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**Addendum No. 2**

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

**Date Issued: October 18, 2021**

This addendum is hereby made part of the Request for Proposals dated September 21, 2021, on the subject work, as amended, as though originally included therein. The following amendments, additions, and/or corrections shall govern this solicitation.

This addendum incorporates the following items:

1. A copy of Part 1 of the questions submitted to date, along with their respective answers, is attached hereto. An additional Q&A will be issued in the near future.
2. A revised copy of Attachment J, Sample Design-Build Agreement, is attached hereto. This revision incorporates the exhibits to the agreement.

**Note: All addenda must be acknowledged by the Offeror in the Technical Proposal.**

Yamillette Waite  
Procurement Officer

**End of Addendum 2**

**Addendum No. 2  
Request for Proposals  
Design-Build Services  
Hagerstown Multi-Use Sports and Events Facility**

**Questions and Answers – Part 1  
October 18, 2021**

**Action Item**

	<b>Question</b>	<b>Answer</b>
1.	Under Section 4.3.d.2, Corporate Experience, can the relevant projects be submitted from both the Design Builder and the A/E team or is the intent for all 5 projects to be submitted from the Design Builder?	Five (5) relevant projects shall be submitted from the A/E and five (5) relevant projects shall be submitted from the CM composing the Design-Build team.
2.	A concept design report is included in the RFP. Are the firms that prepared these documents permitted to submit on this procurement?	Yes.
3.	The Design Build Agreement references an Exhibit A, titled Project Criteria. Is this document going to be provided?	Please see the revised Attachment J, Sample Design-Build Agreement, issued via Addendum No. 2.
4.	Is it required that a representative from the design-build team be present at both sessions of the in-person outreach event(s) scheduled the day of the site visit?	No.



**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
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Exhibit F	Project Progress Report
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Exhibit O	Labor and Material Payment Bond Form

HAGERSTOWN MULTI-USE SPORTS & EVENTS FACILITY DESIGN-BUILD AGREEMENT

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**

29.1 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.

29.2 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 onto 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 Contract 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.

4.42 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.

4.43 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.

4.44 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.

4.45 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**

53.1 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.

53.2 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.

644 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.

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

646 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.

1222 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).

1223 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.

1224 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.

1225 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.

1226 It is understood that there are changes in the Work which by their nature do not delay Substantial or Final Completion.

1227 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.

12.52 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.

12.53 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.

12.54 Delays for reasons described in Section 18.2 (Inside GMP Changes) shall be non-compensable even if an extension of time is granted.

12.55 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.

12.56 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**

12.61 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.

12.62 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.

12.63 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 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 E** (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 20.7.

**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 - *Revised*** **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

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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.

Builders Risk	All Risk Policy
Worker's Compensation	Statutory
Employer Liability	
Bodily injury (per accident/employee)	\$ 1,000,000
Bodily injury (per disease/employee)	\$ 1,000,000
Policy limit by disease	\$ 1,000,000
<i>Auto Liability</i> (Combined single limit)	\$ 2,000,000
General Liability	
Occurrence	\$ 2,000,000
General Aggregate	\$ 4,000,000
Products-completed Operations	\$ 4,000,000
Excess Liability	
Occurrence and Aggregate	\$ 10,000,000

21.1.2 ~~The insurance shall be kept in full force and effect until all work has been satisfactorily completed and accepted. The insurance shall be kept in full force and effect for two (2) years following substantial completion.~~ 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 deliver 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.

25.12 **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.

25.13 **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**

2731 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.

2732 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.

2733 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.

2734 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

# **Project Criteria**

**(as developed by DownTown Baseball, LLC. and MSA)**

## **Hagerstown Ballpark**

June 2021

### **GENERAL**

The Hagerstown Ballpark will be a state-of-the-art multipurpose facility meeting or exceeding Current Minor League Facility Standards for Double A prepared by Major League Baseball (*Facility Standards*). In the event of conflicts between this Project Criteria and the Facility Standards, the Facility Standards shall prevail. Square footages include below are minimums. Amenities included will permit not only high level professional baseball, but also other sports including football, soccer, lacrosse, cheerleading and band competitions, etc., as well as concerts, group outings, and Esports events. Meet ALPB Standards, to the extent that they deviate from Facility Standards.

### **SPECTATOR FACILITIES**

#### **1. Ballpark Capacity**

Total Ballpark capacity of approximately 5,000 for baseball and 7,500 in concert configurations as follows (preliminary distribution):

• Armchair Seats in Bowl	3,000
• Suites (8 suites x 25)	200
• Conference Center (Function Room)	300
• Picnic Decks	500
• Lawn Seating	1,000
<b>TOTAL CAPACITY (BASEBALL)</b>	<b>5,000+</b>
<b>(CONCERTS*)</b>	<b>7,500+</b>

\*Concert capacity includes on-field seating/standing

#### **2. Seating Bowl**

- Cast-in-place concrete (to the greatest extent feasible), galvanized handrails as required by applicable codes, 33” treads, 7.0” risers, 4’ clear aisles. Treads to slope 0.5” toward field for drainage. Handrails to be riser mounted to the greatest extent practicable.
- All armchair seats with cup holders, one-third fully padded premium chairs. Riser mounted where feasible in order to facilitate cleaning. All anchor bolts holding chairs to be epoxied in place.

## Hagerstown Ballpark

- Six to twelve (6-12) **Luxury Field Boxes** behind home plate in units of four to eight (4-8) fully padded theater style seats, side tables between seats, wait-service, and access to reserved pre-game food service area.
- Front row of seating bowl to have drains and sloped concrete to avoid puddling.

### 3. Premium Bowl

Approximately 8-10 Suites (Skyboxes), 25-person capacity, primarily made available for long-term (10-year) leases to all events at Ballpark and at other times to holders – each provided with:

- Eighteen (18) exterior balcony armchair seats @ 22” wide (nominal) with table-counters for food plates; two (2) chairs removable to accommodate a wheelchair space.
- Approximately 400 S.F. each.
- Private restroom.
- Kitchenette to include lockable storage, under counter refrigerator, bar sink with cold water, service outlets.
- Fully glazed with sliding glass doors on field side.
- Individually controlled HVAC, closed circuit TV, cable, radio, PA, telephone jack, radio feed, and internet.
- Fully furnished and decorated. (Customization by holders permitted.)

### 4. Conference Center (Function Room)

Year round meeting, dining and entertainment space overlooking playing field can accommodate up to 300 people:

- Exterior balcony seating for approximately 300.
- Sub dividable into 3 to 4 areas by accordion partitions.
- Full service kitchen.
- Bar and serving area.
- Fully decorated and furnished with 36” sq. tables/chairs.
- Fully glazed with glass doors on field side at balcony aisles (no vertical mullions in glass other than doors).
- Individually controlled HVAC.
- Full audio-visual equipment for presentations, sales meetings, etc., closed circuit TV, cable, radio, PA, telephone jacks, radio feed, and internet.

### 5. Picnic Areas (with service area and grills)

- Terraced platforms with 500 chairs with tables and built-in counters, water/power, and food service in pavilion with roof.
- All food service equipment, tables, chairs, etc., included.

## 6. Restrooms

- The gender ratio shall assume 50% male and 50% female (unless codes provide otherwise).
- Women's toilets will be provided with countertop with sinks, mirrors, shelves, soap and paper towel dispensers, toilet partitions, diaper changing facility, sanitary napkin equipment, general lighting, HVAC and ventilation.
- Men's toilets will be provided with countertops with sinks, mirrors, soap and paper towel dispensers, toilet partitions (at water closets only), general lighting, HVAC, ventilation and diaper changing facility.
- Wheelchair accessible stalls will be provided in each toilet room. They will accommodate a wheelchair and include accessible-height water closet and grab bars, etc.
- Restrooms will be generally distributed on the public concourses and outfield walkway areas. Provide tiled walls and two-part epoxy floors.
- Final fixture count to be based upon the greater of (i) 125% of current local building code, or (ii) 125% of Facility Standards assuming full Ballpark Capacity.
- Fixtures in all public spaces to have automatic controls.

## 7. Main Concourse

- Provide approximately 28' wide-open air, barrier-free circulation on the concourse. Concrete to be sealed with an epoxy-type coating to be specified.
- Provide 7' wide (minimum) concrete and/or asphalt walkway connecting ends of Main Concourse around the outfield. Walkway to be ADA wheelchair accessible.
- Provide 10' wide cross-aisle (no sightline obstruction of seats above assuming 6' tall people on cross-aisle).

## 8. Spectator Services

- Customer Service Space opening onto concourse for fan accommodation information; approximately 120 S.F. (can be combined with admin office).
- Security and First Aid space on concourse; include work area for security personnel, accessible toilet, cot, lockable cabinets; approx. 250 S.F.
- ATM's (Space and conduit for two each on concourse level).
- Nursing Mother Lounge – approx. 100 S.F.
- Drinking fountains @ 1/1,000 of Capacity, distributed around concourse and walkway.

## 9. Play Areas

## Hagerstown Ballpark

Provide distributed Playground facilities on Main Concourse and around outfield Grass Berm areas. Playground Facilities to include:

- All age climbing and play equipment, meeting ADA requirements.
- Toddler and infant play areas.
- Four (4) portable inflatable units to be specified.
- Signature play items such as Carousel, Mini-golf, etc. Details to be provided.
- Design main playground facilities to be accessible and open to Festival Area.
- Provide protective netting against batted balls.

## FOOD SERVICE FACILITIES

### 1. Concourse Level Concessions

#### General:

- Provide approximately one (1) permanent point of sale per 200 spectators.
- Provide approximately 5'-0" of serving counter for each point of sale.
- Each concession stand will be provided with general lighting, sanitary drain, cold and hot water, gas and electrical services, HVAC.
- Concourse countertops (stainless steel) and overhead rolling security doors or grilles will be provided.
- Provide Food Service Equipment such as cookers, warmers, beverage dispensers, freezers, coolers, plumbing fixtures and the hook-up of the same, water heating, equipment, exhaust systems and other equipment, as may be necessary to provide a workable operation.
- Concession storage to be located at the rear of each concession food prep area. Space allocation is covered under each type of concession.
- Concourses will be provided with power outlets distributed to accommodate portable concession stands.

#### Size/Distribution

- Two to four (2-4) main concession stands on Main Concourse.
- Outfield Concessions building serving berm and play areas.
- Concession areas to meet all applicable codes.

### 2. Vendor's Pantry (450 S.F.)

- Area to be based upon one (1) vendor per 200 spectators and 15 S.F. per vendor.
- Area to include HVAC, general illumination, and hot & cold water service as appropriate, electrical service panel and floor drains.

## Hagerstown Ballpark

- Provide equipment such as cookers, warmers, beverage storage, freezers, coolers.
- Plumbing fixtures, and hook-up of the same and exhaust systems, as may be required, will be included.

### **3. Commissary Storage/Receiving (800 S.F.)**

- Provide storage space @ 1,500 S.F.
- Provide a receiving/loading dock with overhead door @ 200 S.F.

### **4. Commissary Administration Office/Lockers (300 S.F.)**

- Concession manager's and head chef's offices @ 120 S.F.
- Cash room @ 80 S.F.
- Open office area @ 100 S.F.
- Provide lockers for concession employees, time clock, and employee restroom.

### **5. Skybox Level Food Preparation Area (800 S.F.)**

- Area to include HVAC, general illumination, electric and gas service, hot and cold water, floor drains and sanitary drain.

### **6. Picnic Area Concessions (800 S.F.)**

- Fully enclosed building located @ picnic areas designated for walk-up service.
- Area to include HVAC, general lighting, electric and gas service, hot and cold water and sanitary drain.

## **MERCHANDISING**

### **1. Novelty Store (1,000 S.F.)**

- Located on the main concourse level with public access from outside the ballpark (non-game time entrance) and from the main concourse (during game time entrance) for the sale of team merchandise.
- Provide storefront windows, general illumination, HVAC, displays, counters, cash registers, etc.

### **2. Novelty Storage & Office (200 S.F.)**

- Provide storage space adjacent and directly connected to Novelty Store.
- Provide 120 S.F. office for merchandise manager.

## TEAM AND PLAYER FACILITIES

### 1. Administrative Offices (2,330 S.F.)

- Reception area @ 200 S.F.
- General Manager's office @ 200 S.F.
- Four (4) offices @ 120 S.F. ea. = 480 S.F.
- Conference room @ 280 S.F.
- Storage @ 150 S.F.
- Men's and Women's restrooms @ 100 S.F.
- Kitchenette & break room @ 120 S.F.
- Open office work area @ 800 S.F.
- Game Day Staff lockers @ 200 S.F.
- Mascot changing area @ 120 S.F.
- All office furniture and equipment to be specified and included.

### 2. Ticketing (1,300 S.F.)

#### Ticket sales @ 700 S.F.

- Hotel-style lobby ticket area, heated and air-conditioned, and two (2) Will Call windows open to outside with stainless steel counters.
- Work area to include five (5) ticket stations, counters, cash drawers, ticket computer equipment.

#### Ticket sales support @ 300 S.F.

- Counting room @ 100 S.F.
- Office @ 200 S.F. with counter space for safe (provided).

### 3. Pressbox (2,500 S.F.)

- Provide space for press located on concourse level or on skybox level.
- Provide two (2) radio rooms @ 50 S.F. ea.
- Provide storage room @ 100 S.F.
- Provide ADA accessible gender neutral restroom @ 50 S.F.
- Provide restroom @ 50 S.F.
- Provide 40 L.F. of counter for working press, statisticians, scoreboard and sound technicians with power, voice and data outlets.
- Provide general workspace for copier and fax, and space for refreshments.
- Provide PA, sound equipment, TV production, and scoreboard controls (cooling and power as specified).

- Provide separate room for servers and other electronic equipment with separate HVAC system.

#### **4. Home Team Clubhouse (Total area = 3, 300 S.F. as summarized below)**

##### **Home Team Lockers (1,000 S.F.) – refer to Facility Standards for details**

- Provide thirty-two (32) full-height wood lockers @ 36”w x 72”h. Note: all lockers specified in this Program Plan (all areas) to have lockable storage, electrical outlet, and USB charging port.
- Office for Clubhouse Manager with lockable cabinets @ 80 S.F.
- Lounge and games area with furniture and two TV’s.

##### **Showers & Toilet Fixture (430 S.F.)**

- Provide one (1) shower room with minimum of eight (8) heads: 180 S.F. with partitions between showers.
- Provide a toilet room with three (3) water closets, two (2) urinals with partitions between and four (4) lavatories; 160 S.F.
- Provide mirrors, counter and continuous shelf.
- Provide a drying room adjacent to toilet area and shower area with towel shelf and robe hooks: 80 S.F.

##### **Manager’s Office (200 S.F.)**

- Provide a separate locker area for the team’s manager with shower, toilet and dressing.
- Provide a work area with desk and storage closet.

##### **Coaches’ Lockers (400 S.F.)**

- Provide a separate locker area for seven (7) coaches with seven (7) wood lockers @ 36”w x 72”h (10 recommended), two (2) showers, one (1) water closet, one (1) urinal and two (2) lavatories.
- Provide a work area with desk and storage closet.

##### **Training/Weight Room (1,000 S.F.)**

- Provide an area to be used for physical therapy and injury treatment.
- Provide four (4) taping tables.
- Provide durable, washable floor finish.
- Provide direct access from locker room.



## Hagerstown Ballpark

- Provide a secured storage room for treatment equipment such as splints, crutches, and immobilizers.
- Provide a curbed area with floor drain and fittings for one (1) ice machine and two (2) whirlpools.
- Provide a weight training area for athletes. This space includes areas for free weights, weight machines and testing (min 400 S.F.).

### **Trainer's Office (120 S.F.)**

- Provide a private office for use by team trainers.

### **Other Areas**

- Video/Conference Room for minimum of six (6) people with table and chairs (250 S.F.)
- Commissary/Dining Area per Facility Standards – fully equipped (300 S.F.)

### **Laundry Room (180 S.F.)**

- Provide an area to be used by laundry personnel for the cleaning of athletic clothing; three commercial (3) washers and three (3) dryers, counter and storage cabinetry, and space to park laundry cart. (NOTE: MAY BE COMBINED WITH VISITOR'S CLUBHOUSE)

### **Storage Room (300 S.F.)**

- Provide a storage room for team uniforms and equipment.

## **5. Visitor's Clubhouse (Total area = 2,120 S.F. as summarized below)**

### **Visiting Team Lockers (1,000 S.F.)**

- Provide thirty-two (32) full-height wood lockers for athletes with chair or stool for each. Lockers to be 24"w x 72"h.
- Provide Commissary/Dining area (300 S.F.)

### **Showers & Toilet Fixture (420 S.F.)**

- Provide one (1) shower room with a minimum of eight (8) heads with partitions; 180 S.F.
- Provide a toilet room with minimum of two (2) water closets, two (2) urinals with partitions and four (4) lavatories: 160 S.F.
- Provide mirrors, counters and continuous shelf.

## Hagerstown Ballpark

- Provide a drying room adjacent to toilet area and shower area with a towel shelf and robe hooks: 80 S.F.

### **Manager's Office/Locker Room (150 S.F.)**

- Provide a separate office and locker area for the team's manager with shower, toilet and dressing area.
- Provide a small work area with desk and storage closet.

### **Coaches' Lockers (400 S.F.)**

- Provide a separate locker area for seven (7) coaches with spaces for showers, toilet and dressing.
- Provide a work area and storage closet.

### **Treatment Area (300 S.F.)**

- Provide an area to be used for physical therapy and injury treatment.
- Provide one (1) treatment table at 7'-0" long.
- Provide one (1) taping table.
- Provide durable, washable floor finish.
- Provide direct access to locker room.
- Provide a desk room for head trainer.

### **Storage Room (200 S.F.)**

- Provide a storage room for team uniforms and equipment.

## **6. Umpire's Locker Area (400 S.F.)**

- Provide five (5) wood lockers for game officials with chair or stool for each. Lockers @ 36" w x 24" d
- Provide two (2) showers, one (1) water closet, one (1) urinal, and one (1) lavatory.

## **7. Auxiliary Clubhouse/Green Room**

- Provide approximately 400 S.F. area to be used as auxiliary clubhouse and/or concert performer "green room".

## **8. Female Staff Facilities**

- Provide a private dressing, shower, and toilet facility that is available only to female umpires and female staff of the home and visiting personnel.

## Hagerstown Ballpark

- Such dressing area shall be located in reasonable proximity to the home and visiting clubhouses and shall include a minimum of four (4) lockers (each a minimum of 24”w x 72”h), two (2) showerheads, two (2) water closets, and two (2) lavatories.
- Minimum floor space requirements for the female staff facilities shall be 200 S.F. (as measured from the base of each wall.
- Notwithstanding the forgoing, facilities may include multiple separate dressing areas for home and visiting female staff and umpires, provided that at least two (2) lockers, one (1) shower, one (1) water closet, and one (1) lavatory are available in each location for female staff.

### **PLAYING FIELD FACILITIES & EQUIPMENT – see Facility Standards**

#### **1. Groundskeeper (1,500 S.F.)**

- Locate with direct access to the field and parking. Provide overhead door.
- Provide storage area for field maintenance equipment @ 800 S.F.
- Provide screened outside storage area for materials and supplies @ 600 S.F.
- Provide office for groundskeeper @ 100 S.F.

#### **2. Playing Field**

- Provide artificial sports turf with under-field draining and irrigation to professional standards.
- Provide outfield wall dimensions to be determined.
- Provide warning track of minimum dimension of 15’ in depth.
- Provide a batter’s eye screen of natural or fence materials with minimum dimensions of 36’h x 60’w.
- Provide a bullpen for each team; beyond outfield wall.
- Flagpoles.
- Advertising fence – 24’h located beyond outfield wall. Final design/configuration to be determined in conjunction with outfield circulation & seating arrangements.

#### **3. Dugouts (Home & Visitor)**

- Player bench: 30 players
- Helmet rack: 30 helmets
- Bat rack: 30 bats
- Water cooler: one (1) per dugout
- Toilet
- Provide non-skid surfaces – all steps.

#### **4. Batting Cages**

- Provide two (2) 15' x 80' protected cages for home team, directly accessible from clubhouse.
- Provide one (1) 15' x 80' protected cage for visiting team directly accessible from clubhouse.

#### **5. Bullpens**

- Each bullpen area must be visible to both dugouts and to the press box. This requirement may be satisfied with a closed-circuit video feed.
- Each bullpen shall have two (2) regulation pitching mounds and home plates, adequate distance and clearance for each pitcher and catcher, and a bench for ten (10) players.
- All bullpens located off the playing field shall include a protective overhead cover that may satisfy the aforementioned seating requirement with either chairs or a bench.

### **BUILDING SUPPORT SERVICES**

#### **1. General**

- General Building Storage @ 2,000 S.F.
- Janitor (distributed) @ 200 S.F.
- Receiving @ 200 S.F.
- Distributed Mechanical/Electrical Rooms @ 2,000 S.F. total

#### **2. Trash Compactor Area (500 S.F.)**

- Two (2) @ 250 S.F. with sanitary, water, and electrical service.

#### **3. Elevator(s) – Freight and Passenger**

### **BUILDING SYSTEMS**

#### **1. Graphics**

- Provide a coordinated, consistent system of quality graphics throughout the entire ballpark.
- Signage will conform to the Americans with Disabilities Act.
- Signs to be provided are indicated (but not limited to those) below:
  - Identification of entrances, including ticket office and special entrances

## Hagerstown Ballpark

- Signs within the ballpark to indicate seating sections, Aisles, rows and seat numbers.
- Identification of toilet rooms, concessions, first aid, exits and other public facilities.
- Way finding and site graphics as required to safely enter and exit the ballpark.

### **2. Sound System/CCTV**

- Provide concert quality complete distributed sound system to serve the entire Ballpark, including playback units, loudspeaker system, auxiliary speakers for even announcing, paging, music broadcast, etc. in lockers, concourse, restrooms and skyboxes.
- Provide closed circuit television feed to all skyboxes, clubs and concessions. Include all TV equipment.

### **3. House Lighting**

- Provide adequate general illumination for safe navigation of concourses, toilets stairs, and ramps.
- Provide adequate general illumination throughout the ballpark for maintenance and clean up.

### **4. Field Lighting**

- Provide LED field lighting based on Facility Standard guidelines: Minimum 100 fc average infield/70 fc average outfield lighting-levels (standard demonstration testing required).
- Pole heights and glare limitations to surrounding areas to be specified.

### **5. Fire Protection**

- Fire protection shall be provided in enclosed areas where required by applicable building and safety codes.

### **6. Electrical**

- Provide for electrical equipment and distribution as required. Include power for portable concession equipment and concert stage on field.

### **7. HVAC**

- Heating and Air conditioning to be provided in all enclosed areas.

## Hagerstown Ballpark

- Fresh air ventilation and exhaust to be provided in all food preparation and restroom areas.
- Kitchen cooking exhaust hood, fans, and ductwork to be provided to meet Local Health Department guidelines.
- Unit heats to be provided to all public restrooms.

### **8. Mechanical/Plumbing**

- Provide for mechanical and plumbing equipment and distribution as required.

### **9. Miscellaneous Equipment**

- Provide Scoreboards, Entertainment Board, Concourse Displays, and Marquee Signs – designs to be specified.
- Two (2) auxiliary video display boards for the Home Run fence.

### **10. Data and Phone System**

- Provide a data and phone system and phone jacks throughout the stadium.

## **HAGERSTOWN CULTURAL TRAIL**

### **General**

The Hagerstown Cultural Trail connects two of the city's most popular destinations, the downtown Arts & Entertainment District with City Park and the Washington County Museum of Fine Arts. With public art experiences, gathering spaces, and other amenities along the way, the Trail is intended to be a destination for visitors.

### **Impact on the Multi-Use Sports and Events Facility**

The current orientation of the Cultural Trail runs directly through a portion of the proposed Project Site. With this, the Cultural Trail will have to be reconfigured to account for the layout of the stadium. As part of the design process, the Design Builder will be responsible for submitting the proposed revised layout of the Cultural Trail impacted by stadium construction with requirements including but not limited to the following:

- The Cultural Trail is to remain one continuous path as currently constructed.
- Cultural Trail construction to match existing.
- The proposed revised layout to the Cultural Trail is subject to review and approval by MSA, the Client, and the appropriate representatives of the City of Hagerstown.
- The final design will be subject to any additional requirements to maintain Tax Exempt Bond Status.
- Maintain/relocate Cultural Trail amenities (shade structures, benches, public art, etc.) as required.

**Request for Proposals (RFP) - CM Services - Redevelopment of Pimlico Racing Facility**

**Staffing Plan**

\* List name, position and number of hours, as indicated. Add rows as needed.

			Preconstruction Phase (Hours)							Construction / Post Construction (Percentage of Time)				
			Meetings (Design, Owner, etc.)	Scheduling	Estimating	Constructability Review	Value Engineering	Bidding / GMP Preparation	Other (Describe)	Subtotal Hours	Construction Phase	Post Construction Phase	Other (Describe)	Percentage of Time Spent
Name	Position	Firm												
										0.00				0%
										0.00				0%
										0.00				0%
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<b>TOTAL HOURS</b>			<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b>



**EXHIBIT D**  
**MBE GOALS & REPORTING FORMS**

Owner maintains a web-based MBE compliance system (*B2G*). The system was designed to provide various work-flow automation features that improve the project reporting process. This system will monitor contract compliance for all MBE firms participating on the project. Design Builder, its' first tier Trade Contractors, and all MBE Trade Contractors and Subcontractors will be required to use the web-based system to submit Project information including, but not limited to, certification of payments made and received by MBE firms. Owner may reasonably require additional information related to the Project to be provided electronically through the system at any time during the Project.

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

Design Builder shall:

- (1) Submit monthly to Owner a report listing (a) payments made to each MBE subcontractors in the preceding thirty (30) days, and (b) any unpaid invoices over thirty (30) days old received from certified MBE subcontractor, together with the reason payment has not been made. This is to be included in the Project Progress Report (**Exhibit F**) and Final Project Report (**Exhibit G**).
- (2) Include in its agreements with its certified MBE subcontractors a requirement that the certified MBE subcontractors submit monthly to Owner a report identifying the prime contract, and listing:
  - a. Payments received from Design Builder in the preceding thirty (30) days, and
  - b. Invoices for which the subcontractor has not been paid; andBefore final payment and release of any retainage, submit a final report, in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

## GMP MBE INSTRUCTIONS

### PLEASE READ BEFORE COMPLETING THIS DOCUMENT

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

1. Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) subcontractor participation goal stated in the Invitation for Bids or Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.
2. MBE Goals and Subgoals: Please review the solicitation for information regarding the Contract's MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from the various MBE classifications to meet the remainder of the overall MBE participation goal.
3. MBE means a minority business enterprise that is certified by the Maryland Department of Transportation ("MDOT"). Only MBEs certified by MDOT may be counted for purposes of achieving the MBE participation goals. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm, including a MBE prime, must be MDOT-certified for the services, materials or supplies that it is committed to perform on the MBE Participation Schedule. A firm whose MBE certification application is pending may not be counted.
4. Please refer to the MDOT MBE Directory at <https://mbe.mdot.maryland.gov/directory/> to determine if a firm is certified with the appropriate North American Industry Classification System ("NAICS") code **and** the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS codes, please visit <https://www.census.gov/eos/www/naics/>. Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the MBE participation goals. **CAUTION:** If the firm's NAICS code is in graduated status, such services/products may not be counted for purposes of achieving the MBE participation goals. A NAICS code is in the graduated status if the term "Graduated" follows the code in the MDOT MBE Directory.
5. When a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the Contract that the certified MBE performs with its own forces toward fulfilling the Contract goal.
6. The work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.

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

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

*Example for illustrative purposes of applying the 60% rule*

*Overall contract value: \$2,000,000*

*Total value of supplies: \$100,000*

*Calculate Percentage of Supplies to overall contract value:*

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

***Apply 60% Rule - Total percentage of Supplies/Products 5% x 60% = 3%***

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

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

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

9. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT's Office of Minority Business Enterprise at 1-800-544-6056 or via email to [mbe@mdot.state.md.us](mailto:mbe@mdot.state.md.us) sufficiently prior to the submission due date.

**MBE PARTICIPATION AFFIDAVIT AND SCHEDULE**

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

Prime Contractor	Project Description	Project/Contract Number

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

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

<p>MBE Prime Firm Name: _____</p> <p>MBE Certification Number: _____ (If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned  <input type="checkbox"/> Hispanic American- Owned  <input type="checkbox"/> AsianAmerican-Owned  <input type="checkbox"/> Women-Owned  <input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p><b>Please refer to Item #7 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%)  <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 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. Contract 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. Contract 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. 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 #7 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. Contract amount of subcontract 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. 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. 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 #7 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. Contract amount of subcontract 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. 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. 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>

Hagerstown Multi-Use Sports and Events Facility GMP

<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 #7 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. Contract amount of subcontract 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. 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. 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 #7 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. Contract amount of subcontract 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. 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. 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>

CONTINUE ON SEPARATE PAGE IF NEEDED

**SIGNATURE PAGE**

**Bidder/Offeror must sign below**

**I solemnly affirm under the penalties of perjury that: (i) I have reviewed the instructions in this form; (ii) In the solicitation of subcontract quotations or offers, MBE firms were provided not less than the same information and amount of time to respond as were non-MBE firms; and (iii) the information contained in this form is true to the best of my knowledge, information and belief.**

\_\_\_\_\_  
Bidder/Offeror Name  
*(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**

**EXHIBIT E-1**  
**PREVAILING WAGE**  
**INSTRUCTIONS FOR THE DESIGN BUILDER**

CONTRACT NO. \_\_\_\_

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

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

**I. DEFINITIONS.**

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

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

**II. PREVAILING WAGE NOTICE.**

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

**III. PAYROLL RECORDS.**

MSA requires certified payroll records be submitted electronically through its web-based system, LPC Tracker. For instructions on how to register and submit go online to <https://prod.lcptracker.net/> and follow the instructions for registering.

**A. When Due.**

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



## **B. Certification.**

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

## **C. Contents. Each payroll record shall:**

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

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

#### **IV. OVERTIME.**

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

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

#### **V. WORK BY LABORERS.**

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

#### **VI. SUBCONTRACTORS SHALL COMPLY.**

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

## VII. ENFORCEMENT AND FEES.

### A. Violations.

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

	VIOLATION	PENALTY OR FEE
1.	Failure to post prevailing wage rates required by Section II herein	\$50 per violation
2.	Late submission of payroll records required by Section III herein.	(a) MSA may postpone processing of a progress payment – or part of a progress payment under Article 21 of the Contract; and (b) Design Builder shall be liable for liquidated damages in the amount of \$10 for each calendar day the records are late.
3.	If MSA receives a complaint of a violation in the course of performance under this contract and determines that a provision of the Act has been violated:	MSA may withhold any amount that the Design Builder or its subcontractor owes to its employees or to MSA as a result of the violation.  The withheld amount shall be used to:  (a) pay the affected employees the full amount of wages due them; and  (b) the amount the Design Builder or subcontractor is liable to MSA for under SF §17-222 (\$20 for each laborer or other employee for each day for which (i) the laborer is paid less than the prevailing wage rate of a mechanic while performing the task required to be performed by a mechanic or a mechanic’s apprentice; or (ii) the employee is paid less than the prevailing wage rate.
4.	Design Builder (or subcontractor at any tier) knew or reasonably should have known of the Design Builder’s (or subcontractor at any tier) obligation to pay the prevailing wage rate and that deliberately failed or refused to pay the prevailing wage rate.	Liable to MSA for liquidated damages of \$250 for each laborer or other employee for each day which:  (a) the laborer is paid less than the prevailing wage rate of a mechanic while the laborer is performing a task required to be performed by a mechanic or mechanic’s apprentice; or  (b) the employee is paid less than the prevailing wage rate.
5.	(a) Failure of Design Builder to cooperate with investigation, refusal to correct or cooperate with	(a) May be an Event of Default under the Contract subject to termination.

	VIOLATION	PENALTY OR FEE
	<p>MSA to correct violations, determination by MSA that Contractor is not acting in good faith.</p> <p>(b) Subcontractor failure to cooperate with investigation, refusal to correct or cooperate with MSA or Design Builder to correct violations, or determination of MSA that Trade Contractor or subcontractor is not acting in good faith.</p>	<p>(b) MSA may require Design Builder to terminate subcontractor contract. Cost of any associated delays or substitutions shall be the sole responsibility of Design Builder and not considered an Owner Change.</p>

**B. Remedies Exclusive.**

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

**C. Design Builder Consent.**

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

**D. MSA May Waive Damages.**

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

**VIII. INVESTIGATION.**

**A. Generally.**

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

## **B. Department of Labor Licensing & Regulation.**

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

## **IX. RETALIATION OR DISCRIMINATION PROHIBITED.**

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

## **X. NO DUTY ON MSA.**

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

Witness:

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Owner

Maryland Stadium Authority

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By: Michael J. Frenz

Executive Director

Witness:

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Design Builder

[NAME]

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By: [Name}

[Title]



**STATE OF MARYLAND**

**Maryland Stadium  
Capital Projects Development Group  
351 W. Camden Street, Suite 300  
Baltimore, MD 21201  
(410) 223-4150  
cpdgcompliance@mdstad.com**

The wage rates to be paid laborers and mechanics for the locality described below is announced by order of Commissioner of Labor and Industry.

It is mandatory upon the successful bidder and any subcontractor under him, to pay not less than the specific rates to all workers employed by them in executing contracts in this locality. Reference: Annotated Code of Maryland State Finance and Procurement, Section 17-201 thru 17-226.

These wage rates were taken from the locality survey of 2020 for Washington County, issued pursuant to the Commissioner's authority under State Finance and Procurement Article Section 17-209, Annotated Code of Maryland or subsequent modification.

**\*\*Note:** If additional Prevailing Wage Rates are needed for this project beyond those listed below, contact the Maryland Stadium Authority, Capital Projects Development Group, Phone: 410-223-4150, email: cpdgcompliance@mdstad.com.

Department, Agency or Bureau:

Maryland Stadium Authority  
351 W. Camden Street, Suite 300  
Baltimore, MD 21201

Project Number

CP - 004

Location and Description of work:

Washington County: Hagerstown Multi-Use Sports and Events Facility

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 hosting outdoor concerts, festivals, community and family oriented events, in addition to serving as the home field for an Atlantic League Professional Baseball Club.

Date of Issue: Aug 13, 2021

**BUILDING CONSTRUCTION**

CLASSIFICATION	MODIFICATION REASON	BASIC HOURLY RATE	BORROWED FROM	FRINGE BENEFIT PAYMENT
BALANCING TECHNICIAN	AD	\$31.63		\$9.18
BRICKLAYER	AD	\$28.08		\$22.77
CARPENTER	AD	\$28.25		\$19.00
CEMENT MASON	AD	\$39.29		\$0.00
COMMUNICATION INSTALLER TECHNICIAN	AD	\$39.29		\$0.00
ELECTRICIAN	AD	\$33.90		\$18.17
ELEVATOR MECHANIC	AD	\$48.42		\$40.66
INSULATION WORKER	AD	\$38.01		\$17.62
IRONWORKER - FENCE ERECTOR	AD	\$26.88		\$17.74
IRONWORKER - REINFORCING	AD	\$27.16	001	\$22.73

IRONWORKER - STRUCTURAL	AD	\$27.16		\$22.73
MILLWRIGHT	AD	\$31.04		\$18.60
PAINTER	AD	\$25.20	023	\$7.99
PLUMBER	AD	\$35.53		\$16.03
POWER EQUIPMENT OPERATOR - BACKHOE	AD	\$34.12	001	\$14.60
POWER EQUIPMENT OPERATOR - BULLDOZER	AD	\$34.12	001	\$14.60
POWER EQUIPMENT OPERATOR - CRANE	AD	\$35.70		\$15.90
POWER EQUIPMENT OPERATOR - EXCAVATOR	AD	\$34.12		\$14.60
POWER EQUIPMENT OPERATOR - FORKLIFT	AD	\$34.12	001	\$14.60
POWER EQUIPMENT OPERATOR - LOADER	AD	\$34.12	001	\$14.60
POWER EQUIPMENT OPERATOR - PAVER	AD	\$22.65	023	\$4.25
POWER EQUIPMENT OPERATOR - ROLLER - ASPHALT	AD	\$17.30	023	\$4.04
POWER EQUIPMENT OPERATOR - SKID STEER (BOBCAT)	AD	\$19.18	023	\$3.34
RESILIENT FLOOR	AD	\$28.00	001	\$10.90
ROOFER/WATERPROOFER	AD	\$29.00		\$14.46
SHEETMETAL WORKER (INCLUDING METAL ROOFING)	AD	\$29.09		\$22.47
SPRINKLERFITTER	AD	\$27.89		\$12.77
STEAMFITTER/PIPEFITTER	AD	\$40.97		\$21.24
STONE MASON	AD	\$39.76		\$19.04
TILE & TERRAZZO FINISHER	AD	\$24.94		\$11.53
TILE & TERRAZZO MECHANIC	AD	\$30.12		\$12.60
TRUCK DRIVER - DUMP	AD	\$17.00	023	\$5.88
TRUCK DRIVER - TRACTOR TRAILER	AD	\$22.50	023	\$5.88

## LABORER GROUP II

LABORER - ASPHALT RAKER	AD	\$21.01		\$21.50
LABORER - COMMON	AD	\$21.01		\$21.50
LABORER - CONCRETE PUDDLER	AD	\$21.01		\$21.50
LABORER - CONCRETE TENDER	AD	\$21.01		\$21.50
LABORER - CONCRETE VIBRATOR	AD	\$21.01		\$21.50
LABORER - DENSITY GAUGE	AD	\$21.01		\$21.50
LABORER - FIREPROOFER - MIXER	AD	\$21.01		\$21.50
LABORER - FLAGGER	AD	\$21.01		\$21.50
LABORER - GRADE CHECKER	AD	\$21.01		\$21.50
LABORER - HAND ROLLER	AD	\$21.01		\$21.50
LABORER - JACKHAMMER	AD	\$21.01		\$21.50
LABORER - LANDSCAPING	AD	\$21.01		\$21.50
LABORER - LAYOUT	AD	\$21.01		\$21.50
LABORER - LUTEMAN	AD	\$21.01		\$21.50
LABORER - MORTAR MIXER	AD	\$21.01		\$21.50
LABORER - PLASTERER - HANDLER	AD	\$21.01		\$21.50
LABORER - TAMPER	AD	\$21.01		\$21.50

## LABORERS GROUP I

LABORER - AIR TOOL OPERATOR	AD	\$21.19		\$21.50
LABORER - ASPHALT PAVER	AD	\$21.19		\$21.50
LABORER - BLASTER - DYNAMITE	AD	\$21.19		\$21.50
LABORER - BURNER	AD	\$21.19		\$21.50



LABORER - CONCRETE SURFACER	AD	\$21.19	\$21.50
LABORER - HAZARDOUS MATERIAL HANDLER	AD	\$21.19	\$21.50
LABORER - MASON TENDER	AD	\$21.19	\$21.50
LABORER - PIPELAYER	AD	\$21.19	\$21.50
LABORER - SCAFFOLD BUILDER	AD	\$21.19	\$21.50

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**Incidental Craft Data: Caulker, Man Lift Operator, Rigger, Scaffold Builder, and Welder** receive the wage and fringe rates prescribed for the craft performing the operation to which welding, scaffold building, rigging, operating a Man Lift, or caulking is incidental.

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These **Informational Prevailing Wage Rates** may not be substituted for the requirements of pre-advertisement or onsite job posting for a public work contract that exceeds \$500,000 in value and either of the following criteria are met: (1) the contracting body is a unit of State government or an instrumentality of the State and there is any State funding for the project; or (2) the contracting body is a political subdivision, agency, person or entity (such as a county) and the State funds 50% or more of the project.

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Modification Codes:

- (AD) 17-209 Annual Determination from Survey Wage Data Received
- (CH) 17-211 Commissioners' Hearing
- (CR) 17-208 Commissioners' Review
- (SR) 17-208 Survey Review by Staff

Each "Borrowed From" county is identified with the FIPS 3-digit county code unique for the specific jurisdiction in Maryland.

For additional information on the FIPS (Federal Information Processing Standard) code, see <http://www.census.gov/datamap/fipslist/AllSt.txt>

The Prevailing Wage rates appearing on this form were originally derived from Maryland's annual Wage Survey. The Commissioner of Labor & Industry encourages all contractors and interested groups to participate in the voluntary Wage Survey, detailing wage rates paid to workers on various types of construction throughout Maryland.

A mail list of both street and email addresses is maintained by the Prevailing Wage Unit to enable up-to-date prevailing wage information, including Wage Survey notices to be sent to contractors and other interested parties. If you would like to be included in the mailing list, please forward (1) your Name, (2) the name of your company (if applicable), (3) your complete postal mailing address, (4) your email address and (5) your telephone number to PWMAILINGLIST@dllr.state.md.us. Requests for inclusion can also be mailed to: Prevailing Wage, 1100 N. Eutaw Street - Room 607, Baltimore MD 21201-2201.

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## PREVAILING WAGE INSTRUCTIONS FOR THE CONTRACTOR & SUBCONTRACTOR

The contractor shall electronically submit completed copies of certified payroll records to the [www.lcptracker.net](http://www.lcptracker.net) and following the instructions for submitting payroll information (NOTE: A contractor must register prior to submitting on-line certified payroll information).

All certified payroll records shall have an accurate week beginning and ending date. The contractor shall be responsible for certifying and submitting to the Maryland Stadium Authority, payroll records covering work performed directly at the work site. By certifying the payroll records, the contractor is attesting to the fact that the wage rates contained in the payroll records are not less than those established by the Commissioner as set forth in the contract, the classification set forth for each worker or apprentice conforms with the work performed, and the contractor or subcontractor has complied with the provisions of the law.

A contractor or subcontractor may make deductions that are (1) required by law; (2) required by a collective bargaining agreement between a bona fide labor organization and the contractor or subcontractor; or (3) contained in a written agreement between an employee and an employer undertaken at the beginning of employment, if the agreement is submitted by the employer to the public body awarding the public work and is approved by the public body as fair and reasonable.

A contractor or subcontractor is required to submit information on-line on their fringe benefit packages including a list of fringe benefits for each craft employed by the contractor or subcontractor, by benefit and hourly amount. Where fringe benefits are paid in cash to the employee or to an approved plan, fund, or program, the contribution is required to be indicated.

Payroll records must be electronically submitted and received within 14 calendar days after the end of each payroll period.

Only apprentices registered with the Maryland Apprenticeship and Training Council shall be employed on prevailing wage projects. Apprentices shall be paid a percentage of the determined journey person 's wage for the specific craft.

Overtime rates shall be paid by the contractor and any subcontractors under its contracts and agreements with their employees which in no event shall be less than time and one-half the prevailing hourly rate of wages for all hours worked in excess of ten (10) hours in any one calendar day; in excess of forty (40) hours per workweek; and work performed on Sundays and legal holidays.

Contractors and subcontractors employing a classification of worker for which a wage rate was not issued SHALL notify the Maryland Stadium Authority for the purpose of obtaining the wage rate for said classification PRIOR TO BEING EMPLOYED on the project. To obtain a prevailing wage rate which was NOT listed on the Wage Determination.

Contractors and subcontractors shall maintain a valid copy of proper State and county licenses that permit the contractor and a subcontractor to perform construction work in the State of Maryland. These licenses must be retained at the worksite.

1. Post a clearly legible statement of each prevailing wage rate to be paid under the project; and
  2. Keep the statement posted during the full time that any employee is employed on the project.
  3. The statement of prevailing wage rates shall be posted in a prominent and easily accessible place at the site of the project.
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\*\*The Maryland Stadium Authority does not require contribution to the Maryland Apprenticeship and Training Council for their Guaranteed Maximum Price (GMP) construction contracts.

**Laborers may NOT assist mechanics in the performance of the mechanic's work, NOR USE TOOLS peculiar to established trades.**

**ALL contractors and subcontractors shall employ only competent workers and apprentices and may NOT employ any individual classified as a HELPER or TRAINEE on a prevailing wage project.**

**EXHIBIT F**  
**PROJECT PROGRESS REPORT**

The Project Progress Report is to be submitted per Section 7.1 of the Agreement. Submit two (2) hard copies and one (1) electronic copy on a flash drive of the following items, organized and tabbed in the order listed below:

- (a) Schedule Status Report per Section 6.0 of **Exhibit J**.
  - (i) Tabular and Graphic Reports per Section 6.0.k.7 and Section 6.0.k.8 of **Exhibit J**.
  
- (b) Cost Status
  - (i) Current Payment Application per **Exhibit L**.
  - (ii) Log of Anticipated Changes (Section 14.2.7 of the Agreement). A log and summary statement showing potential Change Orders which require the MSA's immediate attention.
  
- (c) Trade Contracts/Subcontracts/Purchase Orders
  - (i) Provide a log of each Trade Contract/Subcontract/Purchase Order issued for the Project including a contract reconciliation summary matrix.
  - (ii) Provide copies of Trade Contracts/Subcontracts/Purchase Orders issued during the month being reported.
  - (iii) Provide copies of any Contract Modifications and/or Amendments issued during the month being reported.
  
- (d) Project Logs/Reports
  - (i) Contractor's Daily Construction Reports for the month being reported.
  - (ii) Payroll Reports. Certified Payroll reports submitted by each Trade Contractor/Subcontractor and for trade work performed directly by the CM during the month being reported. Provide a statement that completed copies of all payrolls have been submitted electronically to the *LCPTracker* system and certifying the accuracy of each payroll record thereof as described in **Exhibits E and E-1**.
  - (iii) Safety Log with reports from the month being reported.
  - (iv) RFI Log
  - (v) Submittal Log
  - (vi) Design Builder Completion List (Section 6.4.1 of the Agreement)
  - (vii) Punch List (Section 6.4.2 of the Agreement)
  - (viii) Design Builder QA/QC Log and reports from the month being reported.
  - (ix) MSA QA/QC Log and reports from the month being reported.
  
- (e) Photographs of work performed during the month being reported.

**EXHIBIT G**  
**FINAL PROJECT REPORT**

Upon completion of the Work, the Design Builder shall submit a Final Project Report. Acceptance of the Final Project Report by MSA is a condition precedent for releasing final payment per Section 20.10.2 of the Agreement. Submit three (3) bound copies and one (1) electronic copy on a flash drive. The information in the Final Project Report shall be organized, tabbed and sub-tabbed to match the sequence below.

**EXECUTIVE SUMMARY**

Provide an executive summary describing the execution of the Work with respect to the overall schedule (i.e., Date of NTP; Date of Substantial Completion; Date of Final Completion) and the final financial status of the Project (i.e., Original Contract Amount, Total Amount of Change Orders/Cost Savings/Etc., Final Contract Amount).

**SCHEDULE**

- (a) Executed copies of the following:
  - (i) Certificate of Final Completion (**Exhibit H**)
  - (ii) Certificate of Use and Occupancy
  - (iii) Certificate of Substantial Completion (**Exhibit H**)
  
- (b) Graphic Report of the Final As-Built Schedule sorted by early start date including the following information.
  - (i) Activity identification.
  - (ii) Responsibility
  - (iii) Activity description.
  - (iv) Original duration.
  - (v) Actual duration.
  - (vi) Earliest start date.
  - (vii) Earliest finish date.
  - (viii) Actual start date.
  - (ix) Actual finish date.
  - (x) Monetary value of activity.
  
- (c) Graphic Report of the Final As-Built Schedule sorted by Responsibility including the following information.

- (i) Activity identification.
- (ii) Activity description.
- (iii) Original duration.
- (iv) Actual duration.
- (v) Earliest start date.
- (vi) Earliest finish date.
- (vii) Actual start date.
- (viii) Actual finish date.
- (ix) Monetary value of activity and summary total of work attributable to each responsible party.

## **FINANCIAL**

- (a) Contract Reconciliation Matrix showing the final cost of all items associated with the Project including the disposition and status of all project Allowances, Budget Allocations, Unit Prices, Contingencies, etc. At a minimum, the matrix shall include the name of each party responsible for each line item and provide the following:
  - (i) Work Performed
  - (ii) Bid Package Number
  - (iii) Original contract amount
  - (iv) Total Amount of Change Orders / Cost Adjustments
  - (v) Final contract amount
  - (vi) Last Date that Work was Performed on the Project
  - (vii) Contact Information Including Name, Phone, Address and Email
- (b) Detailed corporate accounting report for all Cost of the Work expenses including labor, materials, supplies, equipment, consultants, Trade Contracts, Purchase Orders, insurances, bonds, taxes, and other applicable costs.
- (c) Approved Application for Final Payment with all applicable back-up including Final Release of Lien and Consent of Surety for Final Payment (**Exhibit K**).
- (d) Copies of the final invoice with Final Release of Lien (**Exhibit K**) for every Trade Contract/Subcontract/Purchase Order issued on the Project.

## **OTHER PROJECT CLOSE OUT AND RECORD DOCUMENTS**

- (a) Evidence of Continuation of Insurance per the RFP and other Contract Documents.
- (b) Project Permit Information.
  - (i) Obtain from Architect/MSA
- (c) Inspection Report(s) from all Testing and Inspection Agencies certifying Compliance with the project Plans, Specifications and other Contract Documents per Article 5 of the Agreement.

- (d) Final Punch List showing evidence of completion and acceptance of all items included on the list.
  
- (e) Copies of transmittals/sign-in sheets showing the Owner/Client's receipt and acceptance of the following:
  - (i) As-Built Documentation
  - (ii) Spare Parts
  - (iii) Operation and Maintenance Manuals
  - (iv) Training and Demonstration Sessions
  - (v) Any other Close Out Documents
  
- (f) Warranties and Guarantees. Matrix of all warranties and guarantees showing the product, type of warranty, Trade Contractor and manufacturer responsible, date of commencement and the date of expiration. Include copies of each warranty/guarantee.
  
- (g) Other documents as may be request by MSA.

Maryland Stadium Authority- Capital Projects Development Group  
351 West Camden Street, Suite 300  
Baltimore, Maryland 21201

CERTIFICATE OF SUBSTANTIAL COMPLETION

MSA PROJECT NO. \_\_\_\_\_ CONTRACT DATE: \_\_\_\_\_

CONTRACTOR NAME: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

**DEFINITION:** The date of Substantial Completion on the Work or designation portion thereof is the Date certified by the Owner when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner and or Client can occupy or utilize the Work or designated portion thereof for the use for which it is intended, as expressed in the Contract Documents.

PROJECT, OR DESIGNATED PORTION THEREOF, INCLUDED IN THIS CERTIFICATE:

The Work to which this Certificate applies has been reviewed and found to be substantially complete. The date of Substantial Completion of the Project or portion thereof designated above is established as, \_\_\_\_\_, which is also the date of commencement of applicable warranties required by the Contract Documents, except as stated below:

\_\_\_\_\_

A list of items to be completed or corrected, prepared and amended by the Owner and Contractor is attached hereto. The failure to include any items on such a list does not alter the responsibilities of the Contractor to complete all work in accordance with the Contract Documents. The list of items shall be completed or corrected by the Contractor within thirty (30) days of the above date of Substantial Completion. The date of commencement of warranties for items on the attached list will be the date of final payment unless otherwise agreed to in writing.

The responsibilities of the Owner/Client and Contractor for security, maintenance, heat utilities, damages to the Work and insurance shall be as follows:

OWNER: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

=====

EXHIBIT H



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

ARCHITECT agrees to this Certificate of Substantial Completion on:

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

Architect: \_\_\_\_\_

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

MSA accepts to this Certificate of Substantial Completion on:

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

Contractor: \_\_\_\_\_

MSA: \_\_\_\_\_

CONTRACTOR agrees to this Certificate of Substantial

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

Contractor: \_\_\_\_\_

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

Maryland Stadium Authority- Capital Projects Development Group  
351 West Camden Street, Suite 300  
Baltimore, Maryland 21201

CERTIFICATE OF FINAL COMPLETION

MSA PROJECT NO: \_\_\_\_\_

CONTRACT DATE: \_\_\_\_\_

CONTRACTOR NAME: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

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

PROJECT, OR DESIGNATED PORTION THEREOF, INCLUDED IN THIS CERTIFICATE:

The Work to which this Certificate applies has been reviewed and found to be substantially complete. The date of Completion of the Project or portion thereof designated above is established as: \_\_\_\_\_

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

The responsibilities of the Owner and Contractor for security, maintenance, heat utilities, and damages to the Work and insurance shall be as follows:

OWNER:

\_\_\_\_\_  
\_\_\_\_\_

CONTRACTOR:

\_\_\_\_\_  
\_\_\_\_\_

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

EXHIBIT H

Hagerstown Multi-Use Sports and Events Facility  
Design Build Agreement

**EXHIBIT I**  
**CPM SCHEDULE REQUIREMENTS – DESIGN AND PRECONSTRUCTION**

See attached.

## **CPM SCHEDULE REQUIREMENTS**

### **1.0 RELATED DOCUMENTS**

- (a) The requirements in this Exhibit shall be coordinated with the requirements of the Agreement and other Articles/Sections of the RFP and/or Contract Documents.

### **1.2 SUMMARY**

- (a) This Exhibit identifies the minimum qualification and experience requirements of the Lead Scheduler.
- (b) This Exhibit establishes the criteria and requirements for the preparation and maintenance of the Preconstruction CPM Schedule.

### **1.3 DEFINITIONS**

- (a) Unless otherwise defined in the RFP/Contract Documents, the terms used in this Exhibit shall have the meaning identified in AACE International Recommended Practice 10S-90 “Cost Engineering Terminology” dated June 20, 2018.

### **2.0 LEAD SCHEDULER QUALIFICATIONS AND EXPERIENCE**

- (a) The Design Builder shall designate a Lead Scheduler that is responsible for the preparation, maintenance, updating and revision of all schedules.
- (b) The Lead Scheduler shall have the authority to act on behalf of the Design Builder throughout the entire Project.
- (c) The Lead Scheduler’s resume shall demonstrate experience that satisfies or meets the following minimum requirements:
  1. Holds at least a Bachelor of Science in engineering, architecture, construction management, or other related field of study from an accredited institution. A graduate degree in a similar field may be used in lieu of the bachelor’s degree requirement.
  2. Has at least 8 years of continuous and verifiable experience in the preparation and maintenance of schedules for projects of similar value, size and complexity.
  3. Has expert knowledge of the critical path method (CPM) of scheduling, pull planning, schedule narrative writing, reporting time performance and earned value management (EVM), and utilizing scheduling software such as the Primavera P6 Professional software platform.

4. Maintains in good standing at least one of the following certifications: Project Management Professional (PMP) from the Project Management Institute (PMI), PMI Schedule Professional (PMI-SP) from PMI, Certified Design Builder (CCM) from Design Builders of America (CMAA), and Planning and Schedule Professional (PSP) from AACE International. An additional 8 years of verifiable scheduling specific experience can be submitted in lieu of one of the certifications mentioned above.
- (d) The Design Builder shall provide at least three (3) references from prior clients who have firsthand, professional experience with the designated Lead Scheduler and can attest to the person's technical abilities. The references must include the name of the person, title, address, work and cell phone numbers, project name, project description, and project cost.
  - (e) The Lead Scheduler shall be dedicated full time to the Project and must be located on-site during the construction phase, along with all software and hardware necessary to satisfy those requirements delineated within this specification. The designated Lead Scheduler shall attend all Project meetings as listed or contemplated within the Contract Documents unless excused by MSA.
  - (f) MSA reserves the right to reject or remove the designated Lead Scheduler, at its sole discretion, for lack of performance or failing to satisfy the requirements listed herein or within the Contract Documents. If the designated Lead Scheduler is rejected or removed by the MSA, the Design Builder must designate a new Lead Scheduler, consistent with the terms of this Exhibit within five (5) working days and at no additional cost to the MSA.

### **3.0 SCHEDULING PLATFORMS AND SOFTWARE**

- (a) The Design Builder shall utilize the Critical Path Method (CPM) for the development and maintenance of all schedules.
- (b) Schedules shall be prepared and maintained utilizing a version of Primavera P6 Professional (or equivalent) that is mutually agreeable between the Design Builder and MSA.
- (c) The Design Builder is to provide the native electronic file (i.e. .xer files for schedules created in Primavera P6 Professional) for each schedule submitted to the MSA. Portable Document Format (PDF) electronic submissions do not satisfy this requirement.
- (d) The Design Builder may elect to prepare a CPM schedule in a platform that is not Primavera P6 and then export the schedule to an .xer file format to satisfy these general requirements. If there are any conflicts between what is shown in the .xer file that was submitted to the MSA and what is shown in the Design Builder's elected software program, the .xer file will take precedence for all instances of conflicts, inconsistencies or any other differences that may result from converting

the scheduling file. The .xer file will serve as the acknowledged project record by both the MSA and the Design Builder, and both parties agree that only the .xer file will be used for basis of any time related disputes, interim pay application submissions and all other purpose, requirements or submissions contemplated herein or the Contract Documents as a whole.

- (e) Upon request from MSA, the Design Builder shall provide a license(s) for use by MSA employees and/or its designated agent(s). Each license shall provide the ability to receive, open, read and fully utilize the files created in the scheduling software used on the Project. MSA will reimburse the Design Builder for the actual cost of each license requested.

#### **4.0 TECHNICAL SCHEDULING REQUIREMENTS**

- (a) The preparation and submission of any schedule represents the Design Builder's intended plan to execute the Work within the specified time performance requirements and plausible constraints.
- (b) The development and maintenance of schedules is to be done in a manner that is substantially compliant with the Project Management Institute's book titled CPM Scheduling for Construction: Best Practices and Guidelines (2014, ISBN #978-1-62825-037-4). Any requirements listed within this specification or elsewhere in the Contract Documents take precedence over what is included within the book. Definitions for planning and scheduling related terms can be found within the book.
- (c) The schedule is to consider all aspects of the Project's Scope of Work. This includes design, all administrative requirements including but not limited to preparation, review and approval of submittals, procurement and delivery of equipment and materials, construction, testing and inspection, commissioning and closeout. The schedule shall also include all other stakeholder responsible scopes, including but not limited to design reviews by the MSA and permit reviews by government agencies.
- (d) All items/actions requiring time and/or resources to complete must be included in the schedule as an Activity. This includes, but is not limited to, activities such as cure times, punch list, material handling, and inspections by government agencies.
- (e) Activity descriptions are to be precise descriptions of what Work is to be completed, Activities are to model or represent only the scope of Work for one (1) Project stakeholder. No activity is to model scopes of more than one (1) responsible party.
- (f) The schedule shall be developed to high degree of detail and to the satisfaction of the MSA. The following factors shall serve as guiding principles in the development and analysis of the schedule.
  1. Use clear and concise activity descriptions.

2. The beginning and end of each activity shall be readily observable and verifiable during execution of the work.
3. The type of work to be performed and the labor trades involved.
4. All purchase, manufacture and delivery activities for all major materials and equipment.
5. Deliveries of equipment furnished by others (e.g. MSA).
6. Preparation and processing of all submittals (i.e. administrative, product, testing and inspection, Operation and Maintenance manuals, etc.)
7. Preparation and approval of coordination drawings.
8. Access and availability of work areas.
9. Testing, and submission and approval of test results.
10. Incorporate time for pre-testing.
11. Identify all required tests and sequence accordingly.
12. Inspections by Authorities Having Jurisdiction and Hold Points for activities such as close-in inspections.
13. Inspections by any third party entities and Hold Points for activities such as close-in inspections, shipment of materials, etc.
14. Correction of deficiencies.
15. Testing/balancing of systems.
16. Commissioning.
17. Potential adverse weather and owner mandated non-working day delays that may be specified in this Exhibit or as described elsewhere in the Agreement, RFP and Contract Documents.
18. Demonstrations and trainings.
19. Punch list inspection/correction of deficiencies.
20. Each project closeout activity as required by MSA.
21. Activities of Owner's subcontractors/consultants including but not limited to Commissioning Agent(s) and third party inspection(s).

(g) The list below shows the mandatory P6 schedule options to be used in the development and maintenance of schedules in the event MSA and the Design Builder agree upon the use of Primavera Project Management P6 for the Project.

1. Duration types is to be set to "fixed duration and units."
2. Percent complete type is to be based upon physical percent complete.
3. The schedule is to ignore relationships to and from other projects.
4. The schedule is not to use expected finish dates.
5. Scheduling progressed activities are to use retained logic.
6. Start-to-start lags are to be calculated off actual start dates.
7. Critical activities are defined as 0 hours.
8. Total float is calculated off finish float.
9. Relationship lags are based off predecessor activity calendars.

(h) All calendars used in the development and maintenance of the schedule are to be Project specific and are not to incorporate any holidays or non-working days from global calendars.

- (i) MSA has based its budget for project management and consultant involvement on a five (5) day work week utilizing one eight (8) hour shift, Monday through Friday, excluding the State Holidays identified herein. The Design Builder shall reimburse MSA for any cost associated with additional staff, overtime, consultant fees, etc. that may be required to accommodate a variance in the schedule unless specifically included in the Agreement.
- (j) State Holidays: Unless agreed to otherwise by MSA, the holidays listed below shall be incorporated into the schedule as non-working days. If a holiday occurs on a Saturday, the prior Friday will be recognized as a non-working day. If a holiday occurs on a Sunday, the following Monday will be recognized as a non-working day. The Design Builder, in order to produce a more accurate and realistic schedule, may be required to include union holidays that are above and beyond those recognized by the MSA. State holidays are published on the Department of Budget and Management website at <https://dbm.maryland.gov/employees/pages/employeeshome.aspx>.
1. New Year's Day
  2. Dr. Martin Luther King Jr. Birthday
  3. President's Day
  4. Memorial Day
  5. Independence Day
  6. Labor Day
  7. Columbus Day
  8. Election Day (if applicable)
  9. Veteran's Day
  10. Thanksgiving
  11. American Indian Heritage Day
  12. Christmas Day
- (k) The number of lost working days to be included in the schedule for adverse weather and Owner Mandated Non-Working Days shall be as agreed upon by MSA and the Design Builder.
- (l) Durations for construction activities shall be calculated in terms of Workdays. Administrative and non-construction activities such as submittals, permitting, procurement, cure times and other similar activities may utilize activity durations in terms of Calendar days.
- (m) Construction activity durations are to be calculated using parametric or analogous estimates that are reflective of the scope complexity, quantity, anticipated production and efficiency rates, resources intended to be used, and anticipated means and methods. When requested, the Design Builder is to provide justification and supporting calculations for all activity durations on an activity by activity basis. Construction activity durations that appear to be arbitrarily assigned may be cause for rejection of the schedule. Anticipated weather is not to be included in individual activity durations.



- (n) The Design Builder shall include at least 30 working days for the entire punch list cycle for each Phase. The punch list cycle includes activities for punch list walk by MSA, punch list correction by the Design Builder, final punch list walk by MSA, and designer administrative process. The entirety of the punch list cycle is to be completed prior to final completion for each phase. The minimum duration for MSA punch list responsible activities is 10 working days.
- (o) Only one (1) Activity is to be missing a predecessor Activity and one (1) Activity is to be missing a successor Activity.
- (p) The schedule is not to contain “start-to-finish” relationships, “finish-to-start relationships” with positive lags, and any relationship with negative lags. Each activity within the schedule is to include as least one predecessor with a “finish-to-start” relationship and at least one successor with a “finish-to-start” relationship. Any “start-to-start” relationships are to be accompanied with a corresponding “finish-to-finish” relationship. Lags in “start-to-start” or “finish-to-finish” relationships must not exceed the duration of the predecessor or successor activity, respectively. The Design Builder is to make every practical effort to minimize the number of logic ties and any apparent attempt to sequester float by assigning superfluous activity relationships will be cause for rejecting the submitted schedule, as solely determined by the MSA.
- (q) The Design Builder is to include activity coding to assist in organizing, sorting and filtering the schedule. At a minimum, the activity coding is to include the following elements:
1. Responsible Party: Each activity is to be assigned an activity code that communicates the predominate party responsible for completing the Work that is being modeled, down to and including the first- and second-tier vendors, consultants and subcontractors. This applies to all activities in the schedule.
  2. Minority & Women Owned Businesses: Each activity is to be assigned an activity code if any portion of the work modeled by the activity will be completed by a certified minority and/or woman owned business. The total cost loading for activities in which a certified minority and/or woman owned business is to be consistent with the amounts the Design Builder has reported as being paid and anticipated to be paid to certified minority and/or woman owned businesses.
  3. General Location: Each activity is to be assigned an activity code that communicates the general location of where the Work is being completed. This applies to all activities in the schedule.
  4. Floor: When applicable to construction activities, the activity is to be assigned an activity code that communicates the floor on which the Work is being completed. This applies only to construction activities.
  5. Room and/or Area: When applicable to construction activities, the activity is to be assigned an activity code that communicates which room or area in which the Work is being completed. This applies only to construction activities.

6. Project Period/Phase/Stage: Each activity is to be assigned an activity code that communicates the period in which the Work will be completed. Examples of Project periods includes, but are not limited to, design, permitting, procurement, construction, commissioning, and close-out. This applies to all activities in the schedule.
  7. CSI Division: Each activity is to be assigned an activity code that communicates which CSI Division relates to the scope of Work modeled by the activity. This applies to all activities in the schedule.
  8. Master Project Schedule correlation (if applicable): Each activity within the Design Builder's schedule is to be assigned to an activity code that collates it to the Master Project Schedule. A copy of the Master Project Schedule will be provided to the Design Builder at the scheduling kick-off meeting. This applies to all activities in the schedule.
  9. Contract Amendment: Each activity that models Work that is the subject of Contract Amendment or any other equitable adjustment is to include an activity code that collates to the amendment's identification. This applies only to activities modeling scopes associated with Contract amendments.
  10. Purchase Orders: The MSA may direct the Design Builder to provide activity coding that are associated with Purchase Order numbers. These Purchase Order numbers will be determined and prescribed by the MSA. These Purchase Orders correspond with MSA funding sources and other internal procedures. Activities that are not assigned a Purchase Order are to be listed as "unassigned." This applies to all activities in the schedule.
- (r) The use of constraints is solely limited to those milestones listed herein. Only the use of soft constraints, such as "finish on or before" or "start on or after," will be accepted. The use of "expected finish dates" or "as late as possible "constraints" will not be allowed.
- (s) Schedules are to contain all Contract milestones as well as other relevant milestones necessary to communicate important start and finish dates of major scopes of work. The MSA, at its sole discretion, may issue a zero-cost contract amendment to the Contract in the event any schedule submission shows a Project completion date that is earlier than what is contractually recognized at the time of the schedule's submission. This amendment will establish new contractually recognized milestone dates and all future schedule submissions are to recognize these revised dates until another Contract amendment revises the dates. Any float sequestration tactics intended to prevent the need for such a type of amendment may be cause for rejection of the schedule. The MSA is under no obligation to accelerate Work items it is responsible for to ensure that the early completion is met nor is it required to modify funding (if applicable) for the Project to meet the Design Builder's accelerated work for planned early completion of the Project.
- (t) At a minimum, the schedule shall contain milestones for the following important events shown below. Only Overall Project Substantial Completion, Project Final Completion and Final Acceptance milestones can have milestones assigned to them.

1. Overall Project Notice to Proceed.
2. Start and finish of procurement for each Stage.
3. Delivery activities are to be represented by finish milestones.
4. Start and finish of construction for each Stage.
5. Start and finish of each design phase for each Phase.
6. Start and finish for the permit application and agency review for each Phase.
7. Start and finish of procurement for each Phase.
8. Start of construction for each Phase.
9. Mechanical Completion for each Phase.
10. Substantial and Final Completion for each Phase.
11. Overall Project Substantial Completion, Project Final Completion, and Final Acceptance milestones.
12. Temporary certificate of occupancy and certificate of occupancy for each Phase.

(u) Permits necessary for the start and completion of construction are to be included within the schedule, including but not limited to, the time needed to make application for permits, agency review time of a permit application, receipt of the permit, and the time that is necessary to close out the permit at the completion of the Project.

(v) The schedule is to model the Contraction Manager's entire buy-out process for each trade/subcontractor, supplier, vendor, etc. at every Stage. This fragment model is to include task dependent activities for preparing the bid package, pricing and bidding, Design Builder review and preparation of an award recommendation, MSA review of recommendation, and Design Builder executing agreement with the selected trade/subcontractor, supplier, vendor, etc. The Design Builder is to also include additional details and activities to model any additional processes, such as entertaining "best and final offer" submissions, in order to accurately model the buy-out process.

(w) Submittals: The schedule shall model the activity sequence associated with preparing, reviewing and approving every submittal item identified in the Contract Documents. Unless defined otherwise, the schedule shall allow no less than twenty-one (21) calendar days for MSA to review and return structural, mechanical, electrical, plumbing and life-safety system submittals. Allow no less than fourteen (14) calendar days for MSA to review and return all other submittals. The Design Builder's submittal deliveries are to be staggered and prioritized so as not to cause a significant backlog of submittals to be reviewed by the MSA and/or other agencies. Mockups are also to be modeled within the schedule. Close out related submittal activities, such as as-built drawings, are to be included within the schedule and are to include time to prepare close out related submittals and MSA review. The review and acceptance of close out submittals are not to be have a forecasted date beyond the Final Completion milestone date.

(x) The entire procurement cycle for the installation of permanent materials or temporary construction devices with Long Lead times is to be incorporated into the schedule and each incremental element within the cycle is to have its own

unique activity. Temporary construction devices include, but are not limited to, formwork, falsework, shoring, specialty rigging, construction elevators, temporary electric equipment, and work platforms. A Long Lead item is defined as any permanent material that has a fabrication duration that takes more than forty-two (42) calendar days to complete. This duration shall be determined by finding the difference between the date in which the submittal was approved to the date in which the material or device arrives on site. Additional activities for additional submittals and additional reviews may be necessary for critical materials, as well time for delivery inspections, field measurements, and agency review of submittals, if applicable. The procurement cycle must be well detailed and easily differentiate between similar but different material types, such as different concrete mix designs, doors, or different areas of Work through separate procurement cycle fragments. Delivery of a Long Lead item is to be identified as a milestone.

- (y) The request for MSA supplied material and its delivery is to be modeled within the schedule. A unique fragment shall be created for any MSA supplied material. Each fragment shall contain two (2) milestones, one to model the Design Builder's request for delivery of the material and another milestone to model when the Design Builder has taken possession of the material. The fragment is to include a MSA responsible task dependent activity to deliver the material. This task dependent activity is to be at least 120 calendar days in duration. No constraints are to be assigned to any of these milestones.
- (z) Testing and inspection activities that are the responsibility of the Design Builder and/or MSA are to be modeled in the schedule.
- (aa) Commissioning related scope of Work provided by the Design Builder and the MSA (if applicable) is to be modeled in the schedule and is to be consistent with the overall commissioning plan for each Phase. This may require separate activities for commissioning select systems and may even be further decomposed by physical Work area. Commissioning activities are to also comply with activity duration limits that are discussed herein.

## **5.0 PRECONSTRUCTION CPM SCHEDULE**

- (a) The Design Builder shall produce and maintain the Preconstruction CPM Schedule as part of Preconstruction Services.
- (b) The Preconstruction CPM Schedule shall be prepared in accordance with the requirements and techniques outlined in this Exhibit.
- (c) The Preconstruction CPM Schedule shall have activity coding to the extent agreed upon by the Design Builder and MSA.
- (d) The Preconstruction CPM Schedule does not need to be revenue loaded.

## **5.1 PRECONSTRUCTION CPM ORGANIZATION PLAN**

- (a) Within fourteen (14) days of receiving a NTP with Preconstruction, the Design Builder shall submit a narrative describing the Design Builder's general plan on executing the Project and the proposed activity coding structures, activity ID naming nomenclature, Work Breakdown Structure (WBS) outline and description, and the scheduling management business process it intends to employ during the Project.

## **5.2 INITIAL PRECONSTRUCTION CPM SCHEDULE**

- (a) The Design Builder shall submit the initial Preconstruction CPM Schedule with the submission of the first cost estimate.
- (b) The Design Builder is to employ the WBS approved by the MSA to develop the initial Preconstruction CPM schedule. The Design Builder may add additional decomposition and details as it sees necessary if does not conflict with the pre-approved WBS structure. Additional WBS details provided by the Design Builder are to be developed in a manner consistent with the Construction Extension to the PMBPOK Guide from the Project Management Institute (2016, ISBN 978-1-62825-090-9).
- (c) The submission is to include the following deliverables:
  1. A narrative that describes the general sequence and execution of the Project, the activities and their interrelation of the anticipated critical path, areas of risk and other items that may have influence over the successful execution of the project.
  2. A graphical depiction of the Project schedule which illustrates the time and sequence for administrative (i.e. completion of design, permitting, buy-out, procurement of Long Lead items), construction and closeout activities and includes all milestones delineated within Section 4 of this Exhibit.
  3. Durations shall not exceed sixty (60) calendar days for administrative activities and thirty (30) Workdays for construction activities.
  4. Native export schedule file.
  5. Narrative printout in PDF format.
  6. Complete schedule printout on 11 x 17 (PDF), banded by WBS, and sorted by earliest to latest start date.
  7. Complete schedule printout on 11 x 17 (PDF), un-banded, and sorted by earliest to latest start date.
  8. Print of the longest path to completion on 11 x 17 (PDF), un-banded, and sorted by earliest to latest start date.

## **5.3 PRECONSTRUCTION CPM SCHEDULE UPDATES**

- (a) The Design Builder shall continuously develop and update the Preconstruction CPM Schedule throughout the Preconstruction phase.
- (b) The most current and updated Preconstruction CPM Schedule shall be provided with the submission of each cost estimate for review and approval by MSA.
- (c) Each submission is to include the following deliverables:
  - 1. A narrative that outlines the changes made from previous submission and which demonstrates the continuous development and refinement of the work plan and schedule.
  - 2. A graphical depiction of the Project schedule which illustrates the time and sequence for administrative (i.e. completion of design, permitting, buy-out, procurement of Long Lead items), construction and closeout activities and includes all milestones delineated within Section 4 of this Exhibit.
  - 3. Native export schedule file.
  - 4. Narrative printout in PDF format.
  - 5. Complete schedule printout on 11 x 17 (PDF), banded by WBS, and sorted by earliest to latest start date.
  - 6. Complete schedule printout on 11 x 17 (PDF), un-banded, and sorted by earliest to latest start date.
  - 7. Print of the longest path to completion on 11 x 17 (PDF), un-banded, and sorted by earliest to latest start date.

#### **5.4 PRECONSTRUCTION CPM SCHEDULE FOR BIDDING AND GMP DEVELOPMENT**

- (a) Prior to initiating the Bidding and GMP Development phase, the Design Builder shall submit the Preconstruction CPM Schedule it intends to use during the Bidding and GMP Development phase for review and approval by MSA.
- (b) In acknowledgement that the GMP Proposal is based on 95% Construction Documents, the Preconstruction CPM Schedule shall include Activities that model the time and sequence necessary to advance the Construction Documents to 100%.
- (c) Durations shall not exceed thirty (30) calendar days for administrative activities and twenty (20) Workdays for construction activities.
- (d) The Design Builder shall include the approved Preconstruction CPM Schedule as part of any bid package assembled for the Project in order to communicate the intended execution sequence and level of effort required by project participants. Acknowledgement of the requirements of the Preconstruction CPM Schedule is to be included as a line item as part of the evaluation of proposals received by any firm submitting a bid on the Project.

#### **5.5 FINAL PRECONSTRUCTION CPM SCHEDULE**

- (a) The Design Builder shall update the Preconstruction CPM Schedule to reflect the market conditions and feedback obtained from potential project participants obtained during the Bidding and GMP Development Phase.
- (b) The Design Builder shall submit the Final Preconstruction CPM Schedule as part of its GMP Proposal(s). The Preconstruction CPM Schedule will be considered a key component in the evaluation and acceptance of the Design Builder's GMP Proposal.
- (c) The accepted Preconstruction CPM Schedule shall serve as the basis for preparing the Detailed Construction Schedule in the event the MSA and Design Builder enter into a GMP Agreement.
- (d) The Final Preconstruction CPM Schedule submission includes the following:
  - 1. A narrative that outlines the changes/adjustments made from previous submission.
  - 2. A written statement that the Preconstruction CPM Schedule has been provided to, and acknowledged by, the project participants included in the Design Builder's GMP Proposal.
  - 3. Complete schedule printout on 11 x 17 (PDF), banded by WBS, and sorted by earliest to latest start date.
  - 4. Complete schedule printout on 11 x 17 (PDF), un-banded, and sorted by earliest to latest start date.
  - 5. Printout of the longest path to completion on 11 x 17 (PDF), un-banded, and sorted by earliest to latest start date.
  - 6. A graphical and tabular report of the anticipated cash flow based on the amounts included in the Design Builder's GMP Proposal.

Hagerstown Multi-Use Sports and Events Facility GMP

Hagerstown Multi-Use Sports and Events Facility  
Design Build Agreement

**EXHIBIT J**  
**SCHEDULES AND REPORTS - CONSTRUCTION**

See attached.



Hagerstown Multi-Use Sports and Events Facility  
Design Build Agreement

**SCHEDULES AND REPORTS**

**1.0 SUMMARY**

- (a) This Exhibit establishes the criteria and requirements for the preparation and maintenance of schedules as well as the reporting of the Design Builder's time performance. Schedules and Reports include, but are not limited to:
1. Detailed Construction Schedule
  2. Baseline Construction Schedule
  3. Progress Schedule Updates
  4. Re-Baseline Schedules
  5. Time Extension Requests and Time Impact Analysis
  6. As-Built Schedule
- (b) Schedules will be used to:
1. Assure adequate planning, scheduling, and reporting during execution of the construction and related activities so that the Work is prosecuted in an orderly and expeditious manner, within the time and budget limits stipulated by the Agreement.
  2. Assure coordination of the Design Builder's own resources, their various subcontractors, vendors, and other individuals or entities in performing or furnishing any aspect of the Design Builder's scope of Work.
  3. Form the basis of preparation and evaluation of the Design Builder's progress payments.
  4. Monitor the progress of the Project and evaluate potential schedule impacts of proposed changes to the Contract or other delay events.
  5. Assist in detecting problems for the purpose of taking corrective action and to provide a mechanism or tool for determining and monitoring such corrective actions.
  6. Assure coordination of the Design Builder's own resources and efforts so as not to delay, interfere or adversely impact other Work nearby.

**1.1 RELATED DOCUMENTS**

- (a) The requirements in this Exhibit shall be coordinated with the requirements of the Agreement, the Preconstruction Agreement and other Articles/Sections of the RFP and/or Contract Documents.

**1.2 DEFINITIONS**

- (a) Unless otherwise defined in the RFP/Contract Documents, the terms used in this Exhibit shall have the meaning identified in AACE International Recommended Practice 10S-90 “Cost Engineering Terminology” dated June 20, 2018.
- (b) A Near Critical Activity is defined as an activity that Total Float of up to fourteen (14) calendar days or ten (10) workdays.

### **1.3 RESPONSIBILITY FOR THE SCHEDULE**

- (a) The Design Builder is solely responsible for the Schedule. MSA’s acceptance of any schedule submitted by the Design Builder in no way makes MSA insurers of success of the Design Builder’s time performance, or liable for time or cost overruns flowing from the shortcomings of a Design Builder authored schedule. MSA disclaims and the Design Builder waives any MSA obligation or liability by reason of MSA’s acceptance of the Design Builder’s schedule submissions.
- (b) All schedule submissions are to be an accurate reflection and model of the Design Builder’s contractual responsibilities for completing the Project. These responsibilities include not only timely performance and completion of the Project, but also those requirements listed throughout the technical specifications and all other parts of the Contract Documents.
- (c) Should the Design Builder fail to define any element of construction, activity, or logic, and the MSA review does not detect this omission or error, such omission or error, when discovered by the Design Builder or MSA, shall be corrected by the Design Builder before the next monthly schedule update and shall not be cause for delay of completion of construction within the required time. The Design Builder acknowledges that MSA is not required or otherwise obligated to discover errors or omissions in the Design Builder’s proposed schedule. MSA’s acceptance of a schedule does not relieve the Design Builder of its responsibility for the schedule.
- (d) Inclusion of activities and/or specific items in the Schedule does not relieve the Design Builder from the responsibility for providing proper notice to MSA, or any other applicable party, or for properly coordinating the work with MSA, Authorities Having Jurisdiction or any other party.
- (e) Failure to include an activity required for the execution of the Work does not excuse the Design Builder from completing the Work or portion thereof within the specified time and at the price specified within the Contract. The Contract requirements are not waived by failure of the Design Builder to include any required schedule or Project constraint, sequence, activity, portion of scope, or milestones in the schedule. The Contract requirements are not waived by the MSA acceptance of the schedule. In the event there is a conflict between the accepted schedule and Contract requirements, the terms and conditions of the Contract govern and take precedence, unless the MSA has explicitly waived said requirements in writing.

- (f) Facility Operations: If the Work is to occur in an occupied/operational facility, the Design Builder is responsible for scheduling and coordinating the Work and cooperating with the MSA to maintain full, uninterrupted operation of the facility.

#### **1.4 COOPERATION & COORDINATION**

- (a) The Design Builder shall engage all Trade Contractors, Subcontractors and/or Suppliers that will perform work on the Project in the preparation, revenue loading and maintenance of the Schedules to ensure accuracy and concurrence among the concerned parties.
- (b) It is solely and entirely the Design Builder's responsibility to ensure that subcontractors and vendors performing Work at all tiers, as well as the Design Builder's own self-performed scopes, are included in the schedule and are well coordinated in a logical and reasonable plan to satisfy the time performance requirements defined within the Contract Documents.
- (c) The Design Builder must coordinate the Work with that of the other subcontractors and must cooperate fully with the MSA in maintaining orderly progress toward completion of the Work as scheduled. The Design Builder must keep itself and subcontractors advised while the Work is progressing regarding delivery status of MSA-furnished equipment and material and of the progress of construction work being performed under separate contracts.
- (d) At MSA's request, the Design Builder shall conduct educational workshops to train and inform key project personnel, including all Trade Contractor personnel, in the proper method of providing data and using the schedule information. The Design Builder shall provide an agenda for MSA's review and approval prior to conducting the first workshop. The Design Builder shall provide written verification that each key personnel has received the training. MSA will attend the first workshop and retains the right to attend subsequent workshops if they are offered.
- (e) Within three (3) calendar days of MSA's acceptance of any schedule submission including but not limited to, the Detailed Construction Schedule, the Baseline Schedule and any update thereof, the Design Builder shall:
  1. Distribute copies of the accepted Detailed Construction Schedule, including all graphic reports described in this Exhibit, to all Trade Contractors, suppliers, MSA, the Architect and other concerned parties.
  2. Instruct recipients to promptly report in writing any problem(s) anticipated by the projections shown in the schedule, or;
  3. Obtain written acknowledgement and acceptance of the updated schedule.

#### **2.0 TECHNICAL REQUIREMENTS**

- (a) The preparation and submission of a schedule shall conform to the software and technical requirements outlined in Exhibit C of the Preconstruction Agreement.

- (b) Work Breakdown Structure (WBS): The Design Builder is to employ the WBS approved by the MSA to create the Preconstruction CPM Schedule. The Design Builder may add additional decomposition and details as it sees necessary if does not conflict with the pre-approved WBS structure. Additional WBS details provided by the Design Builder are to be developed in a manner consistent with the Construction Extension to the PMBPOK Guide from the Project Management Institute (2016, ISBN 978-1-62825-090-9).
- (c) Activity Durations: Except for those activities that represent procurement tasks or non-construction activities, activities included in the Detailed Construction Schedule are not to exceed ten (10) Working Days in duration. All other durations are to conform to the time constraints outlined in the Technical Requirements of Exhibit C of the Preconstruction Agreement.
- (d) Weather & Owner Mandated Non-Working Days: The Schedule shall to take into consideration weather and all “Owner Mandated Non-Working Days” agreed upon during the development of the Preconstruction CPM Schedule. The critical path of the schedule shall include the applicable number of days per month included for both items.
- (e) Revenue Loading: The schedule is to be revenue loaded, and the schedule will be used in calculating the value of progress payments to be made to the Design Builder.
1. The total value of revenue loading within the schedule is to equal the total currently recognized Contract value. This includes all amounts provided within the Design Builder’s approved GMP Proposal and all other adjustments if applicable. These adjustments include, but are not limited to, adoption of Alternative Technical Concepts (ATC), value engineering (VE) proposal approvals, scope reconciliation, and any Contract amendments or equitable adjustments to the Agreement.
  2. The revenue loading within the schedule should be of sufficient accuracy and detail so that it can be filtered and grouped by any parameter or criteria contemplated within this Exhibit. The resulting total cost of filtering and grouping is to equal independent calculations outside of the schedule when the same criteria or parameters are applied.
  3. The revenue loading within the schedule is to equal the total, subtotal, and line items of all Stages issued throughout the life of the Contract.
  4. Revenue loading is to be done by assigning activities a material or a non-labor resource. Material or non-labor resource assignments are to include the total revenue value. The Design Builder is not to use a combination of non-labor and material resources to satisfy the requirement. It is to select one type of resource for all revenue loading.
  5. No task or activity in the schedule can be assigned to more than one material or non-labor resource.
  6. The maximum value assigned to any non-procurement activity is twenty-five thousand dollars (\$25,000).

7. The following submittals shall be included as a revenue loaded activity. Payment will occur upon acceptance/completion/use of the activity.
  - (a) Performance and Payment Bonds
  - (b) Insurances
  - (c) General Conditions
  - (d) CM Fee
  - (e) CM Contingency
  - (f) CM Project Allowances & Holds
  - (g) Owner Contingency & Allowances (if applicable)
  - (h) Detailed [Baseline] Construction Schedule
  - (i) Each Project Status Report
  - (j) Operation and Maintenance (O&M) Manuals: Receipt and approval of each O&M shall be incorporated into the logic of the network to be a Predecessor Activity to any start-up/ commissioning/transfer of occupancy/etc. of any specific item.
  - (k) Record (As-Built) Documents
  - (l) Final Project Report
8. Preconstruction related activities, such as the preparation of submittals and permit applications, are not to be revenue loaded unless previously approved by the MSA in writing.
9. The material or non-labor resource settings for fabrication and delivery related activities are to be set so that no revenue is generated until the activity is actually and completely finished, unless mutually agreed between the MSA and the Design Builder prior to the submission of the Detailed Construction Schedule. All other cost distributions are to be linear.
10. The revenue for Design Builder's fees, Project and home office overhead, profit and other markups are to be separated from the direct costs of the Work. Construction activities are to model only the direct cost of completing the Work being modeled by the Activity. Subcontractor and vendor overhead, profit and markups are to be included within the direct costs of its appropriate construction activity.
11. The total value of a party's (i.e. Trade Contractor, subcontractor, vendor, consultant, design firm) revenue in the schedule must be equal to the current value of the agreement held between the party and the Design Builder. The Design Builder is to provide demonstration and proof that it has and is currently satisfying this requirement.
12. Any apparent front-end loading will be cause, at the MSA's sole discretion, for rejection of any schedule submission.
13. The Design Builder is to utilize the stored period performance function within Primavera P6 (if being used). The periods for storing performance are to be consistent with schedule update start and finish dates.
14. The total value of revenue loading within the schedule is to be equal to the currently recognized Contract value, including all executed change orders and Contract amendments. The Design Builder is to take care in the management of its schedule so that the schedule's overall reported "at completion total cost" is equal to the "budgeted total cost." The addition of the "remaining total cost" and the "actual total costs" is total equal the "at completion costs." The

summation of all previous progress payments, absent of retainage and other deductions, are to equal the “actual total costs.” This requirement also applies to any and all subtotals, breakouts, line items, and other decomposed schedule elements contemplated within this Exhibit. These subtotals, breakouts, line items, and other decomposed schedule elements include, but are not limited to, breakdown by subcontractors or consultants, Contract amendments, physical location, contingency, and CSI Division.

### **3.0 DETAILED CONSTRUCTION SCHEDULE**

- (a) Within thirty (30) calendar days of receiving a NTP for Construction, the Design Builder shall submit the Detailed Construction Schedule for review and approval by MSA.
- (b) The Design Builder shall utilize the Preconstruction CPM Schedule approved with the GMP Proposal to develop the Detailed Construction Schedule.
- (c) The Detailed Construction Schedule shall illustrate the Design Builder’s plan and methodology for completing the Project within the time performance requirements as defined within the Contract Documents.
- (d) The Detailed Construction Schedule shall accurately represents the Design Builder’s understanding of the Project at the time of NTP as well as its contractual obligations.
- (e) The Detailed Construction Schedule is to cover the entire time-frame from NTP up to and including final completion.
- (f) The Detailed Construction Schedule is to accurately model risks, opportunities, and known constraints associated with the Project known at the time of NTP. These constraints include, but are not limited to, permitting requirements, MSA furnished material deliveries, design package releases, and anticipated weather and holidays. The Schedule is not to include any consideration or activities for potential changes in upcoming work.
- (g) The Detailed Construction Schedule submittal is to include the following.
  - 1. A detailed narrative that is both technical in nature and is an effective communication and project management tool intended to communicate how the Design Builder prepared the schedule and demonstrates how the Schedule accurately models the Design Builder’s execution plan. The narrative is to include, at a minimum, the following items:
    - (a) Introduction explaining the Project and general time performance requirements as delineated within the Contract.
    - (b) Milestone report that details the forecasted Contract milestone dates against what is required by the Contract and/or indicated in the approved Preconstruction CPM Schedule. Variances, in calendar days, are to be included within the milestone table and write up.

2. A detailed write up and explanation that communicates the general set up of the schedule and software settings. This section must explain how Project stakeholders will be able to read the schedule so that they can extract pertinent information from it. This includes, at a minimum, the following:
  - (a) WBS dictionary and naming convention;
  - (b) Activity coding dictionary and naming convention;
  - (c) Activity ID convention, if applicable;
  - (d) Calendar definitions and detailed listing of non-working days;
  - (e) List of constraints used, including the constraint date, type, and activity ID.
3. A detailed write up and explanation of the Design Builder's execution plan for completing the Work in accordance with the time performance requirements defined within the Contract. The Design Builder is to include visualizations, such as markups on drawings, logistics plan, diagrams, tables, or sketches, to help illustrate its plan for completing the Project. The write up is to include the following items:
  - (a) A summary explanation of the Design Builder's general sequencing for completing the Project;
  - (b) A detailed explanation of key sequencing requirements, in particular preferential sequencing, that the Design Builder deems necessary in order to complete the Project on time and in a manner consistent with the budget;
  - (c) A detailed risk and opportunity matrix of those items that increase or decrease the likelihood the Project will be completed on time. The matrix should be accompanied by a narrative that explains key or critical risks and opportunities, as well as potential mitigation efforts
4. Tabular reports of Critical Path Activities. Provide one tabular report sorted by early start and one tabular report sorted by responsibility.
5. Tabular reports of Near Critical Path Activities. Provide one tabular report sorted by early start and one tabular report sorted by Responsibility.
6. Tabular reports of Critical and Near Critical Path Activities shall include the following:
  - (a) Activity identification.
  - (b) Activity description.
  - (c) Duration.
  - (d) Earliest start date.
  - (e) Earliest finish date.
  - (f) Latest start date.
  - (g) Latest finish date.
  - (h) Total and free float.
  - (i) Predecessor and Successor Activities.
  - (j) Monetary value of the Activity.
    1. Reports grouped by responsibility shall summarize the monetary value of the collective activities.
  - (k) Identify each activity with applicable specification section number.
7. Tabulation of Submittals: Tabulate by date of submittal, CSI Division and Responsibility. List those submittals required to maintain orderly progress of construction and those required early because of long lead time for manufacture/fabrication or extended transportation/delivery requirements.

- (a) Activity identification.
  - (b) Activity description.
  - (c) Original duration.
  - (d) Earliest start date.
  - (e) Earliest finish date.
  - (f) Latest start date.
  - (g) Latest finish date.
  - (h) Total and free float.
  - (i) Predecessor and Successor Activities.
  - (j) Identify each activity with applicable specification section number.
8. Tabulation of Key Procurement Items: For all “key” (i.e. major equipment and/or Long Lead material) items fabricated or supplied for construction, include a tabular report detailing these items and indicating schedule dates and responsible party for the following related activities:
- (a) Preparation of submittals.
  - (b) Review and approval of submittals.
  - (c) Manufacturing or fabrication.
  - (d) In-plant testing.
  - (e) Packaging and loading, where applicable.
  - (f) Shipment.
  - (g) Delivery.
  - (h) Receipt, inventory, off-loading, warehousing.
  - (i) Handling and re-handling.
  - (j) Erection or installation.
  - (k) Testing and inspection.
  - (l) Commissioning.
  - (m) Final inspection of installed equipment and materials.
9. Trade Contractor, professional service providers, vendors and any other parties’ underwritten agreement with the Design Builder whose contract value is equal to or greater than 1.5% of the Design Builder’s overall Contract value with the MSA are to acknowledge in writing their agreement with all Detailed Construction Schedule submission(s). The written acknowledgement is to include agreement with the completeness of the scoping as modeled by the activities in the schedule, accuracy of activity durations, revenue loading, general sequencing and interfacing with other trades, and anticipated labor and construction equipment demands to complete the work as presented. Written acknowledgement shall be provided on letterhead, clearly describing the schedule submission and identifying the data date of the schedule submission.
10. The Design Builder is to include the following attachments along with the narrative submission;
- (a) A copy of the native schedule file, in .xer format.
  - (b) 11x17 plot (PDF) of all schedule activities, banded by WBS and sorted by start date.
  - (c) 11x17 plot (PDF) of all activities on the longest path to completion, un-banded by WBS and sorted by start date.
  - (d) 11x17 plot (PDF) that captures a cumulative and monthly totals of the schedule’s cost loading.



#### **4.0 BASELINE SCHEDULE**

- (a) The approved Detailed Construction Schedule will establish the Baseline Schedule.
- (b) Cash Flow Projections: Using the cost assigned to each activity of the Baseline Schedule, the Design Builder shall develop a cash flow analysis in graphic form depicting estimated cash draw down in aggregate, by month, over the life of the Project. The accepted cash flow projection will serve as the basis for the Schedule of Values.
- (c) Schedule of Values: The Schedule of Values shall be provided upon acceptance of the Baseline Schedule and acceptance by MSA of the corresponding cash flow projections. The Schedule of Values shall be an integral part of the schedule to the extent that updating activities on the schedule for progress will update the corresponding lines on the Schedule of Values. The Design Builder shall submit data to substantiate the accuracy of the information on the Schedule of Values as MSA may require.
- (d) The Baseline Schedule will serve as the basis for future Progress Schedule Updates (an "Update") and the primary schedule in which future progress and associated earned value amounts will be measured against.
- (e) Within three (3) calendar days of MSA's acceptance of the Baseline Schedule, the Design Builder shall distribute copies of the Baseline Schedule, including all reports, to all Trade Contractors, suppliers, MSA, the Architect and all other concerned parties.

#### **5.0 SCHEDULE UPDATES**

- (a) The Design Builder shall keep the schedule continuously updated throughout the execution of the Project.
  - 1. The Design Builder shall present and discuss the most current Schedule at all periodic Progress Meetings.
  - 2. The Design Builder shall come to the Progress Meetings with the required data prepared in advance of each meeting, to provide, as of the end of the most current update, a complete and accurate report of contract procurement and construction progress and showing how the Design Builder plans to continue construction to meet the contract completion date. The Design Builder acknowledges that updating the schedule to reflect actual progress made as of the date of update is not a modification to the schedule requirements of the contract.
- (b) The Design Builder shall prepare an Update each month.
  - 1. The Design Builder and MSA shall meet monthly to conduct the Update.
  - 2. The Update is to satisfy all the requirements listed within the Technical Schedule Requirements defined in this Exhibit and in the Contract Documents.

3. The Update is to accurately capture what Work was started, completed, and progressed since the last schedule submission. The data date for the update is to be the same date as shown as the “progressed through” date on the payment application.
4. Changes made during an Update are to be limited to actualization of start dates, finish dates, and updates to activities’ physical percent complete.
5. Changes to budgeted resources and resource assignments, addition, or deletion of activities, revising previously actualized dates, activity coding assignments, revisions to original durations, changes to constraints, changes to schedule settings, and altered logic will not be accepted and will be cause for rejection of the schedule submission.
6. The Design Builder may propose changes to the MSA in writing in advance of an Update. The following are a list of changes the Design Builder may make in an Update:
  - (a) Moving forward the data date
  - (b) Actualizing start and finish dates
  - (c) Updating percent completes
  - (d) Correcting out-of-sequence activities
  - (e) Revising activity descriptions to provide greater clarification
  - (f) Duration deductions to the weather contingency activity (if applicable) and insertion of activities associated with actual weather events
  - (g) Corrections made in respect to MSA’s comments made in previous schedule reviews
  - (h) Inclusion of previously proposed changes that were subsequently approved by the MSA
  - (i) Inclusion or revision of activities associated with executed Contract amendments
  - (j) Reducing the original and remaining duration to the weather contingency activity by the number of the weather days incurred in the month being covered in the update.
7. An Update will not be accepted by the MSA if it contains out-of-sequence activities. The Design Builder is to amend existing logic to correct the situation and accurately model how the Work is sequenced. Revising the scheduling settings, such as changing the schedule setting from retained logic to progressive override, will not be accepted.
8. In the event an activity is no longer necessary, it is not to be deleted from the schedule. Its original and remaining duration are to be changed to zero, its activity name is to reflect that it is no longer required, its resource and activity code assignments are to be removed, and its logic is to be revised in such a way that it is no longer a driving activity. It is to be shown as a completed activity. All activities that are no longer required are to be included exclusively in a WBS only intended for these types of activities.
9. The earned revenue calculated within the Update will serve as the Design Builder’s basis and application for interim payment. The Design Builder’s request for a progress payment will not be made until the Update has been approved by the MSA. The total amount of the progress payments, absent of retainage and other relevant deductions contemplated by the Contract, will

equal the difference between the to-date earned revenue calculated by the most recent Update and the to-date earned revenue shown in the immediate prior Update.

### **5.1 MSA REVIEW & APPROVAL OF UPDATES**

- (a) MSA will respond in writing within three (3) business days to each submitted Update. MSA's response may include questions and/or requests for revisions. Within two (2) business days of receipt of MSA's response, the Design Builder shall respond by submitting a revised schedule if it accepts MSA's revision requests, or the Design Builder shall submit in writing the justification why such revisions should not be implemented. If the Design Builder's justification for not implementing the revisions is acceptable to MSA, MSA will accept the Design Builder's schedule as submitted. Schedule issues that remain unresolved will result in a schedule that is not accepted by MSA. MSA's non-acceptance of the Design Builder's schedule does not absolve the Design Builder of the requirement to meet the completion date required by the Contract.
- (b) MSA reserves the right to direct the Design Builder to modify all or any portion of the Update submission if MSA reasonably determines the information to be: (1) impracticable or unreasonable; (2) unrealistic based on performance to date; (3) inaccurate due to erroneous calculations, logic or estimates; (4) lacking the incorporation or consideration of other work occurring on the site not under the Design Builder's control.
- (c) MSA's acceptance of an Update signifies only that MSA's summary review of the schedule leads MSA to believe that the Design Builder has met the general requirements of this Exhibit and the Contract Documents. Acceptance by MSA of the Update does not relieve the Design Builder of any responsibility for the accuracy or feasibility of the Design Builder's plan for execution of the construction, or to perform the construction within specified time constraints. Such acceptance does not express or imply that MSA warrants, acknowledges or admits the reasonableness of the activities, logic, durations, manpower, revenue or equipment loading of the Design Builder's proposed or accepted schedule.
- (d) Within three (3) calendar days of MSA's acceptance of the Update, the Design Builder shall:
  1. Submit a copy of the native schedule file, in .xer format.
  2. Distribute copies of the schedule, including all graphic reports described in this Exhibit, to all Trade Contractors, suppliers, MSA, the Architect and other concerned parties.
  3. Instruct recipients to promptly report in writing, problems anticipated by the projections shown in the schedule, or;
  4. Obtain written acknowledgement and acceptance of the updated schedule.
    - (a) The Design Builder shall repeat this process if revisions are made.

## 6.0 REPORTS

(a) Within seven (7) calendar days of MSA's acceptance of an Update, the Design Builder shall develop the Schedule Status Report and associated tabular/graphical reports for inclusion in the Project Status Report required in Exhibit F of the Agreement.

(b) Schedule Status Report:

1. The Schedule Status Report shall include a detailed analysis that is both technical in nature and is an effective communication and project management tool intended to demonstrate what was achieved during the update period, what are the immediate upcoming tasks, how the schedule has varied from the baseline and the prior progress update, and identification of any unresolved risks. The report is to include, at a minimum, the following items:

- (a) Status of construction and the schedule including an overall analysis of:
1. Time: Total Contract Days; Days Used To Date; Days Remaining
  2. Money: Total Contract Amount; Amount Earned to Date; Amount Remaining. This section is to include a table that communicates the following data points:
    - (a) Budgeted total costs
    - (b) Actual total costs
    - (c) Actual total costs earned during this reporting period
    - (d) Remaining total costs
    - (e) At completion total costs

(b) A detailed write up explaining the Design Builder's planned versus actual earned revenue on the Project to-date and for the update period. This section is to include a cash flow graphic showing: a) accepted Baseline Schedule early start and late start curves, b) actual curve as of the Update, and c) forecast early start and late start curves to complete construction.

(c) Milestone report that details the schedule's forecasted Contract milestone dates against what is required by the Contract, the Baseline Schedule, and the most recently submitted Update. Variances, in calendar days, are to be included within the milestone table and write up.

(d) A detailed write up explaining what tasks were started, progressed, and/or completed during the update period, organized by opportunity, area and then scope. These detailed write ups are to include a brief overview of what was previously anticipated to be completed and whether the prior forecast was met, and if not, an explanation as to why. Attention and additional details are to be given to those activities that were on the previous progress schedule update's longest, critical path and any other activities on the near critical paths. This write up is to include discussion of any weather events, Owner Mandated Non-Working Days, and MSA directed stoppages to eliminate event disruptions that occurred during the

month and how these are currently reflected within the schedule. Additional write up and explanation may be required for any other cause of activity slippages, regardless if it impact critical path activities or not.

- (e) A detailed narrative update to all risks, slippages, potential impacts or areas of concerns mentioned in the prior Update narrative.
- (f) The Design Builder is to provide a general overview of the changes made in the schedule and substantiation as to why the changes are necessary. The Design Builder is to attach the narrative report in tabular form that provides granular level of detail as to what changes were made in the Update.
- (g) A detailed explanation of the current longest, critical path and full substantiation of any changes to it when compared to the previously submitted Update.
- (h) A detailed explanation of Near Critical Activities and full substantiation of any changes to it when compared to the previously submitted Update.
- (i) An update to the risk and opportunity matrix provided within the Baseline Schedule or prior Update submission narrative. Include a narrative write up providing further context and explanation of current unresolved constraints and proposed mitigation efforts to those constraints. The narrative is to include explanation of any new risk or opportunity realized during the update period.
- (j) A detailed write up outlining upcoming tasks that are to be completed in the next 60 calendar days after the data date. The Design Builder must list in detail all items and constraints that need to be completed by others in order to help facilitate Work forecasted in the next 60 calendar days. This includes, but is not limited to, outstanding RFI responses and submittal reviews, execution of change orders, and delivery of any MSA furnished materials.
- (k) The following attachments are to be provided with the narrative submission:
  - 1. Tabular report of the Schedule of Values
  - 2. Tabular report of all activities sorted by early start and early finish from earliest to latest. This report shall be grouped by Responsibility.
  - 3. Tabular report of all submittal activities with early start date and early finish date. This report shall be grouped by Responsibility.
  - 4. Tabular report of all fabrication/delivery activities with early start date and early finish date. This report shall be grouped by Responsibility.
  - 5. Tabular report of Critical Path Activities. This report shall be grouped by Responsibility.

6. Tabular report of Near Critical Path Activities. This report shall be grouped by Responsibility.
7. Tabular reports shall include the following information:
  - (a) Activity identification.
  - (b) Activity description.
  - (c) Original duration.
  - (d) Remaining duration.
  - (e) Earliest start date.
  - (f) Earliest finish date.
  - (g) Actual start date.
  - (h) Actual finish date.
  - (i) Latest start date.
  - (j) Latest finish date.
  - (k) Total and free float.
  - (l) Predecessor and Successor Activities.
  - (m) Reports grouped by responsibility shall summarize the monetary value of the collective activities.
  - (n) Monetary value of activity.
  - (o) Percentage of activity completed.
  - (p) Identify each activity with applicable specification section number.
  - (q) The CM's earnings based upon activity's reported percent complete.
  
8. Graphic Reports:
  - (a) CPM schedule as required by this Exhibit.
  - (b) Bar chart report of all activities sorted by early start date.
  - (c) Bar chart report of all activities on the Critical Path sorted by early start date.
  - (d) Bar chart report of all activities sorted early start date. This report shall be grouped by Responsibility.
  - (e) Bar chart report of all activities sorted by early start date. This report shall be grouped by Location.
  - (f) Each of the above reports shall include the following information:
    1. Activity identification.
    2. Activity description.
    3. Original duration.
    4. Remaining duration.
    5. Earliest start date.
    6. Earliest finish date.
    7. Actual start date.
    8. Actual finish date.
    9. Latest start date.
    10. Latest finish date.
    11. Total and Free Float.
    12. Monetary value of activity.
    13. Reports grouped by responsibility shall summarize the overall monetary value of the collective activities.

14. Percentage of activity completed.

15. The CM's earnings based upon activity's reported percent complete.

(l) Adjust the selection and sort sequence, format, and content of reports as directed by MSA.

(m) MSA reserves the right to ask for additional information and/or to request 30" x 42" prints of the Schedule.

## **7.0 EXECUTION OF THE WORK**

(a) The Design Builder shall furnish sufficient field personnel, offices, materials, facilities, plant and equipment, to ensure the prosecution of construction in accordance with the current accepted schedule. If MSA advises that the Design Builder has fallen behind in meeting milestones as presented in the schedule, the Design Builder shall take such steps as may be necessary to improve progress. Upon MSA's written notice that the Design Builder is behind schedule as a result of inexcusable causes, the Design Builder shall immediately mitigate such loss by increasing the hours of work, the number of shifts, overtime operations and/or the amount of construction equipment. The Design Builder acknowledges that such remedial action on its part is not compensable acceleration of the performance of the Work.

(b) Work for remedial action may be conducted on Saturdays, Sundays, or holidays, with sufficient written notice and subject to MSA's approval which shall not be unreasonably withheld.

## **8.0 RECOVERY SCHEDULE**

(a) If, at any time, the Construction Schedule shows the work to be more than fourteen (14) calendar days behind the approved schedule, and the cause of which is not attributable to MSA, the Design Builder shall prepare a Recovery Schedule that clearly details the Design Builder's plan to bring the work back into compliance with the project requirements. The Design Builder shall submit the Recovery Schedule within five (5) calendar days of receiving written notice from MSA to do so. Within two (2) calendar days of submitting the recovery schedule, the Design Builder shall host a conference with MSA and a representative authorized to act on behalf of every Trade Contractor, Subcontractor, Supplier, etc. whose actions are required to cause the recovery of the schedule to discuss the revised work sequence/methods presented in the Recovery Schedule. Upon MSA's acceptance of the proposed Recovery Schedule, the Design Builder shall monitor and report the progress of the work with respect to the Recovery Schedule to MSA no less than every two (2) calendar days or time period as may be agreed to by MSA and the Design Builder.

## **9.0 RE-BASELINE SCHEDULE**

- (a) The Design Builder may propose to make substantial and material changes to its execution plan and schedule. The MSA may direct the Design Builder in writing to revise its execution plan and schedule, and the Design Builder is to comply with the written direction within seven (7) calendar days. Submissions as a result of either cause are referred to as a Re-Baselined Schedule and this Section defines the requirements of those submissions.
- (b) The Design Builder will not be entitled to a change order, equitable adjustment or any amendment to the Contract in the event its self-proposed Re-Baseline Schedule results in forecasted Overall Substantial Completion Final Completion, and Final Acceptance dates that are beyond Contract requirements. The MSA will not be required to revise or augment its staff plan or overall project management strategy to facilitate the Design Builder's revised Baseline Schedule. The MSA is under no obligation to accelerate Work items it is responsible for to ensure that any early completion dates proposed in the Re-Baseline Schedule is met nor is it required to modify funding (if applicable) for the Project to meet the Design Builder's accelerated work for planned early completion of the Project. The Design Builder is not entitled to any increase in the Contract value or overall project duration for Re-Baseline Schedules. The Design Builder will reimburse the MSA for additional costs that may result from the implementation of the Re-Baseline Schedule. Those costs include, but are not limited to, paying MSA inspectors and consultants overtime or premium costs. These costs will be captured within deductive change orders.
- (c) The MSA may direct the Design Builder to submit a Re-Baselined Schedule to recover or mitigate lost time due to excusable delay events. The Design Builder may be entitled to be reimbursed for the cost to recover or mitigate this lost time. The Design Builder is to provide the Re-Baselined Schedule within seven (7) calendar days after receiving the written request from the MSA along with a complete cost breakdown and supporting documentation. The Design Builder agrees that is bound to the revised Substantial Completion, Final Completion and Final Acceptance milestone dates forecasted in the Re-Baseline Schedule. The MSA, at its sole discretion, may issue a zero-cost change order to memorialize these newly forecasted dates.
- (d) The MSA may direct the Design Builder to submit a Re-Baselined Schedule to recover lost due to inexcusable delay events or any delay event caused by the Design Builder. The Design Builder is not entitled to be reimbursed for the costs necessary to recover or mitigate this lost time due to inexcusable delay events. The Design Builder is to provide the Re-Baseline Schedule within seven (7) calendar days after receiving the written direction from the MSA. The forecasted Overall Substantial Completion, Final Completion and Final Acceptance dates shown in the Re-Baseline Schedule are to be the same date as recognized by the Contract documents. The MSA is under no obligation to accelerate Work items it is responsible for to ensure that key milestone dates proposed in the Re-Baseline Schedule is met nor is it required to modify funding (if applicable) for the Project



to meet the Design Builder's Re-Baseline Schedule. The Design Builder will reimburse the MSA for additional costs that may result from the implementation of the Re-Baseline Schedule. Those costs include, but are not limited, paying MSA inspectors and consultants overtime or premium costs. These costs will be captured within deductive change orders.

- (e) Re-Baseline Schedule submissions are to satisfy all the requirements listed within the Technical Schedule Requirements defined earlier in this specification and those listed in this Exhibit.
- (f) The Re-Baseline Schedule illustrates the Design Builder's plan and methodology for completing the Project within the time performance requirements as defined within the Agreement. The Re-Baseline Schedule is to cover the entire time frame from the data date of the latest progress schedule update up to and including final completion. The Re-Baseline Schedule must also accurately represent the Design Builder's understanding at the time of the schedule's data date and its contractual obligations and scope of Work. The Re-Baseline Schedule is to also accurately model risks, opportunities, and known constraints associated with the Project at the time of the data date. These constraints include, but are not limited to, permitting requirements, MSA furnished material deliveries, design package releases, anticipated weather, Owner-Mandated Non-Working Days, and holidays. The Re-Baseline Schedule is not to include any consideration or activities for potential changes in upcoming work. Finally, the Re-Baseline Schedule will serve as the basis for future Updates and the primary schedule in which future progress will be measured against.
- (g) The Re-Baseline Schedule submission is to include a detailed narrative that is both technical in nature and is an effective communication and project management tool intended to demonstrate how the schedule models the Design Builder's execution plan. The narrative is to include, at a minimum, the following items:
  - 1. Introduction explaining the Project and general time performance requirements as delineated within the Contract;
  - 2. Milestone report that details the schedule's forecasted Contract milestone dates against what is required by the Contract, the baseline, and prior updates. Variances, in calendar days, are to be included within the milestone table and write up.
  - 3. A detailed write up and explanation of the Design Builder's execution plan for completing the Work in accordance with the time performance requirements defined within the Contract. The Design Builder is strongly encouraged to include visualizations, as markups on drawings or sketches, to help illustrate its plan for completing the Project. The write up is to include the following items:
    - (a) A summary explanation of the Design Builder's general sequencing for completing the Project.
    - (b) A detailed explanation of any key sequencing requirements, in particular preferential sequencing, the Design Builder deems as necessary in order to

- complete the Project on time and in a manner consistent with its agreed upon GMP.
- (c) Resource Demands, including but not limited, to average and maximum amounts needed for each type of resource and strategies the Design Builder intends to use in order to gather and retain those resources in order to meet the Project's demands.
  - (d) A detailed risk and opportunity matrix of those items that increase or decrease the likelihood that the Project will be completed on time. The matrix must be accompanied by a narrative that explains risks and opportunities, as well as potential mitigation efforts.
  - (e) An organization chart that shows the Design Builder's overall planned staffing that is intended to be on site. The organization chart is to include the expected first day on-site for the position and the expected date to leave the site.
4. The Design Builder is to include the following attachments along with its narrative submission:
- (a) A copy of the native schedule file, in .xer format.
  - (b) A tabular report identifying every change made within the schedule.
  - (c) 11x17 plot (PDF) of all schedule activities, banded by WBS and sorted by start date.
  - (d) 11x17 plot (PDF) of all activities on the longest path to completion, un-banded by WBS and sorted by start date.
  - (e) 11x17 plot (PDF) of that captures a cumulative and monthly totals of the schedule's cost loading.

## **10.0 FLOAT**

- (a) Any and all float is for the mutual benefit of both the MSA and the Design Builder. Changes to the Project that can be accomplished within the available period of float may be made by the MSA without executing an amendment to the Agreement. No time extensions for excusable delays will be granted or any delay damages will be owed until the Work extends beyond the currently acknowledged Substantial Completion date. Likewise, the Design Builder may utilize float to offset delays that are within their control. Mutual use of float can continue until all available float shown within the schedule has been utilized either by the MSA or the Design Builder, or both. At that time, extensions of the Contract time will be granted for only excusable delay events as defined herein or the Contract Documents. that are either MSA-caused, caused by a third-party, or by unusual weather or extreme weather conditions. The Design Builder agrees that it has waived its right to a time extension if it failed to provide the necessary delay notifications, time extensions requests, time impact analyses and other demonstrations, and supporting documentation as described herein or in other Contract Documents.
- (b) Pursuant to the float sharing requirements of the Contract, schedule submissions and deliverables may be rejected by the MSA at its sole discretion if it appears that Design Builder has utilized float suppression techniques in order to amplify the effects of alleged delay events, manipulate forecasted milestone dates, present an

unrealistic demand and/or supply of resources, or take unproportionate and unwarranted control of available float. Such techniques may include, but are not limited to, preferential sequencing or logic manipulation, specious use of leads or lags, inappropriate use of constraints and calendar manipulations, and/or inflated activity durations. Acceptance of any schedule will not preclude the MSA from later rejecting what it deems to contain float suppression techniques. Correction of float suppression is a prerequisite for consideration for any time extension and/or milestone adjustment.

- (c) Pursuant to the above float sharing requirements, use of float released by elimination of float suppression techniques such as preferential sequencing, special lead/lag logic restraints, unreasonably extended activity durations, or imposed dates shall be distributed by MSA to the benefit of MSA and Design Builder.
- (d) If the Design Builder wishes to complete construction earlier than the time required, the following shall apply:
  - 1. The Design Builder shall continue to calculate float based on the construction completion date required by the Agreement or any Contract Modification(s), by maintaining the required Substantial Completion date as a “finish-no-later-than” constraint.
  - 2. The completion time for construction shall not be amended by MSA’s acceptance of the Design Builder’s proposed earlier completion date.
  - 3. The Design Builder shall not, under any circumstances, receive additional compensation for fees, General Conditions, or Trade Contracts for the period between the time of earlier completion proposed by the CM and the completion time for construction as specified in the NTP for Construction.

#### **11.0 OWNER MANDATED NON-WORKING DAYS**

- (a) MSA will issue written notice to the Design Builder of an “Owner Mandated Non-Working Day” event resulting from a facility operation function that will require the cessation of construction activities. A lost work day shall be considered an “Owner Mandated Non-Working Day” delay when an event directly causes work to be delayed on the activity or activities which are on the critical path according to the latest accepted update of the schedule during that month. “Owner Mandated Non-Working Day” schedule losses shall be measured in half (0.5) workday increments if the event affects work at the site only for one half of a normal workday. If the event occurs during the first half of a normal work day and also delays work during the second half of the day the entire work day shall be considered a lost work day.
- (b) The Design Builder’s request for time extensions resulting from Owner Mandated Non-Working Day events shall be considered only for the aggregate of actual work days lost in excess of the number of work days identified in the Baseline Schedule. The Design Builder shall meet the submission and notification requirements and

follow the procedures for requesting time adjustments to the schedule as described in the Agreement, RFP and this Exhibit.

## **12.0 TIME EXTENSION REQUESTS AND TIME IMPACT ANALYSIS**

- (a) The Design Builder acknowledges that:
1. Activity delays shall not automatically result in adjustment of specified time constraints.
  2. A Contract Modification or other MSA action or inaction may not affect existing critical activities or cause non-critical activities to become critical.
  3. A Contract Modification or delay may result in only absorbing a part of the available total float that may exist within an activity chain of the network, thereby not causing any effect on specified time constraints.
- (b) If the Design Builder believes a change to the Agreement and/or that a delay event has occurred that is above and beyond its control, it is to submit a time extension supported and demonstrated by a Time Impact Analysis (TIA) in accordance with the requirements outlined in this Exhibit.
- (c) It is the MSA's goal to review alleged delay events and impacts in a contemporaneous manner, identify potential impacts to the overall Project Completion Date, allow for sufficient time to develop and implement mitigation efforts, and if the impact cannot be avoided, to reach an agreement for compensable and/or non-compensable time extensions in a timely manner.
- (d) The Design Builder agrees that the cost to perform any and all delay analyses and time extension requests have been included within its current Contract value and therefore, the Design Builder acknowledges it is not entitled to a change order or an amendment to the Contract in order to recover the cost to prepare any schedule deliverable within this Exhibit or the Contract Documents.
- (e) The Design Builder shall comply with all notification and submission requirements delineated within this Exhibit and the Contract documents. The Design Builder agrees that it has waived any claim or request for additional time if it fails to comply with these notification and submission requirements. If any requirements within this specification conflict with the Agreement, the requirements of the Agreement will take precedence.
- (f) TIA submissions must satisfy all the requirements listed within the Technical Schedule Requirements defined in this Exhibit and those listed in the Contract Documents.
- (g) Each month, along with the Update, the Design Builder will prepare an as-built TIA that includes only those impacts that occurred during the update period. If the Design Builder does not submit an as-built TIA with its Update, the Design Builder

agrees that it has waived its right to an equitable adjustment for any or all delay events that may have occurred or started during the update period.

- (h) The Design Builder shall prepare and submit a forward-looking TIA within seven (7) calendar days after receiving written direction from the MSA. The MSA may direct the Design Builder to prepare a TIA that expands the duration of alleged excusable delay events that were included in a previously submitted as-built TIA. The Design Builder agrees that it has waived its right for excusable time extension for the alleged delay event in question if it fails to comply with the MSA's request.
- (i) No time extension will be granted unless the alleged delay event impacts the longest critical path, consumes all available total float on the longest critical path, and extends the remaining performance period beyond the latest occurring Contract milestone date for the Project.
- (j) No time extensions will be granted or awarded until all apparent float suppression techniques identified by the MSA within the schedule have been removed from the schedule by the Design Builder. No time extensions for weather or Owner Mandated Non-Working Days will be granted unless the total number of actual events is greater than the overall project total number of anticipated days for each within the approved Baseline Schedule.
- (k) The Design Builder agrees and acknowledges that the results of as built and forward looking TIAs only reflect the number of potential excusable delays and does not determine the number of compensable days it may be entitled. The TIAs will form the basis of the mutually agreed upon delay days caused by excusable delay events. The number of excusable delays days that are compensable will be determined by deducting the summation of the total number of concurrent delays and the total number of delay days caused by other excusable but non-compensable delay events from the total number of mutually agreed upon excusable delays. The Design Builder will not be entitled to an increase in the overall Contract value if the summation of the number of concurrent delays and the number of delay days caused by other excusable but non-compensable delay events is equal to or greater than the total number of mutually agreed upon days caused by excusable delays.
- (l) A concurrent delay occurs when two or more independent actions, occurring at similar times, sufficiently cause a delay to the longest critical path, consume all available Project float, and result in a final completion date that is beyond the Contract requirements, and one of those actions is within the control of the Design Builder. The magnitude and effects of each of the actions do not have to be equal in order to be considered a concurrent delay. The total duration of concurrent

delays is equal to the number of days the schedule has elongated due to Design Builder-caused delay events.

- (m) If the Design Builder is requesting a compensable time extension, it is required to fully demonstrate lack of culpability with other non-excusable delays. To establish entitlement for compensable time extensions, all activity paths and respective float must be examined. The Design Builder must clearly demonstrate that but-for the MSA caused delays, the Design Builder could have finished the Work in accordance with the Contract time and required completion milestone dates. Pacing, or the deliberate decision to slow down planned progress of unimpacted Work, is not valid justification for demonstrating entitlement for a compensable time extension or lack of culpability of potential Design Builder caused delays, unless the Design Builder has previously informed the MSA and the MSA has approved in writing of the planned pacing efforts prior to the actual start of pacing. The Design Builder waives its right to a compensable time extension for the alleged excusable delay event if it fails to substantially comply with these requirements.
- (n) Non-compensable but excusable delay events are identified in Section 11.2 of the Agreement.
- (o) The MSA is not responsible or liable to the Design Builder for any constructive acceleration related costs in the event the Design Builder has failed to substantially comply with any of the requirements delineated within this Exhibit or the Contract Documents.
- (p) If mutually agreed upon and approved, the impact fragnets will become a permanent part of the schedule and will be included in the next occurring update. The fragnet activities are to be consistent and compliant with all other requirements delineated within this Exhibit, including cost and activity coding requirements. The Design Builder will not unilaterally make changes to the update to justify the impacts of alleged excusable delay events without prior written approval from the MSA.
- (q) The MSA may prepare alternative delay analyses that do not utilize the TIA methodology for quantifying the impact of alleged excusable delay events. The MSA and Design Builder may agree to utilize an alternative methodology in the event the TIA methodology is not deemed to be the most appropriate methodology for a specific circumstance or subject.
- (r) The following are instructions for preparing a retrospective TIA:
  - 1. The Design Builder will model all alleged excused delay events or Contract changes with impact fragnets. The impact fragnet is to include important and pertinent elements of the delay event, such as when it was first discovered and when the MSA was notified. The forecasted completion date of the impact

- fragnet cannot be greater than the data date of the progress schedule update that is being submitted in conjunction with the as-built TIA.
2. The fragnet is to be inserted into the prior progress schedule update (or another schedule mutually agreed upon). Only those changes that are necessary for the inclusion of the impact fragnet will be accepted. Any other schedule, logic, and/or activity changes that are not directly related to the creation of the impact fragnet and its inclusion will not be accepted and will be cause for rejection.
  3. The Design Builder will make every reasonable effort to mitigate the potential delay by either isolating its impact or planning “work around” approaches to the Work. The Design Builder will remove any float suppression techniques within the TIA, as determined by the MSA. The Design Builder agrees that it has waived its right for any excusable time extension for the alleged delay event(s) in question if it fails to comply with these requirements.
  4. The difference of the final completion dates between the as-built TIA and the schedule hosting the impact fragnet is the maximum number of days the Design Builder can request for those delay events occurring in the update period. This difference represents the number of excusable days. This analysis does not identify whether all or any of the excusable days are compensable.
  5. Retrospective TIA submissions are to be developed in a manner that is substantially consistent with Method Implementation Protocols 3.6 and 3.7 of AACE International Recommended Practice 29R-03 “Forensic Schedule Analysis,” dated 25 April 2011. Requirements listed within this specification take precedence any practices or recommendations mentioned in the above referenced recommended practice.
  6. The following items are to be included with the as-built TIA submission:
    - (a) A copy of the native schedule file, in .xer format;
    - (b) A tabular report identifying every change made within the schedule;
    - (c) 11x17 plot (PDF) of all schedule activities, banded by WBS and sorted by start date;
    - (d) 11x17 plot (PDF) of all activities on the longest path to completion, un-banded by WBS and sorted by start date;
    - (e) A brief narrative that describes and fully justifies the impact fragnet(s) and description of the alleged excusable delay events. The Design Builder is to also include discussion of plausible scenarios and forecasts as to when it believes the delay event will cease impacting existing scopes of Work;
    - (f) Copies of documentation supporting and substantiating the Design Builder’s proposed impact fragnets and as-built TIA. The Design Builder also agrees to provide any requested documentation that MSA deems necessary to investigate and review the alleged delay event. The Design Builder agrees that it has waived its right for excusable time extension for any alleged delay event in question if it fails to comply with the MSA’s request.
- (s) The following are instructions for preparing a prospective TIA:
1. The Design Builder will use its most recently submitted as-built TIA in order to create the forward-looking TIA. The Design Builder is to forecast the

- completion date of the impact fragnet in question. This forecast completion date is to reflect when the Design Builder believes the actual delay event will be completed and no longer impacts or impedes any future, existing Work. The forecasted date will be based upon information available to the Design Builder at the time the TIA is being developed.
2. The Design Builder will re-calculate the schedule after the inclusion of the impact fragnet. The difference of the final completion dates between the forwarding looking TIA and the pre-impacted schedule hosting the fragnet is the maximum number of days the Design Builder can request.
  3. The Design Builder shall make every reasonable effort to mitigate the potential delay by either isolating its impact or planning “work around” approaches to the Work. The Design Builder will remove any float suppression techniques within the TIA, as determined by the MSA. The Design Builder waives its right for an excusable time extension for the alleged delay event(s) in question if it fails to comply with these requirements.
  4. The difference of the final completion dates between the forward-looking TIA and the schedule hosting the impact fragnet is the maximum number of days the Design Builder can request for the delay event. This difference also only represents the number of excusable days and some, if not all, may not be compensable.
  5. Prospective TIA submissions are to be developed in a manner that is substantially consistent with AACE International Recommended Practice 52R-06 “Prospective Time Impact Analysis – As Applied in Construction,” dated 04 May 2017. Requirements listed within this specification take precedence any practices or recommendations mentioned in the above referenced recommended practice.
  6. The following items are to be included with the forward-looking TIA submission:
    - a. A copy of the native schedule file, in .xer format.
    - b. Tabular identifying every change made within the schedule.
    - c. 11x17 plot (PDF) of all schedule activities, banded by WBS and sorted by start date.
    - d. 11x17 plot (PDF) of all activities on the longest path to completion, un-banded by WBS and sorted by start date.
    - e. A brief narrative that describes and fully justifies the impact fragnet(s) and description of the alleged excusable delay events. The Design Builder must also include a list of assumptions it relied upon when developing the TIA, as well any inclusions or exclusions with its submission.
    - f. Copies of documentation supporting and substantiating the Design Builder’s proposed impact fragnets and forward-looking TIA. The Design Builder also agrees to provide any requested documentation that MSA deems necessary to investigate and review the alleged delay event and the Design Builder agrees that it has waived its right for any excusable time extension for the alleged delay events in question if it fails to comply with the MSA’s request.



- (t) The Design Builder acknowledges and agrees that in the event it fails to submit a time extension that is compliant with this Exhibit and other Contract Documents the Design Builder is not entitled to any reimbursement for costs incurred due to acceleration efforts it employed in order to avoid damages identified in the Agreement.
- (u) In the event the Design Builder does not agree with the decision of MSA regarding the impact of a delay, it shall be resolved in accordance with Article 27 of the Agreement.
- (v) If the Design Builder elects to further pursue its time extension request, it is to present a Re-Baselined Schedule that illustrates its revised plan to meet the Contract recognized milestone dates. This Re-Baselined Schedule is to be submitted within fourteen (14) calendar days after receiving the MSA's final determination. The Design Builder waives its rights and entitlement for a time extension and/or any other equitable adjustment to the Contract due to constructive acceleration if it fails to provide the Re-Baselined Schedule as prescribed above.

#### **14.0 AS-BUILT SCHEDULE**

- (a) The final Update will be recorded as the As-Built Schedule. All activities within the schedule are to have actualized start and finish dates and are to have a physical percent complete equal to 100%. No activities are to be out of sequence.
- (b) The As-Built Schedule is to reflect the exact way the Project was constructed by stating actual start and finish dates for all activities.
- (c) The As-Built Schedule submission is to satisfy all the requirements listed within the Technical Schedule Requirements defined in this Exhibit and the Contract Documents.
- (d) The As-Built Schedule shall be included with the Final Project Report required by Exhibit G of the Agreement.
- (e) Approval of the As-Built Schedule is a prerequisite for making final payment.
- (f) The Design Builder is to include the following attachments with the submission of the As-Built Schedule:
  1. Written certification, on its company letterhead, that the As-Built Schedule is an accurate record of the way the Project was constructed, signed by the Project Manager and the Lead Scheduler;
  2. A copy of the native schedule file, in .xer format;
  3. 11x17 plot (PDF) of all schedule activities, banded by WBS and sorted by start date.

Hagerstown Multi-Use Sports and Events Facility

MSA Project No. \_\_\_\_\_

**Exhibit K**  
**PARTIAL CONTRACTOR/SUBCONTRACTOR/SUPPLIER**  
**Waiver of Lien - Material and Labor**

State of \_\_\_\_\_

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

County of \_\_\_\_\_

Whereas the undersigned \_\_\_\_\_ has been employed by \_\_\_\_\_ for the construction of the \_\_\_\_\_

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

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

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

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

Signature: \_\_\_\_\_

Sworn to and subscribed to me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

Given under by hand and notary seal this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_.

Company: \_\_\_\_\_

Notary Republic: \_\_\_\_\_

Signature: \_\_\_\_\_

Commission expires: \_\_\_\_\_

Hagerstown Multi-Use Sports and Events Facility

MSA Project No. \_\_\_\_\_

Exhibit K

**FINAL CONTRACTOR/SUBCONTRACTOR/SUPPLIER  
Waiver of Lien – Material and Labor**

State of \_\_\_\_\_

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

County of \_\_\_\_\_

Whereas the undersigned \_\_\_\_\_ has been employed by \_\_\_\_\_ for the construction of the \_\_\_\_\_

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

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

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

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

Signature: \_\_\_\_\_

Sworn to and subscribed to me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

Given under by hand and notary seal this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_.

Company: \_\_\_\_\_

Notary Republic: \_\_\_\_\_

Signature: \_\_\_\_\_

Commission expires: \_\_\_\_\_



# AIA<sup>®</sup> Document G707<sup>™</sup> – 1994

## Consent Of Surety to Final Payment

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

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

on bond of  
*(Insert name and address of Contractor)*

, SURETY,

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

, CONTRACTOR,

as set forth in said Surety's bond.

, OWNER,

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

\_\_\_\_\_  
*(Surety)*

\_\_\_\_\_  
*(Signature of authorized representative)*

\_\_\_\_\_  
*(Printed name and title)*

Attest:  
 (Seal):

Hagerstown Multi-Use Sports and Events Facility  
Design Build Agreement

**EXHIBIT L**  
**DESCRIPTION OF DESIGN BUILDER INVOICE**

The Design Builder invoice format shall be as described below showing complete breakdowns of Trade Contractor/Subcontractor, General Conditions, Contingency, and complete billings with requisite backup. Each invoice shall consist of the following:

- (a) AIA Cover Sheet (Document G702 attached).
- (b) Schedule of Values (**Exhibit J**).
- (c) Design Builder Partial/Final Release of Lien (**Exhibit K**).
  - (i) Consent of Surety if applicable.
- (d) Statement per Section 20.1 of the Agreement.
- (e) MBE Payment Report listing (a) all payments made to each MBE firm in the preceding thirty (30) days, and (b) any unpaid invoices over thirty (30) days old received from a certified MBE together with the reason the payment has not been made. Include confirmation of payments to all MBEs from the web-based compliance system referenced in **Exhibit D**.
- (f) Cost of the Work Backup Documentation
  - (i) Application for Payment with Release of Lien for each Trade Contractor per Section 20.3 of the Agreement.
  - (ii) Copies of invoices paid for work/items not included in Trade Contracts.

**APPLICATION AND CERTIFICATION FOR PAYMENT**

TO OWNER: PROJECT: [REDACTED]  
 CONTRACT NUMBER: [REDACTED]  
 PO NUMBER: [REDACTED]  
 FEDERAL TAX ID #: [REDACTED]  
 VIA ARCHITECT: [REDACTED]  
 FROM CONTRACTOR: [REDACTED]

AIA DOCUMENT G702

APPLICATION NO: 0

PAGE ONE OF \_\_\_\_\_ PAGES

PERIOD TO: [REDACTED]

Distribution to:

<input type="checkbox"/>	OWNER
<input type="checkbox"/>	ARCHITECT
<input type="checkbox"/>	CONTRACTOR
<input type="checkbox"/>	
<input type="checkbox"/>	

PROJECT NOS:

CONTRACT FOR:

CONTRACT DATE:

**CONTRACTOR'S APPLICATION FOR PAYMENT**

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

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

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

CONTRACTOR:

By: [REDACTED] Date: [REDACTED]

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

**ARCHITECT'S CERTIFICATE FOR PAYMENT**

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

AMOUNT CERTIFIED . . . . . \$ [REDACTED]

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT: \_\_\_\_\_ Date: \_\_\_\_\_

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

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	[REDACTED]	[REDACTED]
Total approved this Month	[REDACTED]	[REDACTED]
<b>TOTALS</b>	\$0.00	\$0.00
<b>NET CHANGES by Change Order</b>	\$0.00	

# CONTINUATION SHEET

AIA DOCUMENT G703

PAGE OF PAGES

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

APPLICATION NO:

APPLICATION DATE:

PERIOD TO:

ARCHITECT'S PROJECT NO:

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

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

A ITEM NO.	B BID PACK.	B DESCRIPTION OF WORK	C ORIGINAL SCHEDULED VALUE	IN-SCOPE CHANGES	ADJUSTED SCHEDULE VALUE	D		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H % (G ÷ C)	I BALANCE TO FINISH (C - G)	J RETAINAGE (IF VARIABLE RATE)
						E WORK COMPLETED						
						FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
		<i>(Fill in &amp; break down contract values)</i>										
		<i>(Add any change order(s) descriptions)</i>										
		<b>GRAND TOTALS</b>	\$0.00			\$0.00	\$0.00	\$0.00	\$0.00	0%	\$0.00	\$0.00

Users may obtain validation of this document by requesting of the license a completed AIA Document D401 - Certification of Document's Authenticity

**EXHIBIT M**  
**BID / PROPOSAL BOND**  
**HAGERSTOWN MULTI-USE SPORTS AND EVENTS FACILITY**

**KNOW ALL MEN BY THESE PRESENTS**, that we, the undersigned \_\_\_\_\_ as Principal, and \_\_\_\_\_ as Surety, are held and firmly bound unto the Maryland Stadium Authority as Owner, in the Sum of \$ \_\_\_\_\_ (an amount equal to Five Percent (5%) of the Maximum Total Bid Submitted) (the "Penal Sum"), for payment of which Penal Sum, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, personal representatives, successors and assigns, firmly by these presents.

The condition of the above obligation is such that WHEREAS the Principal has submitted to the Maryland Stadium Authority a certain Bid, attached hereto, and hereby made a part hereof, to enter into a Contract, in writing, for: (check appropriate categories)

**HAGERSTOWN MULTI-USE SPORTS AND EVENTS FACILITY**

**NOW THEREFORE,**

- .1 If said Bid shall be rejected, or
- .2 If said Bid shall be accepted and the Principal shall execute and deliver a Contract in the form of Contract attached hereto (properly completed in accordance with said Bid), and shall furnish a Bid for his faithful performance of Contract and for the payment of all persons performing labor or furnishing materials in connection therewith and shall in other respects perform the Agreement created by the acceptance of the Bid;

**THEN**, in either of such events, this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the Penal Sum.

If the Bid should be accepted and the Principal fails to:

- .1 execute and deliver the Contract, or
- .2 furnish bonds acceptable to the Owner for his faithful performance of the Contract and for payment of all persons performing labor or furnishing materials in connection therewith, or
- .3 perform in any other respects the Agreement created by the acceptance of the Bid;

**THEN**, in any of such events, the Principal shall pay the Penal Sum to the Owner within ten (10) days after demand therefore, failing which the Surety shall pay it.

The Surety, for valued received, hereby stipulates and agrees that the obligations of said Surety and its Bond shall be in no way impaired or affected by any extension of time within which the Owner may accept such Bid; and said Surety does hereby waive notice of any such extension.

**IN WITNESS WHEREOF**, the Principal and Surety have hereunto set their Hand and Seals, and such of them as are corporations have caused their Corporate Seals to be hereto affixed and these presents to be signed by their proper Offices, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.



**ATTEST:**

**PRINCIPAL:**

SIGN: \_\_\_\_\_ SIGN: \_\_\_\_\_(SEAL)

NAME: \_\_\_\_\_ NAME:

TITLE: \_\_\_\_\_ TITLE:

**ATTEST:**

**SURETY:**

SIGN: \_\_\_\_\_ SIGN: \_\_\_\_\_(SEAL)

NAME: \_\_\_\_\_ NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_

**AGENT (COMPANY):**

\_\_\_\_\_

AUTHORIZED BY:

\_\_\_\_\_

NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

**EXHIBIT N  
PERFORMANCE BOND  
HAGERSTOWN MULTI-USE SPORTS AND EVENTS FACILITY**

**PERFORMANCE BOND**

**PRINCIPAL:**

\_\_\_\_\_  
BUSINESS NAME

\_\_\_\_\_  
BUSINESS ADDRESS

**OBLIGEE**

Maryland Stadium Authority  
its Successors and/or Assigns,  
OBLIGEE NAME

351 W. Camden Street, Suite 300  
Baltimore, Maryland 21201-2435  
BUSINESS ADDRESS

**SURETY:**

\_\_\_\_\_  
BUSINESS ADDRESS

\_\_\_\_\_, 20\_\_\_\_  
DATE BOND EXECUTED

A Corporation of the State of \_\_\_\_\_ authorized to do business in the State of Maryland.

**SUM OF BOND** (Equal to Contract Price):

SUM OF \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

**CONTRACT:**

\_\_\_\_\_  
CONTRACT NUMBER AND IDENTIFICATION

\_\_\_\_\_, 20\_\_\_\_  
DATE OF CONTRACT

**KNOW ALL MEN BY THESE PRESENTS**, That we, the PRINCIPAL and SURETY are held and firmly bound unto the OBLIGEE in full and just sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the PRINCIPAL is entering into a certain Contract with the OBLIGEE described and dated, as shown above and attached hereto, and is required to give a Bond conditioned as hereinafter set forth.

**NOW, THEREFORE,** if the PRINCIPAL shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term of said Contract and any extensions thereof that may be granted by the OBLIGEE, notice of such extensions to the SURETY being hereby waived and during the terms or terms of any maintenance, repair, guaranty and warranty required under the Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any duly authorized modifications of said contract that may hereafter be made, notice of which modification to the SURETY being hereby waived, and shall indemnify and save harmless the OBLIGEE, its agents and employees, may be subjected by reason of any wrong doing, misconduct, want of care or skill, negligence or default on the part of the PRINCIPAL, its agents or employees, or in any manner arising directly or indirectly from any and all causes whatsoever, or about the execution or performance of the Contract, during the original term of said Contract and/or any extension or modification thereof and/or during the term or terms of any maintenance, repair, guaranty, and warranty required under the Contract, then this obligation shall be null and void; otherwise to remain in full force and affect.

Whereas PRINCIPAL shall be, and declared by OBLIGEE to be in default under the Contract, the SURETY shall promptly remedy the default, or shall promptly:

1. Complete the Contract in accordance with its terms and conditions, or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by SURETY of the lowest responsible bidder, or, if the OBLIGEE elects, upon determination by the OBLIGEE and the SURETY jointly of the lowest responsible bidder, arrange for a contract between such bidder and OBLIGEE and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the costs of completion less the balance of the contract price, but not exceeding, including other costs and damages for which the SURETY may be liable hereunder, the face amount set forth above. The term "balance of the contract price" as used in this paragraph, shall mean the total amount payable by OBLIGEE to PRINCIPAL under the Contract and any amendments thereto, less the amount previously paid by OBLIGEE to PRINCIPAL.

None of the following shall be defense to any claim under the Bond:

1. Failure of the OBLIGEE to withhold retainages pursuant to the Contract;
2. Failure of the OBLIGEE to withhold other payments from the PRINCIPAL pursuant any right of the OBLIGEE so to do;
3. Waiver by the OBLIGEE of, or failure by the OBLIGEE to enforce, any right remedy against the PRINCIPAL, and
4. Withholding by OBLIGEE of any payment(s) from the PRINCIPAL under a claim of a contractual right to do so, provided that, in the case of (.4), any amount

so withheld is approved by the Architect under the Contract or is reasonable under the circumstances and is withheld in good faith.

No right of action shall accrue on the bond to or for the use of any person or corporation other than the OBLIGEE or the successors or assigns of OBLIGEE.

**IN WITNESS WHEREOF**, the parties have executed this instrument under their several Seals on the dated indicated above, the Name and Corporation Seal of each Corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

**ATTEST:**

**PRINCIPAL:**

SIGN: \_\_\_\_\_ SIGN: \_\_\_\_\_ (SEAL)

NAME: \_\_\_\_\_ NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_

**ATTEST:**

**SURETY:**

SIGN: \_\_\_\_\_ SIGN: \_\_\_\_\_ (SEAL)

NAME: \_\_\_\_\_ NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_

**AGENT (COMPANY):** \_\_\_\_\_ (SEAL)

**AUTHORIZED BY:** \_\_\_\_\_

**NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_.

**EXHIBIT O**  
**LABOR AND MATERIAL PAYMENT BOND**  
**HAGERSTOWN MULTI-USE SPORTS AND EVENTS FACILITY**

**PRINCIPAL:**

\_\_\_\_\_  
BUSINESS NAME

\_\_\_\_\_  
BUSINESS ADDRESS

**SURETY:**

\_\_\_\_\_  
BUSINESS ADDRESS

**OBLIGEE:**

Maryland Stadium Authority  
its Successors and/or Assigns,  
OBLIGEE NAME

351 W. Camden Street, Suite 300  
Baltimore, Maryland 21201-2435  
BUSINESS ADDRESS

\_\_\_\_\_, 20\_\_\_\_  
DATE BOND EXECUTED

A Corporation of the State of \_\_\_\_\_ authorized to do business in the State of Maryland.

**SUM OF BOND** (Equal to Contract Price):

SUM OF \_\_\_\_\_ Dollars (\$\_\_\_\_\_)

**CONTRACT:**

\_\_\_\_\_, 20\_\_\_\_  
DATE OF CONTRACT

**KNOW ALL MEN BY THESE PRESENTS**, That we, the PRINCIPAL and SURETY are held and firmly bound unto the OBLIGEE in full and just sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the PRINCIPAL is entering into a certain Contract with the OBLIGEE described and dated, as shown above and attached hereto, and is required to give a Bond conditioned as hereinafter set forth.

**NOW, THEREFORE**, the condition of this obligation is such that if the PRINCIPAL shall promptly make payments to all persons supplying labor, material, and/or services in the prosecution of the Work ("claimant") provided for in said contract and any and all duly authorized extension and/or modifications of said contract that may hereafter be made, notice of such extension and/or modifications to the SURETY being hereby waived, and any maintenance,

repair, guaranty and warranty required under the Contract, then this obligation to be null and void; otherwise to remain in full force and effect.

The PRINCIPAL and SURETY hereby jointly and severally agree with the OBLIGEE that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last such claimant's work or labor was done or performed, or materials or services were furnished by such claimant, may sue on this bond for the use of claimant, prosecute the suite to final judgment for such sum or sums as may be justly due claimant, and have execution thereof. The OBLIGEE shall not be liable for the payment of any costs or expenses of any such suit.

The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by SURETY of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

A suit or action commenced hereunder shall comply with applicable Provisions of the Public General Laws of Maryland. No suit or action shall be commenced hereunder against the OBLIGEE, its successors and assigns, nor shall OBLIGEE be liable for any costs or expenses of such suit.

None of the following shall be a defense to any claim under the Bond:

1. Failure of the OBLIGEE to withhold retainages pursuant to the Contract;
2. Failure of the OBLIGEE to withhold other payments from the PRINCIPAL pursuant to any right of the OBLIGEE so to do;
3. Waiver by the OBLIGEE of, or failure by the OBLIGEE to enforce, any right remedy against the PRINCIPAL; and
4. Withholding by OBLIGEE of any payment(s) from the PRINCIPAL under a claim of a contractual right to do so, provided that, in the case of (iv), any amount so withheld is approved by the Architect under the Contract or is reasonable under the circumstances and is withheld in good faith.

**IN WITNESS WHEREOF**, the parties have executed this instrument under their several Seals on the dated indicated above, the Name and Corporation Seal of each Corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

**ATTEST:** \_\_\_\_\_ **PRINCIPAL:**  
SIGN: \_\_\_\_\_ SIGN: \_\_\_\_\_ (SEAL)  
NAME: \_\_\_\_\_ NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_

**ATTEST:** \_\_\_\_\_ **SURETY:**

SIGN: \_\_\_\_\_ SIGN: \_\_\_\_\_ (SEAL)

NAME: \_\_\_\_\_ NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_

**AGENT (COMPANY):** \_\_\_\_\_ (SEAL)

**AUTHORIZED BY:** \_\_\_\_\_

**NAME:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_