram (mg/kg) in all 10 samples that were analyzed for PPL metals. Concentrations ranged from 6.6 mg/kg in sample B-9 10 to 29.0 mg/kg in sample B25. Mercury was detected at a concentration in excess of the ATC of 0.51 mg/kg in one of the 10 samples that were analyzed for PPL metals. Mercury was detected at 1 mg/kg in sample B-14.

TPH DRO was detected in concentrations in excess of the MDE Cleanup Standard of 620 mg/kg in three of the 21 samples that were analyzed for TPH DRO. TPH DRO exceeded the cleanup standard in samples B-7 3.5 (652 mg/kg), B-8 5 (663 mg/kg), and B-9 10 (875 mg/kg). Further, concentrations of TPH (C06-C10) were detected in concentrations in excess of the MDE Cleanup Standard for Non-Residential Soil of 620 mg/kg in two of the 21 samples that were analyzed for TPH (C06-C10). TPH (C06-C10) exceeded the cleanup standard in samples B-9 10 (692 mg/kg) and B-15 (650 mg/kg).

Concentrations of PPL metals, TPH, and VOCs were detected above their respective 2018 MDE Cleanup Standard for Groundwater. Specifically:

- Arsenic was detected at concentrations above the MDE Cleanup Standard for Groundwater of 10 micrograms per liter (ug/L) in both groundwater samples analyzed for metals, at concentrations of 62.7 ug/L (B-9 GW) and 626 ug/L (GW-25).
- Benzene was detected at concentrations above the MDE Cleanup Standard for Groundwater of 5 ug/L in two of the three groundwater samples at concentrations of 160 ug/L (B-8 GW) and 120 ug/L (B-9 GW).
- Beryllium was detected at concentrations above the MDE Cleanup Standard for Groundwater of 4 ug/L in both groundwater samples analyzed for metals, at concentrations of 5.9 ug/L (B-9 GW) and 54.2 ug/L (GW-25).
- Chromium was detected at concentrations above the MDE Cleanup Standard for Groundwater of 100 ug/L in both groundwater samples analyzed for metals, at concentrations of 176 ug/L (B-9 GW) and 1,190 ug/L (GW-25).
- Lead was detected at concentrations above the MDE Cleanup Standard for Groundwater of 15 ug/L in both groundwater samples analyzed for metals, at concentrations of 283 ug/L (B-9 GW) and 1,220 ug/L (GW-25).

- Mercury was detected at a concentration of 4 ug/L in sample GW-25, which exceeds the MDE Cleanup Standard for Groundwater of 2 ug/L.
- Naphthalene was detected at a concentration of 3.9 ug/L in sample B-8 GW and 0.98 ug/L in sample B-9 GW, both of which exceed the MDE Cleanup Standard for Groundwater of 0.17 ug/L.
- Nickel was detected at concentrations above the MDE Cleanup Standard for Groundwater of 73 ug/L in both groundwater samples analyzed for metals, at concentrations of 130 ug/L (B-9 GW) and 800 ug/L (GW-25).
- TPH DRO was detected in all three groundwater samples at concentrations of 1,900 ug/L (B-8 GW), 1,000 ug/L (B-9 GW) and 45,500 ug/L, respectively, which exceed the MDE Cleanup Standard for Groundwater of 47 ug/L.
- TPH (C06-C10) was detected in all three groundwater samples at concentrations of 2,500 ug/L (B-8 GW), 1,570 ug/L (B-9 GW) and 15,200 ug/L, respectively, which exceed the MDE Cleanup Standard for Groundwater of 47 ug/L.
- 1,3,5-Trimethylbenzene was detected at a concentration of 8.6 ug/L in sample B-8 GW and 9.4 ug/L in sample B-9 GW, both of which exceed the MDE Cleanup Standard for Groundwater of 6 ug/L.
- Zinc was detected at a concentration of 2,110 ug/L in sample GW-25, which exceeds the MDE Cleanup Standard for Groundwater of 600 ug/L.

Triad concluded that four areas of the Site may require environmental attention and cleanup based on the PID readings and laboratory analytical testing data. Triad then provided an estimated footprint of those four areas and provided a cost range to remove the soil in those areas. While Urban Green concurs that additional attention should be paid to those areas, there are substantial data gaps that prevent a more comprehensive understanding of the potential environmental concerns/subsurface impacts present at the Site and the associated bearing on project cost and schedule to address these impacts during future development activities.

## **2.5 Data Gaps**

Given the results of the Phase I and Phase II investigations, several data gaps exist that present challenges for evaluating the costs and schedule implications associated with the above environmental concerns during redevelopment of the Site.

### **2.5.1 Petroleum-Impacted Soil Excavation, Handling and Disposal**

The Phase I ESA noted the presence of an out-of-use, 1,000-gallon heating oil UST at the 140 Summit Avenue (D&P Coin-Op Laundry) property. A review of online *Facility Summary* maintained by the MDE Oil Control Program (OCP) indicates that three USTs, presumably the 1,000-gallon tank

identified in the Phase I and two 500-gallon USTs with unknown contents, were removed from the property in April 2018. An OCP *Case Information Report* retrieved from the OCP online database indicates that a case file related to the tanks was opened in January 2017 and closed in August 2018. A release was noted in the file, but no information is provided regarding a cleanup. While the case closed status typically indicates that no additional action or investigation is required for the facility, the possibility exists that residual contamination remains from the tanks and could be encountered if excavations are performed in that area of the Site. Copies of the MDE OCP Facility Summary and Case Information Report are included in Attachment A.

In the conclusions presented with its Phase II report, Triad identified four areas that might require environmental attention and cleanup based on PID readings taken during field screening efforts and as a result of the laboratory analytical testing. According to the Triad report, the four areas identified total approximately 24,916 square feet and are shown on Figure 1. Based upon the average overburden depth of 12 feet within the areas identified, Triad estimated the quantity of soil requiring remedial excavation could be approximately 298,992 cubic feet (11,073 cubic yards). At the time of their analysis, Triad estimated the cost to dispose of the excavated contaminated material within these areas would be approximately \$290,000 to \$320,000. This estimate was solely for soil disposal and did not include the excavation, transportation, backfilling, environmental oversight, and sampling that would be required to complete the remedial excavations. Additionally, it was noted that if the laboratory testing required for by the soil disposal facilities identified that the material for disposal was determined to be hazardous the cost for disposal could double.

Since the soil data used to generate the cost estimates provided in the report is now approximately eight years old, it is unlikely that a potential disposal facility would rely upon the old information. An assessment of current soil conditions would be required, and the data collection would need to be tailored to a specific facility's testing requirements. Examples of testing requirements from Clean Earth, both for their facility in Hagerstown, Maryland as well as their facility in New Castle, Delaware are provided in Attachment B.

### **2.5.2 Petroleum-Impacted Groundwater**

Elevated concentrations of petroleum, and petroleum-related compounds, were identified in the groundwater samples collected at the Site. However, there is no indication in the Triad report if light non-aqueous phase liquid (LNAPL), commonly referred to as free product, was observed or not. Given the elevated concentrations of petroleum identified, this is important information to know, as if LNAPL is present, under COMAR 26.10, notification would be required to the Maryland Department of the Environment (MDE) Oil Control Program (OCP) and additional action would be required.

### **2.5.3 Potential For Co-Mingled Contaminants in Soil and Co-Mingled Waste Characterization**

Another data gap pertaining to soil removal potentially relates to the Site history as a railyard or the historic import of fill. The soil boring logs presented in the Phase II report indicate that coal dust was

identified in at least half of the soil borings; however, it appears that none of the samples for laboratory analysis were collected from within the layers of coal dust. Coal dust often contains high levels of metals and SVOCs that can limit options for offsite disposal to local petroleum-impacted soil disposal facilities. For instance, most Maryland-permitted petroleum-impacted soil disposal facilities cannot receive soils containing elevated levels of metals or SVOCs, thus requiring disposal as a co-mingled waste at out-of-state facilities in Delaware or Pennsylvania. Figure 1 illustrates the estimated extent of onsite areas of presumed coal ash placement based upon the information presented in the Triad Phase II.

#### **2.5.4 Vapor Intrusion Conditions**

In accordance with the current ASTM standard for the performance of a Phase I ESA (E1527-13), the presence of an on-Site gasoline filling station, dry cleaner and storage tanks would be identified as a vapor intrusion condition in addition to be identified as a recognized environmental condition. However, the scope of work for the Phase II did not include a soil gas survey or evaluate for the potential for vapor intrusion at the property. It is also noteworthy, that given the karst conditions likely at the Site, a soil gas survey would be prudent to include testing over multiple seasons to evaluate potential seasonal changes in Site conditions.

Given the elevated levels of petroleum products identified in soil and groundwater at the Site and in the absence of soil gas data, a vapor intrusion risk should be assumed to exist at the Site and a vapor mitigation strategy should be incorporated into future development plans to ensure the adequate protection for human health and the environment. It is noteworthy, that vapor mitigation strategies would also likely address the concern raised in the Phase I ESA regarding potential radon infiltration.



### 3.0 PRELIMINARY REMEDIAL STRATEGIES

At this time, it is anticipated that the Site will be redeveloped with a multi-use sports and events facility, with associated landscaped areas, sidewalks, and limited parking.

While additional action or investigations may be prudent to refine the remedial strategy for the Site, at a minimum it would be anticipated that during construction, several remedial strategies, including soil removal, the installation of a containment remedy (environmental cap), and vapor mitigation, would be required. Typically the following strategies would be developed as part of Environmental Management Plan for the Site.

#### 3.1 Soil Removal

During the excavations for the future Site redevelopment, if the Site grading is not balanced (excess soil), if geotechnically unsuitable soils are present, and/or petroleum-saturated soils are identified, soil removal and off-site disposal may be required. Based on the existing soil data, additional soil characterization sampling must be completed to meet the requirements of the selected soil disposal facilities prior to offsite disposal.

Where possible, options should be explored to keep soils excavated during Site redevelopment activities onsite and under the environmental cap as outlined in Section 3.2. By limiting soil removals, remedial costs can be effectively minimized.

Excess soils designated for offsite disposal would need to be placed in designated stockpile area(s) of the Site and/or live-loaded for transport to an appropriately permitted facility or MDE-approved property. The nearest permitted facility to the Site is operated by Clean Earth in Hagerstown.

Designated stockpiled soil should be placed on plastic or impervious surface, covered completely with 6-mil plastic, so that the entire stockpile is encapsulated, and anchored to prevent the elements from affecting the integrity of the plastic containment. As required by an appropriate disposal facility, composite soil samples would be required for profiling/waste characterization. It is anticipated that at a minimum, each composite sample would be submitted to a fixed laboratory for the following analyses: TPH DRO/GRO, SVOCs, PPL Metals and any additional analysis required by the selected disposal facility and/or MDE.

All excess rubble or debris excavated from the Site should be disposed in accordance with applicable local, State, and federal laws and regulations.

Please note that the Maryland Department of the Environment (MDE) Land Restoration Program (LRP) has published guidance and standards if soils were to be considered for transport and re-use

at another redevelopment property. This guidance should be strictly adhered to for any soils moved off-Site for re-use.

In addition to the above, it is noteworthy, that the MDE LRP also provides guidance regarding the re-use of concrete and masonry materials at properties. Specifically, inspection and/or testing is typically required if concrete and masonry materials are proposed to be crushed and re-used as fill at a property.

### **3.2 Containment Remedy (Cap)**

In the experience of Urban Green, where remediation of a Site media (e.g. soil, groundwater, soil gas) to the MDE Cleanup Standard is not feasible, alternatives are implemented to eliminate exposure pathways. A commonly approved method would be capping or a containment remedy. It is noteworthy, that containment remedies do not reduce the toxicity and volume of the contaminants. Continued maintenance of the containment remedy would be required (annual inspections and repairs) to ensure long term effectiveness and limit the mobility of Site contaminants in the future.

The containment remedy presented here would provide a pathway for eliminating the exposure pathway from the media of concern at the Site (surface and subsurface soil, groundwater, potential soil gas) to the potential receptors (future onsite commercial workers and visitors). Health and safety protocols should be implemented during the construction phase of the redevelopment to ensure construction workers are not exposed to an unacceptable risk.

Containment remedies are intended to minimize the threat to human health and the environment by eliminating potential contact with the impacted soil and groundwater. This containment remedy would consist of one or more of the following capping techniques across the entire Site:

- Concrete covered areas (future building foundations/sidewalks) (see Figure 2):
  - Repair (including application of new concrete cover) to ensure that concrete paved areas consists of a minimum 4- to 5-inch concrete slab and are in good condition or
  - Placement of a minimum 4- to 5-inch concrete slab-on-grade
- Asphalt paved areas (existing and future exterior) (see Figure 2):
  - Repair (including application of new asphalt cover) to ensure that asphalt paved areas consists of a minimum 8-inch combination of road base and asphalt and are in good condition or
  - Placement of minimum of 8-inch combination of clean fill and/or road base and asphalt.
- Landscaped areas (see Figure 3):
  - Placement of a minimum two-foot combination clean fill and/or topsoil over an MDE approved geotextile fabric material/marker fabric material.

The following report sections provide additional details regarding the construction and types of containment remedies.

### **3.2.1 Existing Concrete Covered Areas**

If during redevelopment portions of remnant concrete building slabs need to be restored and/or resurfaced, the following general procedures would need to be implemented within these areas:

- Inspection of the existing concrete covered areas.
- Repair (e.g. sealing or pouring new concrete) to ensure the existing concrete surface is competent and a minimum 4-inch to 5-inch in thickness.

### **3.2.2 Existing Pavement Covered Areas**

If during redevelopment portions of existing asphalt paved areas may need to be restored and/or resurfaced, the following general procedures would need to be implemented within these areas:

- Inspection of the existing asphalt paved areas.
- Repair (including application of a new asphalt cover) to ensure that asphalt paved areas consist of a competent and continuous cap of a minimum 8-inch combination of road base and asphalt.

Cross sections detailing the proposed composition of the impervious surface layers for existing asphalt paved and concrete covered areas are presented on Figure 2.

### **3.2.3 New Paved and Concrete Covered Areas**

During redevelopment, certain areas of the Site will likely be paved with new asphalt or concrete. These areas would need to be paved in accordance with the following procedures:

- Regrade the Site as needed.
- Placement of an 8-inch total thickness asphalt pavement and clean fill sub-base, or placement of a 4- to 5-inch thick concrete slab.

Cross sections detailing the proposed composition of the impervious surface layers for new asphalt paved and concrete covered areas are presented on Figure 2.

### **3.2.4 Landscaped Areas**

During redevelopment of the Site, landscaped areas may be created. In these areas, construction would need to adhere to the following protocols:

- Regrade the Site as needed.
- Placement of an MDE-approved non-woven geotextile fabric with a minimum weight of four ounces per square yard.

- Placement of a two-foot clean fill layer.
- No current Site soils should be used as clean fill without an evaluation demonstrating that the materials meet appropriate MDE cleanup criteria.

A cross section detailing the proposed composition of the landscaped areas is presented on Figure 3. Landscape plants should be limited to those with root systems which will not penetrate the geotextile/marker barrier.

### **3.3 Vapor Mitigation**

Given the petroleum impacts observed in soil and groundwater at the Site during the previous Phase II investigation, in the absence of additional Site data, the design and construction of any future buildings on the property should include the installation of a vapor mitigation system that will protect occupants of the buildings from exposure to vapors from underlying soils or groundwater. Should a soil gas survey indicate that a vapor mitigation remedy is recommended for the Site, it should be designed to minimize the potential for complete exposure pathways that could result in an unacceptable risk to future receptors (i.e. visitors and workers) by preventing the migration of soil vapors into indoor air. The most common remedies approved by the MDE that can be integrated into the design of a building include the placement of an engineered vapor barrier and a passive sub-slab depressurization system (excluding open air structures or mechanically vented parking garages).

This potential vapor mitigation system typically consist of two components:

1. Placement of an engineered vapor barrier beneath all areas of future buildings, as well as beneath stairwells, elevator shafts and mechanical rooms; and,
2. Installation of a sub-slab depressurization system beneath first floor areas with an intended occupied use.

#### **3.3.1 Engineered Vapor Barrier**

In the experience of Urban Green, engineered vapor barriers can vary widely; an engineered vapor barrier (such as Stego® Wrap 15-Mil or VAPORBLOCK® PLUS™, 20 mil) would be recommended to be installed beneath all portions of the onsite building where occupied spaces are constructed at grade. The selected vapor barrier materials should be designed for the mitigation of VOCs. General design specifications include the following:

- The vapor barrier should maintain a permeance of less than 0.01.
- Penetrations (utilities, pipes, cables, conduits, etc.) must be sealed in accordance with the construction specifications and the manufacturer’s recommendations.
- The vapor barrier should be sealed to the foundation components in accordance with the manufacturer’s specifications.
- The vapor barrier should extend below any pits or sumps, if present.
- Lap seams should be taped in accordance with manufacturer’s specifications.



- Smoke testing should be performed following installation of the vapor barrier to check for potential leaks. Any area where leaks are identified will be corrected per the manufacturer's specification.

### **3.3.2 Sub-Slab Depressurization System**

The purpose of a passive SSDS/under-slab venting system is to create a negative pressure field directly beneath the future building and on the outside of the future building foundation. VOCs, if present, will be caught within this negative pressure field and collected via below grade perforated piping and piped to ambient discharge points (roof vents).

If required, the SSDS should be installed beneath the entire structure. VOCs caught within this negative pressure field are collected and piped to ambient discharge point(s). A typical passive venting system design includes either: a) the installation of an open-ended polyvinyl chloride (PVC) pipe system in a layer of sub-slab gravel/stone beneath the concrete slab-on-grade; or b) the installation of a modular prefabricated gas venting layer. A vapor barrier should then be placed above the selected vapor collection system, as applicable (see above Section) and a vertical riser PVC vent pipe. Specifically, installation shall include:

- Placement of a uniform, layer of clean aggregate/stone as sub-slab material; permeable sub-slab material thickness shall be a minimum of 4 inches.
- A vapor collection system, consisting of either:
  - A minimum two-inch diameter perforated PVC piping system embedded horizontally into the sub-slab aggregate before the slab is poured. The two-inch diameter perforated piping shall be placed on a minimum of 30-foot centers running across the footprint of the select building foundation areas, or,
  - A modular prefabricated gas venting layer (GeoVent) installed directly on the subgrade.
- Placement of an engineered vapor barrier in areas of potential ground-floor occupancy.
- Fresh air intakes.
- Vents to the roof; the vents shall be a minimum of 25 feet from air intakes, windows and doors.

Any penetrations and entryways through the slab must be sealed against vapor intrusion; further, the passive SSDS system should be designed such that it can be upgraded to an active (blower assisted) system if necessary.

#### 4.0 POTENTIAL REGULATORY OVERSIGHT

To date, no federally-defined hazardous materials have been identified at the Site. As a result, the remedial strategies discussed in Section 3.0 can be self-implemented without oversight from a regulatory program, presuming adherence with all applicable federal, state and local regulations, as well as the requirements of any facility receiving soils from the property. However, prior to the commencement of redevelopment activities, it is prudent to consider regulatory oversight. Oftentimes lenders or other fiduciary partners, business entities or future operators of a property require, or strongly prefer, that properties achieve closure through a State regulatory program prior to proceeding with development. In addition, conditions may be identified during the redevelopment process, such as the presence of free product in soil or groundwater, which would require a notification to the MDE.

Therefore, consideration should be given to enrolling the Site in an MDE-overseen regulatory program.

The two programs most likely to apply to this property both fall under the jurisdiction of the MDE Land Restoration Program (LRP): the Voluntary Cleanup Program (VCP) or the Controlled Hazardous Substances (CHS) Program. Both programs apply identical MDE-established, risk-based cleanup standards to ensure that environmental conditions are adequately protective of future Site workers, visitors and occupants. At the time of application, each program would require the submission of a current Phase I ESA or Phase I ESA Update (conducted within 360 days of application) and for this property, a current Phase II ESA (conducted within one year of the date of application).

Upon review of the documentation, each program may require additional delineation of the petroleum impacts at the property and the development of a comprehensive corrective action/response action plan that would be implemented during the redevelopment process, but each program also provides flexibility for reaching project completion. Upon completion of a corrective action, each program would also likely require the preparation and recordation of an environmental covenant that will codify land use restrictions placed upon the Site to ensure the continued protection of human health and the environment as well as the maintenance of the environmental remedies implemented in perpetuity. Copies of programmatic flow charts illustrating the VCP and CHS processes are included in Attachment C.

#### 4.1 Voluntary Cleanup Program

The VCP was created by legislation passed in 1997, and amended in 2004, for the purpose of encouraging the investigation, cleanup, and redevelopment of eligible properties with known or perceived contamination from controlled hazardous substances or oil or petroleum. The statute requires that the VCP protect public health and the environment, accelerate cleanup of properties, and provide liability releases and finality to Site cleanup.

To receive the maximum benefit from the program, an applicant must be established as an inculpable person, defined as a person (or entity) who, at the time of application for participation in the VCP, has no prior or current ownership interest in the property and has not caused or contributed to contamination at the eligible property. Once the MDE designates a participant as an inculpable person, the person is not liable for existing contamination identified in the submitted application at the Site. The inculpable person is only liable for new contamination or the exacerbation of the existing contamination. If the property is owned or operated by a State, county, or municipal government or other political subdivision of the State, the property is subject to similar liability protection as an inculpable person except in the case of gross negligence or willful misconduct.

To enroll in the VCP, an application must be submitted to MDE, along with a \$6,000 application fee. The VCP also requires public notification, and a sign would have to be posted at the property for 30 days announcing the application and inviting public comment. MDE has 45 days to review the application, and upon completion of the review, MDE may determine that the application is incomplete and request additional information; approve the application and issue a No Further Requirements Determination (NFRD) stating that there are no further requirements related to the investigation of controlled hazardous substances (CHS) or petroleum (oil) at the eligible property; or approve the application and advise the applicant that a Response Action Plan (RAP) must be developed to address contaminants of concern at the property. At the time of approval of an application, the Department will also confirm the participant status as an inculpable or responsible person.

Given the contamination identified at the property, it is likely that a RAP would be required, and per program guidance, the RAP must be submitted within 18 months of acceptance into the VCP. Upon submittal of the proposed RAP, a public informational meeting is required to provide the public with an opportunity to learn about the proposed RAP and submit comments. The public participation and review process can take a maximum of 75 days; upon completion of the review, MDE may approve the RAP or request modifications. MDE has an additional 30 days to review subsequent modifications to the RAP.

Once a RAP is approved and a bond or other security is submitted, the RAP implementation can begin. Throughout the RAP implementation process, the Site will be subject to oversight from its VCP project manager, and the participant's environmental consultant is required to submit regular project status reports. Upon completion of RAP activities, the environmental consultant must prepare a Response Action Completion Report for review and approval by MDE. When the VCP determines that the RAP was completed to its satisfaction, a Certificate of Completion (COC) is issued, most likely with the requirement for the recordation of an environmental covenant as described above. VCP also requires the payment of a \$2,000 fee upon issuance of the COC.

Following receipt of the COC, if the participant is a tax paying entity and received inculpable status, the property would be eligible for a Brownfields tax credit. Washington County implemented its Brownfields Property Tax Credit Ordinance in August 2020, and the credit can be for up to 70 percent of the incremental increase in the property tax assessment following cleanup for up to 10 years, depending upon the cost of the remedial activities or if the property is located within an Enterprise Zone. According to the June 2012 Hagerstown/Washington County Enterprise Zone Map, the property appears to be located within the Enterprise Zone.

#### **4.2 Controlled Hazardous Substances Program**

As an alternative to the VCP, the owner of a contaminated property can request oversight from the LRP CHS Enforcement Division by submitting a written request and agreeing to cost recovery for the time spent on providing the technical assistance. As with the VCP, CHS oversight would include Departmental review and comment of environmental assessment reports, work plans, and/or proposed investigation/remediation strategies.

Properties receiving oversight from the CHS enforcement division are not subject to the public participation requirements or regulatory review timelines required by the VCP. As a result, document reviews can be completed more quickly, usually within two to four weeks. As described above, CHS would also likely require a remedial plan to be developed; in this case a Corrective Action Plan (CAP) would be developed and submitted for review. Implementation of the CAP would also require oversight by the project manager and the submission of progress reports and a Completion Report by the environmental consultant. Following a review of the Completion Report, and presuming the Department's satisfaction with its findings, a No Further Action (NFA) letter would be issued. In this instance, the NFA would also likely contain a requirement to record an environmental covenant and the ongoing inspection and maintenance of the environmental remedies employed at the Site. The CHS employs cost recovery for its oversight and bills the participant on a semi-annual schedule for its review time, at rates ranging from approximately \$40 to \$70 per hour.

Oversight from the CHS program does not provide the liability protections of the VCP, nor would it provide eligibility for the tax credit upon completion.



## 5.0 NEXT STEPS

A review of the existing environmental reports for the Site indicates that there are environmental issues that are recommended to be addressed prior to and during the proposed redevelopment of the property. Since the Phase I ESA is more than eight years old, an updated Report is recommended to examine current Site conditions and review any new environmental documentation, such as the records of the onsite UST removals conducted in 2018.

In addition, there are several other data gaps at present; however, these data gaps may be best addressed following a review of proposed Site plans. An optimal remediation strategy would limit the amount of soil to be disturbed or requiring offsite disposal. With a careful review of future Site plans and areas of proposed cut and fill across the Site, an appropriate work plan could be developed to carefully define the limits of disturbance and minimize the amount of soil characterization sampling required.

Further, prior to the construction of new structures at the Site, in the absence of a multi-seasonal soil gas sampling investigation, vapor mitigation should be included in the development plans. The soil and groundwater data collected in 2012 indicates the presence of petroleum-related compounds in soil and groundwater across the property. These compounds can create a vapor intrusion risk, and it is much more cost effective to design a vapor mitigation strategy prior to construction rather than trying to retrofit a building upon its completion.

The project management team should determine with its stakeholders if oversight from MDE is needed during the construction process. While the contaminants identified during the previous investigation may not require state regulatory involvement, there can be value to the project by enrolling the Site into an MDE-overseen program. The decision should be based upon the project's ownership structure, financial partners, tenant expectations and project timing.

If oversight from MDE is deemed desirable, the first step should be to request a pre-application or pre-development meeting where the initial findings can be presented, and a discussion started regarding plans for additional investigations that would be required by the Department. MDE can provide valuable, informal technical guidance during these preliminary meetings. Although no guidance would be considered official until the property is formally enrolled in one of its programs, pre-application meetings tend to serve as a valuable litmus test to judge if development plans will match well with MDE expectations. It is also important to note that MDE would expect an updated Phase I be submitted at the time of any program enrollment.

With or without MDE oversight, final construction documents should include a formal remediation plan that addresses the appropriate handling and disposal of soil and groundwater on the property. The plan should also address vapor mitigation, if necessary, and outline any steps necessary to protect the health and safety of construction workers during the redevelopment process.

## 6.0 REFERENCES

City of Hagerstown, Maryland. 2012. *Enterprise Zone Map*.

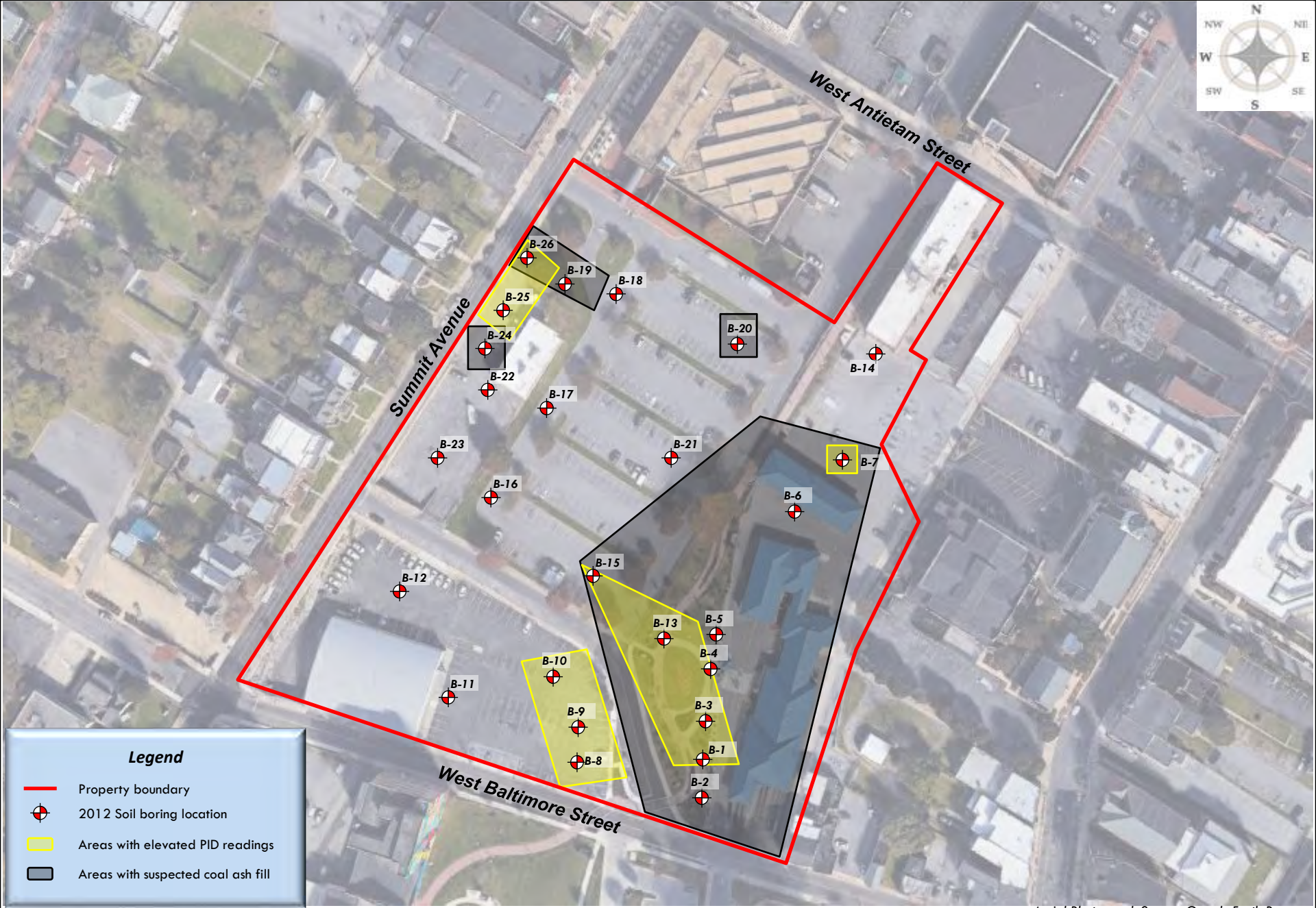
<https://www.hagerstownmd.org/DocumentCenter/View/1445/Enterprise-Zone-Map?bidId=>. Accessed September 11, 2020.

ECS Mid-Atlantic, LLC. 2012. *Phase I Environmental Site Assessment Report, Hagerstown Baseball Site. Hood Street, Hagerstown, Washington County, Maryland, 21740*. July.

Greene, Julie E. 2020. "Washington County adopts tax credit for Brownfield sites." *The Herald-Mail* [Hagerstown], August 12, [https://www.heraldmillmedia.com/news/local/washington-county-adopts-tax-credit-for-brownfield-sites/article\\_5843c88f-c055-5ab9-a52c-7670f5fbd55c.html](https://www.heraldmillmedia.com/news/local/washington-county-adopts-tax-credit-for-brownfield-sites/article_5843c88f-c055-5ab9-a52c-7670f5fbd55c.html). Accessed September 11, 2020.

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Triad Engineering, Inc. 2013. *Phase II ESA, Proposed Multi-Use Sports and Events Center City of Hagerstown, Maryland*. March.



**Legend**

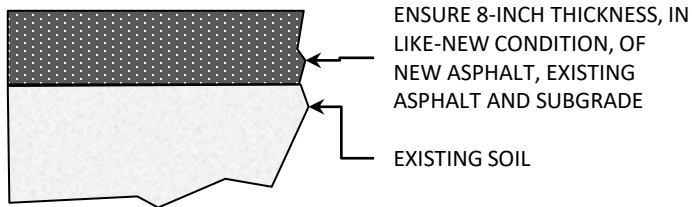
- Property boundary
- 2012 Soil boring location
- Areas with elevated PID readings
- Areas with suspected coal ash fill

Aerial Photograph Source: Google Earth Pro

**EXISTING PAVING SECTION DETAIL – RESTORE**

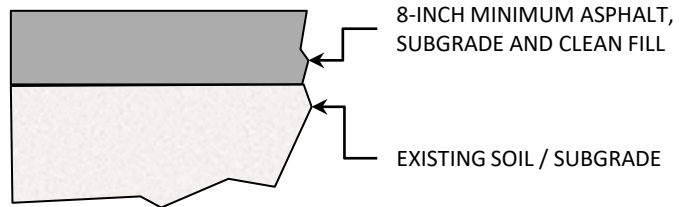
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**NEW PAVING SECTION DETAIL**

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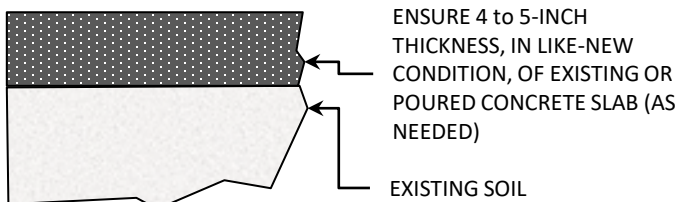
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1. DETAIL NOT FOR CONSTRUCTION
2. DETAIL ADDRESSES ENVIRONMENTAL CONCERNS AND DOES NOT ADDRESS CIVIL OR GEOTECHNICAL CONCERNS. ENGINEER SHOULD EVALUATE FOR CONSTRUCTION PURPOSES.
3. PAVEMENT SECTION: IMPERVIOUS

**EXISTING CONCRETE SECTION DETAIL – RESTORE**

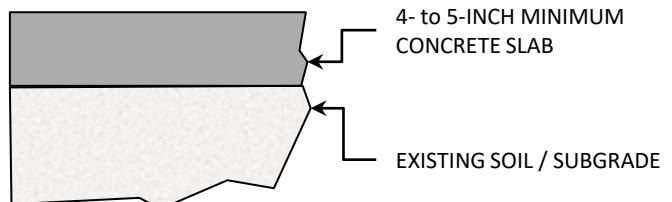
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**NEW CONCRETE SECTION DETAIL**

NOT TO SCALE



NOTES:

1. DETAIL NOT FOR CONSTRUCTION
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3. PAVEMENT SECTION: IMPERVIOUS

Figure 2 Cross Section Showing Proposed Cap Construction in Asphalt and Concrete Covered Areas  
Hagerstown Multi-Use Sports and Events Facility  
Hagerstown, Maryland

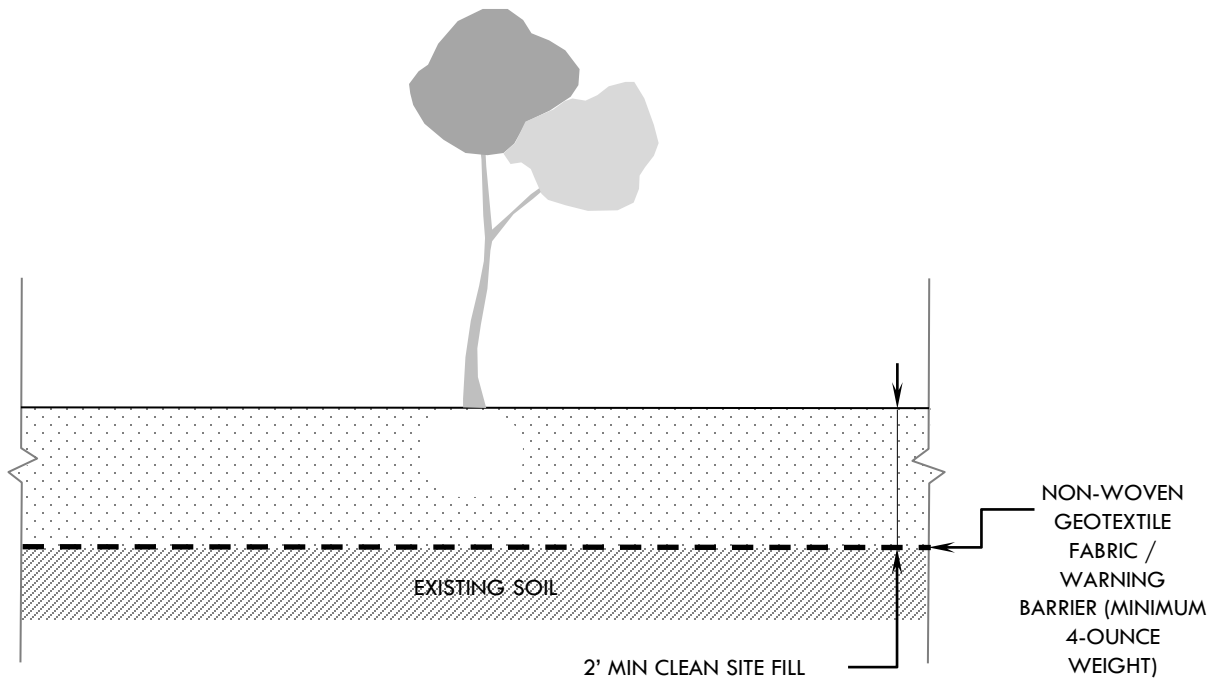
Date:  
September 2020

Approximate Scale:  
Not to Scale

Figure:  
2

Project Number:  
305-001-20





**TYPICAL LANDSCAPE AREA DETAIL**

NOT TO SCALE

NOTES:

1. DETAIL NOT FOR CONSTRUCTION
2. DETAIL ADDRESSES ENVIRONMENTAL CONCERNS AND DOES NOT ADDRESS CIVIL OR GEOTECHNICAL CONCERNS. ENGINEER SHOULD EVALUATE FOR CONSTRUCTION PURPOSES.

Table 1 - Phase II Soil Analytical Summary - Hits Only  
Proposed M.U.S.E.C. Hagerstown, Maryland 21740

ANALYTE	MDE Non-Residential Cleanup Standard (2018) <sup>(1)</sup>	ATC <sup>(2)</sup>																								
			B-1 4.5	B-3 4.5	B-6 10	B-7 3.5	B-8 5	B-9 10	B-10 5	B-12 2	B-13	B-14	B-15	B-16	B-17	B-18	B-19	B-20	B-21	B-22	B-23	B-24	B-25	B-26		
			Date Sampled	9/7/12	9/7/12	9/7/12	9/7/12	9/7/12	9/7/12	9/7/12	9/7/12	9/7/12	12/4/12	12/4/12	12/4/12	12/4/12	12/4/12	12/4/12	12/4/12	12/4/12	12/4/12	12/4/12	12/4/12	12/4/12	12/4/12	12/4/12
			Depth of Sample	4.5 feet	4.5 feet	10 feet	3.5 feet	5 feet	10 feet	5 feet	2 feet	10-12 feet	6 feet	7.5 feet	5 feet	12 feet	4 feet	6.5 feet	6.5 feet	9.5 feet	3.5 feet	7 feet	5 feet	12 feet	16 feet	
			PID reading (ppmv)	110	1,330	0	110	1,815	3,008	3,613	0	306	0	2,678	11	0	0	0	0	0	0	0	1,200	1,384		
			% moisture	22.6	25.2	24.9	19.4	20.9	40.9	20.9	20.1	22.8	27.9	44.9	13.8	21.3	16.4	11.5	19.2	19.0	22.0	21.9	20.5	27.0	28.8	
<b>Volatile Organic Compounds (SW8260B / mg/kg)</b>																										
Acetone	61,000	NA		0.0783	0.453	0.0264	ND	0.452 J	2.89	0.0673	ND	ND	0.017	ND	ND	0.0063 J	0.0062 J	0.0056 J	---	0.050	ND	ND	ND	0.025 J	0.066	
Benzene	5.1	NA		0.0011 J	0.0064 J	ND	ND	0.345	1.96	0.0035 J	ND	ND	ND	ND	0.0015 J	ND	ND	ND	---	ND	ND	ND	ND	ND	ND	
Total BTEX	---	NA		ND	0.0460	ND	ND	1.69	18.6	0.0186 J	ND	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
Carbon disulfide	350	NA		ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	---	ND	ND	ND	ND	0.0097 J	0.0047 J	
Cyclohexane	---	NA		---	---	---	---	---	---	---	---	2.2	0.0024 J	ND	ND	ND	ND	ND	---	ND	ND	ND	ND	0.0045 J	0.58	
Ethylbenzene	25	NA		ND	0.0088	ND	ND	0.630	13.1	0.0186	ND	ND	ND	ND	ND	ND	ND	---	ND	ND	ND	ND	ND	ND	ND	
Isopropylbenzene (Cumene)	990	NA		---	---	---	---	---	---	---	---	0.32	ND	1.6	ND	ND	ND	ND	---	ND	ND	ND	ND	ND	0.23	
p-Isopropyltoluene	---	NA		---	---	---	---	---	---	---	---	0.14 J	ND	0.29 J	ND	ND	ND	ND	---	ND	ND	ND	ND	ND	0.065	
2-Butanone (MEK)	19,000	NA		ND	0.139	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	---	ND	ND	ND	ND	ND	ND	
Methylcyclohexane	---	NA		---	---	---	---	---	---	---	---	5.9	0.0048 J	28.3	0.0045 J	0.0027 J	ND	0.0028 J	---	0.0038 J	ND	ND	0.0034 J	0.013 J	5.0	
Methylene Chloride	320	NA		ND	0.0039 J	ND	ND	ND	ND	ND	ND	ND	0.0031 J	ND	ND	ND	ND	0.0014 J	---	0.0055 J	0.0031 J	0.0027 J	0.0064	0.0045 J	ND	
4-Methyl-2-pentanone (MIBK)	14,000	NA		ND	ND	ND	ND	ND	ND	0.190	ND	ND	ND	ND	ND	ND	ND	ND	---	ND	ND	ND	ND	ND	ND	
Naphthalene	17	NA		---	---	---	---	---	---	---	---	ND	ND	ND	0.014	ND	ND	ND	---	ND	ND	ND	0.0064	0.0096 J	0.011 J	
1,2,4-Trimethylbenzene	180	NA		---	---	---	---	---	---	---	---	ND	ND	ND	0.0092	ND	ND	ND	---	ND	ND	ND	0.0071	ND	ND	
1,3,5-Trimethylbenzene	150	NA		---	---	---	---	---	---	---	---	ND	ND	ND	0.0027 J	ND	ND	ND	---	ND	ND	ND	0.0019 J	ND	0.061	
Tetrachloroethene	39	NA		ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	---	ND	0.0014 J	ND	ND	ND	ND	
Toluene	4,700	NA		ND	0.0047 J	ND	ND	0.204 J	0.810	0.0039 J	ND	ND	ND	ND	ND	ND	ND	ND	---	ND	ND	ND	ND	ND	ND	
m&p-Xylene	250	NA		ND	0.0372	ND	ND	0.720	2.72	0.0047 J	ND	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
o-Xylene	250	NA		ND	0.0044 J	ND	ND	0.149 J	0.394 J	ND	ND	---	---	---	---	---	---	---	---	---	---	---	---	---	---	
Xylene (Total)	250	NA		ND	0.0416	ND	ND	0.868	3.11	0.0047 J	ND	ND	ND	ND	0.0051 J	ND	ND	ND	---	ND	ND	ND	0.010 J	ND	ND	
<b>Semi-Volatile Organic Compounds (SW8270B / ug/kg)</b>																										
2-Methylnaphthalene	300	NA		---	ND	---	---	---	10.4	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	ND	---
Naphthalene	17	NA		---	ND	---	---	---	5.41	---	---	---	---	---	---	---	---	---	---	---	---	---	---	---	ND	---
<b>Priority Pollutant List Metals (SW6020A / mg/kg)</b>																										
Antimony	47	6		ND	ND	ND	---	ND	ND	---	---	ND	1.1	ND	---	---	---	---	ND	---	---	---	---	ND	---	
Arsenic	3	1.83 <sup>(3)</sup>		21.5	12.8	21.0	---	8.0	6.6	---	---	9.6	8.1	18.9	---	---	---	---	6.6	---	---	---	---	29.0	---	
Beryllium	230	0.66		1.5	1.1	1.6	---	1.2	0.43	---	---	1.4	0.84	2.4	---	---	---	---	0.76	---	---	---	---	3.2	---	
Chromium	---	28.00		33.3	33.8	34.5	---	24.3	11.5	---	---	33.3	19.3	45.3	---	---	---	---	22.2	---	---	---	---	42.8	---	
Copper	4,700	12		13.3	6.0	11.4	---	10.1	9.9	---	---	15.6	23.7	25.8	---	---	---	---	10.5	---	---	---	---	19.3	---	
Lead	800	45		26.8	25.5	28.8	---	19.3	24.2	---	---	24.0	107	40.9	---	---	---	---	12.6	---	---	---	---	25.8	---	
Mercury	---	0.51		0.070 J	0.056 J	0.055 J	---	0.071 J	0.099 J	---	---	0.060 J	1.0	0.22	---	---	---	---	0.038 J	---	---	---	---	0.11 J	---	
Nickel	2,200	13		22.6	14.4	26.0	---	17.9	8.5	---	---	24.5	15.8	46.9	---	---	---	---	12.9	---	---	---	---	42.3	---	
Selenium	580	2.2		1.3	1.2	1.5	---	0.84	1.4	---	---	1.4	1.0	1.4	---	---	---	---	1.4	---	---	---	---	ND	---	
Silver	580	0.9		ND	0.20 J	0.30 J	---	ND	ND	---	---	ND	0.44 J	0.38 J	---	---	---	---	ND	---	---	---	---	0.23 J	---	
Zinc	35,000	63		42.3	28.9	53.7	---	27.2	27.6	---	---	35.0	50.7	134	---	---	---	---	24.6	---	---	---	---	83.9	---	
<b>Total Petroleum Hydrocarbons (SW6020 / mg/kg)</b>																										
Diesel Components	620	NA		6.4 J	48.3	6.6 J	652	663	875	67.0	7.8 J	427	5.8 J	509	87.8	5.9 J	17.2	230	---	13.6	5.8 J	ND	69.4	295	19.7	
Gasoline Range Organics	620	NA		8.3 J	151	ND	51.1 J	444	610	103	2.9 J	58.2	ND	615	ND	ND	ND	4.6 J	---	ND	ND	ND	2.9 J	23.2	147	
TPH (C06-C10)	620	NA		9.4 J	167	3.5 J	56.8 J	500	692	106	3.4 J	62.9	ND	650	ND	ND	ND	5.2 J	---	ND	ND	ND	3.3 J	17.1	152	

Notes:

- (1) State of Maryland Department of the Environment Cleanup Standards for Soil and Groundwater, Interim Final Guidance, Update No. 3 (MDE 2018).
- (2) Anticipated Typical Concentrations (ATCs) represent reference or background levels published by the MDE for the Site area.
- (3) Pursuant to the July 2013 Memorandum issued by the MDE regarding the bioavailability of arsenic, the standards presented are adjusted based on the assumption that 60% of the arsenic reported is bioavailable.

mg/kg = Milligrams per kilogram

--- = No standard or sample not analyzed for select compound

Bold cell indicates a concentration above the lowest level of quantitation (LLQ).

Bold and shaded cells indicate a detection above the MDE Cleanup Standard for Non-Residential Soil or the ATC

ND = Not detected

J = Analyte detected at a level less than the Method Reporting Limit (MRL) and greater than or equal to the Method Detection Limit (MDL), Concentrations within this range are es

ppmv = parts per million volume

Table 2 - Phase II Groundwater Analytical Summary - Hits Only  
Proposed M.U.S.E.C. Hagerstown, Maryland 21740

ANALYTE	MDE Cleanup Standard - Groundwater <sup>(1)</sup> (2018)	Sample ID	B-8 GW	B-9 GW	GW-25
		Date Sampled	9/7/2012	9/7/2012	12/4/2012
<b><i>Volatile Organic Compounds (8260B / ug/L)</i></b>					
Acetone	1,400		13	26	ND
Benzene	5		160	120	0.43 J
Chlorobenzene	100		33	21	ND
Cyclohexane	---		---	---	0.63 J
cis-1,2-Dichloroethene	70		ND	ND	0.25 J
Ethylbenzene	700		20	14	ND
Isopropylbenzene (Cumene)	45		26	20	ND
Methylcyclohexane	---		---	---	9.1 J
Naphthalene	0.17		3.90	0.98 J	ND
Toluene	1,000		8.2	11	0.44 J
1,2,4-Trimethylbenzene	5.6		2.6	2.6	---
1,3,5-Trimethylbenzene	6		8.6	9.4	---
m&p-Xylene	1,000		13	37	ND
o-Xylene	1,000		3.1	8.8	ND
Xylene (Total)	1,000		16	46	ND
<b><i>Priority Pollutant List Metals (SW6010B / ug/L)</i></b>					
Arsenic	10		---	62.7	626
Beryllium	4		---	5.9	54.2
Chromium	100		---	176	1,190
Copper	1,300		---	151	575
Lead	15		---	283	1,220
Mercury	2		---	0.99	4.0
Nickel	39		---	130	800
Selenium	50		---	7.5 J	70.5 J
Zinc	600		---	365	2,110
<b><i>Total Petroleum Hydrocarbons (SW 8015/5030 / ug/L)</i></b>					
TPH DRO	47		1,900	1,000	45,500
TPH (C06-C10)	47		2,500	1,570	15,200

Notes:

<sup>(1)</sup>State of Maryland Department of the Environment Cleanup Standards for Soil and Groundwater, Interim Final Guidance, Update No. 3 (MDE 2018).

ug/L = Micrograms per liter

ND = Not detected.

--- = No standard or sample not analyzed for select compound

Bold cell indicates a concentration above the lowest level of quantitation (LLQ).

Bold and shaded cells indicate a detection above the MDE Cleanup Standard for Groundwater

J = Analyte detected at a level less than the Method Reporting Limit (MRL) and greater than or equal to the Method Detection Limit (MDL), concentrations within this range are estimated.

**ATTACHMENT A**  
MDE OCP FACILITY SUMMARY AND CASE INFORMATION REPORT



## Facility Summary for Facility ID #9747

**Owner Name and Address:** D & P Properties  
18911 Dover Dr Hagerstown, MD 21742  
Donald Baker (301) 733-8329

**Owner Type:** Commercial

Facility ID	County	Location Name	Location Street Address	Location City	Zip
9747	Washington	D & P Coin-Op Laundry	140 Summit Avenue	Hagerstown	21740

Tank ID	Date Installed	Product	Tank Mat'l of Construction	Piping Material	Primary - Tank Release Detection	CP	RD	FR
Status	Age (yr)	Total Capacity	Secondary Option	Secondary Option	Primary - Piping Release Detection	Over	Spill	
Closure Status	Closure Date	Compartment		Piping Type	Sec - Interstitial Monitoring Tank/Piping	Mnfd	EG	B/HO
1	04/01/1963	Heating Oil	Asphalt Coated or Bare Steel	Copper	R	No	No	No
Permanently Out Of Use		1,000	None	None	R	No	No	
Tank removed from ground	4/18/2018			Not Listed	No/No	No	No	No
2		Unknown	Asphalt Coated or Bare Steel	Bare or Galvanized Steel	R	No	No	No
Permanently Out Of Use		500	None	None	R	No	No	
Tank removed from ground	4/18/2018			Not Listed	No/No	No	No	No
3		Unknown	Asphalt Coated or Bare Steel	Bare or Galvanized Steel	R	No	No	No
Permanently Out Of Use		500	None	None	R	No	No	
Tank removed from ground	4/18/2018			Not Listed	No/No	No	No	No

**Total Tanks: 3**

### Tank/Piping Release Detection Codes

<b>A</b>	Manual Tank Gauging	<b>B</b>	Tank Tightness Testing	<b>C</b>	Inventory Control	<b>D</b>	ATG/Auto Line LD	<b>E</b>	ATG 0.2 GPH Test	<b>F</b>	Safe Suction
<b>G</b>	Gravity Feed	<b>H</b>	Elect ALLD Testing 0.2 GPH	<b>I</b>	Line Tightness Annual	<b>J</b>	Line Tightness Every 2 Yrs.	<b>K</b>	Vapor monitoring	<b>L</b>	Groundwater monitoring
<b>M</b>	Inventory SIR	<b>N</b>	Interstit. Dbl-wall Monitor	<b>O</b>	Interstit. Sec. Con. Monitor	<b>P</b>	Other method	<b>Q</b>	Deferred	<b>R</b>	Not listed
<b>N/A</b>	Heating Oil/Emergency Generator										

### Tank/Piping Codes

<b>CP</b>	Corrosion Protection Met	<b>Over</b>	Overfill Protected	<b>Mnfd</b>	Manifold	<b>FR</b>	Financial Responsibility Met
<b>RD</b>	Release Detection Met	<b>Spill</b>	Spill Protected	<b>EG</b>	Emergency Power Generation	<b>B/HO</b>	Bulk Heating Oil

Report Generation Date: 9/9/2020



**Maryland**  
Department of  
the Environment

## Oil Control Program

Suite 620, 1800 Washington Blvd., Baltimore, MD 21230-1719

410-537-3442 1-800-633-6101 x3442

<http://www.mde.maryland.gov/>

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### Oil Control Program Case Information Report

**Case No.:** 18-0354WA  
**Date Open:** JAN 23, 2017  
**Spill Location:** D&P COIN-OP LAUNDRY  
**Address:** 140 SUMMIT AVE, HAGERSTOWN, MD 21740  
**County:** WASHINGTON COUNTY  
**Facility ID:** 9747  
**Release:** YES  
**Cleanup:**  
**Status:** CLOSED **Date Closed:** AUG 09, 2018

**ATTACHMENT B**  
TESTING REQUIREMENTS FOR OFFSITE DISPOSAL

## Clean Earth Sampling Protocol Maryland

PARAMETERS	TPH-GRO	TPH-DRO	Oil and Grease	BTEX	PCBs	TOTAL METALS-8 RCRA *	TOTAL VOLATILE ORGANICS*	TCL SEMI-VOLATILE ORGANICS* (& Pyridine)	
<b>METHODS (1)</b>	8015	8015	9071B	8021 or 8260B	8082A	6010/7471	8260B	8270D	
<b>FREQUENCY</b>									
<b>VIRGIN PETROLEUM WITH REGULATORY DOCUMENT</b>									
Gasoline	Representative composite sample of at least five representative grab samples every 3000 tons	X			X				
Other distillate fuel (eg: Diesel, Kerosene)			X		X				
Residual fuel (eg: #4, #6 Fuel Oil)				X	X				
<b>Limit (mg/kg)</b>	avg<25,000	avg<25,000	avg<25,000	Benzene <10					
<b>PETROLEUM WITHOUT REGULATORY DOCUMENT/MISCELLANEOUS</b>									
Gasoline	Representative composite sample of at least five representative grab samples every 3000 tons	X				X	X	X	
Other distillate fuel (eg: Diesel, Kerosene)			X			X	X	X	
Residual fuel (eg: #4, #6 Fuel Oil)				X		X	X	X	
Unknown		X	X	X		X	X	X	
<b>Limit (mg/kg)</b>	avg<25,000	avg<25,000	avg<25,000	Benzene <10	avg<12	Below RCRA Toxicity Level	Below RCRA Toxicity Level	Below RCRA Toxicity Level	

(1) The methods provided are standard EPA methods. The method revisions are subject to change and the most current method should always be utilized by the laboratory.

This is to be used as a guideline for sampling. Sampling frequencies and parameter requirements may be modified at the discretion of the CE Approval staff based on items such as site history, levels of contamination and/or source of contamination. (Please refer to the attached Addendum # 1)

\* **Note:** For compounds with total concentrations greater than or equal to 20X RCRA Toxicity, TCLP is required.

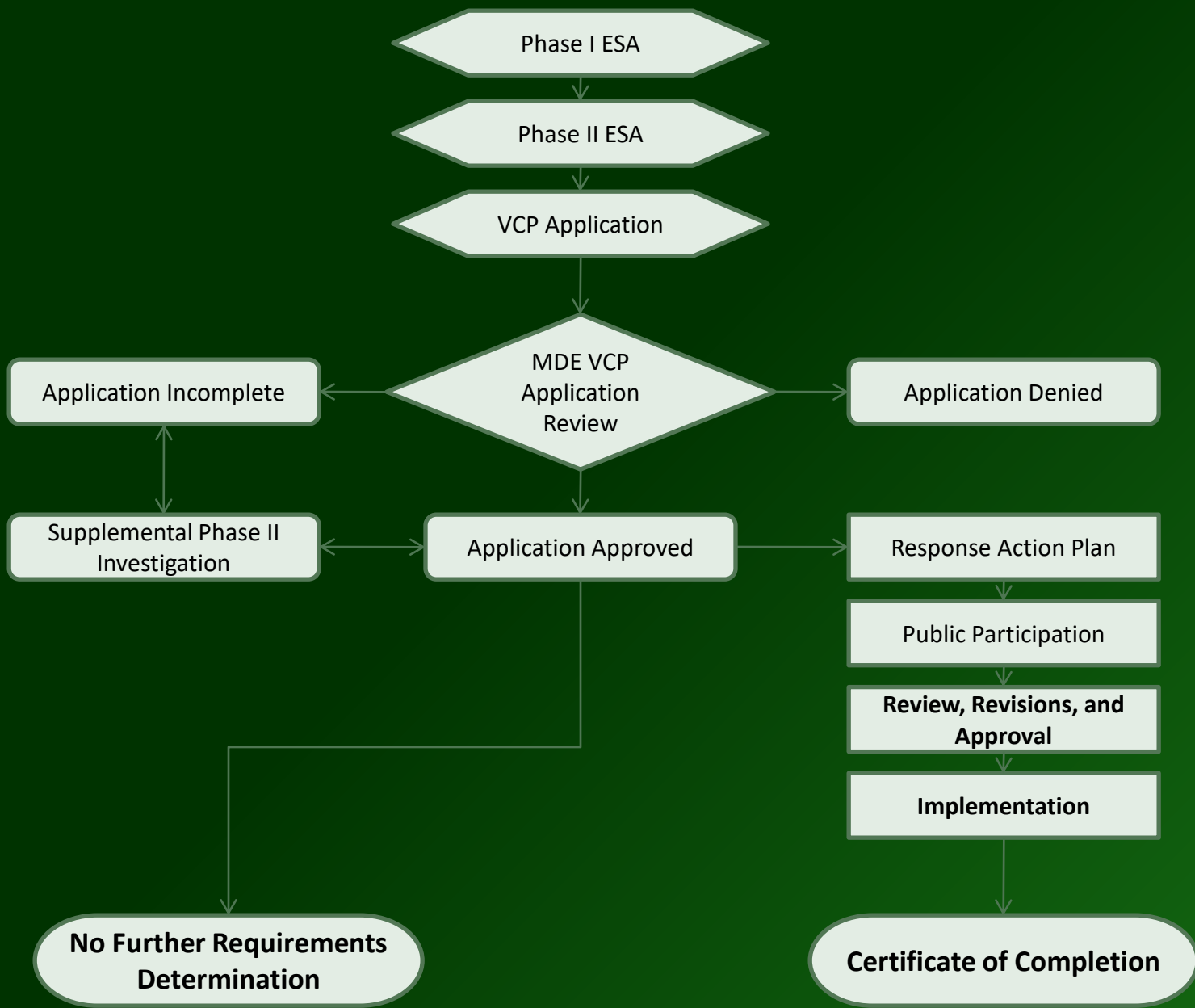




**ATTACHMENT C**  
**FLOWCHARTS OF THE VCP AND CHS PROCESSES**

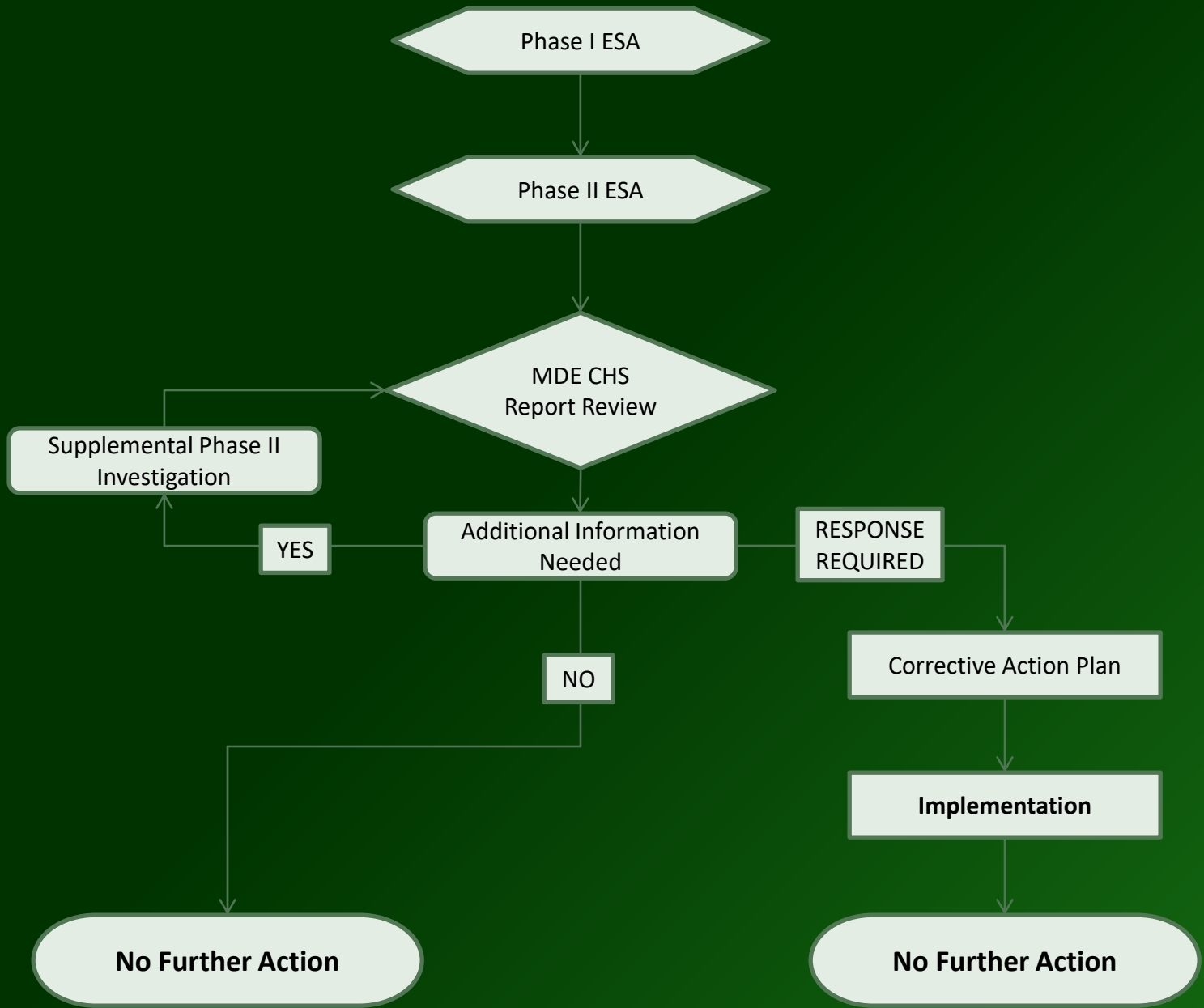


# VCP Process





# CHS Process





## Appendix G Geotechnical Investigation





June 26, 2020

TO: Scott A. Berkheimer, PE, DBIA  
Project Manager  
RK&K  
700 East Pratt Street, Suite 500  
Baltimore, MD 21202

RE: Geophysical Survey of Hagerstown Multi-Use Sports & Events Facility (HMUSEF),  
Hagerstown, Maryland

Dear Mr. Berkheimer,

**ERT, Inc. (ERT)** is pleased to submit to RK&K this report summarizing the instrumentation, field design, and results of seismic surveys conducted on the night of June 17 and the morning of June 18, 2020, at the proposed Hagerstown Multi-Use Sports & Events Facility, Hagerstown, Maryland. The objective of the survey was to map the variation in thickness of overburden materials using the standard refraction seismic technique.

## 1.0 Geologic Setting

The investigation area is within the Great Valley Physiographic Province of Maryland. The area of investigation is a group of parking lots underlain by the Ordovician Stonehenge Limestone. Most of the site is underlain by the Middle member of the Stonehenge, composed of “massive, medium gray, algal lime boundstone with some layers up to 25 feet thick.” (Brezinski, D. K., 2013. *Geologic and Karst Features Map of the Hagerstown Quadrangle, Washington County, Maryland*. Maryland Geological Survey. Map Scale: 1:24,000).

An outcrop of the Stonehenge is present in the southwest corner of the site. The bedding is nearly vertical and strikes north-northeast, or nearly parallel to Summit Avenue on the west side of the site. The outcrop may expose the Middle member, the underlying Stoufferstown Member, or both. Other parts of the site are probably heavily disturbed by construction of current and previous structures.

For purposes of determining rippability of the near surface materials, the bedrock is assumed to be “limestone.”

## 2.0 Field Methods

Seismic refraction lines were placed in the field with reference to existing site features. Three lines were acquired in their proposed locations. One line planned for a grassy area in the southeast part of the site was found to be in a highly landscaped area and the decision was made in the field with concurrence from RK&K personnel to move this line and acquire a fourth line parallel to the other three.

A Topcon HiperGa Real Time Kinematic Global Positioning System (RTK GPS) was used to capture line locations. The RTK GPS base was set up on a large manhole cover visible on georeferenced orthophotos available from USGS (<https://earthexplorer.usgs.gov/>). The position of the manhole was measured autonomously by the base and the digitized location of the manhole from the orthophoto was used to make a correction to all horizontal positions. The accuracy should be within approximately 1 ft.



A seismic refraction survey involves the transmission of sound waves into the Earth and recording the acoustic responses using a seismograph at set distances from a seismic energy source (e.g. hammering on an aluminum plate). The seismograph measures the time it takes for a compressional sound wave (P-wave) generated by the seismic energy source to travel down through the layers of the Earth and back up to detectors (called geophones) placed on the surface. By measuring the travel time of the sound wave and applying the laws of physics that govern the propagation of sound, the subsurface geology can be inferred. Because sound waves travel at different velocities through dissimilar materials (i.e., faster through denser, more rigid materials), interpretations related to the depth, morphology and integrity of the bedrock surface can be made using various computer-aided processing techniques, such as the intercept time method, the generalized reciprocal method (GRM), tomographic inversion, and inversion and optimization techniques.

The data were collected using a Geometrics SmartSeis 24-channel seismograph with 4.5-Hertz geophones. Each spread, consisting of up to 24 geophones, was arranged at a constant geophone interval of 5 feet along a straight line on the ground, yielding a geophone array length of up to 115 feet. A 16-lb sledgehammer struck directly on asphalt surfaces or against an aluminum plate placed on the ground was used as the seismic source. To generate and stack the energy, the hammer was swung to strike the aluminum plate 3 to 7 times at each shot point. Multiple strikes with the hammer at a single location (“stacking”) were used to improve the signal-to-noise ratio for the records. The record length of the seismograph was set at 128 milliseconds (ms), and the sample interval was set at 31.25 microseconds ( $\mu$ s). Generally, 4 or 5 shots were made for each geophone spread: a midpoint shot (between geophones 12 and 13), two endpoint shots (5 feet beyond geophones 1 and 24), and two far shots, offset up to 40 feet from each endpoint of the spread. On several spreads only one far shot was possible due to obstructions such as buildings, walls, or streets.

### 3.0 Data Processing

The following assumptions were made for the interpretation of seismic refraction data: 1) seismic velocity (the speed at which a compressional sound wave travels through a given medium, such as schist) increases with depth; 2) each successive layer is at least as thick as the layer above it; and 3) the thickness of each layer is greater than the wavelength of the compressional wave.

Data were processed with seismic data processing software distributed by Optim Software. The first step involved using SeisOpt Picker software to pick the first arrivals of P-waves at geophone trace and to input topographic data for the shots and geophones. The data were then further processed using SeisOpt 2D (v6.0) Inversion and Optimization software in order to generate a velocity model. This processing method allows the user to identify zones of subsurface velocity that gradually change laterally and with depth. Velocity and depth data generated from the model were contoured to produce 2-D profiles using the Surfer (v 12.0) contour package from Golden Software.

An example of the first part of data processing is shown in Figure 1. A through E show the upper part of raw seismic records as displayed on the seismograph and in the processing software for five shots (two far, two end, and one midpoint) of a single 24-geophone spread. The numbers on the Y-axis represent the time in ms for the seismic wave to travel from the shot to each geophone; while the numbers on the X-axis represent the geophone number (with a 10-ft geophone spacing). In C, the actual first break picks (the time at which the seismic energy from the hammer strike arrives at the geophone) are shown as blue horizontal marks. Selection of the first arrivals was performed for all records.



In instances where data recorded by a geophone were too noisy to recognize a first break, that channel was not used during further processing stages.

First break picks in milliseconds (ms), geophone locations (horizontal station, elevation), and shot locations (also horizontal station, elevation) were entered into SeisOpt 2D software (OBS, REC, and SRC files, respectively). Iterative inversion in SeisOpt 2D was used to process the data in order to develop a subsurface velocity model that matches the first arrival picks without layer assignments. The velocity models consist of hundreds of blocks of approximately 1/3 the geophone spacing in width, and each block has a velocity in feet per second (ft/s). Successive iterations in the software model ray paths from shots to geophones through the model blocks, and improve the velocities to reduce error in the modeled first break picks versus the actual ones. The fit is measured as a least-square error in  $ms^2$ , with a low number indicating a better fit and greater reliability of the processed data.

Topographic data were provided by RK&K. Line locations were plotted and elevation data were extracted from the topographic contour lines. Additional topographic data were collected using RTK GPS.

Table 1 summarizes data processing. Least-square errors are all in the low range, with many below 1.0.

**Table 1: Summary of seismic refraction data processing**

Profile	Spreads	Shots	Model block size (ft)	No. Model Blocks (horiz. x vert.)	Iterations	Max. Velocity (ft/s)	Min. Velocity (ft/s)	Least-square error ( $ms^2$ )
1	3	13	2.016 x 2.016	164 x 29	70647	19711	1569	2.12
2	3	13	2.017 x 2.017	167 x 29	49933	18940	1482	2.32
3	3	14	2.168 x 2.168	181 x 26	43566	15435	1657	2.48
4	4	19	2.005 x 2.005	250 x 30	66695	18379	1458	3.38

Model block data (files showing horizontal distance, elevation, and P-wave velocity in ft/s) were contoured for display using Surfer v12.0.

Depth estimations based on the seismic refraction method usually have a 10% error. However, this error would increase if the data quality were compromised with external factors such as nearby traffic or construction sites, aircraft, electric power lines, underground utilities or structures, and adverse weather conditions. Traffic noise was fairly minimal due to collection of data at night, but underground utilities may have been a source of noise.

#### 4.0 Results

A map of the seismic refraction lines is shown in Figure 2. The locations of borings from a Phase II Environmental Site Assessment Report (Triad Engineering, Inc., 2013) are also shown.

Seismic refraction profiles are displayed in Figure 3 as contoured P-wave velocity cross-sections. Contoured values represent wave velocities in feet per second. The solid thick black line along the top of each section represents the ground surface. Zones of rippability, based on the Caterpillar Performance Handbook (CAT, 1999. Edition 30, Pages 1-72 to 1-76.), are indicated as rippable, marginally rippable, or non-rippable, based on 1) the rock type (granite, schist, sandstone, etc.), and 2) the type of ripper (D8R, D9R, etc.). In all sections the rock type is limestone and the smallest ripper (D8R) is assumed. The rippable zone of a larger ripper would extend into higher velocity rock and generally to greater depth.



Boreholes located within 20 feet of any profile are plotted on the profile. Note however that some are offset from the profile

**Line 1:** Depth to marginally rippable material varies from 0 feet at the northwest end to approximately 30 feet at the southeast end. Boreholes 12 and 10 agree fairly well with the profile, but borehole 9 shows a discrepancy of nearly 10 feet.

**Line 2:** Depth to marginally rippable material varies from approximately 2 feet at 1025 to over 30 feet at 1320, with a relatively flat boundary between these stations. The cutter (bedrock low) at 1320 correlates with broader bedrock lows on Lines 1 and 3. No borings lie within 20 feet of Line 2.

**Line 3:** Depth to marginally rippable material varies from approximately 7 to 10 feet at the center and at the southeast end, with greater depth in other areas, including a broad area of over 30 feet centered at station 1230. Borehole 21 correlates well with the depth to marginally rippable material, and borehole 6 correlates fairly well.

**Line 4:** Depth to marginally rippable material varies from at or near the surface in three places to approximately 30 feet at station 1340. Boreholes 18 and 20 both indicate a top of rock above the marginally rippable material.

## 5.0 Closing

The survey indicates that there is variation in depth to rippable material across the site ranging from 0 to over 30 feet. The presence of a strike-parallel cutter of variable width is supported by the seismic data on all four lines. Boring data indicates the top of rock surface is at or up to approximately 10 feet above the top of marginally rippable material as determined by the seismic data.

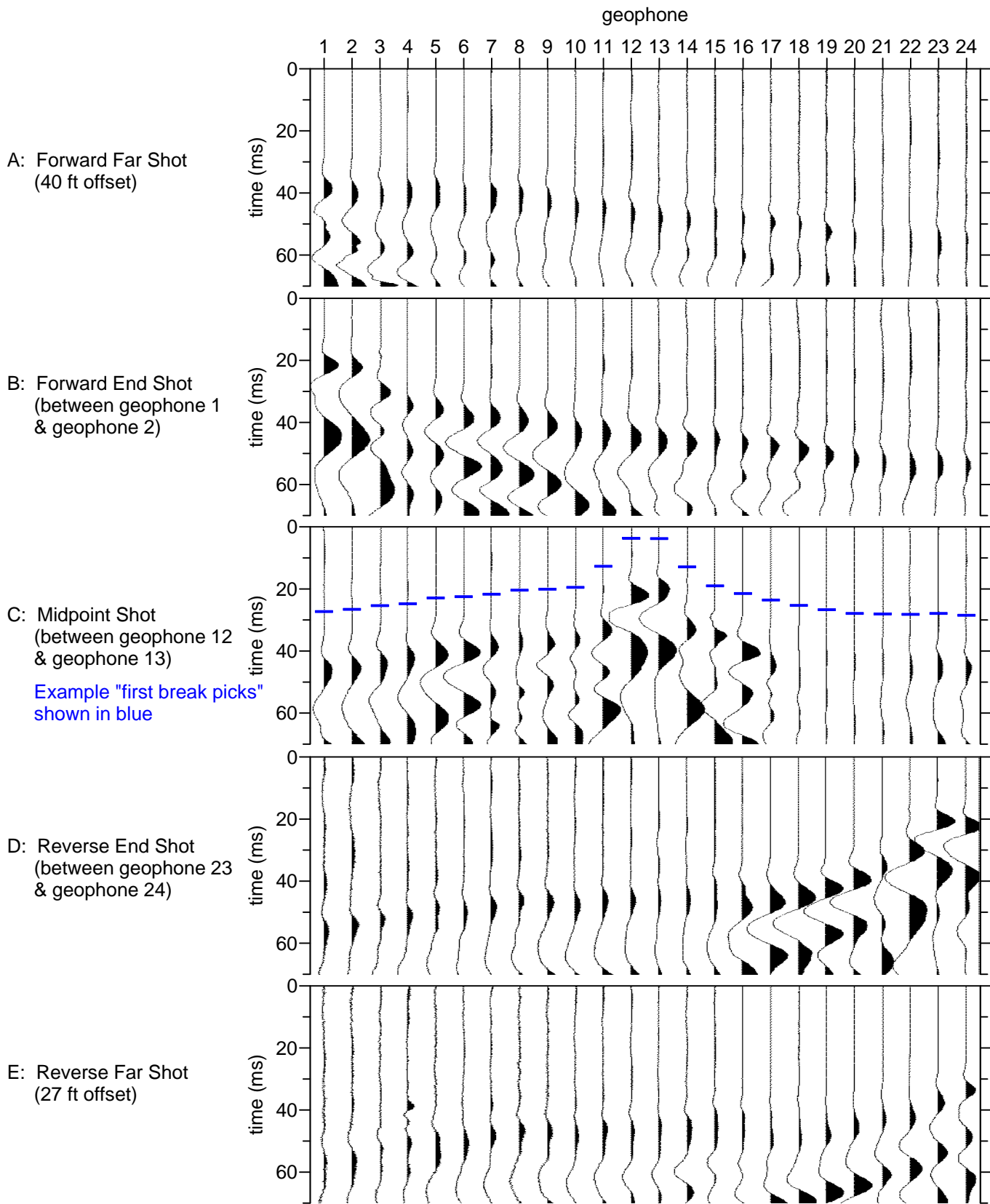
The field procedures and interpretative methodologies used in this project are consistent with standard, recognized practices in similar geophysical investigations. The correlation of geophysical responses with probable subsurface features is based on the past result of similar surveys although it is possible that some variation could exist at this site. This warranty is in lieu of all other warranties either implied or expressed. **ERT** assumes no responsibility for interpretations made by others based on work performed by or recommendations made by **ERT**.

Sincerely,  
**Earth Resources Technology, Inc.**

A handwritten signature in blue ink, appearing to read "James L. Stuby". The signature is fluid and cursive, written over a light blue horizontal line.

James L. Stuby, M.S., P.G.  
Senior Geophysicist



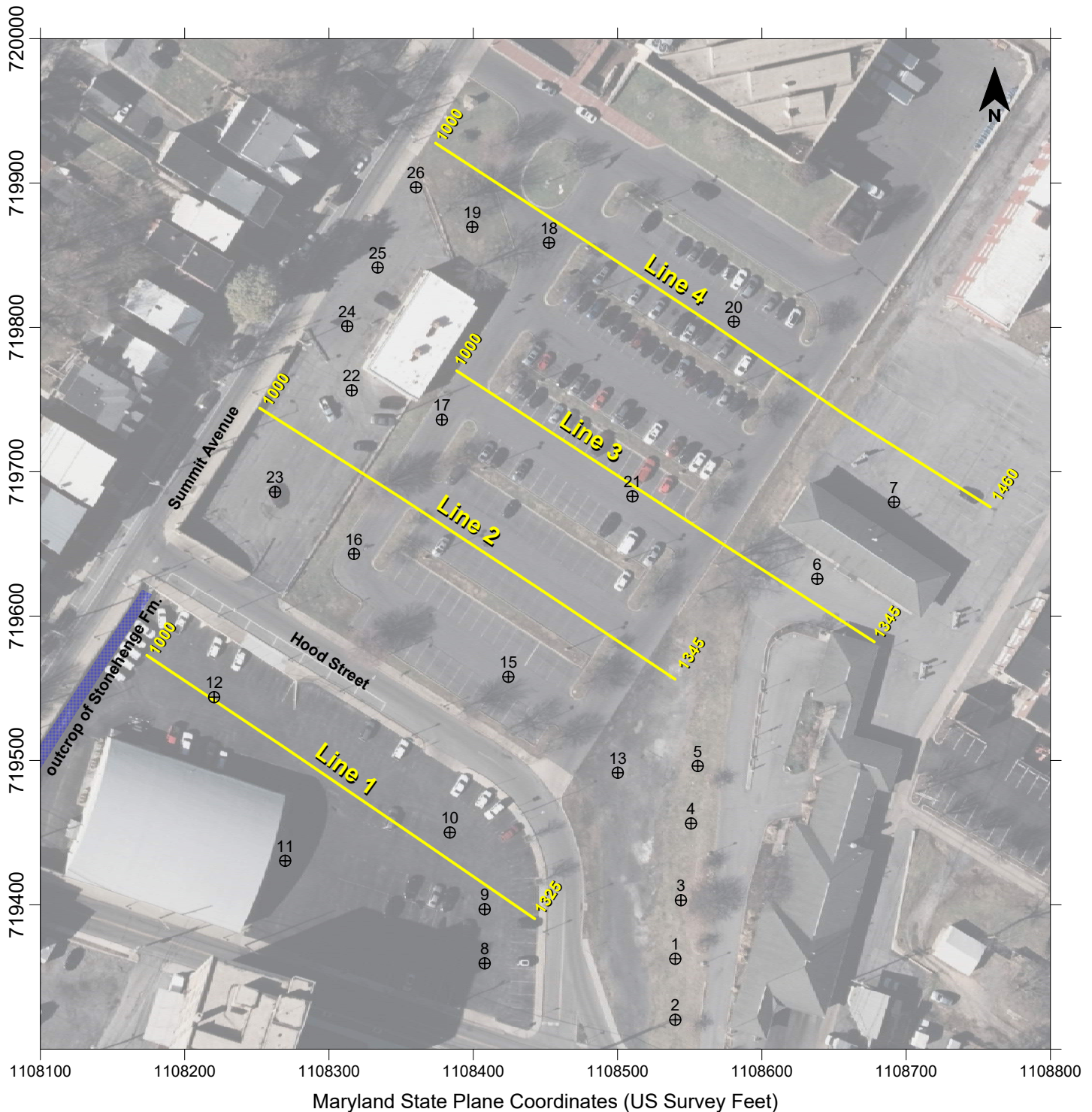


Example of Raw Seismic Refraction Data  
from single 24-geophone setup  
geophone interval: 10 feet  
(note: data not from this site)

FIGURE 1

revised July 2014

SCALE: As shown



1. Orthophoto: 2014

2. The approximate locations of borings are from a Phase II Environmental Site Assessment Report (Triad Engineering, Inc., 2013).



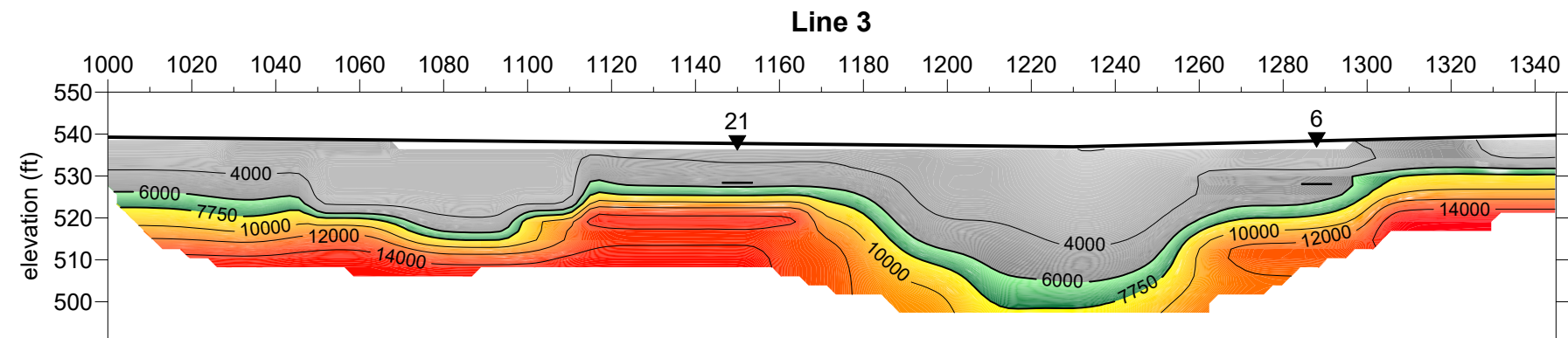
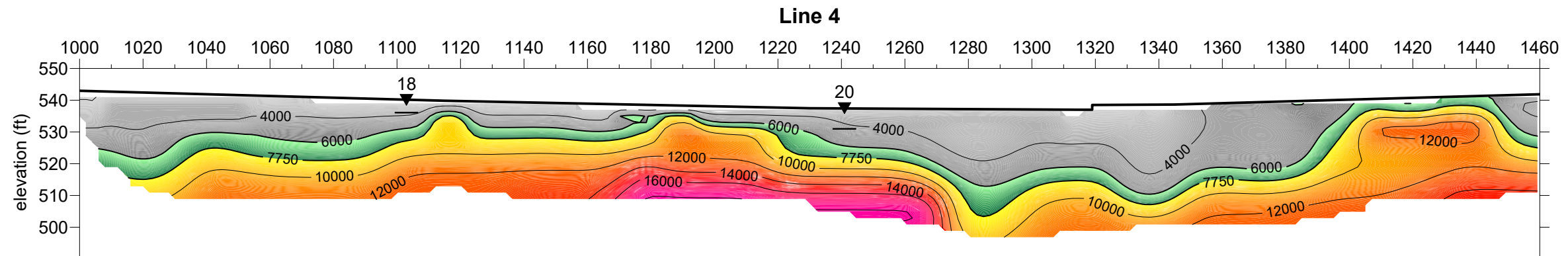
Site Map  
 Hagerstown Multi-Use Sports & Events Facility  
 Hagerstown, Maryland

FIGURE 2

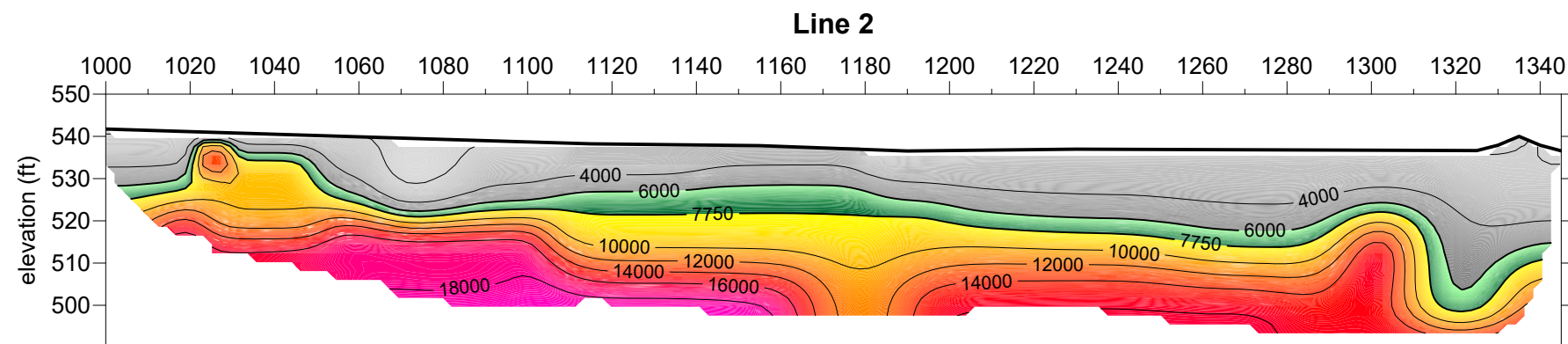
June 2020

SCALE: 1 inch = 100 feet

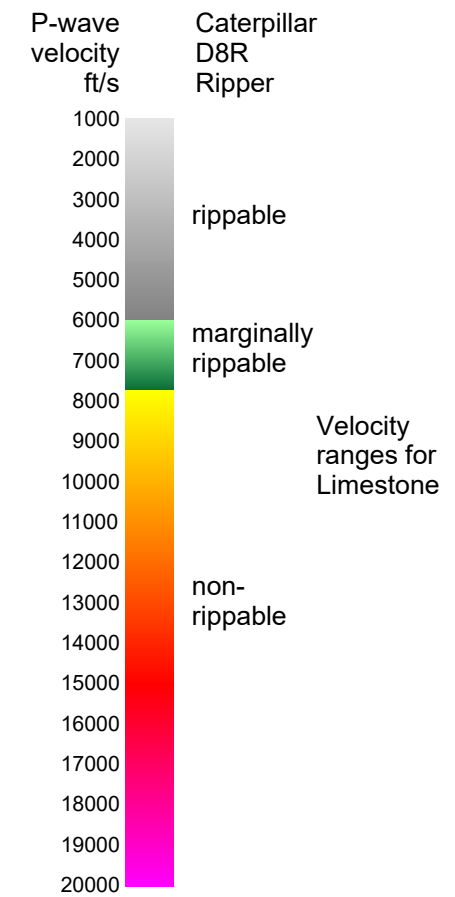
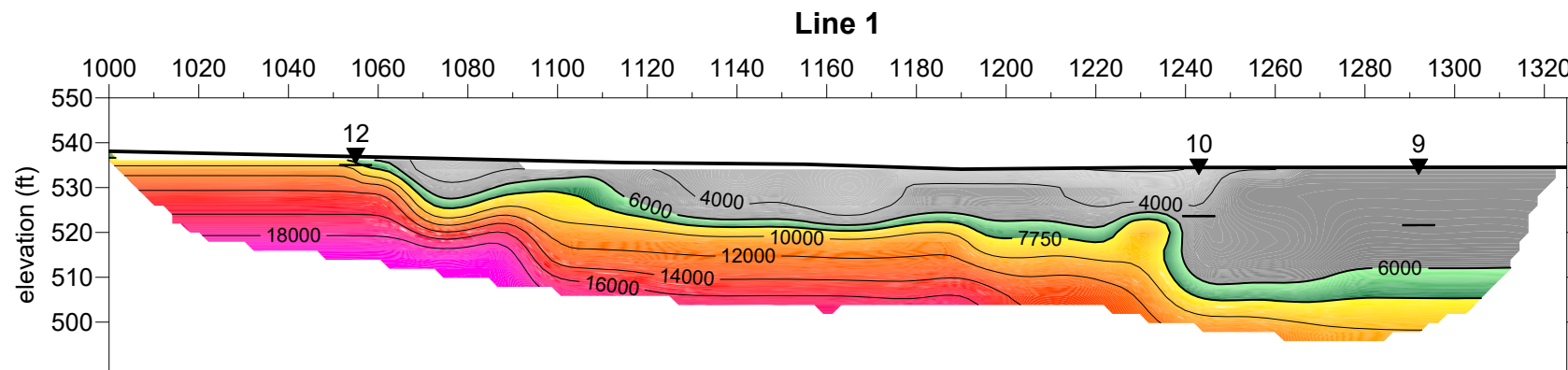




Northwest



Southeast



1. Data collected on June 17, 2020, using Geometrics SmartSeis seismograph with 4.5 Hz geophones.
2. Data processed using SeisOpt 2D v6.0.
3. Borehole locations within 20 feet of the seismic line are indicated by inverted triangles with borehole numbers above. The top of rock is indicated by a horizontal line below the triangle.



SEISMIC REFRACTION PROFILES  
Hagerstown Multi-Use Sports & Events Facility  
Hagerstown, Maryland

FIGURE 3

June 2020

Scale: 1" = 40'

# Appendix H Building Program















HAGERSTOWN, MD (A)			
NET SQUARE FOOTAGE			
ROOM NAME	NET AREA (SF)	NON-ENCLOSED AREA (SF)	NOTES
<b>FIELD</b>			
FIELD		128,600	
BULLPENS		4000	
<b>TOTAL</b>	<b>0</b>	<b>132,600</b>	
<b>CLUBHOUSE LEVEL SQ. FOOTAGE</b>			
<b>NET TOTAL:</b>	<b>21,968</b>	<b>132,900</b>	

MAIN CONCOURSE			
CONCESSIONS/COMMISSARY/KITCHEN			
POS			175 sf/pos
PERMAMENT	1:200	14.19	60% of capacity
TEMPORARY	1:200	9.46	40% of capacity
CONCESSION-3RD BASE	1,400		8 pos
STAGING	480		
VENDOR	140		
CHECK-IN/CASH ROOM	170		
OFFICE	145		
RECEIVING OFFICE	100		
ACCOUNTING OFFICE	0		
OFFICE	0		
COUNT RM./VAULT	0		
LOCKER ROOM	0		

MILB FUTURE ADD AS OF 06.30.20	
NET SQUARE FOOTAGE	
	NOTES
<b>CLUBHOUSE LEVEL SF</b>	
1678	
<b>MAIN CONCOURSE</b>	

















HAGERSTOWN, MD (A)			
NET SQUARE FOOTAGE			
ROOM NAME	NET AREA (SF)	NON-ENCLOSED AREA (SF)	NOTES
CLUB LEVEL SQUARE FOOTAGE			
NET TOTAL:	15,201	2,140	

TOTAL SQUARE FOOTAGE			
CLUBHOUSE LEVEL	21,968	132,900	*non-enclosed area includes 128,000sf for the field
CONCOURSE LEVEL	21,120	94,060	
CLUB LEVEL	15,201	2,140	
TOTAL	58,289	229,100	*non-enclosed area would be 100,500 sf without field

GROSS FACTOR 5%	61202.925	walls, chases
-----------------	-----------	---------------

SITE DEVELOPEMENT			NOTES
CULTURAL TRAIL		24000	excludes 15' of concourse
ENTRY PLAZAS (PLURAL)		12,000	will vary depending on entry
VENDOR TRUCK AREA		5,000	will vary depending on design
ON SITE PARKING		32,000	20 vip; 60 staff/team (400sf/car)
TOTAL	0	73,000	

MILB FUTURE ADD AS OF 06.30.20	
NET SQUARE FOOTAGE	
	NOTES
CLUB LEVEL SF	
176	
1,678	
0	
176	
1854	
1946.7	



# Appendix I Workshop Notes



HAGERSTOWN MULTI-USE SPORTS & EVENT FACILITY (HMUSEF)  
SITE WORKSHOP (VIRTUAL)  
MEETING NOTES  
9/2/2020

PARTICIPANTS

Scott Nicewarner, COH  
Rodney Tissue, COH  
Al Tyler, MSA  
Mike Sabatini, Populous  
Steve Caudle, Populous  
Brian Smith, Populous  
Josey Shaw, Populous  
Tom Strandberg, OCMI  
Dan Spedden, VH  
Jim Kercheval, GHC  
Charlie Mitchell, RK&K  
Chris Krupinski, RK&K

GOALS / PROGRAM SUMMARY

- Program review
  - Capacity typically differentiates facilities
  - Based on MiLB requirements
  - 5,000 seats (incl boxes, standing, etc); fixed = 3,400 (seatbacks)
  - Lounge area for event space
    - Club for 400 enclosed – year round
    - Outfield bar separate
  - 6 suites – breakout rooms (multi-purpose)
  - Trend toward moving/”transient” fans during event
- Stakeholder Goals
  - Multi-use (365 days) – anything an event center would have
    - More than a ballpark
  - Great fan experience
  - Convenient access/parking (for stadium and A&E sites)



- Cultural trail to remain on-site
- Budget considerations – options/add ons from phasing perspective
- Ability to address technology/flexibility for use of future tech advancements
- Openess of concourse
- Historical aesthetics of facade – USMH bldg example (historic front/modern back) (similar to regional library)
- Dan feedback on current stadium (shared by Jim)
  - Autograph alley
  - Provide flex space enjoyed by community
  - 360-deg concourse integrated with trail
  - Fireworks – operational/logistical considerations
  - 3,500 seats target
  - Plaza – community pride with infrastructure for events
  - Keep historic feel – avoid chain link, etc
  - Message board
  - Sound – adjacent community concerns...new tech? Lighting too?
  - Allow bathroom access during outside events
  - Large event/catering considerations
  - Multi-purpose

#### EVALUATION CRITERIA CONSIDERATIONS

- Flexibility (multi-purpose) – more flexible is better
- No. of seats
- Ability to accommodate year-round use
- Minimizes barren feel during off-days (empty stadium)

#### EXISTING CONDITIONS/SITE CONSTRAINTS

- Herald Mail (HM) building and drive aisle
- Cultural trail
- East Alley (one way – only access to several existing parking lots)
- Multiple parcels
  - Cultural trail is a separate parcel now (COH) – conditional language requiring it remains a park

- COH to send the plat
    - HM partial parcel acquiring (parking lot)
- Storm drain (3x5 ft) ~ 6 ft below exist? Likely more shallow (2 ft)
  - Elevations? COH can provide
  - Video? COH will check
  - COH recommends replacement due to age
- Rock – seismic refraction analysis and previous boring records
  - Karst limestone
  - Shallow
- Contaminated soils ~ approx. locations factored into site model
- Archeological Ph 1 recommendations (further site investigations)
- Topo maps – No field survey. Using Washington County recent 2 ft contour
- Groundwater pumped from HM (hit underground spring/runs constant) – tested for contaminants?

#### CONCEPT OPTIONS OVERVIEW

- Introduction/Commonalities/Assumptions
  - Field orientation similar
  - Attendees entering from downtown
  - Use of existing parking lots/garages in vicinity
  - Rock (extent estimated from records and seismic refraction analysis)
  - East alley must remain
  - Art trail to remain (modification possible)
  - Demolition of ex bldgs
  - HM remains/possible engagement?
  - Respect residential in vicinity
  - Existing storm drain (stone/brick arch) location/condition
    - Options developed so that storm drain could remain if condition allowed (***need elevation verification***)
  - Hazmat soil removal needed in all options
  - Utility impacts similar between all options
  - Challenge – outfield development – open up cultural trail options (shutdown during events)

## CONCEPT OPTION 1

- OVERVIEW/ASSUMPTIONS
  - See notes in intro above
  - 60 space parking on-site for staff
- SITE CONSTRAINTS/CHALLENGES
  - HM service drive remains
  - Integration of Cultural trail
  - Use of alley for peds as bypass for events? COH thinks this is appropriate
- CONCURRENT/FUTURE PROJECTS
  - Opportunities to engage adjacent properties
- OPERATIONS – use of rooftop space? Potential
- REGULATORY
  - Artificial vs Natural turf considerations (MDE)
    - Both have similar configuration
    - Artificial holds up better to more frequent field use during events
    - Artificial typically increases SWM requirements
- PROS
  - Ideal architectural (programmatically)
  - Less empty feel (deck)
  - Opens up for residential
  - More cultural trail and access (drink rail height)
  - Maintains HM service route/no overlap
  - Better exterior views into stadium
  - Parking (below grade)
- CONS
  - Excavating Rock (most)
  - Proximity to existing storm drain

## CONCEPT OPTION 2

- OVERVIEW/ASSUMPTIONS

- See notes in introduction above
- Minimize rock (pull up field/amenities)
- Engage HM bldg. (pushes north)
- Based on what we know from MiLB changes
- Field similar to Option 1
- SITE CONSTRAINTS/CHALLENGES
  - HM engagement? Opportunity? Have not had recent conversation with HM ownership, but COH can look into this.
  - Reaction to higher structure concept?
    - Swap to Baltimore side?
- CONCURRENT/FUTURE PROJECTS – similar to Option 1
- OPERATIONS – see pros/cons
- UTILITIES – similar to Option 1
- REGULATORY – similar to Option 1
- PROS
  - Minimizes rock (least)
  - Greater buffer from storm drain
  - Flexibility for sectioning off areas during smaller events
  - Engaging other buildings
- CONS
  - Perceived blockage of exterior residential views?
  - Reduces cultural trail/interface with outfield
  - Logistical access less direct
  - Deck less opportunity for rooftop events (compared to option 1)
  - Player amenities at concourse

### CONCEPT OPTION 3

- OVERVIEW/ASSUMPTIONS
  - Similar elevation to option 2 except field is raised
  - Maintains HM access
  - Moves ground crew to SE – access from right field
  - No run outs for football
- SITE CONSTRAINTS/CHALLENGES – similar to Option 1

- CONCURRENT/FUTURE PROJECTS
  - Antietam bldg. – owners sympathetic to this project...public/private agreement potential? Ability to further engage trail
    - Similar considerations for HM
  - Dagmar Hotel redevelopment options?
- OPERATIONS – see pros/cons
- UTILITIES – similar to Option 1
- REGULATORY – similar to Option 1
- PROS
  - HM service drive maintained
  - More room for cultural trail
  - Minimizes rock
- CONS
  - Grounds facilities in right field/public view
  - Parking all off-site

#### STAKEHOLDER FEEDBACK

- Seats below concourse preferred vs tiers
- Leading edge amenities? Overlap with cultural trail
- Heritage considerations...balance with younger audience
- Concourse/Cult trail integration/extension opportunity?
- Caution with cultural trail due to its funding approach (COH bond \$) – don't break covenants? Consult finance director
- Vacant lot opportunities – private money availability? Complement development? Appropriate time to reach out – Antietam vs HM? Challenges of private development on public property (COH to review)
- Parking impacts and lot acquisition
- Community anticipation of report? Report to hold until after election

#### NEXT STEPS/ACTION ITEMS

- COH provide additional information:
  - Cultural Trail
  - existing storm drain records on condition/elevation
- RKK/Populous to prepare draft concept report for MSA review



- Will include a fourth option based upon discussion in workshop
- Following MSA review/comment, RKK/Populous to revise concept report and submit to MSA/COH for selection of preferred concept option
- RKK/Populous to prepare schematic design package based upon preferred concept

**ATTACHMENT D**  
**MBE INSTRUCTIONS AND FORMS**

<b>Attachment D. Minority Business Enterprise (MBE) Forms</b>
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<b>D-1A</b> <b>MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT</b> <b>&amp; MBE PARTICIPATION SCHEDULE</b>
--

**PART 1 - INSTRUCTIONS**

***PLEASE READ BEFORE COMPLETING THIS DOCUMENT***

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

1. Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) subcontractor participation goal stated in the Invitation for Bids or Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.
2. MBE Goals and Subgoals: Please review the solicitation for information regarding the Contract's MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from 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. **Guidelines Regarding MBE Prime Self-Performance.** Please note that when a certified MBE firm participates as a prime contractor on a Contract, a procurement agency may count the distinct, clearly defined portion of the work of the Contract that the certified MBE firm performs with its own workforce toward fulfilling up to, but no more than, fifty-percent (50%) of the overall MBE participation goal, including up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the Contract.

- ✓ In order to receive credit for self-performance, an MBE prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE prime is self-performing and include information regarding the work it will self-perform.
  - ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.
  - ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime's ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
  - ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the contract has subgoals, regardless of MBE Prime's ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to use other MBEs for each of any remaining subgoals or request a waiver. As set forth in Attachment 1-B Waiver Guidance, the MBE Prime's ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
  - ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to the Governor's Office of Small Minority & Women Business Affairs' website for the MBE Prime Regulations Q&A for illustrative examples.  
[http://www.goMDsmallbiz.maryland.gov/Documents/MBE\\_Toolkit/MBEPrimeRegulation\\_QA.pdf](http://www.goMDsmallbiz.maryland.gov/Documents/MBE_Toolkit/MBEPrimeRegulation_QA.pdf)
6. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the Contract that the certified MBE performs with its own forces toward fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.
7. The work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.
8. **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.

**9. 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.*

10. CAUTION: The percentage of MBE participation, computed using the percentage amounts determined for all of the MBE firms listed in PART 3, MUST meet or exceed the MBE participation goal and subgoals (if applicable) as set forth in PART 2- for this solicitation. If a bidder/offeror is unable to meet the MBE participation goal or any subgoals (if applicable), then the bidder/offeror must request a waiver in PART 2 or the bid will be deemed not responsive, or the proposal not reasonably susceptible of being selected for award. You may wish to use the attached Goal/Subgoal Worksheet to assist in calculating the percentages and confirming that your commitment meets or exceeds the applicable MBE participation goal and subgoals (if any).
11. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT's Office of Minority Business Enterprise at 1-800-544-6056 or via email to [mbe@mdot.state.md.us](mailto:mbe@mdot.state.md.us) sufficiently prior to the submission due date.



**Subgoals (if applicable)**

Total African American MBE Participation: \_\_\_\_\_ %  
Total Asian American MBE Participation: \_\_\_\_\_ %  
Total Hispanic American MBE Participation: \_\_\_\_\_ %  
Total Women-Owned MBE Participation: \_\_\_\_\_ %

**Overall Goal**

Total MBE Participation (include all categories): \_\_\_\_\_ %

**PART 2 - MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT &  
MBE PARTICIPATION SCHEDULE**

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

In connection with the bid/proposal submitted in response to Request for Proposals for Design-Build Services for the Hagerstown Multi-Use Sports and Event Facility (Design Phase), I affirm the following:

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

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

7 percent for African American-owned MBE firms  
\_\_\_\_\_ percent for Hispanic American-owned MBE firms  
\_\_\_\_\_ percent for Asian American-owned MBE firms  
10 percent for Women-owned MBE firms

Therefore, I am not seeking a waiver pursuant to COMAR 21.11.03.11. I acknowledge that by checking the above box and agreeing to meet the stated goal and subgoal(s), if any, I **must** complete PART 3 - MBE Participation Schedule and Part 4 Signature Page in order to be considered for award.

**OR**

After making good faith outreach efforts prior to making this submission, I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals I acknowledge that by checking this box and requesting a partial waiver of the stated goal and/or one or more of the stated subgoal(s) if any, I **must** complete Part 3, the MBE Participation Schedule and Part 4 Signature Page for the portion of the goal and/or subgoal(s) if any, for which I am not seeking a waiver, in order to be considered for award. I acknowledge that by checking this box and requesting a full waiver of the stated goal and the stated subgoal(s) if any, I **must** complete Part 4 Signature Page in order to be considered for award.

### **Additional MBE Documentation**

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

- (a) Good Faith Efforts Documentation to Support Waiver Request (Attachment D-1C)
- (b) Outreach Efforts Compliance Statement (Attachment D-2);
- (c) MBE Subcontractor/MBE Prime Project Participation Statement (Attachments D-3A and 3B);
- (d) Any other documentation, including additional waiver documentation if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal and subgoals, if any.

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

### **Information Provided to MBE firms**

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

## PART 3 - MBE PARTICIPATION 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
	Design-Build Services (Design Phase) Hagerstown Multi-Use Sports & Event Facility	

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

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

<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>Percentage of total Contract Value to be performed with own forces and counted towards the MBE <b>overall participation goal</b> (up to 50% of the overall goal): _____% <b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p>Percentage of total Contract Value to be performed with own forces and counted towards the <b>subgoal</b>, if any, for my MBE classification (up to 100% of not more than one subgoal): _____%</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><b>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work your firm is self-performing to calculate amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</b></p> <p><b>A. Percentage amount of subcontract where the MBE Prime firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products / services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p><b>B. Percentage amount for items of work where the MBE Prime firm is being used as supplier, wholesaler, and/or regular dealer</b> (60% Rule).  Total percentage of Supplies/Products ___% x 60% = ___%</p> <p><b>C. Percentage amount of fee where the MBE Prime firm is being used as broker</b> (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 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><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></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><b>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.</b></p> <p><b>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products/services from suppliers, wholesalers, regular dealers and brokers) ___ %</p> <p><b>B. Percentage of total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule).</b> Total percentage of Supplies/Products ___% X 60% = ___ %</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker</b> (count reasonable fee/commission only) ___ %</p> <p>Description of the work to be performed: _____ _____</p>
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<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><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></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><b>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that for 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.</b></p> <p><b>A. Percentage of total contract amount 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) ___%</b></p> <p><b>B. Percentage of the total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule).</b> Total percentage of Supplies/Products ___% X 60% = ___%</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker (count reasonable fee/commission only) ___%</b></p> <p>Description of the work to be performed: _____ _____</p>
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CONTINUE ON SEPARATE PAGE IF NEEDED

**PART 4 – SIGNATURE PAGE**

**To complete Affidavit committing to MBE(s) or requesting waiver,  
Bidder/Offeror must sign below:**

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

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

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

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_  
Date

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

<b>Attachment D. Minority Business Enterprise (MBE) Forms</b>
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<b>D-1A</b> <b>MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT</b> <b>&amp; MBE PARTICIPATION SCHEDULE</b>
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**PART 1 - INSTRUCTIONS**

***PLEASE READ BEFORE COMPLETING THIS DOCUMENT***

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

1. Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) subcontractor participation goal stated in the Invitation for Bids or Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.
2. MBE Goals and Subgoals: Please review the solicitation for information regarding the Contract's MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from 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. **Guidelines Regarding MBE Prime Self-Performance.** Please note that when a certified MBE firm participates as a prime contractor on a Contract, a procurement agency may count the distinct, clearly defined portion of the work of the Contract that the certified MBE firm performs with its own workforce toward fulfilling up to, but no more than, fifty-percent (50%) of the overall MBE participation goal, including up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the Contract.

- ✓ In order to receive credit for self-performance, an MBE prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE prime is self-performing and include information regarding the work it will self-perform.
  - ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.
  - ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime's ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
  - ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the contract has subgoals, regardless of MBE Prime's ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to use other MBEs for each of any remaining subgoals or request a waiver. As set forth in Attachment 1-B Waiver Guidance, the MBE Prime's ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
  - ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to the Governor's Office of Small Minority & Women Business Affairs' website for the MBE Prime Regulations Q&A for illustrative examples.  
[http://www.goMDsmallbiz.maryland.gov/Documents/MBE\\_Toolkit/MBEPrimeRegulation\\_QA.pdf](http://www.goMDsmallbiz.maryland.gov/Documents/MBE_Toolkit/MBEPrimeRegulation_QA.pdf)
6. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the Contract that the certified MBE performs with its own forces toward fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.
7. The work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.
8. **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.

**9. 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.*

10. CAUTION: The percentage of MBE participation, computed using the percentage amounts determined for all of the MBE firms listed in PART 3, MUST meet or exceed the MBE participation goal and subgoals (if applicable) as set forth in PART 2- for this solicitation. If a bidder/offeror is unable to meet the MBE participation goal or any subgoals (if applicable), then the bidder/offeror must request a waiver in PART 2 or the bid will be deemed not responsive, or the proposal not reasonably susceptible of being selected for award. You may wish to use the attached Goal/Subgoal Worksheet to assist in calculating the percentages and confirming that your commitment meets or exceeds the applicable MBE participation goal and subgoals (if any).
11. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT's Office of Minority Business Enterprise at 1-800-544-6056 or via email to [mbe@mdot.state.md.us](mailto:mbe@mdot.state.md.us) sufficiently prior to the submission due date.



**Subgoals (if applicable)**

Total African American MBE Participation: \_\_\_\_\_ %  
Total Asian American MBE Participation: \_\_\_\_\_ %  
Total Hispanic American MBE Participation: \_\_\_\_\_ %  
Total Women-Owned MBE Participation: \_\_\_\_\_ %

**Overall Goal**

Total MBE Participation (include all categories): \_\_\_\_\_ %

**PART 2 - MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT &  
MBE PARTICIPATION SCHEDULE**

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

In connection with the bid/proposal submitted in response to Request for Proposals for Design-Build Services for the Hagerstown Multi-Use Sports and Event Facility (Construction Phase), I affirm the following:

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

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

- 8 percent for African American-owned MBE firms
- percent for Hispanic American-owned MBE firms
- percent for Asian American-owned MBE firms
- 11 percent for Women-owned MBE firms

Therefore, I am not seeking a waiver pursuant to COMAR 21.11.03.11. I acknowledge that by checking the above box and agreeing to meet the stated goal and subgoal(s), if any, I **must** complete PART 3 - MBE Participation Schedule and Part 4 Signature Page in order to be considered for award.

**OR**

After making good faith outreach efforts prior to making this submission, I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals I acknowledge that by checking this box and requesting a partial waiver of the stated goal and/or one or more of the stated subgoal(s) if any, I **must** complete Part 3, the MBE Participation Schedule and Part 4 Signature Page for the portion of the goal and/or subgoal(s) if any, for which I am not seeking a waiver, in order to be considered for award. I acknowledge that by checking this box and requesting a full waiver of the stated goal and the stated subgoal(s) if any, I **must** complete Part 4 Signature Page in order to be considered for award.

### **Additional MBE Documentation**

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

- (a) Good Faith Efforts Documentation to Support Waiver Request (Attachment D-1C)
- (b) Outreach Efforts Compliance Statement (Attachment D-2);
- (c) MBE Subcontractor/MBE Prime Project Participation Statement (Attachments D-3A and 3B);
- (d) Any other documentation, including additional waiver documentation if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal and subgoals, if any.

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

### **Information Provided to MBE firms**

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

## PART 3 - MBE PARTICIPATION 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
	Design-Build Services (Construction Phase) Hagerstown Multi-Use Sports & Event Facility	

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

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

<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>Percentage of total Contract Value to be performed with own forces and counted towards the MBE <b>overall participation goal</b> (up to 50% of the overall goal): _____% <b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p>Percentage of total Contract Value to be performed with own forces and counted towards the <b>subgoal</b>, if any, for my MBE classification (up to 100% of not more than one subgoal): _____%</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><b>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work your firm is self-performing to calculate amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</b></p> <p><b>A. Percentage amount of subcontract where the MBE Prime firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products / services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p><b>B. Percentage amount for items of work where the MBE Prime firm is being used as supplier, wholesaler, and/or regular dealer</b> (60% Rule).  Total percentage of Supplies/Products ___% x 60% = ___%</p> <p><b>C. Percentage amount of fee where the MBE Prime firm is being used as broker</b> (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 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><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></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><b>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.</b></p> <p><b>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products/services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p><b>B. Percentage of total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer</b> (60% Rule). Total percentage of Supplies/Products ___% X 60% = ___%</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker</b> (count reasonable fee/commission only) ___%</p> <p>Description of the work to be performed: _____ _____</p>
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<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><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></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><b>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that for 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.</b></p> <p><b>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products/services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p><b>B. Percentage of the total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule).</b> Total percentage of Supplies/Products ___% X 60% = ___%</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker</b> (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><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></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><b>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.</b></p> <p><b>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products/services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p><b>B. Percentage of total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule).</b> Total percentage of Supplies/Products ___% X 60% = ___%</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker</b> ___%</p> <p>Description of the work to be performed: _____ _____</p>

CONTINUE ON SEPARATE PAGE IF NEEDED

**PART 4 – SIGNATURE PAGE**

**To complete Affidavit committing to MBE(s) or requesting waiver,  
Bidder/Offeror must sign below:**

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

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

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

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_  
Date

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

## D-1B WAIVER GUIDANCE

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

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

#### I. Definitions

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

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

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

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

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

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

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

##### A. Identify Proposal Items as Work for MBE Firms

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

- (a) Certain procurements will include a list of Proposal items identified during the goal setting process as possible work for performance by MBE Firms. If the procurement provides a list of Identified Items of Work, the Offeror shall make all reasonable efforts to solicit quotes from MBE Firms to perform that work.
- (b) Offerors may, and are encouraged to, select additional items of work to be performed by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved.

###### 2. Identified Items of Work by Offerors

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

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

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

### 1. MBE Firms Identified in Procurements

- (a) Certain procurements will include a list of the MBE Firms identified during the goal setting process as available to perform the items of work. If the procurement provides a list of Identified MBE Firms, the Offeror shall make all reasonable efforts to solicit those MBE firms.
- (b) Offerors may, and are encouraged to, search the MBE Directory to identify additional MBEs who may be available to perform the items of work, such as MBEs certified or granted an expansion of services after the solicitation was issued.

### 2. MBE Firms Identified by Offerors

- (a) When the procurement does not include a list of Identified MBE Firms, Offerors should reasonably identify the MBE Firms that are available to perform the Identified Items of Work.
- (b) Any MBE Firms identified as available by the Offeror should be certified to perform the Identified Items of Work.

## **C. Solicit MBEs**

### 1. Solicit all Identified Firms for all Identified Items of Work by providing written notice. The Offeror should:

- (a) provide the written solicitation at least 10 days prior to Proposal opening to allow sufficient time for the MBE Firms to respond;
- (b) send the written solicitation by first-class mail, facsimile, or e-mail using contact information in the MBE Directory, unless the Offeror has a valid basis for using different contact information; and
- (c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE, and other requirements of the contract to assist MBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)

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

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

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

- (a) by telephone using the contact information in the MBE Directory, unless the Offeror has a valid basis for using different contact information; or
- (b) in writing *via* a method that differs from the method used for the initial written solicitation.

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

- (a) attending any pre-Proposal meetings at which MBE Firms could be informed of contracting and subcontracting opportunities; and
- (b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors' groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website.

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

Offerors must negotiate in good faith with interested MBE Firms.

1. Evidence of negotiation includes, without limitation, the following:
  - (a) the names, addresses, and telephone numbers of MBE Firms that were considered;
  - (b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and
  - (c) evidence as to why additional agreements could not be reached for MBE Firms to perform the work.
2. The Offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.
3. The fact that there may be some additional costs involved in finding and using MBE Firms is not in itself sufficient reason for the Offeror's failure to meet the contract MBE goal(s), as long as such costs are reasonable. Factors to take into consideration when determining whether an MBE Firm's quote is excessive or unreasonable include, without limitation, the following:
  - (a) dollar difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Offeror;
  - (b) percentage difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Offeror;
  - (c) percentage that the MBE subcontractor's quote represents of the overall contract amount;
  - (d) number of MBE firms that the Offeror solicited for that portion of the work;
  - (e) whether the work described in the MBE and Non-MBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and
  - (f) number of quotes received by the Offeror for that portion of the work.
4. The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.
5. The Offeror may not use its price for self-performing work as a basis for rejecting an MBE Firm's quote as excessive or unreasonable.
6. The "average of the other subcontractors' quotes received" by the Offeror refers to the average of the quotes received from all subcontractors. Offeror should attempt to receive quotes from at least three subcontractors, including one quote from an MBE and one quote from a Non-MBE.
7. The Offeror shall not reject an MBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified MBE that is rejected as unqualified or that placed a subcontract quotation or offer that the Offeror concludes is not acceptable, the Offeror must provide a written detailed statement listing the reasons for this conclusion. The Offeror also must document the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
  - (a) The factors to take into consideration when assessing the capabilities of an MBE Firm, include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.
  - (b) The MBE Firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of Proposals in the efforts to meet the project goal.

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

When appropriate under the circumstances, the decision-maker will consider whether the Offeror made reasonable efforts to assist interested MBE Firms in obtaining:

1. The bonding, lines of credit, or insurance required by the procuring agency or the Offeror; and
2. Necessary equipment, supplies, materials, or related assistance or services.



### III. Other Considerations

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

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

### IV. Documenting Good Faith Efforts

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

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

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

#### B. Outreach/Solicitation/Negotiation

1. The record of the Offeror's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a). **(Complete Outreach Efforts Compliance Statement - D-2).**
2. A detailed statement of the efforts made to contact and negotiate with MBE Firms including:
  - (a) the names, addresses, and telephone numbers of the MBE Firms who were contacted, with the dates and manner of contacts (letter, fax, e-mail, telephone, etc.) **(Complete Good Faith Efforts Attachment D-1C- Part 2, and submit letters, fax cover sheets, e-mails, etc. documenting solicitations);** and
  - (b) a description of the information provided to MBE Firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed and the means used to provide that information.

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

1. For each MBE Firm that the Offeror concludes is not acceptable or qualified, a detailed statement of the reasons for the Offeror's conclusion, including the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
2. For each certified MBE Firm that the Offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the Offeror's conclusion, including the quotes received from all MBE and Non-MBE firms proposing on the same or comparable work. **(Include copies of all quotes received.)**
3. A list of MBE Firms contacted but found to be unavailable. This list should be accompanied by an MBE Unavailability Certificate (see **D-1B - Exhibit A** to this Part 1) signed by the MBE contractor or a statement from the Offeror that the MBE contractor refused to sign the MBE Unavailability Certificate.

#### D. Other Documentation

1. Submit any other documentation requested by the Procurement Officer to ascertain the Offeror's Good Faith Efforts.
2. Submit any other documentation the Offeror believes will help the Procurement Officer ascertain its Good Faith Efforts.

**D-1B - Exhibit A**  
**MBE Subcontractor Unavailability Certificate**

1. It is hereby certified that the firm of \_\_\_\_\_  
(Name of Minority firm)

located at \_\_\_\_\_  
(Number) (Street)

\_\_\_\_\_  
(City) (State) (Zip)

was offered an opportunity to bid on Solicitation No. \_\_\_\_\_

in \_\_\_\_\_ County by \_\_\_\_\_  
(Name of Prime Contractor's Firm)

\*\*\*\*\*

2. \_\_\_\_\_ (Minority Firm), is either unavailable for the work/service or unable to prepare a Proposal for this project for the following reason(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\*\*\*\*\*

\_\_\_\_\_  
(Signature of Minority Firm's MBE Representative) (Title) (Date)

\_\_\_\_\_  
(MDOT Certification #) (Telephone #)

\*\*\*\*\*

3. To be completed by the prime contractor if Section 2 of this form is not completed by the minority firm.

To the best of my knowledge and belief, said Certified Minority Business Enterprise is either unavailable for the work/service for this project, is unable to prepare a Proposal, or did not respond to a request for a price Proposal and has not completed the above portion of this submittal.

\_\_\_\_\_  
(Signature of Prime Contractor) (Title) (Date)

**D-1C**  
**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST**

PAGE \_\_ OF \_\_

<b>Prime Contractor:</b>	<b>Project Description:</b>	<b>PROJECT/CONTRACT</b>
Offeror Company Name, Street Address, Phone		<b>Solicitation #:</b>

Parts 1, 2, and 3 must be included with this certificate along with all documents supporting your waiver request.

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

Company:

---

Company Name (please print or type)

By:

---

Signature of Authorized Representative

Printed Name:

---

Printed Name

Title:

---

Title

Date:

---

Date

Address:

---

Company Address

**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST**  
**PART 1 – IDENTIFIED ITEMS OF WORK OFFEROR MADE AVAILABLE TO MBE FIRMS**

PAGE \_\_ OF \_\_

<b>Prime Contractor:</b>	<b>Project Description:</b>	<b>PROJECT/CONTRACT</b>
Offeror Company Name, Street Address, Phone		<b>Solicitation #:</b>

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

<b>Identified Items of Work</b>	<b>Was this work listed in the procurement?</b>	<b>Does Offeror normally self-perform this work?</b>	<b>Was this work made available to MBE Firms? If no, explain why not.</b>
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
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	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Please check if Additional Sheets are attached.

**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST**

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

PAGE \_\_ OF \_\_

<b>Prime Contractor:</b>	<b>Project Description:</b>	<b>PROJECT/CONTRACT</b>
<i>Offeror Company Name, Street Address, Phone</i>		<b>Solicitation #:</b>

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

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

Please check if Additional Sheets are attached.



**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST**  
**PART 3 – ADDITIONAL INFORMATION REGARDING REJECTED MBE QUOTES**

PAGE \_\_ OF \_\_

<b>Prime Contractor:</b>	<b>Project Description:</b>	<b>PROJECT/CONTRACT NUMBER:</b>
<i>Offeror Company Name, Street Address, Phone</i>		<b>Solicitation #:</b>

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

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

Please check if Additional Sheets are attached.

**D- 2**  
**OUTREACH EFFORTS COMPLIANCE STATEMENT**

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

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

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

---

---

---

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

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

---

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---

4. **Please Check One:**

- This project does not involve bonding requirements.
- Offeror assisted MDOT-certified MBE firms to fulfill or seek waiver of bonding requirements. (DESCRIBE EFFORTS):

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5. **Please Check One:**

- Offeror did attend the pre-Proposal conference.
- No pre -Proposal meeting/conference was held.
- Offeror did not attend the pre-Proposal conference.

**D- 2**  
**OUTREACH EFFORTS COMPLIANCE STATEMENT**

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

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

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

---

---

---

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

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

---

---

---

4. **Please Check One:**

- This project does not involve bonding requirements.
- Offeror assisted MDOT-certified MBE firms to fulfill or seek waiver of bonding requirements. (DESCRIBE EFFORTS):

---

---

---

5. **Please Check One:**

- \_\_\_\_\_ Offeror did attend the pre-Proposal conference.
- \_\_\_\_\_ No pre -Proposal meeting/conference was held.
- \_\_\_\_\_ Offeror did not attend the pre-Proposal conference.

**D-3A**  
**CERTIFIED MBE SUBCONTRACTOR PARTICIPATION CERTIFICATION**

**INSTRUCTIONS:**

**PRIME CONTRACTOR:** After completing SECTIONS A, B, and D, provide this form to *each* certified Minority Business Enterprise subcontractor (MBE) listed on the MBE Participation Schedule (Attachment D-1A) allowing sufficient time for the MBE to respond within the required timeframe.

**CERTIFIED MBE SUBCONTRACTOR:** Complete SECTION C to acknowledge and certify the information in SECTION A. Return the completed form directly to the Procurement Officer identified in SECTION D within 10 days after notice from the Prime Contractor of the State’s intent to award the Contract. Provide a copy to the Prime Contractor.

***IF THIS FORM IS NOT RETURNED WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE PRIME CONTRACTOR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.***

**SECTION A**

Provided that (Prime Contractor) \_\_\_\_\_ is awarded the State contract in conjunction with Solicitation Number \_\_\_\_\_, (Prime Contractor) \_\_\_\_\_ intends to enter into a subcontract with (Certified MBE Subcontractor) \_\_\_\_\_ with MDOT Certification Number \_\_\_\_\_ committing to participation by (Certified MBE Subcontractor) \_\_\_\_\_ of at least \$ \_\_\_\_\_ which equals \_\_\_\_\_% of the Total Contract Value for the following products/services:

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

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

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

**SECTION B – Prime Contractor**

Signature of Representative:

\_\_\_\_\_

Printed Name and Title:

\_\_\_\_\_

Prime Firm's Name: \_\_\_\_\_

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

Street Address, City, State, Zip Code:

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Date: \_\_\_\_\_

**SECTION C – Certified MBE Subcontractor**

Signature of Representative:

\_\_\_\_\_

Printed Name and Title:

\_\_\_\_\_

MBE Firm's Name: \_\_\_\_\_

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

Street Address, City, State, Zip Code:

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Date: \_\_\_\_\_

**SECTION D**

*This completed form is due to the Procurement Officer on or before:* \_\_\_\_\_

Solicitation #: \_\_\_\_\_ Solicitation Title: \_\_\_\_\_

Agency/Dept.: \_\_\_\_\_ Procurement Officer: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Street Address, City, State, Zip Code:

\_\_\_\_\_

\_\_\_\_\_



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

**Please complete and submit this form to attest to each specific item of work that your MBE firm has listed on the MBE Participation Schedule (Attachment D-1A) for purposes of meeting the MBE participation goals. This form must be submitted within 10 Business Days of notification of apparent award. If the Offeror fails to return this affidavit within the required time, the Procurement Officer may determine that Proposal is not susceptible of being selected for Contract award.**

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

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE) For Construction Projects, General Conditions must be listed separately	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES	VALUE OF THE WORK

**MBE Prime Contractor**

Company:

\_\_\_\_\_  
*Company Name (please print or type)*

FEIN:

\_\_\_\_\_  
*Federal Identification Number*

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

\_\_\_\_\_  
 Phone:

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

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

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

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

\_\_\_\_\_  
 Date:

**D-4A**  
**Minority Business Enterprise Participation**  
**Prime Contractor Paid/Unpaid Invoice Report**

Report #:	Contract #:
Reporting Period (Month/Year):	Contracting Unit:
<b>Prime Contractor: Report is due to the MBE Liaison by the 10th of the month following the month the services were provided.</b> <b>Note: Please number reports in sequence</b>	Contract Amount:
	MBE Subcontract Amt:
	Project Begin Date:
	Project End Date:
	Services Provided:

Prime Contractor:		Contact Person:	
Address:			
City:		State:	ZIP:
Phone:	FAX:	E-mail:	
MBE Subcontractor Name:		Contact Person:	
Phone:	FAX:	E-mail:	
Subcontractor Services Provided:			
<b>List all payments made to MBE subcontractor named above during this reporting period:</b>		<b>List dates and amounts of any outstanding invoices:</b>	
	<b>Invoice #</b>	<b>Amount</b>	
	<b>Invoice #</b>	<b>Amount</b>	
1.			1.
2.			2.
3.			3.
4.			4.
<b>Total Dollars Paid: \$</b>		<b>Total Dollars Unpaid: \$</b>	

- If more than one MBE subcontractor is used for this contract, you must use separate **Attachment D-4A** forms. Information regarding payments that the MBE prime will use for purposes of meeting the MBE participation goals must be reported separately in **Attachment D-4B**.
- **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

---

Contract Monitor Name

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Address

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Email

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Signature (Required)

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Contracting Unit

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City, State Zip

---

Phone Number

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Date

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**D-4A**  
**Minority Business Enterprise Participation**  
**Prime Contractor Paid/Unpaid Invoice Report**

Report #:	Contract #:
Reporting Period (Month/Year):	Contracting Unit:
<b>Prime Contractor: Report is due to the MBE Liaison by the 10th of the month following the month the services were provided.</b> <b>Note: Please number reports in sequence</b>	Contract Amount:
	MBE Subcontract Amt:
	Project Begin Date:
	Project End Date:
	Services Provided:

Prime Contractor:		Contact Person:	
Address:			
City:		State:	ZIP:
Phone:	FAX:	E-mail:	
MBE Subcontractor Name:		Contact Person:	
Phone:	FAX:	E-mail:	
Subcontractor Services Provided:			
<b>List all payments made to MBE subcontractor named above during this reporting period:</b>		<b>List dates and amounts of any outstanding invoices:</b>	
	<b>Invoice #</b>	<b>Amount</b>	
	<b>Invoice #</b>	<b>Amount</b>	
1.			1.
2.			2.
3.			3.
4.			4.
<b>Total Dollars Paid: \$</b>		<b>Total Dollars Unpaid: \$</b>	

- If more than one MBE subcontractor is used for this contract, you must use separate **Attachment D-4A** forms. Information regarding payments that the MBE prime will use for purposes of meeting the MBE participation goals must be reported separately in **Attachment D-4B**.
- **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

---

Contract Monitor Name

---

Address

---

Email

---

Signature (Required)

---



---

Contracting Unit

---

City, State Zip

---

Phone Number

---

Date

---

**D-4B**  
**Minority Business Enterprise Participation**  
**MBE Prime Contractor Report**

MBE Prime Contractor:	Contract #:
Certification Number:	Contracting Unit:
Report #:	Contract Amount:
Reporting Period (Month/Year):	Total Value of the Work to the Self-Performed for purposes of Meeting the MBE participation goal/subgoals:
<b>MBE Prime Contractor: Report is due to the MBE Liaison by the 10th of the month following the month the services were provided.</b> <b>Note: Please number reports in sequence</b>	Project Begin Date:
	Project End Date:

Contact Person:			
Address:			
City:		State:	
Phone:		FAX:	E-mail:

Invoice Number	Value of the Work	NAICS Code	Description of Specific Products and/or Services

**Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Contract Monitor Name	Contracting Unit
Address	City, State Zip
Email	Phone Number
Signature (Required)	Date

**D-5**  
**Minority Business Enterprise Participation**  
**MBE Subcontractor Paid/Unpaid Invoice Report**

Report #:	Contract #:
Reporting Period (Month/Year):	Contracting Unit:
<b>Report is due by the 10th of the month following the month the services were performed.</b>	MBE Subcontract Amt:
	Project Begin Date:
	Project End Date:
	Services Provided:

MBE Subcontractor Name:					
MDOT Certification #:					
Contact Person:					
Address:					
City:			State:		ZIP:
Phone:		FAX:		E-mail:	
<b>Subcontractor Services Provided:</b>					
<b>List all payments received from Prime Contractor during reporting period indicated above.</b>			<b>List dates and amounts of any unpaid invoices over 30 days old.</b>		
	<b>Invoice Amount</b>	<b>Date</b>		<b>Invoice Amount</b>	<b>Date</b>
1.			1.		
2.			2.		
3.			3.		
4.			4.		
<b>Total Dollars Paid: \$</b>			<b>Total Dollars Unpaid: \$</b>		
Prime Contractor:			Contract Person:		

**Return one copy of this form to the following addresses (electronic copy with signature and date is preferred):**

_____	_____
Contract Monitor Name	Contracting Unit
_____	_____
Address	City, State Zip
_____	_____
Email	Phone Number
_____	_____
Signature (Required)	Date



**ATTACHMENT E**  
**CORPORATE PROFILE**

**Corporate Profile**

**Firm Contact Information**

Firm Name: \_\_\_\_\_

Federal ID Number: \_\_\_\_\_

D&B Number: \_\_\_\_\_

Point of Contact: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Regional Office Address: \_\_\_\_\_  
\_\_\_\_\_

**Firm Background Information**

Year Firm Founded: \_\_\_\_\_

Contractor's License #: \_\_\_\_\_ State: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Bonding Capacity: \_\_\_\_\_ Available Bond Capacity: \_\_\_\_\_

Is the firm MDOT MBE and/or SBR Certified? Yes  No  If certified, provide the certification # and minority status.

\_\_\_\_\_

Primary Business / Service Provided: \_\_\_\_\_

Number of Years Performing Construction Management Services: \_\_\_\_\_

Number Full Time Employees (Corporate / Regional Office): \_\_\_\_\_ / \_\_\_\_\_

Provide a brief narrative outlining the firm's history. Elaborate on the firms experience and expertise performing Construction Management at Risk services. Specifically, elaborate on the firms experience completing renovations/additions and/or replacements of large public assembly venues.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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Provide sales volume, project completion data and safety data for the most recently completed three-year period. Note that information provided is to be for the regional / local office that would be responsible for completing work under this solicitation.

	Annual Sales Volume	# of Completed Projects	Largest Project	EMR Rating
2018	_____	_____	_____	_____
2019	_____	_____	_____	_____
2020	_____	_____	_____	_____
Current EMR Rating				_____

**Firm References**

Provide three (3) references. Note that references are to be from different projects; that is, only one reference per project is allowed.

Firm Reference Number 1

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Company Name: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_  
 Project Relationship: \_\_\_\_\_

Firm Reference Number 2

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Company Name: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_  
 Project Relationship: \_\_\_\_\_

Firm Reference Number 3

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company Name: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Project Relationship: \_\_\_\_\_

**Corporate Profile Prepared By:**

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**ATTACHMENT F**  
**PROJECT EXPERIENCE FORM**



**Request for Proposals (RFP)  
Design-Build Services - Hagerstown Multi-Use Sports and Events Facility**

**Project Experience Form**

	<b>PROJECT #1</b>	<b>PROJECT #2</b>	<b>PROJECT #3</b>	<b>PROJECT #4</b>	<b>PROJECT #5</b>
Project Name and Location					
Owner Name, Contact Person, Email & Phone Number					
Offeror's Role in the Project					
Project Type (New, Renovation, etc.)					
Gross Square Footage of Project					
Project Delivery Method (CMR, CM Agency, DB, Negotiated GMP, GC, etc.)					
Similarities/Relevance to this Project					
Original Completion Date					
Actual Completion Date					
Reason(s) for Variance (if applicable)					
Original Construction Cost					
Final Construction Cost					
Reason(s) for Cost Difference (if applicable)					
Offeror's Original Contract Amount					
Offeror's Final Contract Amount					
Reason(s) for Cost Difference (if applicable)					
Preconstruction Services Provided (Yes / No. If Yes, detail the level of services provided.)					
Construction Services Provided (Yes / No. If yes detail the level of services provided.)					
Project Executive					
Project Manager					
Field Superintendent					
Project Scheduler					

**ATTACHMENT G**  
**STAFFING PLAN**



**ATTACHMENT H**  
**KEY PERSONNEL PROJECT EXPERIENCE MATRIX**





**ATTACHMENT I**  
**FINANCIAL PROPOSAL FORM**

**Maryland Stadium Authority**

**Request for Financial Proposal**

**Design Build Services**

**Hagerstown Multi-Use Sports and Events Facility**

**Issue Date:**



**Prospective Offerors who have received this document from the Maryland Stadium Authority and wish to assure receipt of any changes or additional materials related to this Request for Proposal, should immediately confirm receipt of this document to the Procurement Officer and provide their name and contact information in order to receive information about Amendments to the RFP or other communications. Proposers must be prequalified for the referenced procurement in order to reply to this solicitation.**

1. The Financial Proposal must be received by the Procurement Officer no later than \_\_\_(am/pm) on \_\_\_\_\_, 2021.
2. The Financial Proposal shall be uploaded to the following link (to be provided by the Procurement Officer).
3. The Financial Proposal shall be completed using the forms provided herein. If electronic forms are made available, Offerors are responsible for ensuring the proper and accurate calculation of all formulas and functions contained in the forms provided.
4. Proposals are valid for the period of time stated in Section 1.12 of the RFP.
5. The Financial Proposal includes the documents listed below. The Proposal shall be organized in the sequence indicated.
  - A. Transmittal Letter: Provide a transmittal letter prepared on the Offeror's business stationery that lists all items contained in the proposal and is signed by a company executive authorized to bind the firm to all the statements, services and financial commitments contained in the Proposal.
  - B. Attachment A - Financial Proposal Form
  - C. Attachment B – GMP Calculation Form (For record purposes)
  - D. Attachment B1 – DB Allowances and Holds (For record purposes)
  - E. Attachment C – Estimated General Conditions
  - F. Attachment D - Hourly Rates for Project Management and Professional Services
    - Provide hourly rates for each position (not individual) included on the Staffing Plan provided in **Attachment G** in the RFP. Hourly rates identified are to be fully loaded rates inclusive of all expenses and costs in connection with providing the services required under this Contract (e.g. overhead, travel, lodging, meals, etc.). Hourly rates provided are fixed for the duration of the Project.
  - G. Offeror's current Dun and Bradstreet's Comprehensive Report

**REQUEST FOR FINANCIAL PROPOSAL  
DESIGN BUILD SERVICES  
HAGERSTOWN MULTI-USE SPORTS AND EVENTS FACILITY  
ATTACHMENT A  
FINANCIAL PROPOSAL FORM**

1.0 Preconstruction Services:	\$	-
Allowance For Travel and Reimbursables:	\$	-
Subtotal:	\$	-
Owner Contingency (equal to 10% of Subtotal):	\$	-
Owner's Allowance (Software, Licenses, etc.):	\$	5,000.00
<b>Total Preconstruction Services Fee:</b>	<b>\$</b>	<b>5,000.00</b>

2.0		
	Trade Contractor P& P Bonds/Default Insurance ( <i>Cell B13 on Attachment B</i> ):	0.00%
	DB Contingency based on 70% CDs ( <i>Cell B15 on Attachment B</i> ):	0.00%
	DB Builder's Risk Insurance ( <i>Cell B19 on Attachment B</i> ):	0.00%
	DB Payment and Performance Bonds ( <i>Cell B21 on Attachment B</i> ):	0.00%
	DB Insurances (i.e GLI, Auto, etc.) ( <i>Cell B23 on Attachment B</i> ):	0.00%
	DB Fee ( <i>Cell B25 on Attachment B</i> ):	0.00%

3.0 Estimated General Conditions Fee (Attachment C):	\$	-
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**REQUEST FOR FINANCIAL PROPOSAL  
DESIGN BUILD SERVICES  
HAGERSTOWN MULTI-USE SPORTS AND EVENTS FACILITY  
ATTACHMENT B  
GMP CALCULATION FORM**

	A	B	C	D	E
1	<b>GUARANTEED MAXIMUM PRICE SUMMARY</b>				
2	Cost of Work Item #1	1	LS	\$ -	\$ -
3	Cost of Work Item #2	1	LS	\$ -	\$ -
4	Cost of Work Item #3	1	LS	\$ -	\$ -
5	Cost of Work Item #4	1	LS	\$ -	\$ -
6	Cost of Work Item #5	1	LS	\$ -	\$ -
7	Cost of Work Item #6	1	LS	\$ -	\$ -
8	Cost of Work Item #7	1	LS	\$ -	\$ -
9	Cost of Work Item #8	1	LS	\$ -	\$ -
10	Cost of Work Item #9	1	LS	\$ -	\$ -
11	Cost of Work Item #10	1	LS	\$ -	\$ -
12	<b>Subtotal Cost of Work</b>			\$ -	\$ -
13	Add Alternates (10% per DB Agreement Section 2.14.6)	10.00%	of	\$ -	\$ -
14	<b>Subtotal</b>			\$ -	\$ -
15	Trade Contractor P&P Bonds / Default Insurance	0.00%	of	\$ -	\$ -
16	<b>Subtotal</b>			\$ -	\$ -
17	DB Contingency (Based on 70% CDs)	0.00%	of	\$ -	\$ -
18	<b>Subtotal</b>			\$ -	\$ -
19	General Conditions Fee	1	LS	\$ -	\$ -
20	<b>Subtotal</b>			\$ -	\$ -
21	DB Builder's Risk Insurance	0.00%	of	\$ -	\$ -
22	<b>Subtotal</b>			\$ -	\$ -
23	DB Payment and Performance Bonds	0.00%	of	\$ -	\$ -
24	<b>Subtotal</b>			\$ -	\$ -
25	DB Insurances (i.e GLI, Auto, etc.)	0.00%	of	\$ -	\$ -
26	<b>Subtotal</b>			\$ -	\$ -
27	DB Fee	0.00%	of	\$ -	\$ -
28	<b>Subtotal</b>			\$ -	\$ -
29	DB Project Allowances & Holds (Attached):	1	LS	\$ -	<i>TBD</i>
30	Owner Contingency, Allowances & Holds	1	LS	\$ -	<i>TBD</i>
31	<b>TOTAL GUARANTEED MAXIMUM PRICE</b>			\$ -	\$ -



**REQUEST FOR FINANCIAL PROPOSAL  
DESIGN BUILD SERVICES  
HAGERSTOWN MULTI-USE SPORTS AND EVENTS FACILITY  
ATTACHMENT B1  
DB ALLOWANCES AND HOLDS**

<b>ALLOWANCES &amp; HOLDS SUMMARY</b>						
Allowance/Hold Item #1	1	LS	\$	-	\$	-
Allowance/Hold Item #2	1	LS	\$	-	\$	-
Allowance/Hold Item #3	1	LS	\$	-	\$	-
Allowance/Hold Item #4	1	LS	\$	-	\$	-
Allowance/Hold Item #5	1	LS	\$	-	\$	-
Allowance/Hold Item #6	1	LS	\$	-	\$	-
Allowance/Hold Item #7	1	LS	\$	-	\$	-
Allowance/Hold Item #8	1	LS	\$	-	\$	-
Allowance/Hold Item #9	1	LS	\$	-	\$	-
Allowance/Hold Item #10	1	LS	\$	-	\$	-
<b>Subtotal</b>					<b>\$</b>	<b>-</b>
Subcontractor P&P Bonds / Subcontractor Default Insurance*	<input type="text" value="0.00%"/>	of	\$	-	\$	-
<b>Subtotal of Direct Work</b>					<b>\$</b>	<b>-</b>
DB Contingency	1	LS	Included with GMP		Included with GMP	
<b>Subtotal Cost of Construction</b>					<b>\$</b>	<b>-</b>
General Conditions Fee	1	LS	Included with GMP		Included with GMP	
<b>Subtotal</b>					<b>\$</b>	<b>-</b>
DB Builder's Risk Insurance*	<input type="text" value="0.00%"/>	of	\$	-	\$	-
<b>Subtotal</b>					<b>\$</b>	<b>-</b>
DB Payment and Performance Bonds*	<input type="text" value="0.00%"/>	of	\$	-	\$	-
<b>Subtotal</b>					<b>\$</b>	<b>-</b>
DB General Liability Insurance*	<input type="text" value="0.00%"/>	of	\$	-	\$	-
<b>Subtotal</b>					<b>\$</b>	<b>-</b>
DB Fee*	<input type="text" value="0.00%"/>	of	\$	-	\$	-
<b>TOTAL ALLOWANCES &amp; HOLDS</b>					<b>\$</b>	<b>-</b>

\* Amounts from GMP Calculation Form

**REQUEST FOR FINANCIAL PROPOSAL  
DESIGN BUILD SERVICES  
HAGERSTOWN MULTI-USE SPORTS AND EVENTS FACILITY  
ATTACHMENT C  
ESTIMATED GENERAL CONDITIONS**

\*Rate is **Fully Loaded** to include all costs associated with the individual's assignment to the Project. This includes, but is not limited to, payroll burden expenses; vehicle costs, including lease, insurance, maintenance, repair and fuel; out-of-town travel expenses including per diem and overnight stay expenses.

<b>Category</b>	<b>Name</b>	<b>MONTHS</b>	<b>TOTAL HOURS</b>	<b>RATE*</b>	<b>TOTAL COST (Total Hours x Rate)</b>
Project Executive		0.00	-	\$ -	\$ -
Project Manager		0.00	-	\$ -	\$ -
Project Superintendent		0.00	-	\$ -	\$ -
Cost Estimator		0.00	-	\$ -	\$ -
Lead Scheduler		0.00	-	\$ -	\$ -
Project Manager #2		0.00	-	\$ -	\$ -
Assistant Project Manager		0.00	-	\$ -	\$ -
Assistant Superintendent		0.00	-	\$ -	\$ -
Project Engineer		0.00	-	\$ -	\$ -
Field Engineer		0.00	-	\$ -	\$ -
Accounting		0.00	-	\$ -	\$ -
QA/QC		0.00	-	\$ -	\$ -
MBE		0.00	-	\$ -	\$ -
BIM		0.00	-	\$ -	\$ -
Other:		0.00	-	\$ -	\$ -
Other:		0.00	-	\$ -	\$ -
Other:		0.00	-	\$ -	\$ -
Other:		0.00	-	\$ -	\$ -
<b>SUBTOTAL LABOR COST:</b>					<b>\$ -</b>
Safety and Site Security	First aid supplies; hardhats and goggles; safety signage; security locks.	0.00		\$ -	\$ -
Temporary Field Facilities and Services	Rent, set-up, and removal of trailers for the CM and for MSA site representative; field offices' utilities, security, communication services, and cleaning; temporary sanitary facilities; Project signs.	0.00		\$ -	\$ -

**REQUEST FOR FINANCIAL PROPOSAL  
DESIGN BUILD SERVICES  
HAGERSTOWN MULTI-USE SPORTS AND EVENTS FACILITY  
ATTACHMENT C  
ESTIMATED GENERAL CONDITIONS**

Field Offices' Equipment and Software	Field office equipment, maintenance and repair; field office furniture; field office computer equipment, software, maintenance, repair, and support; equivalent requirements for the MSA on-site field representative (with the exception of computer equipment and software).	0.00	-	\$	-	\$	-
Field Offices' Supplies and Postage/Shipping	Office supplies for CM and MSA; postage/ shipping.	0.00		\$	-	\$	-
Professional Services	Cost of Services Not Included in the CM's Construction Services Fee or Trade Contracts	0.00		\$	-	\$	-
Other:		0.00		\$	-	\$	-
Other:		0.00		\$	-	\$	-
Other:		0.00		\$	-	\$	-
Other:		0.00		\$	-	\$	-
Other:		0.00		\$	-	\$	-
Project Documentation and Reproduction	Per Requirements of Contract Documents	With General Requirements in Cost of Work					
Temporary Utilities	Consumption for Temporary Project Utilities	With General Requirements in Cost of Work					
Waste Management and Daily Cleaning	Cost of Services for Dumpsters, Street Sweeping, Etc.	With General Requirements in Cost of Work					
Weather and Other Protection	Temporary weather and dust protection not in Trade Contracts; site snow removal; materials for maintenance of erosion control not in Site Trade Contract.	With General Requirements in Cost of Work					
Material Handling	Chutes, Rental Equipment, etc.	With General Requirements in Cost of Work					
Elevator Operator(s)	If Applicable	With General Requirements in Cost of Work					
Miscellaneous Materials and Small Tools	Miscellaneous materials; small tools; surveying equipment.	With General Requirements in Cost of Work					
Protection of Finished Work	If Not Included In Trade Contracts	With General Requirements in Cost of Work					
Permit Fees	Cost of the Building Permit is by Owner. Costs associated with construction related permits are to be included in the GMP and/or the Trade Contracts.	Construction related permits included in Trade Contracts					
<b>SUBTOTAL NON-LABOR COST:</b>						\$	-
<b>TOTAL ESTIMATED GENERAL CONDITIONS (Labor plus Non-Labor Cost)**:</b>						\$	-



**ATTACHMENT J**  
**DESIGN-BUILD AGREEMENT**





**HAGERSTOWN MULTI-USE SPORTS & EVENTS FACILITY  
DESIGN-BUILD AGREEMENT**

**BETWEEN  
MARYLAND STADIUM AUTHORITY  
&  
[FIRM NAME]**

MSA CONTRACT NO. \_\_\_\_\_

**DESIGN-BUILD AGREEMENT**

Hagerstown Multi-Use Sports & Events Facility

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Exhibit C	Staffing Plan
Exhibit D	MBE Goals & Reporting Forms (A-H)
Exhibit E	Prevailing Wage Scale
Exhibit E-1	Prevailing Wage Instructions to Design-Builder
Exhibit F	Project Progress Report
Exhibit G	Final Project Report
Exhibit H	Certificates of Substantial & Final Completion
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Exhibit M	Bid Proposal Bond Form
Exhibit N	Performance Bond Form
Exhibit O	Labor and Material Payment Bond Form

DESIGN BUILD AGREEMENT

WITH

GUARANATEED MAXIMUM PRICE

Hagerstown Multi-Use Sports & Events Facility

This Design Build Agreement (this “Agreement”) is made as of this \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_ 2021.

between the Owner:

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

and the Design Build Contractor

Name  
Address  
City, State, Zip Code

The Project is:

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

The Client is:

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

MARYLAND STADIUM AUTHORITY (the “**Authority**”), a body politic and corporate and an instrumentality of the State of Maryland (the “**State**”) hereby contracts with \_\_\_\_\_ (“Design-Builder”), a \_\_\_\_\_ corporation to perform all work (the "Work") in connection with \_\_\_\_\_, (the "Project"), as said Work is set forth in the Plans and Specifications furnished by the Design-Builder and other Contract Documents hereafter specified.

## **ARTICLE 1 GENERAL PROVISIONS**

### **Section 1.1 Definitions**

Capitalized terms not otherwise defined herein shall have the meaning given such terms in the Request for Proposals (“**RFP**”) or as generally recognized within the industry.

“**Add Alternate**” or “**Alternate**” means a line item that allows for inclusion of, or the use of an item or construction method that is different from the item or method identified in the current Construction Documents.

“**Architect**” is the entity under contract with the Design-Builder and is responsible for the design services.

“**Bidding and GMP Development Phase**” has the meaning set forth in Article 3.

“**Change Orders**” means a change order submitted and approved as provided in Section 18.6.

“**Client**” means the Hagerstown-Washington County Industrial Foundation, Inc.

“**COMAR**” means the Code of Maryland Regulations.

“**Commencement Date**” means the Project commencement date identified in the Notice to Proceed.

“**Construction Documents**” means those documents set forth in Section 2.1.2.

“**Construction Phase**” has the meaning set forth in Article 4.

“**Construction Team**” includes the Design-Build Team and its Trade Contractors, Subcontractors and Suppliers.

“**Contract**” means the written agreement between MSA and the Design-Builder 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, Design-Build documents, the GMP documentation, documents listed in this Agreement, and all amendments, modifications, addenda, and exhibits to the foregoing.

“**Contract Price**” means Design and Pre-construction Services, exclusive of GMP.

“**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 Design-Builder.

“**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 12.1.1 herein.

“**Design Build Team**” means the Design-Builder, the Architect, and consultants under contract with the Design-Builder.

“**Design-Builder**” or “**Contractor**” means the party under contract with MSA herein. Design-Builder also refers to the Design Build Team or member of the Design Build Team as the context requires.

“**Design Development Phase**” has the meaning set forth in Section 2.23.

“**DGS**” means the Maryland Department of General Services.

“**DGS Manual**” means the Maryland Department of General Services Procedure Manual for Professional Services.

“**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 MSA and the Design-Builder’s 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 6.5) have been fully completed and the Design-Builder 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.

“**GMP**” means the Guaranteed Maximum Price which is the cost of the Work (excluding pre-construction) to be performed by the Design-Builder that has been or will be agreed to by the

Design-Builder and MSA and set forth in a modification to this Agreement after the Design Phase is complete and the GMP has been accepted by MSA.

“**Guaranteed Maximum Price Limit**” (**GMP Limit**) is identified in the RFP and means the maximum amount available for the construction of the Project (including supervision, labor, materials, equipment, supplies, etc.).

“**Hazardous Material**” has the meaning set forth in Section 1.5.

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

“**Interdisciplinary Review**” has the meaning set forth in Section 2.15.

“**Liquidated Damages**” has the meaning set forth in Section 12.6. (*see also, MBE Liquidated Damages*).

“**MBE**” means Minority Business Enterprise Program.

“**MBE Liquidated Damages**” has the meaning set forth in Section 20.8 and Article 24.

“**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 Design-Builder 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 design and construction to be performed under this Agreement, as generally described in **Exhibit C** attached hereto.

“**Project Criteria**” means the minimum criteria to be met as part of the design as set forth on attached Exhibit A.

“**Project Team**” means the Design-Builder, MSA and the Client.

“**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**.

“**Proposal**” includes the Technical Proposal, Financial Proposal and the Best and Final Offer Proposal (if applicable) accepted by the MSA at the time of award of the Contract.

“**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 MSA. 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, MSA shall make the determination as to the standards of what is reasonably inferable. The Design-Builder shall not be entitled to increase the GMP due to an omission in, or a conflict between the Contract Documents of any detail or specification which the Contract Documents may require.

“**RFP**” means the Request for Proposals dated \_\_\_ and issued by MSA for Design Build services.

“**Solicitation Documents**” means MSA’s 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 Design-Builder or a Trade Contractor to furnish a part of the Work. It includes one who furnishes labor, material or equipment worked to a design according to the Contract Documents for the Work.

“**Submittals**” means shop drawings, material data, samples, product data or any other item required to be received, reviewed, and approved by the Architect and/or MSA in accordance with the Contact or Construction Documents.

“**Substantial Completion**” subject to the provisions of Section 11.2 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) Design-Builder has coordinated the FF&E for the Project (*see* Section 4.16).

(h) Design-Builder has satisfied the requirements of Section 4.19 (“as-built” drawings).

(i) Design-Builder has satisfied the requirements of Article 11 with respect to Substantial Completion.

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

“**Supplier**” means an entity having a direct contract with the Design-Builder, Trade Contractor or Subcontractor to furnish material or equipment as a part of the Work.

“**Trade Contractor**” means an entity having a direct contract with the Design-Builder to furnish a part of the Work. It includes one who furnishes labor, material or equipment 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, including design 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 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: This Agreement as subsequently modified or amended
- Second: Project Criteria
- Third: RFP
- Fourth: All other exhibits to this Agreement

(b) The order of priority in (a) notwithstanding, it is the Contractor’s responsibility to inform the MSA 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 Design-Builder 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.

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

1.2.3 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.

1.2.4 Entire Agreement. This Agreement represents the entire and integrated agreement between the MSA and the Design-Builder and supersedes all prior negotiations, representations or agreements, either written or oral.

1.2.5 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 MSA may obtain an independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the MSA. Such independent review shall be undertaken at the MSA's expense and shall not delay the timely execution of the Work.

1.3.3 In the event MSA 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 Design-Builder.

1.3.4 In the event MSA 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 Design-Builder.

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

1.3.6 Organization of the specifications into divisions, sections and articles, and arrangement of drawings shall not control the Design-Builder in dividing the Work among Trade Contractors, Subcontractors or Suppliers in establishing the extent of Work to be performed.

1.3.7 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.

### **Section 1.4 General Contract Conditions and Terms**

1.4.1 Relationship. Design-Builder recognizes and accepts that MSA is entering into this Contract in reliance on Design-Builder's expertise, skills, and abilities with respect to performing its obligations hereunder. The Design-Builder accepts the relationship of trust and confidence established between it and MSA by this Contract, and covenants to furnish its best efforts, skill and judgment and to cooperate with any other consultants engaged by MSA.

1.4.2 MSA is the principal decision-making authority within the Project Team. In the event of any disagreement or dispute between any members of the Project Team regarding the Project, MSA shall be the final decision making authority.

1.4.3 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 Design-Builder, its employees, Trade Contractors, Subcontractors, Suppliers, consultants, et al., shall be the property of MSA upon payment for said Work or part thereof notwithstanding termination pursuant to Article 22 (whether for convenience or default). Design-Builder 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 1.4.3 shall not apply to the Design-Builder's proprietary project control system (if applicable).

1.4.4 Compliance with laws. The Design-Builder 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) Design-Builder 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.

1.4.5 Conditions Affecting the Work.

(a) The Design-Builder 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 Design-Builder to do so will not relieve it from responsibility for successfully performing the Work without additional expense to MSA. MSA 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.

(b) Site Conditions. The Design-Builder 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 Design-Builder 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 MSA, as well as from information presented by the drawings and specifications made a part of this Agreement. Any failure by the Design-Builder 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. MSA assumes no responsibility for any conclusions or interpretations made by the Design-Builder on the basis of the information made available by MSA.

#### 1.4.6 Differing Site Conditions.

(a) The Design-Builder shall promptly (but in no event more than ten (10) business days from the date Design-Builder becomes, or should have become aware) and before such conditions are disturbed, notify MSA 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) MSA 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 Design-Builder'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 Design-Builder under this clause shall be allowed unless the Design-Builder has given the notice required in subsection (a) of this clause; provided, however, the time prescribed therefore may be extended by MSA.

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

### **Section 1.5 Hazardous Materials**

1.5.1 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.

1.5.2 In the event the Design-Builder encounters any materials reasonably believed to be hazardous substances and if deposited prior to the date hereof other than as identified in the environmental reports or as otherwise disclosed to the Design-Builder, and not in the course of the

Work by the Design-Builder or its subcontractors, the Design-Builder shall immediately stop work in the affected area and report the condition in writing to MSA.

1.5.3 The Work in the affected area shall not resume except by written agreement of MSA and the Design-Builder, if in fact materials that are hazardous substances have not been rendered harmless.

1.5.4 MSA shall contract to have the hazardous substances removed or rendered harmless (which contract may be with the Design-Builder if mutually agreeable) and MSA shall bear the costs and expense of same.

## **ARTICLE 2 DESIGN & PRECONSTRUCTION SERVICES**

### **Section 2.1 Generally**

2.1.1 The Design-Builder shall provide complete architecture and engineering services necessary to result in a complete and fully functioning facility compliant with the requirements of the Contract, the Project Criteria included in Exhibit A, and within the GMP Limit.

2.1.2 In fulfilling its obligations under this section, Design-Builder shall employ architects and engineers of the appropriate specialties for proper preparation of the Project drawings and specifications, including structural, mechanical, electrical, soils, civil and such other specialties (collectively, "Construction Documents") as are reasonably required. All such professional services shall be performed by appropriately State licensed personnel. Design-Builder takes responsibility for the proper performance of architectural and engineering services.

2.1.3 The Design-Builder shall develop project procedures in cooperation with MSA, which will be used as a guide for the management and coordination of the Project.

2.1.4 The Design-Builder shall produce Schematic Design documents per Section 2.22, Design Development documents per Section 2.23 and Construction Documents per Section 4.2.

2.1.5 The Design-Builder shall achieve economy in construction by simplification in design, standardization in materials and the like where appropriate.

2.1.6 If the Project exceeds the GMP Limit at any time during the Design and Pre-Construction Phase, the Project shall be redesigned as necessary to reduce the Project costs to an amount acceptable to MSA without additional compensation to the Design-Builder.

### **Section 2.2 Architect Services**

#### **2.2.1 Architect Basic Services**

- (a) Architecture
- (b) Civil engineering
- (c) Landscape architecture
- (d) Structural engineering



- (e) Mechanical/plumbing engineering
- (f) Fire protection engineering
- (g) Electrical engineering

2.2.2 Architect Special Services

- (a) Land survey (per Section 2.10), existing utility survey(s), and test pitting, etc. (
- (b) Geotechnical engineering per Section 2.11
- (c) Telecommunications/IT systems design
- (d) LEED Consulting
- (e) Energy Efficiency and Sustainability Analysis per Section 2.1.8
- (f) Playing Surface Specialist or Consultant
- (g) Events/ Space Planning Consultant
- (h) Any other required consultants whose services are not included in Basic Services.

2.2.3 Specifications. Design specifications shall be prepared in accordance with the requirements set forth in the DGS Manual.

2.2.4 Utilities, Telecommunication, Infrastructure

- (a) Architect shall include with the design all utilities, telecommunications, and other infrastructure whether new or relocated for the Project from the Project to the source necessary to serve the Project.
- (b) Architect shall include full systems design to include work in existing buildings or structures on site, site investigation, and capacity studies.
- (c) Design shall be for systems for a completed and fully functioning facility(ies).

**Section 2.3 Design-Builder Services**

2.3.1 The Design-Builder shall advise the Architect on matters relating to site use, improvements, selection of materials, building methods, construction details, building systems and equipment, phasing, and sequencing.

2.3.2 At a minimum, Design-Builder shall provide:

- a. Site utilization and logistics planning per Section 2.16.
- b. Constructability review services per Section 2.13.
- c. Scheduling services per Section 2.19.
- d. Cost modeling and estimating services per Section 2.14.
- e. Value engineering services per Section 2.20.
- f. Construction Documents Interdisciplinary Review services per Section 2.15.
- g. Bidding and GMP Preparation per Article 3.

**Section 2.4 Codes, Standards and Regulations**

2.4.1 In addition to the requirements set forth in Section 1.4.4 herein, the Design-Builder shall:

(a) Comply with the codes, standards, and regulations applicable to the Project, including but not limited to those required by the Maryland State Fire Prevention Code, Maryland Accessibility Code, and the Americans with Disabilities Act.

(b) Coordinate and incorporate requirements identified by the State Fire Marshal during all Phases of the Project.

2.4.2 The most restrictive requirement of the latest approved code or regulation shall apply in the case of conflicting requirements between these codes and standards.

### **Section 2.5 Access**

2.5.1 The Design-Builder shall coordinate access to the site or other facilities if required, with the Client through MSA for a land survey, geotechnical services, and any other service requiring equipment to be brought to the site.

### **Section 2.6 Green Building**

2.6.1 Although MSA is not seeking formal LEED Certification, the Project facilities' design shall adhere to the requirements of § 3-602.1 of the State Finance & Procurement Article, Maryland Annotated Code, and employ Green Building principles wherever practical in the design and construction using the LEED™ Silver rating as the minimum standard.

### **Section 2.7 Meetings**

2.7.1 Design-Builder shall conduct regularly scheduled meeting with the Architect and other members of the Design-Build Team in addition to the meetings set forth in this Section.

#### **2.7.2 Design Progress Meetings**

(a) Regular Design Progress meetings shall be held every two (2) weeks unless otherwise agreed to by MSA.

(b) At MSA's request, there may be at least five (5) additional Design Progress meetings during the Design Phase.

(c) As required or deemed necessary by MSA, there shall be other meetings among the Design -Build Team, MSA, and the Client to review the design of civil, mechanical, electrical, fire alarm, telecommunications, security, and other systems and topics such as security and utilities.

2.7.3 Design review meetings shall occur after each design submission, and if necessary, to resolve comments made by the Project Team.

2.7.4 Design progress meetings as well as design review meetings may be held virtually, in Baltimore or at the Project location. The final format and location for each is subject to acceptance by MSA.

2.7.5. Other meetings during the Design Phase as needed to include but not necessarily limited to discussions regarding Value Engineering pursuant to Section 2.20.

2.7.6 All meetings under this Section 2.6 shall be conducted by the Design-Builder and documented within five working days following each meeting.

2.7.7 Design-Builder shall utilize the BIM Model (*see Section 2.17*) to communicate the current progress of design and construction at all meetings with MSA and the Client.

2.7.8 Public Meetings. At MSA's request, Design-Builder and other members of the Design Build Team shall attend and participate in public meetings and hearings. If necessary, provide public presentations to the Washington County Planning Board.

### **Section 2.8 Printing and Reproduction**

2.8.1 The cost of printing or reproduction of documents required for reviews, meeting presentations, cost estimating etc., of each design submission shall be borne by the Design-Builder.

2.8.2 The cost for any interim printing or reproduction that is required to obtain price information from other parties, or costs of any printing or reproduction for any other purpose during the Pre-Construction / Design Phase, including the Interdisciplinary Review shall be borne by the Design-Builder.

2.8.3 The cost for reproduction for bidding purposes shall be included in the Pre-construction fees. The Design-Builder shall make the Construction Documents easily available to interested trade contractors by setting up an FTP site or similar approach. It is the Design-Builder's responsibility to maximize participation of contractors by minimizing the cost of bidding to potential contractors, especially local contractors and small and MBE contractors.

### **Section 2.9 Design Report**

2.9.1 Design-Builder or its designee shall provide a design report with each Design Phase submission to provide design information that does not appear on drawings or in specifications. The purpose of the design report is to enable the Project Team to understand design intentions, assumptions, direction and issues; and where necessary or appropriate, provide feedback and comments.

2.9.2 The Design Report shall be organized by discipline and system (e.g. a separate discussion of the fire alarm system from discussion of primary distribution) and include the following:

- (a) Project description, status, building code data;
- (b) Status of permits if applicable (in matrix format);
- (c) List of alternates, allowances, items requiring unit prices;
- (d) Description of systems, elements, materials, equipment, and design assumptions;
- (e) List of systems to be designed or engineered by Key Staff and Trade Contractors and suppliers, i.e. metal stairs, sprinkler;
- (f) Major issues, if any;
- (g) List of approved deviations from Project Criteria;
- (h) Calculations;
- (i) Identification of the individual on the Design-Build Team who reviewed the submitted documents for conformity to the Project Criteria, Contract Documents, GMP Limit, etc.

### **Section 2.10 Land Survey**

2.10.1 Provide a land survey for the site and areas affected by the design including but not necessarily limited to the following:

- (a) Topography including contours and spot elevations
- (b) Property lines, building lines and setback requirements
- (c) Easements and rights-of-way
- (d) Legal description
- (e) Surface features and adjoining roads
- (f) Location, size, depth, inverts, and pressure (where applicable) of water, gas, steam, sewers, storm drains, manholes, catch basins, and other utilities, and location of fire hydrants
- (g) Location and elevation of power, street lighting, and telecommunications systems
- (h) Location and species of trees over 6-inch caliper
- (i) Any other information that the Design Builder determines is necessary for the design of the Project

### **Section 2.11 Geotechnical Services.**

2.11.1 The Design-Builder shall provide the following geotechnical investigation and engineering services:

- (a) Borings, soil analysis, laboratory testing, infiltration tests, and geotechnical report.
- (b) Any other tests and information that the Design-Builder determines necessary for the design of the Project.
- (c) Meetings with the Project Team to review the geotechnical report and to discuss its recommendations and how they will be addressed in the facility design;
- (d) MSA shall be provided with a sealed and signed geotechnical report ;
- (e) Geotechnical testing and inspection services required during the Construction Phase will be provided by MSA. The Design-Builder is responsible for coordinating all activities associated with testing and inspection and for providing timely notice to MSA for upcoming testing and inspection requirements.

### **Section 2.12 Quality Control Program**

2.12.1 Design-Builder with the Architect shall develop a Quality Control Program (the “**Quality Control Program**”) for the Project for use by MSA in its procurement of independent testing and inspection services.

2.12.2 The Quality Control Program shall be thorough and identify the specific testing and inspection requirements for the entire Project including the appropriate quantities for each test and inspection.

2.12.1 Additional costs associated with additional quality control measures that MSA in its sole discretion deems necessary, beyond those identified in the Quality Control Program, may be deducted from the GMP Contingency or the Design-Builder Fee for any amount not covered by the GMP Contingency.

### **Section 2.13 Constructability Review Services**

2.13.1 Design-Builder shall notify the MSA in writing upon observing any features in the design that appear to be ambiguous, confusing, conflicting, or erroneous.

2.13.2 The Design-Builder shall provide organized constructability reviews of design submissions for the purpose of:

- (a) identifying errors and deficiencies, omissions, and coordination and interdisciplinary design conflicts; and
- (b) improving the design, minimizing Requests for Information (“RFI”), achieving efficient, cost effective construction, and eliminating added costs and negative effects on the quality of construction.

2.13.3 The Design-Builder shall review the design documents produced by the Architect at the conclusion of each design phase for constructability issues. Provide the following at the completion of each Constructability Review:

- (a) A complete report identifying the constructability issues; and
- (b) Marked up drawings and specifications as necessary to clearly convey the review comments and recommendations.

2.13.4 Design-Builder shall verify that the constructability comments and recommendations have been implemented or addressed in the Design Phase following each review.

### **Section 2.14 Construction Cost Modeling & Costs Estimating Services**

2.14.1 Design-Builder shall develop a project cost model and shall update it with all required design phase submissions. Project cost models shall be based upon the Design-Builder’s own experience in the specific trade work market.

2.14.2 The Design-Builder shall coordinate with the Architect to clearly understand the design intent and to establish estimating assumptions prior to each cost model and estimate submission.

2.14.3 Within thirty (30) days from the date of the NTP for Design and Pre-Construction Services, the Design-Builder shall develop and submit to the MSA the Base Project Cost Model utilizing the available Project documents, including the Project Criteria.

2.14.4 The Base Cost Model, and all subsequent cost models, shall be organized and calculated in accordance with the GMP Calculation Form included in the Financial Proposal. The calculation shall include the applicable lump sum and percentage amounts identified in the Design-Builder’s Proposal accepted by MSA.

2.14.5 The Design-Builder’s Base Cost Model and each of its subsequent cost estimate submissions to MSA shall include a written description of the Design-Builder’s methodology for developing the specific estimate submitted.

2.14.6 Ten percent (10%) of the Cost of Work is expected to be identified as Add Alternates. Estimating for Add Alternates shall start as soon as Alternates are identified; and shall be complete and include the same level of detail and accuracy as the estimates for the base design at each design phase.

2.14.7 Construction Cost Estimates. Design-Builder shall provide a cost estimate at the conclusion of each design phase in accordance with DGS Manual Chapter 1 Article 5.

2.14.8 Cost estimates shall be submitted within ten (10) business days of receipt by MSA of the Schematic Design; and within fifteen (15) business days of the Design Development documents and all Construction Document submissions.

2.14.9 Design-Builder shall provide *cost comparisons* for current cost estimate and any prior cost estimates it provided to MSA.

2.14.10 In the event that the construction cost estimate exceeds the GMP Limit at *any* time, the Design-Builder shall collaborate with the Project Team to redesign the Project as necessary to maintain the Project Criteria and meet the GMP Limit without additional compensation to the Design-Builder.

2.14.11 (a) MSA reserves the right to retain the services of an independent estimator to provide independent estimates of any or all design submissions.

(b) Design-Builder shall manage the process of reconciling the two estimates, including meetings and negotiations with MSA and the Architect as necessary to explain and resolve questions and differences in any of the CSI divisions or trade packages.

(c) In the event of disparity between the two estimates, the Design-Builder shall work with MSA to reach a mutually agreed upon and acceptable cost estimate. Upon conclusion of this process, the two estimates shall be reconciled, and a revised Design-Builder cost model provided in hardcopy and electronic formats shall be submitted to MSA.

### **Section 2.15 Interdisciplinary Review**

2.15.1 The Design-Builder shall arrange for an independent firm to conduct a thorough Interdisciplinary Review of the 70% Construction Documents – including drawings and specifications and shall provide its comments to MSA in writing.

2.15.2 Interdisciplinary Review methodology shall utilize a structured and industry recognized process.

2.15.3 The Interdisciplinary Review shall result in the following deliverables:

- (a) Marked-up sets of the Construction Documents and other documents prepared by Architect and other members of the Design-Build Team for submission;
- (b) A written description of each interdisciplinary issue noted as problematic, including background information;
- (c) Written report inclusive of Design-Builder's comments and redial recommendations. The costs to perform the Interdisciplinary Review shall be included in the Design-Builder's fee for Design and Preconstruction Services pursuant to Article 14.

2.15.4 MSA reserves the right to hire an independent Interdisciplinary Review firm. The Design-Builder shall ensure that comments from MSA's independent Interdisciplinary Review firm are incorporated into the 100% Construction Documents in a timely manner.



### **Section 2.16 Site Utilization and Logistics Planning Service**

2.16.1 The Design-Builder shall anticipate and effectively address the impact of construction work on the areas surrounding the site (including roadway improvements) and the community. This includes both on-site construction activities, and off-site activities that impact the premises, nearby roads, or other off-site areas. The plan shall include items such as staging areas, parking, and transportation issues (for both occupant of surrounding buildings and construction workers), traffic considerations, security, deliveries to adjacent buildings, construction noise and vibration impact on surrounding buildings, and any other activity, regardless of its duration, which will occur or have an impact on the site or surrounding areas.

### **Section 2.17 Building Information Modeling Services**

2.17.1 The Design-Builder shall provide Building Information Modeling (“**BIM**”) services using either a qualified outside firm or qualified in-house personnel.

2.17.2 At a minimum, the Design-Builder shall utilize BIM software to complete the drawings and develop a model (a “**BIM Model**”) to include the following disciplines:

- (a) architecture;
- (b) mechanical;
- (c) electrical;
- (d) plumbing; and
- (e) structural engineering.

2.17.3 The Design-Builder shall assist in the development of a “BIM Implementation Plan” which will outline the proposed plans for BIM Model use, and how it will be coordinated with all parties.

2.17.4 The Design-Builder shall employ coordinating software accessible to and by all parties.

2.17.5 The Design-Builder shall be provided full access to the digital model, and shall work with, and coordinate the model with other members of the Design-Build Team as appropriate and MSA.

2.17.6 At completion of the Construction Document Phase, the BIM Model shall meet the requirements of Level of Development (a “**LOD**”) 300, as defined in AIA document G202-2013

2.17.7 The BIM Model must include the follow elements:

- (a) substructure
- (b) shell
- (c) interiors
- (d) services

2.17.8 BIM Modeling services shall include:

- (a) Logistics and impacts outside the Limit of Disturbance
- (b) Value Engineering-cost and alternative studies
- (c) Virtual mock-ups
- (d) Labor planning and asset management

(e) Spatial Coordination: Collision/Clash detection

(f) Trade Contractor/Subcontractor scope definition

2.17.9 The Design-Builder shall utilize the BIM Model to communicate the current progress of design and construction at all meetings with MSA and the Client.

2.17.10 The Design-Builder shall start performing spatial coordination including collision/clash detection exercises as early as possible and shall complete the last Pre-Construction Phase collision detection prior to the completion and submission of the 70% Construction Documents.

### **Section 2.18 Life Cycle, Building Energy Efficiency and Sustainability**

2.18.1 Life Cycle, Building Energy Efficiency and Sustainability Report. The Design-Builder shall provide a Life Cycle, Energy Efficiency and Sustainability Report which identifies all energy efficient and sustainability related features, components and strategies incorporated into the design and construction of the facility. The report shall elaborate on how the features, components and strategies align with those identified in the Maryland Climate Solutions New Act of 2021 (the “Act”). The report shall also elaborate on the features, components and strategies identified in the Act that are not included in the design or construction and provide an explanation as to why they are not feasible at the present time and how they may be pursued in the future.

### **Section 2.19 CPM Scheduling Services (Design and Preconstruction)**

2.19.1 Design-Builder shall provide CPM scheduling services during the Design and Pre-Construction Phases as described in Exhibit I.

### **Section 2.20 Value Engineering Services**

2.20.1 Design-Builder shall provide value engineering (“**Value Engineering**”) services and offer time and/or cost savings suggestions and best value recommendations to the Project Team. All recommendations shall be fully reviewed with and approved by MSA prior to implementation.

2.20.2 Value Engineering shall result in a design that is most effective in initial cost as well as long term operational cost relative to issues of energy use and facility maintainability. The goal is to achieve a balance between costs, aesthetics, and function.

2.20.3 Value engineering studies shall be continuous as the design is developed and shall be provided on a timely basis and within the design schedule. ‘**Continuous**’ means that, in addition to the Value Engineering studies required at the end of each design phase, the Design-Builder shall assist the Architect in evaluating the costs of elements of the design for the purpose of developing timely cost data during Design Phases.

2.20.4 Value Engineering shall be conducted throughout the design process to evaluate design alternatives for the purpose of identifying time and/or cost saving. The Design-Builder shall provide time and cost analysis for alternate building design options, such as building materials, mechanical systems, and other options as may be proposed by the Architect and methods of construction and other options as may be proposed by the Design-Builder.

2.20.5 Design-Builder shall conduct a Value Engineering study at the completion of each Design Phase utilizing the design submissions and Construction Documents produced by the Architect. This study shall include, but not be limited to the following:

- (a) Review design submissions and Construction Documents. This review process shall include a detailed review of all Construction Documents including drawings, specifications, studies, test reports, and technical and design reports submitted by the Architect.
- (b) Collaborate in person as needed with the Architect and the Project Team to generate ideas and develop solutions to issues.
- (c) Develop Value Engineering concepts for consideration at the session (both the Design-Builder and the A/E will concurrently be conducting these activities).
- (d) Provide a written Value Engineering report and submit to MSA within two (2) weeks of the initial meeting under (b) above, and subsequent Value Engineering meetings. This report shall include a summary of Value Engineering items, detailed written pro/con evaluation of options, and applicable time and/or cost savings.
- (e) Conduct a formal presentation of the study to the MSA and Client.
- (f) Provide a revised report documenting the accepted and rejected items.

### **Section 2.21 Schematic Design Phase**

2.21.1 Design-Builder shall prepare and submit schematic design (“**Schematic Design**”) documents in accordance with Chapter II, Article 10 of the DGS Manual.

#### 2.21.2 Schematic Design Kick-off meeting and Follow-ups

- (a) Immediately following the NTP for Design and Preconstruction, the Design-Builder and each member of the Design-Build Team shall attend a Schematic Design kick-off-off meeting to discuss and develop the Project’s design philosophy and strategy.
- (b) The Design-Builder and Design-Build Team shall use this opportunity to explain its interpretation of the Project priorities and goals, and its strategy for accomplishing these.
- (c) The Design-Builder shall meet with MSA as necessary to discuss issues affecting the Project’s design or construction requirements and to present findings and solutions.

### **Section 2.22 Schematic Design Document Submission**

2.22.1 Design Concepts. The Design-Builder shall present a minimum of three (3) design concepts which shall include several elevations, axonometric views, and perspective for each to allow proper understanding, review and approval by MSA and Client.

2.22.2 Site Plan. Provide an analysis of site characteristics and design requirements on a site plan. The site plan shall show existing and proposed utilities, roads, walks, grades, other structures and site features, and the relationship of the Project (as completed) to the anticipated future improvements which are not a part of the Project.

2.22.4 Construction Documents. Provide a list of final construction documents Design-Builder anticipates will be required.

2.22.5 Cost Estimates.

- (a) Pursuant to section 2.14 herein, Design-Builder shall provide a cost estimate in accordance with DGS Manual Chapter 1, Article 5(K).
- (b) The Design-Builder shall continue to the next phase of the design process if the cost estimate is within Project Construction Cost Limit.
- (c) If the cost estimate exceeds the budget the Design-Builder shall redesign the Project to meet the budget and resolve all comments to MSA's satisfaction prior to moving on to the Design Development Phase.

2.22.6 CPM Schedule. Submit the Initial Preconstruction CPM Schedule per Section 5.2 of Exhibit M.

**Section 2.23 Design-Development Phase**

2.23.1 Design-Builder shall submit design development (“**Design Development**”) documents in accordance with Chapter 11, Article 11 of the DGS Manual.

2.23.2 Design Development Kick-off Meeting. Immediately following the NTP for Design Development, the Design-Builder and each member of the Design-Build Team shall attend a Design Development kick-off meeting to discuss further development of the Project documents; review the submission requirements set forth in the DGS Manual; and to discuss any issues related to the creation of Design Development documents.

2.23.3 Incorporate comments on the Schematic Design document submission into the Design Development documents.

2.23.4 Construction Documents. Provide a list of final construction documents Design-Builder anticipates will be required.

2.23.5 Submit the initial Quality Control Program pursuant to section 2.12 herein, for review and comment.

2.23.6 Submit the initial site utilization and logistics plan prepared by the appropriate member of the Design-Build Team in accordance with Section 2.16.

2.23.7 Submit the Life Cycle, Building Energy Efficiency and Sustainability report(s) in accordance with Section 2.18.

**Section 2.24 Cost Estimates**

2.24.1 Pursuant to section 2.14 herein, Design-Builder shall provide a cost estimate in accordance with DGS Manual Chapter 1, Article 5(L).

- (a) If the cost estimate exceeds the GMP Limit, the Design-Builder shall redesign the Project to meet the budget and resolve all comments to MSA's satisfaction prior to moving on to the next phase of design

2.24.2 CPM Schedule. Submit the updated Preconstruction CPM Schedule per Section 5.3 of Exhibit M.

**Section 2.25 Construction Document Phase**

2.25.1 Construction Documents (“**Construction Documents**”) must be prepared and submitted in accordance with Chapter II, Article 12 of the DGS Manual.

2.25.2 Construction Documents Kick-off Meeting. Immediately following the NTP for Construction Documents, the Design-Builder and each member of the Design-Build Team shall attend a kick-off meeting to discuss further development of the Project documents; review the submission requirements set forth in the DGS Manual; and to discuss any issues related to the creation of the Construction Documents.

**Section 2.26 Seventy Percent (70%) Construction Documents**

2.26.1 (a) Construction documents must be submitted to MSA for review upon 70% of their completion (the “**70% Construction Documents**”). The 70% Construction Documents shall be complete and coordinated documents.

(b) The 70% Construction Document submission shall consist of six (6) copies of all drawings and specifications required for approval by MSA. Provide four (4) full size, two (2) half size, and five (5) complete electronic sets.

(c) Submit 70% Construction Documents for Interdisciplinary Review in accordance with section 2.15.

(d) Incorporate into the 70% Construction Documents comments from MSA, the Interdisciplinary Reviews and the Constructability Review pursuant to Section 2.13.

(e) Unless agreed to otherwise, the 70% Construction Documents approved by the MSA will be the bid set of Construction Documents to develop the GMP Proposal.

2.26.2 Submit the final Quality Control Program (*see Section 2.12*)

2.26.3 Submit the final Site Utilization and Logistics Plan in accordance with Section 2.16.

**ARTICLE 3  
BIDDING and GMP DEVELOPMENT**

**Section 3.1 Generally**

3.1.1 Unless agreed to otherwise, the Bidding and GMP Development Phase will start upon MSA’s approval of the 70% Construction Document submission, the associated cost estimate and the Pre- Construction CPM Schedule for Bidding and GMP Development.

### **Section 3.2 Trade Packages**

3.2.1 Design-Builder shall use the approved Construction Documents to prepare scopes of services for each trade package. Each scope of service shall include, but not limited to the approved Preconstruction CPM Schedule for Bidding and GMP, anticipated number of work hours necessary for coordination between or among trades, outages and any other conditions that may impact the execution of the Work.

3.2.2 In addition to Section 3.2.1, Design-Builder shall ensure that the scope of work under each trade packages is consistent with the requirements set forth in Section 4.3. Design Builder shall verify that none of the scopes of work include items covered under the Design-Builder General Conditions or Design-Builder fees.

3.2.3 Design-Builder shall solicit a minimum of three (3) competitive bids on all trade packages and materials for each GMP Proposal submission. Bids on trade packages and materials are “**GMP Trade Bids.**”

### **Section 3.3 Bidding**

3.3.1 Design-Builder may not begin bidding until plans, specifications and drawings have been approved by the MSA. MSA’s approval is only to for the limited purpose of checking for conformance with information given and the design concept expressed in the design development documents. MSA’s review of such documents is not conducted for the purpose of determining accuracy and completeness of other details, such as dimensions and quantities, or for substituting instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Contract Documents

3.3.2 The Design-Builder and applicable members of the Design Team shall conduct all pre-bid meeting(s) and provide minutes of the meetings.

3.3.3 The applicable engineers including civil, structural, mechanical, and electrical shall attend scope review meetings to review bids.

3.3.4 The Design-Builder shall provide explanations and interpretations of the documents in writing, to include drawings as necessary.

3.3.5 The bid documents shall include the Design-Builder’s documents and other documents produced by the Design-Build Team and documents provided by MSA.

3.3.6 The Architect shall provide MSA with analysis and evaluation of Design-Builder’s requests for substitutions during bidding, and if necessary, during construction.

3.3.7 The Design-Builder is responsible for obtaining clarification of all questions it has with respect to the meaning or intent of the Contract Documents; and conflicts between items or requirements contained in the Contract Documents prior to submission of the GMP Proposal.

3.3.8 Design-Builder’s failure to obtain any such clarification(s) shall give the MSA the absolute right in its discretion, to direct that the Work proceed by any method indicated, specified, or required by the Contract documents.

3.3.9 MSA’s exercise of its right under 3.3.8 above shall not be grounds for the Design-Builder to claim additional costs or expenses.



3.3.10 The terms of this Section 3.3 notwithstanding, the Design-Builder shall be deemed to have obtained all clarifications to its questions and resolution of conflicts which were known or should have been known prior to its submission of the GMP Proposal at the conclusion of the preconstruction phase.

3.3.11 General Conditions: As part of the GMP Preparation and negotiation activities, the Design-Builder and MSA will negotiate a fixed fee for General Conditions.

#### **Section 3.4 Submission of GMP Proposal**

3.4.1 The GMP Proposal shall be provided to MSA within the timeframe identified in the Design-Builder's Proposal.

3.4.2 The GMP shall not exceed the Guaranteed Maximum Price Limit.

3.4.3 The GMP shall be organized and calculated in accordance with the GMP Calculation Form included in the Proposal. The calculation shall include the applicable lump sum and percentage amounts identified in the Design-Builder's Proposal accepted by MSA.

3.4.4 The GMP is generally comprised of the following:

- a. Cost of Work per Article 15
- b. General Conditions per Article 16
- c. GMP Contingency per Section 18.3
- d. Design-Builder Fee per Article 17
- e. Design Builder Allowances & Holds per Section 18.4
- f. Owner Contingency & Allowances per Sections 18.7 and 18.8

3.4.5. The GMP Proposal submission shall include all required forms, proposal bond, certifications, Final Preconstruction CPM Schedule per Section 5.5 of Exhibit M and completed MBE attachments.

#### **Section 3.5 GMP / Project Cost Adjustments**

3.5.1 After review by MSA of the selected Trade Bids, Design-Builder shall submit its GMP Proposal (the "**GMP Proposal**") which includes the GMP Trade Bids to MSA.

3.5.2 In the event that the total projected construction costs exceed the GMP Limit, MSA reserves the right to direct the Design-Builder to work with the Architect to redesign the Project as necessary to maintain the Project Criteria and meet the GMP Limit.

3.5.3 With input from MSA, the Design-Builder and the members of the Design-Build Team as appropriate shall work cooperatively with the Project Team to make agreed upon changes to the Construction Documents (the "**Amended Construction Documents**") necessary to achieve the required reduction in cost.

3.5.4 The Design-Builder shall submit an amended GMP Proposal (the "**Amended GMP Proposal**") to MSA reflecting the changes.

3.5.6 Notwithstanding anything to the contrary in this Contract, Design-Builder shall perform the work set forth in this section without additional compensation.

3.5.7 Design-Builder's detailed GMP Proposal will be reviewed by the Architect and MSA - and compared with the GMP Limit.

- (a) MSA, the Architect, and Design-Builder shall meet as necessary to resolve differences between the GMP Limit and the Design-Builder's GMP Proposal, and other related issues.
- (b) Design-Builder shall work with the Architect and MSA to reach a mutually acceptable GMP.

### **Section 3.6 GMP Amendment to Contract**

3.6.1 Acceptance of Design-Builder's GMP Proposal shall be in MSA's sole discretion. If MSA and Design-Builder fail to agree on the GMP, the Contract may be terminated in accordance with Article 22 (termination for convenience).

3.6.2 Upon MSA's acceptance of the GMP Proposal (and any amendments thereto), and receipt of approval from the required governmental authorities including the MSA Board of Directors and the Maryland Board of Public Works this Agreement will be amended to include the terms of the GMP Proposal. At this point, the Design-Builder will provide Construction Services.

## **ARTICLE 4 CONSTRUCTION SERVICES**

### **Section 4.1 Construction Phase**

4.1.1 The Construction Phase will commence upon the Design-Builder's receipt of NTP with Construction from MSA.

4.1.2 Generally, the Design-Builder shall:

(a) Supply all services (including architectural, engineering, and construction) 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 the Trade Contractors and each member of the Design-Build Team.

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

(d) Provide construction administration services through its Design Team.

(e) Prepare and maintain the Project CPM Schedule and Reports in accordance with Article XX.

### **Section 4.2 100% Construction Documents**

4.2.1 Upon receipt of NTP with Construction, the Design-Builder shall advance the design to 100% Construction Documents.

4.2.2 The Interdisciplinary Review firm shall review the 100% Construction Documents to verify that all comments from the review of the 70% Construction Documents have been addressed. MSA shall be notified in writing of any unaddressed comments or issues.

4.2.3 The Design-Builder shall incorporate any corrections identified in the special coordination and collision/clash detection exercises into the 100% Construction Documents.

4.2.4 The 100% Construction Document submission shall consist of six (6) copies of all drawings and specifications required for approval by MSA. Provide four (4) full size, two (2) half size, and five (5) complete electronic sets.

### **Section 4.3 Trade Contractors, Subcontractors & Suppliers**

4.3.1 Upon receipt of NTP with Construction, the Design-Builder shall commence final negotiations and award of contracts to Trade Contractors, Subcontractors and Suppliers.

4.3.2 In General

The Design-Builder is fully responsible to MSA and the State for the acts and omissions of its Design Build Team, 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.

4.3.3 Nothing contained in the Contact Documents shall create any contractual relation between the Design Build Team, any Trade Contractor, Subcontractor or Supplier at any tier and MSA 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 Design-Builder. No Trade Contractor, Subcontractor or Supplier at any tier shall have or make any claim or cause of action directly against the Client, Owner or the State.

4.3.4 Trade Contractors, Subcontractors and Suppliers shall be selected by competitive bidding as provided in Section 9.4 below.

4.3.5 MSA shall have the right to review the form of all Trade Contracts, Subcontracts or agreements with Suppliers which shall incorporate the terms and conditions of the Contract Documents.

4.3.6 Design-Builder shall not make any changes to any of its Trade Contracts, Subcontracts or agreements with Suppliers without prior written approval by the Owner, which may be given or withheld at the sole discretion of Owner.

4.3.7 Design-Builder shall deliver to MSA a copy of each executed Trade Contracts, Subcontracts or agreements with Suppliers, and any changes, modifications, additions or amendments with the Project Progress Report (*see **Exhibit F***). The Owner shall not be a party to any Trade Contracts, Subcontracts or agreements with Suppliers.

### **Section 4.4 Exceptions**

4.4.1 Under certain circumstances (i.e. a Trade Contractor's breach or the lack of available qualified contractors), the Design-Builder may recommend to Owner that Design-Builder employ its own work force to perform certain Trade Contractor work.

4.4.2 If the Design-Builder recommends and Owner approves Design-Builder employing its own work force *during* the bid process, Design-Builder shall submit a bid for the subject work in the same format as required of other bidders.

4.4.3 If the Design-Builder makes a recommendation after an award to a Trade Contractor, Subcontractor or Supplier and during the course of the Project Work, (i.e. the Trade Contractor is in breach of contract), the Design-Builder shall establish to Owner's satisfaction that Design-Builder's price for substitution with its own work force is competitive for the type of work at issue.

4.4.4 In no event shall work be started by the Design-Builder or its employees, agents, contractors, or other substitute for the Trade Contractor, Subcontractor or Supplier without prior written approval of the Owner. Owner's approval shall include the method of determining the payment to the Design-Builder for such work, however it shall not entitle the Design-Builder to an increase in the Cost of the Work.

4.4.5 All such work shall be performed in accordance with the Contract Documents.

#### **Section 4.5 Procurement & Contracts**

4.5.1 Design-Builder shall receive no fewer than three (3) bids for any Work to be performed by a Trade Contractor, Subcontractor or Supplier.

4.5.3 MSA shall have the right to review the form of all Trade Contracts, Subcontracts or agreements for the purchase of materials which shall incorporate the terms and conditions of the Contract Documents.

4.5.4 Design-Builder shall not award any Trade Contracts, Subcontracts or agreements for the purchase of materials in excess of \$10,000 without the prior written approval of the MSA. Design-Builder's recommendation for contract award shall include a tabulation of qualified and financially responsible bidders or suppliers with their bids. The bids shall be sufficiently detailed for MSA to compare.

4.5.5 The Design-Builder must provide a written explanation to MSA for any Trade Contractor, Subcontractor or Supplier recommended for award who was not the lowest bidder.

4.5.6 Design-Builder shall award the Trade Contracts, Subcontracts or agreements for the purchase of materials after the MSA and the Design-Builder review the bids or proposals.

4.5.7 Buy-out savings resulting from negotiations and award to Trade Contractors, Subcontractors and Suppliers shall increase GMP Contingency.

#### **Section 4.6 Prompt Payment of Trade Contractors, Subcontractors and Suppliers**

4.6.1 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.

4.6.2 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.

4.6.3 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.

4.6.4 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 4.7 Retainage in Payments to Trade Contractors, Subcontractors and Suppliers**

4.7.1 The Design-Builder may not retain from any payment due to a Trade Contractor, Subcontractor or Supplier a percent of the payment greater than the percent of retainage specified in Section 21.5.

4.7.2 A Trade Contractor, Subcontractor or Supplier 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 Trade Contractor, Subcontractor or Supplier.

4.7.3 However, the Design-Builder and/or a Trade Contractor, Subcontractor or Supplier are not prohibited by this Section 4.6 from withholding an amount in addition to retainage if the Design-Builder or subcontractor determines that a Trade Contractor, Subcontractor or Supplier's performance under the Trade Contractor, Subcontractor or Supplier provides reasonable grounds for withholding the additional amount.

4.7.4 The Design-Builder and each Trade Contractor, Subcontractor or Supplier at any tier shall include, in all of their contracts for work called for by this Agreement, wording that incorporates the provisions of this Section 4.6.

#### **Section 4.8 Trade Contract – Contract Provisions**

4.8.1 In addition to any other required term or provision contained herein, the Design-Builder must bind every Trade Contractor, Subcontractor or Supplier - and will see that every Trade Contractor, Subcontractor or Supplier 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 MSA. The Design-Builder must include in any Trade Contracts, Subcontracts or agreements with Suppliers the following provisions:

4.8.2 Trade Contractor, Subcontractor or Supplier agrees to be bound to the Design-Builder by the terms of the Contract between the Design-Builder and MSA, and to assume toward it all obligations and responsibilities that the Design-Builder, by those documents assumes towards MSA.

4.8.3 Trade Contractor agrees to submit to the Design-Builder applications for payment in such reasonable time as to enable the Design-Builder to apply for payment under Section 20.1.

4.8.4 The provisions required by Sections 4.6 and 4.7; and if applicable, the prevailing wage provisions on **Exhibits E and E-1** attached hereto.

4.8.5 Each contract shall be assignable to MSA at MSA's election in the event the Design-Builder is terminated or fails to perform its obligations under the Contract Documents. MSA 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, Subcontractor or Supplier.

4.8.6 The Design-Builder shall have the right to require the Trade Contractor, Subcontractor or Supplier 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 CPM Schedule.

4.8.7 The provisions of this Section 4.7 notwithstanding, unless there is an assignment of contract pursuant to this Section the Design-Builder shall be solely responsible for all Trade Contractors, Subcontractors and Suppliers and neither MSA nor the Architect shall have privity of contract with, or obligations or liabilities to the Trade Contractor, Subcontractor or Supplier.

#### **Section 4.9 Prevailing Wage Requirements**

4.9.1 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 Design-Builder shall comply with all Prevailing Wage requirements set forth in **Exhibits E and E-1** attached hereto titled "Prevailing Wage Instructions for Design-Builder."

#### **Section 4.10 Materials**

4.10.1 Generally. The Design-Builder in accepting the Contract, is assumed to be thoroughly familiar with the services and 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.

4.10.2 Approval. The Design-Builder through its Architect is responsible for assuring all materials conform with the Contract Documents, quality, design, color, etc. MSA's approval of a Trade Contractor, Subcontractor or Supplier does not constitute approval of a material which is other than that included in the Contract Documents.

4.10.3 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 MSA.

4.10.4 Samples. The Design-Builder shall furnish for MSA's approval all samples as directed and materials used shall be consistent with the approved samples.

4.10.5 Proof of Quality. The Design-Builder 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.

4.10.6 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 4.11 Dimensions**

4.11.1 The Design-Builder 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 Design-Builder. Whenever a stock size manufactured item or piece of equipment is specified or is proposed by the Design-Builder to be furnished, it is the responsibility of the Design-Builder to determine the actual space requirements for setting or entrance to the setting space. No additional cost will be allowed by reason of work requiring adjustments in order to accommodate the particular item or equipment furnished by the Design-Builder.

#### **Section 4.12 Patents, Copyrights, Trade Secrets and Protected Matters**

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

4.12.2 When an item specified by MSA or furnished by the Design-Builder infringes or is alleged to infringe any patent, copyright, trademark, trade secret or other property right of another, the Design-Builder will, at his option, and at no additional cost to MSA or the State, (i) procure for MSA 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 4.13 Substitutions**

4.13.1 Should the Design-Builder 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.

4.13.2 Any materials which the Design-Builder proposes be substituted, and the materials it proposes to use as substitutions, require MSA's written approval. The Design-Builder 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 MSA if the Design-Builder has not clearly specified and designated such material as a "substitute" and the Design-Builder shall not be released from any of its contractual obligations.

### **Section 4.14 Non-Conformance of Work**

4.14.1 If the Design-Builder 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 Design-Builder to the responsible party (i.e. Trade Contractors or Subcontractors) with a copy to the MSA and the Architect.

### **Section 4.15 Quality of Work and Standard of Care**

4.15.1 The Work performed shall be consistent with (i) the standards and construction practices observed by Design-Builders of comparable stature to Design-Builder on projects of similar size and importance; and (ii) the interests of MSA relating to quality, timely completion, safety and economics.

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

### **Section 4.16 Coordination of the Work**

4.16.1 The Design-Builder has full responsibility for the control and execution of the Work. The Design-Builder shall:

(a) Supervise and direct the work of its Design-Builder Team, Trade Contractors, Subcontractors and Suppliers including providing administrative management and related services as required to coordinate the Work with the activities and responsibilities of the Trade Contractors and the MSA to complete the Project in accordance with the MSA'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 Construction Team.

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

(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 MSA to minimize disruption to operations of existing facilities as applicable.

#### **Section 4.17 Coordination with Utilities**

4.17.1 The Design-Builder 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 Design-Builder's operations shall be the responsibility of the Design-Builder.

4.17.2 It is understood and agreed that the Design-Builder's GMP 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.

4.17.3 At any point where the Design-Builder'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 Design-Builder.

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

4.17.5 The Design-Builder 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 4.18 Submittals**

4.18.1 The Design-Builder shall:

(a) Establish and implement procedures for expediting the processing of product data, samples and other submittals consistent with the Contract Documents and Construction Documents.

(b) Provide the MSA with a set of Coordinated Shop Drawings from its Design Build Team, Trade Contractors, Subcontractors and Suppliers 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 MSA, a submittal log which incorporates the activities of the Design Build Team, and Trade Contractors on the Project, including a master registry of all submittals for the Project, with weekly updates to be distributed at the progress meeting.

#### **Section 4.19 Land Survey**

4.19.1 In addition to the Location Survey requirements in Section 2.10, Design-Builder shall

- (a) Provide new monuments at all property corners at completion of the Construction Phase.
- (b) Provide sealed and signed original drawings and AutoCAD files to MSA upon completion of the survey.
- (c) Provide a certified survey of the site upon completion of the Construction Phase. The final metes and bounds shall be submitted as part of the close-put documents.

#### **Section 4.20 Trade Contractor As-Built Drawings**

4.20.1 As-built drawings are to be prepared by all Trade Contractors. The Design-Builder shall monitor their preparation on at least a monthly basis – or more often if necessary and shall take appropriate corrective action when as-built drawings are not being properly updated. The Design-Builder shall forward as-built drawings to the Architect upon completion of the Project for the Architect’s preparation of record drawings.

### **ARTICLE 5 SAFETY, SECURITY & PERMITS**

#### **Section 5.1 General Provisions**

5.1.1 The Design-Builder 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 5.2 Safety Precautions, Barricades & Warning Signs**

5.2.1 The Design-Builder 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 ensure 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 MSA or its designee by the Design-Builder.

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

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

5.2.2 The Design-Builder also has primary responsibility for all Project safety programs, shall require and review Project-specific safety programs developed by each of the Trade Contractors, and shall observe, at a minimum the safety programs required in the Contract Documents.

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

### **Section 5.3 Emergencies**

5.3.1 In an emergency affecting the safety of persons or property, the Design-Builder shall act to prevent threatened damage, injury or loss. The Cost of the Work and the Substantial Completion Date shall not be adjusted except as provided in Section 12.4.

5.3.2 If the MSA determines that an emergency exists that threatens the safety of persons or property, and the Design-Builder or responsible Trade Contractor does not immediately take corrective action, the MSA shall have the right to: (a) order the affected work be stopped; and (b) take any necessary corrective action, including hiring of experts or professionals as MSA deems

necessary under the circumstances. All costs incurred in so doing shall be charged to the Design-Builder and shall not increase the Cost of the Work.

**Section 5.4 Building Permit**

5.4.1 The Design-Builder shall apply for and obtain the building permits. The Design-Builder will be reimbursed for the actual cost of the building permit by MSA.

**Section 5.5 Permits, Licenses, Certificates and Fees**

5.5.1 The Design-Builder 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 at the time the GMP is provided to the MSA.

5.5.2 This Section 5.3 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.

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

**ARTICLE 6  
SPECIAL CONSULTANTS, INSPECTIONS & CHECKLISTS**

**Section 6.1 Special Consultants and Testing Laboratories**

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

(b) If special consultants or testing laboratories were unanticipated and not reasonably anticipated by the Design-Builder, the Design-Builder shall notify the MSA and in consultation with the MSA, 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 Design-Builder shall maintain a log documenting all deficiencies revealed by such surveyors, consultants and laboratories, and shall monitor and document the corrective measured taken. This information shall be included in the Progress Report. The Design-Builder shall coordinate any inspections which may be required by any government agencies or the MSA, subject to Owner Changes (Section 18.5).



## **Section 6.2 Inspections**

6.2.1 As used in this Section 6.2 and elsewhere wherever the context calls for it, “inspection” *includes* testing and/or approval of work.

6.2.2 The Design-Builder 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.

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

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

6.2.5 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 Design-Builder shall give the MSA 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 MSA the date of the inspection.

6.2.6 The MSA may charge the Design-Builder any additional cost of inspection when Work is not ready at the time specified by the Design-Builder, or when prior rejection makes re-inspection necessary.

6.2.7 All Work, including fabrication and source of supply, is subject to inspection by the Architect, MSA or the State, or any third party inspector. Other than the MSA, inspectors are not authorized to revoke, alter, or waive any requirements of the Contract. Inspectors are authorized to call the attention of the Design-Builder 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 MSA, until resolution of issues concerning compliance with Contract requirements.

6.2.8 Inspections by the MSA or the State are for the sole benefit of the MSA. Inspections by the MSA or the State, or the presence or absence of the MSA or a State inspector at any inspection, or the failure of the MSA or the State inspector to report any deviation by the Design-Builder from Contract requirements shall not: (i) relieve the Design-Builder 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 MSA to hold Design-Builder responsible for failure to meet Contract requirements.

6.2.9 If the MSA determines that any Work requires special inspection not required by the Contract, it may direct the Design-Builder to obtain such inspection and the Design-Builder shall

do so. If the inspection reveals a failure of the Work to comply with Contract requirements, the Design-Builder shall bear all costs of the inspection, and any other costs incurred by the MSA. In all other cases, the MSA shall bear such costs and an equitable adjustment may be made to the GMP as an Owner Change (*see* Section 18.5).

6.2.10 Required certificates or other documentation of inspection shall be obtained by the Design-Builder and promptly delivered to the MSA, and any other public authority or agency entitled thereto.

### **Section 6.3 Checklists**

6.3.1 Close In Checklists. The Design-Builder 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.

6.3.2 Reserved

6.3.3 Checkout, Initial Start-Up & Testing.

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

6.3.4 The Design-Builder shall perform or observe the Trade Contractors' performance of the final checkout of utilities, operational systems and equipment for readiness.

6.3.5 The Design-Builder shall assist in the initial start-up and testing and make arrangements with the Trade Contractors for appropriate maintenance personnel to be trained in the operations of the equipment.

6.3.6 The Design-Builder shall perform the requirements of this Section with input and participation of the MSA and the Architect and consistent with the provisions of the Contract Documents.

6.3.7 If applicable, the Design-Builder shall coordinate the Work with the MSA's Commissioning Agent.

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

### **Section 6.4 Completion List and Punch List**

6.4.1 Throughout the execution of the Work, Design-Builder shall maintain a list of items needed to be completed or corrected to meet the Substantial Completion Date (the "**DB Completion List**"). The Design-Builder shall provide copies of the DB Completion List to the MSA at progress meetings for their review and comment.

6.4.2 If the MSA determines that Substantial Completion has been achieved as defined in Section 1.1, the MSA shall determine the time within which the Design-Builder shall complete any remaining items of work, which will be indicated on a list (the "**Punch List**").

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

6.4.4 If the Design-Builder fails to complete the Punch List in the required time, the MSA shall have the undisputed right to complete the work at the Design-Builder's expense.

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

6.4.6 Acceptance of the Work as substantially complete shall not excuse or waive any failure of the Design-Builder to complete the Contract as required by the Contract Documents.

## **ARTICLE 7 PROGRESS REPORTS; MEETINGS; COSTS**

### **Section 7.1 Progress Reports**

7.1.1 Progress Reports. The Design-Builder shall record the progress of the Project and shall submit a monthly report containing the information shown on **Exhibit F** to the MSA.

### **Section 7.2 Progress Meetings**

7.2.1 Progress Meetings. The Design-Builder shall:

(a) Schedule and conduct construction progress meetings (and any other meetings deemed necessary relative to the Project) as either agreed upon by Design-Builder and MSA, or as otherwise required by MSA.

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

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

### **Section 7.3 Project Cost; Budget**

7.3.1 The Design-Builder shall:

(a) Develop and monitor an effective system of Project cost controls acceptable to MSA. The system should include cash flow projections updated not less than monthly.

(b) Provide monthly reports to MSA showing budgets, committed amounts, Change Orders, contingencies, and the estimated cost to complete variances from budgets; and payments for line items in the account structure.

(c) Advise the MSA promptly whenever any line item of projected cost exceeds either the budget for, or the estimated cost of such item.

## **ARTICLE 8 RECORDS; DOCUMENTS; AS-BUILT DRAWINGS**

**Section 8.1 Maintenance of On-Site Documents**

8.1.1 The Design-Builder 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.

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

8.1.3 Design-Builder 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.

8.1.4 The Design-Builder shall make all records available to the MSA.

**ARTICLE 9  
PERSONNEL**

**Section 9.1 In General**

9.1.1 The Design-Builder shall staff the Project in strict accordance with the project staffing plan (the “**Staffing Plan**”) attached hereto as **Exhibit I**.

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

9.1.3 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.

9.1.4 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.

9.1.5 The Design-Builder shall employ on the Project, at all times, sufficient personnel to complete the Work within the time stated in the Contract.

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

**Section 9.2 Key People**

9.2.1 “Key People” are principals and employees of the Design-Builder who the MSA desires assigned to the Project for the duration of the contract.

9.2.2 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.

9.2.3 Key People may not be substituted without the prior written consent of the MSA.

9.2.4 Design-Builder's employees shall be supervised by one or more Key People.

9.2.5 If the MSA in its sole discretion determines that any Key Person is not performing satisfactorily, the MSA shall have the right to direct that Design-Builder to replace the individual(s). The Design-Builder shall provide the MSA with resumes of possible replacements within three business days, and the MSA shall have the opportunity, but not the obligation to interview replacement candidates.

## **ARTICLE 10 CPM SCHEDULE and REPORTS**

### **Section 10.1 Notices to Proceed & Critical Path**

10.1.5 CPM Schedule and Reports. The Design-Builder shall prepare and maintain the Project CPM schedule and reports in accordance to the requirements outlined in **Exhibit J**.

10.1.1 The Commencement Date. The Commencement Date shall be the date indicated in the NTP with Construction Design and Preconstruction. The MSA may issue partial NTPs for portions of the Work coordinated with availability of funds or as the Project may require.

10.1.2 If Design-Builder 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 Article 22.

10.1.3 Substantial Completion. The Design-Builder shall achieve Substantial Completion of the entire Work not later than the date identified in the NTP with Construction.

10.1.4 Final Completion. The Design-Builder shall achieve Final Completion not later than the date identified in the NTP with Construction or otherwise required by this Agreement.

## **ARTICLE 11 SUBSTANTIAL AND FINAL COMPLETION**

### **Section 11.1 Time is of the Essence**

#### **11.1.1 Time is of the Essence**

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

### **Section 11.2 Substantial Completion**

11.2.1 Notwithstanding the required elements of Substantial Completion as defined in Section 1.1, the Design-Builder shall not be held responsible for delays affecting the critical path described in Section 12.2, which are caused or created by contractors hired directly by the MSA.

11.2.2

(a) The Design-Builder shall give reasonable advance notice to the MSA of the anticipated Substantial Completion date.

(b) The Architect will inspect the Project to confirm that it has achieved Substantial Completion and provide the MSA with a certification in a form acceptable to MSA stating Substantial Completion has been achieved.

### **Section 11.3 Project & Contract Close Out; Warranties**

#### **11.3.1 Project Close-Out.**

The Design-Builder shall secure and provide to the MSA all items described in and set forth in **Exhibit G** "Final Project Report."

11.3.2 The Design-Builder 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.

11.3.3 Contract Close-Out. The Design-Builder shall continue to provide services as necessary after Final Completion to close-out Trade Contracts, Subcontracts, Purchase Orders, etc. and to resolve outstanding claims which arose prior to Final Completion.

#### **11.3.4 Warranty.**

Except to the extent that the contract documents impose longer warranty obligations on the Design-Builder for all or any part of the work, the Design-Builder warrants for a two 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 Design-Builder 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.

11.3.5 The Design-Builder 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 Design-Builder'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.

### **Section 11.4 Final Completion**

11.4.1 Upon satisfactory receipt and acceptance by MSA 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 MSA and Architect. If the MSA has reasonable cause to believe that the Design-Builder will not achieve Final Completion by the Final Completion Date, the MSA may withhold all or a portion of the Design-Builder Fee remaining to be paid until Final Completion is achieved. (see also Section 20.7 Additional Withholding) Any withheld amounts shall be paid in accordance with Article 21 once Final Completion is achieved.

11.4.2 In addition to the requirements of Section 20.10 final payment shall not be made until Final Completion.

11.4.3 Correction of Work before Final Payment.

The Design-Builder 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.

11.4.4 Subject to MSA's rights under Section 1.3.4, the Design-Builder, 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.

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

### **Section 11.5 Use and Occupancy**

11.5.1 The MSA and/or Client may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the State Fire Marshall, or other governmental authority having jurisdiction over the Work. Such partial use or occupancy may commence whether or not the portion is substantially complete, provided the MSA and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work, and insurance and have agreed in writing concerning the period for completion of correction of the Work and commencement of warranties required by the Design-Build Documents.

11.5.2 Subject to the provisions of Section 11.2 regarding Substantial Completion, partial use or occupancy shall be subject to the consent of the Design-Builder, which consent shall not be unreasonably withheld.

11.5.3 Prior to partial use or occupancy, the MSA, or MSA's designated representative(s) and Design-Builder shall jointly inspect the area to be used or occupied or portion of the Work to be used to determine the condition of the Work. Their findings and observations, and the stage of progress shall be documented in writing executed by the MSA and Design-Builder.

11.5.4 Unless otherwise agreed to in writing, partial use or occupancy of a portion of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

### **Section 11.6 - Warranty Period Inspection**

11.6.1 The Design Builder and its lead Architect, structural, and MEP engineers shall conduct a warranty period walk-through of the Project at the six (6); twelve (12); and twenty-three (23) month milestones after Substantial Completion.

11.6.2 The Architect shall compile, review, verify, and document in writing items identified by the MSA, the Design Builder, lead Architect, structural engineer or MEP engineers, conferring with them if necessary. Identify action items and time-frames for completion. Provide follow-up and follow-through as necessary on warranty and operational issues, and other items that are unresolved or that arise during the warranty period.

## **ARTICLE 12 DELAYS & TIME EXTENSIONS**

### **Section 12.1 Delays Generally**

12.1.1 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 12.1 covers every such act, omission, occurrence, event or other factor, whether called delay, disruption, interference, impedance, hindrance, suspension, construction suspension, extension or otherwise.

12.1.2 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. Design-Builder 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 12.2 Critical Path Delay – Design-Builder Not At Fault**

12.2.1 If Design-Builder is delayed in the critical path shown by the CPM schedule by (i) fault of the MSA, or other contractor or consultant separately hired by the MSA (but only to the extent such fault is not caused by Design-Builder or by its failure to coordinate the Work under the Contract); or (ii) one or more of the following events of force majeure:

- (a) bomb threats;
- (b) embargoes;
- (c) fire;
- (d) unavoidable casualties;
- (e) national emergencies or states of emergency declared by the federal government, the State, or local government – including but not limited to epidemics and pandemics;

- (f) unusually severe weather conditions in accordance with Section 12.5.2; or
- (g) acts of terrorism.

And any aforementioned delay adversely affects the expected date for Substantial Completion, *then* Design-Builder 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 MSA is not willing to assume.

And any aforementioned delay adversely affects the expected date for Substantial Completion, *then* Design-Builder 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 MSA is not willing to assume.

12.2.2 If no recovery schedule is reasonably possible, the MSA 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 Design-Builder learns, or should have learned of any such delay, it delivers to the MSA 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).

12.2.3 If Design-Builder 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 Design-Builder.

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

12.2.5 Knowledge on the part of the MSA of the act, omission, occurrence, event, or other factor, or of the delay resulting therefrom, shall not excuse Design-Builder's failure to give the required notice.

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

12.2.7 There shall be no extensions of time for Inside GMP Changes (*see* Section 18).

### **Section 12.3 Critical Path Delay – Design-Builder At Fault**

12.3.1 When the Design-Builder or any Architect, consultant, contractor under contract with Design-Builder or a member of Design-Builder Team or its Trade Contractor, Subcontractor or Supplier is responsible for a delay, the MSA may order the Design-Builder 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 MSA or increase of the Cost of the Work. The Design-Builder does not have the unilateral right to complete the Work late.

12.3.2 Unless the MSA 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 MSA may be deemed or construed as its consent or approval of an extension, a waiver or agreement to pay costs.

12.3.3 If the Design-Builder, or any Architect, consultant, contractor under contract with Design-Builder or a member of Design-Builder Team or its Trade Contractor is responsible for a delay, the MSA, at its option may recover from the Design-Builder *the* MSA's costs incurred for items set forth in Section 12.4 as a result thereof.

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

### **Section 12.4 Compensable Delay Costs**

#### **12.4.1 Equitable Adjustments for Delay.**

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

#### **12.4.2 Recoverable Costs.**

*Only* the following costs may be recoverable by the Contractor as compensation for delay damages:

(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 MSA as to eligibility as a recoverable expense.

(c) Costs are not recoverable for Inside GMP Changes.

#### **12.4.3 Subtraction of Recovered/Recoverable Expenses.**

There shall be deducted from the compensation payable to the Design-Builder under this Section any and all costs, expenses, and overhead recovered or recoverable by the Design-Builder 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 12.5 Non-Compensable Delay Costs**

12.5.1 No other compensation or damages are recoverable by the Design-Builder for compensable delays or extensions of the completion time except as expressly stated in Section 12.4 or as provided in Section 18.5 (Owner Changes). In particular, MSA will not be liable for the following (by way of example and not limitation) whether claimed by the Design-Builder or by a Trade Contractor 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.

12.5.2 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**.

(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.

12.5.3 Design-Builder shall not be entitled to any compensation or delay damages unless it has complied with the notice requirement in Section 12.2.2. Knowledge on the part of the MSA of the act, omission, occurrence, event, or other factor, or of the delay resulting therefrom, shall not excuse Design-Builder's failure to give the MSA the required notice.

12.5.4 Delays for reasons described in Section 18.2 (Inside GMP Changes) shall be non-compensable even if an extension of time is granted.

12.5.5 MSA'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 MSA'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 MSA with Design-Builder's performance of the Work.

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

**Section 12.6 Liquidated Damages**

12.6.1 In addition to MBE Liquidated Damages set forth in Article 24 Design-Builder may be subject to liquidated damages for each day that any work shall remain uncompleted beyond the time(s) specified elsewhere in this Agreement.

12.6.2 The Design-Builder shall be liable for liquidated damages in the amount(s) provided for in the RFP, provided, however, that due account shall be taken of any adjustment of specified completion time(s) for completion of Work as granted by approved changed orders.

12.6.3 The provisions of this Section 12.6 notwithstanding, if MSA and the Design-Builder negotiated Liquidated Damages as part of the solicitation, the resulting written agreement between MSA and the Design-Builder with respect to Liquidated Damages shall control.

**ARTICLE 13**  
**MSA'S RESPONSIBILITIES**

13.1.1 The MSA shall provide information regarding its requirements for the Project.

13.1.2 The MSA's Project Manager identified in Section 27.19 shall be fully acquainted with the Project and has authority to make routine project decisions on behalf of MSA and approve Owner Change Orders. Any limitations of the foregoing shall be indicated to the Design-Builder in writing.

13.1.3 The MSA shall review and approve or take other appropriate action upon the Design-Builder's submittals including but limited to design and construction documents required by the Construction Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents.

13.1.4 The MSA shall furnish all reasonably available surveys describing the physical characteristics, soil reports and subsurface investigations, legal limitations, and known utility locations. The Design-Builder is responsible for providing all necessary surveys not available from the MSA.

13.1.5 The services, information, surveys and reports required by this Article 13 or otherwise, to be furnished by the MSA or other consultants employed by the MSA, shall be furnished with reasonable promptness at the MSA's expense. The Design-Builder shall verify the accuracy and completeness of the aforementioned.

13.1.6 Addressing the presence of hazardous materials as provided in Section 1.5.

13.1.7 If the MSA 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 Design-Builder.

13.1.8 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 MSA or any employees or representatives of the MSA, 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 MSA.



**ARTICLE 14**  
**DESIGN-BUILDER'S COMPENSATION**

**Section 14.1 Design and Preconstruction Fee**

14.1.1 For the performance of the Design and Preconstruction Services set forth herein and for the profit and overhead related to these services, a lump sum fee of \$ \_\_\_\_ shall be paid to the Design-Builder.

14.1.2 The Design-Builder's design personnel to be assigned during the Design and Preconstruction Phase of the Work and their duties and responsibilities, fee schedules and duration of their assignments are shown on Exhibit J - attached hereto. Such personnel shall not be replaced without the prior consent of MSA, which consent shall not be unreasonably withheld.

**Section 14.2 Construction GMP**

14.2.1 When MSA and the Design-Builder have agreed to the GMP, the terms shall be set forth on an Amendment to this Contract pursuant to Section 3.6.

14.2.2 MSA will agree to pay all sums owing to the Design-Builder pursuant to the GMP subject to the terms and conditions of this Agreement.

14.2.3 General Conditions: A lump sum fee of \$ \_\_\_\_ shall be paid to the Design-Builder.

14.2.4 The GMP includes a breakdown of the costs, or estimated costs (the "**Cost Breakdown**") of the various portions of the Work (i.e. the line item limits for each portion including the Cost of the Work, General Conditions, Design-Builder's Fee, Design-Builder Allowances and Holds (*see Section 18.4*), and Owner's Contingency and Allowances, all of which shall be separately accounted for. The aggregate of these costs is the total sum of the GMP.

14.2.5 Changes or adjustments to increase a line item amount shall be permitted only if the Design-Builder demonstrates to MSA's satisfaction that the increase can be off-set by savings in another line item in equal amount, and that an adequate balance remains to complete the Work. All such changes or adjustments must be approved by the MSA, which approval will not be unreasonably withheld.

14.2.6 The Design-Builder has provided the GMP based upon the 70% Construction Documents. The Design-Builder represents that the GMP adequately covers the reasonably inferable intent of the Contract Documents.

14.2.7 The Design-Builder shall exert its best efforts to promptly identify potential areas and items that may result in Change Orders ("**Anticipated Changes**") and shall assist the MSA in preparing a list of such items so the that the Design-Builder and MSA can avoid the risk of increases to the Cost of the Work.

14.2.8 Throughout the Contract Term, the Design-Builder shall promptly notify the MSA of any area or details in Contract Documents which are either vague, incomplete, erroneous or confusing and shall assist in clarifying, resolving and correcting such items so as to maintain the Cost of the Work.

14.3.7 If at any time during the execution of the Work, the probable costs will exceed the Cost of the Work, the MSA shall have the right to direct the Design-Builder to redesign the Project as necessary to maintain the program and meet the Cost of the Work.

14.3.8 The Design-Builder shall not be entitled to make a claim for additional cost or time if the Design-Builder fails to notify the MSA within five (5) business days of any Anticipated Change of which the Design-Builder becomes aware and which would possibly cause an increase in the Cost of the Work.

## **ARTICLE 15 COST OF THE WORK**

### **Section 15.1 Included in GMP Cost of the Work**

15.1.1 The term “**Cost of the Work**” shall mean costs expressly authorized under Article 15 which costs are:

- (a) Necessarily incurred on the Project during the Construction Phase;
- (b) Paid by the Design-Builder, and
- (c) Not included in the General Conditions or the Design-Builder’s Fee.

15.1.2 The following items shall be included in the Cost of the Work:

(a) Wages paid for trade labor in the direct employ of the Design-Builder under applicable collective bargaining agreements, or, under a salary or wage schedule agreed upon by the MSA and Design-Builder and including such welfare or other benefits, if any, as may be payable with respect thereto.

(b) Payments made by the Design-Builder to Trade Contractors, Subcontractors or Suppliers for work performed pursuant to contracts under this Agreement, including the cost of Trade Contractors/Subcontractor’s payment and performance bonds.

(c) Sales, use, gross receipts or similar taxes related to the Work imposed by any governmental authority, and for which the Design-Builder is liable.

(d) Permit fees, (including building permit, permits, licenses, certificates, tests and inspections pursuant to Sections 4.16, 5.5, and Article 6.

(e) *Subject to Section 4.12*, royalties and license fees paid for the use of any materials, equipment processes, design, product, or other items of a particular manufacturer or manufacturers specified by the Contract Documents.

(f) The cost of the builders risk policy and the deductible portion of any loss covered by the Builder’s Risk and Flood insurance policies maintained by the Design-Builder as required by this Agreement, up to a maximum of Five Thousand Dollars (\$5,000) per occurrence on the Builder’s Risk policy and Twenty Five Thousand Dollars (\$25,000) per occurrence on the flood and earthquake insurance policy.

(g) Costs for items of work commonly identified as “General Requirements” including, but not limited to: (1) project documentation and reproduction; (2) consumption for temporary project

utilities; (3) waste management and daily cleaning including dumpsters, street sweeping; (4) weather and other protection including temporary weather and dust protection not in the Trade Contracts/ Subcontracts, snow removal, materials and maintenance of site sediment and erosion control devices not included in Trade Contracts/Subcontracts; (5) miscellaneous materials and small tools; and (6) protection of finished work not in Trade Contracts/Subcontracts.

(h) Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction of the Project.

(i) Costs of materials described in the preceding subsection (g) in excess of those actually installed to allow for reasonable waste and spoilage. Unused materials, if any, shall become the MSA's property at the completion of the Work or, at the MSA's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the MSA as a deduction from the Cost of the Work.

(j) Costs including transportation and storage, installations, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Design-Builder at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Design-Builder. Cost for items previously used by the Design-Builder shall mean fair market value.

(k) Rental charges for power operated equipment required for the Work supplied by Design-Builder or rented from others at rates approved by the MSA. All equipment shall be delivered in good condition and hereafter all charges for operating and maintaining equipment shall be charged at cost. Normal wear and tear, repair costs of a capital nature and depreciation charges on equipment shall not be charged but shall be covered by the rental fee charged. The rental fee charged shall be at the lowest prevailing local rates. A schedule of the rental rates and equipment valuations shall be submitted to the MSA for approval. Rental charges for each item Design-Builder owned equipment or tools furnished by Design-Builder shall be charged to the Cost of the Work until such time as the aggregate of such rentals for any items equals eighty-five percent (85%) of the agreed value of that item, entitled "Equipment Value/Rental Rate Schedule and Equipment Log" (the "**Equipment Log**"): thereafter, only routine repair and maintenance costs for servicing such items shall be charged to the Cost of the Work or the balance of the period that the equipment and tools are used in performance of the Work. The Design-Builder shall maintain and furnish to the MSA an Equipment Log to track all equipment valued in excess of Five Hundred Dollars (\$500.00) for which rental is charged to the Project. The Equipment Log shall be submitted each month with Design-Builder's progress pay application as part of the documentation for the equipment charges. All power tools, equipment, or other devices, for which rent is charged to the Project, shall be removed from the site in order to terminate the rental charges as soon as possible.

(l) Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the MSA. The Trade Contractors and the Design-Builder shall not bill for or be paid for materials and equipment that are "in stock" and not segregated for and to be promptly incorporated into the Work. Materials and equipment that are needed for the Work shall be stored on site and the Design-Builder will provide security for same. The Design-Builder shall cause insurance coverage to be provided for stored materials and equipment consistent with the requirements of the MSA and the Contract Documents.

(m) Cost of Performance and Payment Bonds and/or sub-contractor default insurance. This shall be submitted in the forms attached hereto as **Exhibit N** and **Exhibit O**.

(n) Cost of the premiums for all insurance which the Design-Builder is required by this Agreement to procure. Any additional or separate insurance which the Design-Builder deems necessary for the prosecution of the Work shall require the prior written consent of the MSA to be included with General Condition's expenditures.

(o) Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility to the MSA as set forth in the Contract Documents.

(p) Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Trade Contractor or their subcontractors and suppliers, provided that such damaged or nonconforming Work was not cause by negligence or material failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recoverable by the Design-Builder from insurance, sureties, Trade Contractors, or their subcontractors or suppliers.

(q) Cost incurred due to an emergency affecting the safety of persons and property, unless such emergency is caused by the Design-Builder's gross negligence, fault, or breach of contract.

(r) The cost of corrective or warranty work provided such work results from causes other than the Design-Builder's negligence or breach of contract. The cost of corrective or warranty work made necessary due to Trade Contractor shall be reimbursable only after Design-Builder has exhausted all good faith efforts to secure replacement of the defective work or compensation from such Trade Contractor.

(s) Cost of overtime work required in the reasonable judgment of the Design-Builder to maintain the Project Schedule provided that:

(i) the cost of such overtime work results from causes *other than* the Design-Builder's negligence, breach of contract or delay for which it was responsible regardless of negligence, and;

(ii) the Design-Builder has given prior written notice to the MSA of the overtime or extension of schedule.

(t) GMP Contingency as defined in Section 18.3.

## **ARTICLE 16 GENERAL CONDITIONS**

### **Section 16.1 Included in General Conditions**

16.1.1 The "**General Conditions**" include all expenditures required to be made by the Design-Builder to fulfill its obligations under this Agreement and that are not included in the Design-Builder's Fee or the Cost of the Work. The General Conditions are fixed. The Design-Builder may not use GMP Contingency (defined in Section 18.3) without MSA approval, for overages in the General Conditions. General Conditions include, but are not limited to the following:

(a) Direct Personnel Expense of Design-Builder's Key People and other staff working on the Project in accordance with the Staffing Plan (including Design-Builder Team) as provided in

Article 8 and attached as **Exhibit I**. “Direct Personnel Expense” is defined as the direct salaries allocated on an hours worked basis of Design-Builder’s employees engaged in performing the services under this Agreement and the cost of all employee benefits, including, without limitation, (i) medical and worker’s compensation insurance, allowed absences, vacations, pension, and/or profit sharing, all in accordance with Design-Builder’s standard personnel policy, and (ii) taxes for such items as unemployment compensation and social security.

(b) Cost of job site computer, hardware, software, supplies, and communications.

(c) Costs, including setup and maintenance of temporary facilities.

(d) The actual costs of necessary and reasonable document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, and telephone service at the site; and reasonable petty cash expenses of the site office. (e) Subject to the approval of the MSA, and the rates set forth in the State’s standard travel regulations, as amended from time to time, the costs of travel expenses including transportation, meals and lodging. *Excluding* telephone calls, facsimile costs and travel between the offices of MSA, the Project site, and the Contractor.

*Except* as provided in this Section Direct Personnel Expense of those employed directly in the construction of the project shall be included with the Cost of the Work.

## **ARTICLE 17 DESIGN-BUILDER FEE**

### **Section 17.1 Included in Design-Builder Fee**

17.1.1 The “**Design-Builder Fee**” is a lump sum fee of \$ \_\_\_\_ to be paid to the Design-Builder, includes the Design-Builder’s profit and all expenditures required to be made by the Design-Builder to fulfill its obligations under this Agreement and that are not included in the Cost of the Work or the General Conditions including, but not limited to the following:

(a) Salaries, expenses, and/or other compensation of the Design-Builder’s personnel stationed at the Design-Builder’s principal office or offices other than the site office,- except as expressly provided in Sections 24.1 and 25.1; as specifically provided in the Contract Documents or as approved by the MSA.

(b) Expenses of the Design-Builder’s principal office and offices other than the Project Site office.

(c) Overhead and general expenses.

(d) The Design-Builder’s capital expenses, including interest on the Design-Builder’s capital used to perform the Work and the Design-Builder’s obligations under the Contract Documents.

(e) Rental costs of machinery and equipment, except as specifically provided in Section 24.1(j).

(f) Except as provided in Sections 15.1.2 (p) and (r), costs due to the negligence or failure to fulfill a specific responsibility of the Design-Builder, Trade Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

(g) Any cost not specifically and expressly described in Sections 24.1 and 25.1 above.

(h) Costs, expenses and legal fees due to the negligence of, wrongdoing of, or violation of this Agreement or other contractual or legal obligation by the Design-Builder or anyone directly employed by him, including, but not limited to, the correction of defective or non-conforming Work, disposal of materials and equipment wrongly supplied, or making good any damage to property or performing any warranty work.

(i) Automobile repairs for Design-Builder's vehicles.

(j) Costs of any education or training of Design-Builder's employees.

(k) Any Gross Receipts taxes resultant from the Design-Builder's performance of the Work.

## **ARTICLE 18 CHANGES IN THE PROJECT**

### **Section 18.1 Generally**

18.1.1 The Design-Builder acknowledges that the GMP and Substantial Completion Date are based upon the GMP Amendment executed between the Design-Builder and MSA.

Subject to Article 14, the GMP includes the cost to perform all Work necessary to provide a complete and usable facility in accordance with the scope, intent, and the reasonably referable intent of the Contract Documents. The Design-Builder will administer changes in the Trade Contracts, Subcontracts and other agreements in accordance with this Agreement.

18.1.2 There shall be two types of changes recognized by this Agreement: "Inside GMP Changes" and "Owner Changes." Except as specifically set forth herein, Inside GMP Changes and Owner Changes shall both be governed by the provisions in this Agreement. Any disagreement over whether a change is an Owner Change or an Inside GMP Change shall be determined in accordance with the Disputes provisions of Article 26.

### **Section 18.2 "Inside" GMP Changes**

#### **18.2.1 "Inside" GMP Changes.**

(a) Inside GMP Changes are any changes to the Cost of the Work in connection with or related to matters that are reasonably inferable from the Contract Documents including details which should have been anticipated by the Design-Builder at the time of the MSA's approval of the GMP; or changes that are needed for a complete working system.

(b) Inside GMP Changes include but are not limited to:

(i) refinement of details of design within the scope of standards;

(ii) quality and quantities which may reasonably be inferred from the GMP documents;

(iii) terms omitted during buy-out;

(iv) correction of defects of labor or materials;



- (v) corrections in the Work provided the Design-Builder has exhausted all reasonable means to obtain correction of same from the responsible Trade Contractor;
  - (vi) labor and material overruns, and additional costs relating to Trade Contractor defaults - provided any such default is not due to the MSA's actions or failure to act.
  - (vii) scope gaps between Trade Contractors;
  - (viii) contract default by Trade Contractors;
  - (ix) costs of corrective work not provided for elsewhere;
  - (x) expediting/accelerating of the Work to meet scheduled completion dates (if required),
  - (xi) design omissions, consistent with the intent of the contract, needed for a complete working system.
- (c) Inside GMP Changes shall be paid with DB Contingency defined in Section 18.3 below.
- (d) The GMP has been calculated to account for mark-ups for insurance, bonds and CM Fee on the entire amount of the DB Contingency. As such, Inside GMP Changes are not to include costs associated with these items.

### **Section 18.3 GMP Contingency**

#### **18.3.1 GMP Contingency.**

(a) The GMP includes a Design-Builder controlled contingency (the “**GMP Contingency**”) for Inside GMP Changes. (b) The GMP Contingency is *not* allocated to any particular item and is established for the Design-Builder's use as may be required for increases in costs incurred in the Cost of the Work either from causes or details not reasonably anticipated at the time the MSA approved the GMP.

18.3.2 It is understood that the amount of the GMP Contingency is the maximum sum available to the Design-Builder to cover costs incurred as a result of Inside GMP Changes, and that Inside GMP Changes in excess of the GMP Contingency will be borne by the Design-Builder.

18.3.3 The Design-Builder may not use the GMP Contingency without prior written notice to the MSA for amounts in excess of Ten Thousand Dollars (\$10,000).

(a) The MSA shall have five (5) business days from receipt of said notice (the “**Notice Period**”) to, in writing, object to the proposed use of GMP Contingency and/or request additional information. The Design-Builder shall not use the GMP Contingency over an MSA objection and shall provide the MSA with all requested information.

(b) At the expiration of the Notice Period, if the MSA has not objected to the proposed use of the GMP Contingency nor requested additional information, the Design-Builder may proceed and no further notice to or from the MSA is required.

### **Section 18.4. Design-Builder Allowances and Holds**

18.4.1 The GMP may include a Design-Builder Allowance or Hold amount for an item of work the precise cost or value of which was not known at the time of GMP acceptance by MSA.

18.4.2 Design-Builder Allowances and Holds shall be used strictly for the purposes for which they are established.

18.4.3 Overruns to Design-Builder Allowances and Holds shall be covered by the GMP Contingency.

18.4.4 The Design-Builder may not self-perform work on Design-Builder Allowance and Hold items without obtaining advanced approval from MSA.

### **Section 18.5. Owner Changes**

18.5.1 Owner Changes are limited to changes that are made necessary as a result of an action or the inaction of the MSA. The Design-Builder's entitlement to an extension of the Contract Time or an adjustment in the GMP in accordance with Sections 12.2 and 12.4 shall also be considered an Owner Change. (See also Section 18.6 Owner Change Orders). For purposes of this Section, "inaction" shall be limited to the failure of the MSA to either grant or deny a requested approval within 20 days after the Design-Builder's written request therefore.

18.5.2 Notwithstanding the 20 day time period above, in an emergency, the MSA shall make the necessary decision as quickly as the circumstances require, which decision may or may not be given in writing.

18.5.3 If MSA action or inaction increases the cost of performing the Work after MSA's acceptance of the GMP, the Design-Builder may be entitled to an equitable adjustment or amendment to the Substantial Completion Date.

18.5.4 The Design-Builder may be entitled to an equitable adjustment for "Differing Site Conditions" subject to the provisions of Section 1.4.6, in which case it will be treated as an Owner Change for the purpose of this Section.

18.5.5 An extension of the Contract Term shall be subject to Article 12.

### **Section 18.6 Owner Change Orders**

18.6.1 This Section applies to Owner changes which may affect the amount of, or time for performance under the GMP.

18.6.2 In accordance with SFP § 15-112:

If MSA determines that a change in Work is required:

(a) MSA shall issue a written Change Order for work under the Contract that specifies whether the Work is to proceed in compliance with the terms of the Contract on:

- (i) an agreed-to price or agreed upon source of pricing;
- (ii) a force account;
- (iii) a construction change directive; or
- (iv) a time and materials basis.

(b) Until a Change Order is issued as described in (a) above, the Design-Builder is not required to begin change order work, and the Design-Builder may not require any Trade Contractor or Subcontractor to begin work.

(c) If the MSA and the Design-Builder do not agree that work is included within the original scope and terms of the Contract, nothing in this Section:

(i) Prohibits the MSA from issuing an order to the Design-Builder to perform work or furnish labor or materials determined by the MSA to be required by the Contract;

(ii) Authorizes a refusal to perform Work or to furnish labor or materials that the Project Manager has ordered Design-Builder to perform or to furnish which the Project Manager has determined are required by the Contract;

(iii) Prejudices or impairs the right of the Design-Builder to submit a claim or dispute to the MSA, in accordance with applicable law and the Contract, seeking additional compensation for complying with the Change Order.

(d) If the Contract, or part of the Contract requires MSA to pay using a unit methodology, a change order may not be required for work to continue and be completed beyond the estimated quantities in the contract. Upon completion of the Work, MSA will determine the actual quantity used to complete the Contract; and if necessary, issue a final adjustment change order.

(e) Payments under an agreed upon change order that do not exceed \$50,000 shall be paid within 30 days after receipt of the invoice by MSA. All other requirements for submission of invoices and payment provisions apply to payments under change orders.

(f) Design-Builder shall provide effected Trade Contractors and Subcontractors with copies of the Change Order, the amount to be paid to Trade Contractor(s) or Subcontractor(s) based on the change order within five days after Design-Builder's receipt of the written Change Order from MSA.

### **Section 18.7 Owner Contingency**

18.7.1 The GMP may include a separate Owner's Contingency (the "**Owner's Contingency**"). The Owner, in its sole discretion may use the Owner's Contingency for any Project purpose.

### **Section 18.8 Owner Allowance**

18.8.1 The GMP may include one or more Owner's Allowance items (an "**Owner's Allowance**"). The Owner, in its sole discretion may use an Owner's Allowance for any Project purpose.

### **Section 18.9 Change Cost Dispute**

18.9.1 In the event the MSA and the Design-Builder are unable to reach agreement on the Cost of an Owner Change Order, the Design-Builder shall promptly proceed with the subject work, upon receipt of written direction from MSA.

18.9.2 The cost of such work shall be determined in accordance with the "Disputes" provisions of this Agreement.

18.9.3 Pending final determination of the total cost of an Owner Change, amounts not in dispute may, with a Change Order and the prior approval of the MSA (which shall not be unreasonably withheld), be included in the Design-Builder Invoice (as defined in Section 20.1). In all instances, Change Orders must be complete, inclusive of all impacts to the Design-Builder and the Trade Contractors, prior to their submission to the MSA for approval.

18.9.4 In addition to the requirements in this Section 18.9, applicable Change Orders are subject to and shall comply with the provisions set forth in Section 14.3.3 and Exhibit J.

**Section 18.11 Value Engineering (During Construction)**

18.11.1 Value engineering ideas provided by the MSA or the Design Team will be implemented as a change to the Cost of the Work with 100% of the savings going to and benefitting the MSA as determined by the MSA. Any value engineering proposed by the Design-Builder and accepted by the MSA will serve to increase the GMP Contingency subject to the provisions of Section 18.3.

**ARTICLE 19  
STATE PROPERTY NOT SUBJECT TO LIEN.**

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

**ARTICLE 20  
PROGRESS PAYMENTS**

**Section 20.1 Invoices**

20.1.1 The Design-Builder shall require all Trade Contractors, Subcontractors and Suppliers 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.

20.1.2 The Design-Builder shall submit its application for progress payments (the “**DB Invoice**”) to the Project Manager in substantially the form attached hereto as **Exhibit L**, who shall review the DB Invoice, and upon approval, submit the DB Invoice for payment.

20.1.3 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 Design-Builder agrees to cooperate with the MSA in any such action. If in the course of any such verification any amount shown payable under this Agreement or any Trade Contract, 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 Design-Builder.

**Section 20.2 Discounts, Rebates, and Refunds**

20.2.1 If there are cash discounts, rebates or other financial incentives offered to Design-Builder, the MSA shall have the right to accept or reject those financial incentives or benefits.

20.2.2 Any additional funds made available as a result of 20.2.1 shall accrue to GMP Contingency.

### Section 20.3 Submissions – Documents, Certifications

#### 20.3.1 The Design-Builder shall

(a) Provide MSA with a copy of the DB Invoice.

(b) Comply with such requirements with respect to any work self-performed by the Design-Builder (see **Exhibit F**).

(c) Lien Waivers.

Before the Design-Builder receives a progress payment or a final payment which includes payments due a Trade Contractor, Subcontractor or Supplier it shall provide the MSA with lien waivers from all Trade Contractors, Subcontractors and Suppliers on a continuous basis.

(i) Lien waivers must be submitted in substantially the same form attached hereto as **Exhibit K**.

(ii) Trade Contractors, Subcontractors and Suppliers are not expected to execute lien waivers for work for which they have not been paid. *However*, the Design-Builder shall certify in writing that, in accordance with contractual arrangements or agreements Trade Contractors, 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 MSA reserves the right to withhold from any progress payment those amounts payable to a Trade Contractor, Subcontractor or a Supplier whose payments have not been certified in accordance with (c)(ii) above. In all circumstances, lien releases are required for Final Payment.

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

(e) Include with the DB Invoices submitted to the MSA evidence satisfactory to the MSA that disbursements required by (d) above have occurred.

20.3.2 The Design-Builder shall submit to the MSA a monthly statement as described on the attached **Exhibit F** (certified as to its accuracy), showing all moneys paid out, costs accumulated, or costs incurred on account of the Cost of the Work and General Conditions during the previous month.

20.3.3 The MSA and the Design-Builder intend that at all times the estimated cost of performing the uncompleted and unpaid portion of the Work, including the Design-Builder's Fee and General Conditions shall not exceed the unpaid balance of the Design-Builder's Compensation (less retainage on Work previously completed). Therefore, if at any time the MSA determines in its sole discretion that the aggregate amount shown on the Cost Breakdown (as defined in Section 14.3.2), exceeds or may exceed the Cost of the Work, the amount payable by the MSA with respect to the subject DB Invoice shall be reduced by the amount of estimated excess.

20.3.4 The Design-Build Team, or any member thereof shall have access to the Project and the records, documents, or other materials associated with the Project, as they deem necessary to verify the Work performed and the amount requested in any DB Invoice. If the MSA is unable to verify any portion of the Work performed or payment amount(s) requested, the MSA shall be entitled to

withhold payment for that portion of unverified or unconfirmed Work until such time as verification is obtained. MSA shall work with the Design-Builder to resolve any such issues as quickly as possible.

20.3.5 The Design-Builder shall maintain detailed statements, including without limitation, payroll records, receipted invoices, check vouchers, and any other evidence demonstrating costs incurred by the Design-Builder on account of the Cost of the Work, which records shall be available for the MSA's examination during regular business hours.

#### **Section 20.4 Progress Payment Calculation**

20.4.1 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 MSA.

20.4.2 General Conditions and Design-Builder Fee shall be billed at the same ratio that corresponds to the percentage complete of the Cost of Work.

20.4.3 Nothing contained in this Article 20 shall require the MSA to pay the Design-Builder an aggregate amount exceeding the amount owing to the Design-Builder pursuant to Article 14 or to make a payment if the MSA reasonably believes that the cost to complete the Work (plus the balance of General Conditions and Design-Builder's Fee) would exceed the balance of the funds available for the same.

#### **Section 20.5 Payment and Interest**

20.5.1 Subject to Section 27.4, progress payments to the Design-Builder shall be made no later than 30 days after MSA's receipt of Certification of Payment from the Architect.

20.5.2 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.

20.5.3 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 20.6 Retainage**

20.6.1 Design and Pre-Construction services are not subject to retainage.

20.6.2 A five percent (5%) retainage ("**retainage**") will be retained on the gross billings (Line Item #4 on AIA G702) under the Construction GMP portion of this Agreement certified by the Architect and due to the Design-Builder. (See Sections 4.5 and 4.6 for retainage and prompt payment and subcontractors).

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

20.6.4 In MSA's sole discretion, retainage may be released to a Trade Contractor, Subcontractor or Supplier whose role in the Project has been completed.



20.6.5 Final retainage shall be released to the Design-Builder at the time of Final Payment.

**Section 20.7 Additional Withholding**

20.7.1 In addition to retainage the MSA may withhold from payments otherwise due the Design-Builder any amount that the MSA reasonably believes necessary to protect the MSA'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 Design-Builder 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.

20.7.2 MSA may withhold estimated actual damages it reasonably believes is necessary to protect the MSA's interest pursuant to this Section 207.

**Section 20.8 MBE Liquidated Damages Withholding**

20.8.1 If the MSA has determined that the Design-Builder will not fulfill its MBE requirements as identified in the Contract Documents, the MSA may withhold an amount equal to the liquidated damages set forth in Article 24 until the Design-Builder 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 24 for MBE violation liquidated damages provisions.

**Section 20.9 Non-Conforming Work Remedied**

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

20.9.2 The MSA's determination shall be final subject only to appeal as provide in the Disputes clause in Article 26.

20.9.3 Except as provided in this Section 20.9 when the condition(s) in Sections 20.7 and 21.7 are remedied, the amounts withheld shall be disbursed.

**Section 20.10 Final Payment**

20.10.1 Conditions for Final Payment.

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

20.10.2 The MSA has approved and accepted the Final Project Report (*see **Exhibit G***) with all required submissions.

20.10.3 The MSA shall have received from the Design-Builder all documents (which are Design-Builder'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 Design-Builder shall submit at final completion "As-Built" Drawings and Specifications showing all of the Work including all changes, locations and installations for the MSA's approval and acceptance.

20.10.4 The Design-Builder shall have met all of its insurance, indemnification and all of its other obligations under the Contract Documents.

20.10.5 The Design-Builder has provided all required MBE documentation in accordance with the Agreement.

20.10.6 Except as provided in Section 20.10.7 below, final payment constituting the unpaid balance of the Cost of the Work and the Design-Builder's Fee shall be due and payable when Final Completion has been achieved in accordance with Article 11.

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

### **Section 20.11 Cost Savings**

20.11.1 Cost Savings is the amount of GMP Contingency remaining at the time of Final Completion of the Project.

The Design-Builder may submit a request to share the Cost Savings in an amount not to exceed twenty-five percent (25%) for review and approval by the MSA. At a minimum, the request shall outline the Design-Builder's efforts during the execution of the Project that realized Cost Savings.

20.11.2 The MSA has the sole discretion to:

- (1) approve the request in full.
- (2) approve a portion of the request; or
- (3) deny the request.

## **ARTICLE 21 DESIGN-BUILDER'S INSURANCE**

21.1.1 The Design-Builder shall maintain in full force and effect liability insurance necessary to cover claims arising from the Design-Builder'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:

Architect's Professional Liability Insurance in the amount of \$1 million per \$10 million of the Cost of Work (including contractual liability coverage, if available, with all coverage retroactive to the earlier of the date of this Agreement or the commencement of Architect's services in relation to the Project), said coverage to be maintained for a period of five (5) years after the date of final payment or the date of final completion of the Project, whichever is later.

Builder's Risk	All Risk Policy
Worker's Compensation and Employer's Liability	Statutory
<i>Auto Liability</i> (Combined single limit)	\$ _____
General Liability	
Occurrence	\$ _____
General Aggregate	\$ _____
Products-completed	\$ _____
Operations Aggregate	\$ _____
Excess Liability	
Occurrence and Aggregate	\$ _____

21.1.2 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.

21.1.3 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.

21.1.4 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.

21.1.5 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.

21.1.6 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.

21.1.7 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.

21.1.8 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.

21.1.9 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.

21.1.10 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.

21.1.11 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 22.1.1.
  - (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 22.1.1.

(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 22.1.1.

(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 22**  
**TERMINATION & EVENTS OF DEFAULT**

**Section 22.1 Termination for Convenience**

22.1.1 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.

22.1.2 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.

22.1.3 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.

22.1.4 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.

22.1.5 Subject to the provisions of Section 23.1.4 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 23.1.6, 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.

22.1.6 In the event of the failure of the Contractor and the Project Manager to agree as provided in Section 23.1.5 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 23.1.5:

(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 MSA (or sold or acquired as provided in Section 22.1.2(g) above) and for which payment has not theretofore been made;

(iii) a sum equivalent to the aggregate price for the supplies or services computed in accordance with the price or prices specified in the GMP, appropriately adjusted for any saving of freight or other charges;

(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 23.1.6(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 23.1.2(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 Design-Builder'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 23.1.6(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 23.1.2(g).

(d) Costs claimed, agreed to, or determined pursuant to Sections 22.1.4, 22.1.5, and 22.1.6 (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 22.1.4, 22.1.6 (a), (b) or 22.1.6(g) hereof, except that if the Contractor has failed to submit his claim within the time provided in Sections 22.1.4 or 22.1.6(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 22.1.4, 22.1.6 (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 22.2 Events of Default**

### **22.2.1 If the Design-Builder:**

(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 10.1:

(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 MSA and Design-Builder, if the Design-Builder 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 Design-Builder 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 22.3 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.

22.3.1 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.

22.3.2 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.

22.3.3 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."

22.3.4 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.

22.3.5 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.

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

22.3.7 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 12.2. After MSA's acceptance of the GMP, the Contractor may not contest the reasonableness of the amount of liquidated damages stated in the contract.



22.3.8 If the Design-Builder 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 Design-Builder, terminate the Design-Builder'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 Design-Builder's right to proceed with the work is terminated, the Design-Builder and its sureties shall be liable for any damage to MSA resulting from the Design-Builder's refusal or failure to complete the Work within the specified time.

## **ARTICLE 23 SUSPENSION OF WORK**

### **Section 23.1 Suspension of Work**

23.1.1 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.

23.1.2 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.

23.1.3 No claim under this Section 24 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 24 MBE LIQUIDATED DAMAGES**

24.1.1 This contract requires the Design-Builder to make good faith efforts to comply with the MBE Program and contract provisions with respect to subcontractors. The MSA and the Design-Builder acknowledge and agree that the MSA will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff

resources, if the Design-Builder 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, Design-Builder agrees upon a determination by MSA that Design-Builder failed to comply with one or more of the specified requirements of the MBE Program, related contract provisions, or the prompt payment requirements, Design-Builder shall pay liquidated damages to MSA 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 Design-Builder’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 25  
AUDITS BY OWNER & RECORD RETENTION**

25.1.1 Access to Design-Builder’s Books and Records: The Design-Builder 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 Design-Builder involving transactions related to this Agreement.

25.1.2 **Access to Trade Contractor's Books and Records:** The Design-Builder 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.

25.1.3 **Retention of Records:** The Design-Builder 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 26 DISPUTES**

26.1.1 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 Design-Builder and MSA's Project Manager shall be resolved in accordance with this Article.

26.1.2 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.

26.1.3 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.

26.1.4 When a claim cannot be resolved by mutual agreement, the Design-Builder shall submit a written request for final decision to the MSA Project Executive identified in Section 28.19. The written request shall set forth all the facts surrounding the controversy.

26.1.5 The Design-Builder shall be afforded an opportunity to be heard by the Project Executive and to offer evidence in support of its claim.

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

26.1.7 The Project Executive's decision shall be final and conclusive without prejudice to the rights of the Design-Builder to institute suit after completion of the Work in a court of competent jurisdiction for losses incurred by Design-Builder as a result of the Project Executive's decision. Design-Builder 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.

26.1.8 Pending resolution of a claim, the Design-Builder shall proceed diligently with the performance of the contract in accordance with the Project Executive's decision.

## **ARTICLE 27 STATE TERMS**

### **Section 27.1 General State Terms**

27.1.1 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.

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

27.1.3 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 Design-Builder shall notify the MSA 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 Design-Builder

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

27.1.5 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.

27.1.6 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 27.2 Non-Discrimination Provisions**

27.2.1 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.

27.2.2 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 27.3 Disclosures and Ethics**

**27.3.1 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.

**27.3.2 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.

27.3.3 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.

27.3.4 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 27.4 Subject to Appropriations**

27.4.1 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 Design-Builder and the MSA from future performance of this Agreement, but not from their rights and obligations existing at the time of termination. The Design-Builder shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of this Agreement. The MSA shall notify the Design-Builder 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 27.5 Drug and Alcohol Free Workplace**

27.5.1 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 27.6 Indemnification**

27.6.1 Contractor shall be responsible for, and shall defend, indemnify and hold harmless the State of Maryland, and MSA and their members, officers, agents, and employees, and the Client 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 27.7 Tax Exemption**

27.7.1 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 except as provided in § 11-242 of the Tax General Article of the Maryland Annotated Code.

**Section 27.8 No Delegation of Authority**

27.8.1 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 27.9 Governmental Immunities**

27.9.1 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 27.10 Tort Claims Acts**

27.10.1 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 MSA or Client, unless requested by MSA.

**Section 27.11 Independent Contractor Status**

27.11.1 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 27.12 Remedies Cumulative**

27.12.1 The remedies of the MSA 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 MSA, under law or at equity, all of which rights and remedies are specifically reserved by the MSA; 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 Design-Builder; 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 MSA 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 Design-Builder.

**Section 27.13 No Arbitration**

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

**Section 27.14 Approvals**

27.14.1 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 MSA notifies the Design-Builder that such approvals have been obtained.

**Section 27.15 No Third Party Beneficiaries**

27.15.1 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 MSA or the Design-Builder. There are no intended third party beneficiaries of this Agreement.

**Section 27.16 Owner Approval**

27.16.1 Whenever provision is made herein or in the Contract Documents for the approval or consent of the MSA, or that any matter be to MSA's satisfaction, unless specifically stated to the contrary, such approval or consent shall be made by MSA in its sole discretion and determination.

**Section 27.17 Time of the Essence**

27.17.1 Time is of the essence in the performance of the obligations of the Design-Builder under this Agreement.

**Section 27.18 Counterparts**

27.18.1 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 27.19 Contract Representatives**

27.19.1 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 Executive:

**Section 27.20 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:

HAGERSTOWN MULTI-USE SPORTS & EVENTS FACILITY DESIGN-BUILD AGREEMENT

If to the Owner:

Maryland Stadium Authority  
351 West Camden Street, Suite 300  
Baltimore, MD 21201-2435  
Attention: Al Tyler, Vice President

If to the Design-Builder:

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]

HAGERSTOWN MULTI-USE SPORTS & EVENTS FACILITY DESIGN-BUILD AGREEMENT

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

ATTEST: OWNER:  
MARYLAND STADIUM AUTHORITY

By: \_\_\_\_\_ By: \_\_\_\_\_ (SEAL)  
Michael J. Frenz, Executive Director

Approved for legal form and sufficiency

\_\_\_\_\_  
Amy K. Mataban  
Assistant Attorney General  
Maryland Stadium Authority

ATTEST: DESIGN-BUILDER

By: \_\_\_\_\_ By: \_\_\_\_\_ (SEAL)  
Authorized Officer

Negotiated Guaranteed Maximum Price

**ATTACHMENT K**  
**CONTRACT AFFIDAVIT**

## Contract Affidavit

**A. AUTHORITY**

I hereby affirm that I, \_\_\_\_\_ (name of affiant) am the \_\_\_\_\_ (title) and duly authorized representative of \_\_\_\_\_ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

**B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION**

I FURTHER AFFIRM THAT:

The business named above is a (check applicable box):

- (1) Corporation -  domestic or  foreign;
- (2) Limited Liability Company -  domestic or  foreign;
- (3) Partnership -  domestic or  foreign;
- (4) Statutory Trust -  domestic or  foreign;
- (5)  Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name and Department ID Number: \_\_\_\_\_

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

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID Number: \_\_\_\_\_

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

**C. FINANCIAL DISCLOSURE AFFIRMATION**

I FURTHER AFFIRM THAT:

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

**D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION**

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of



\$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more 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 or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31.

E. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its Proposal, 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), above;
  - (h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
    - (i) Abide by the terms of the statement; and

- (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
- (i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
- (j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
  - (i) Take appropriate personnel action against an employee, up to and including termination; or
  - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
- (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
  - (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
  - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
  - (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

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 Proposal Affidavit dated \_\_\_\_\_, 202\_\_\_\_, 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: \_\_\_\_\_ (print name of Authorized Representative and Affiant)  
 \_\_\_\_\_ (signature of Authorized Representative and Affiant)

**ATTACHMENT L**  
**CAPACITY SUMMARY SHEET**

