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**Addendum No. 1**

**To Offerors: Request for Proposals  
Testing and Inspection Services  
Arthur Perdue Stadium Improvements**

**Date Issued: September 27, 2024**

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This addendum is hereby made part of the Request for Proposals dated September 19, 2024, on the subject work as though originally included therein. The following amendments, additions, and/or corrections shall govern this solicitation.

This addendum incorporates the following items:

1. The Question Due Date is hereby extended to October 7, 2024, at 1:00 p.m. Local Time.
2. The Proposal Closing Date and Time is hereby extended to October 15, 2024, at 1:00 p.m. Local Time.
3. A copy of the Pre-Proposal Conference attendance list is attached hereto.
4. A copy of the Pre-Proposal Conference presentation slide deck is attached hereto.
5. A copy of the Sample Contract (Attachment L) is attached hereto, and can be accessed via the following link:  
  
<https://mdstad.sharefile.com/d-s98106a8f9da14c72a17efab268ec7b5b>.
6. The Staffing Plan (Attachment F) is not a required submission, and was stricken from Section 4.3.5, and the Attachments.
7. The DLS Geotechnical Report (Attachment J.3) is part of the 70% Specifications (Attachment J.2). All references to Attachment J.3 are obsolete, and were replaced with references to Attachment J.2.
8. The Project Schedule (Attachment K) was stricken. All references to Attachment K are obsolete, and were replaced with references to Section 3.4 of the RFP.
9. Section 3.4 Schedule – CPM was amended to read as follows:  
  
“Testing and Inspection Services resulting from this solicitation are anticipated to commence immediately upon award and continue through June 2025.”
10. The line item 4 in Section 4.3.6 – Other Required Submission was stricken, as the Corporate Profile (Attachment E) is a required submission under TAB 1. See Section 4.3.4.4 of the RFP.

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

  
Christian Kramer  
Procurement Officer

**Attachments**

# Addendum 1, Line item 3

**Capital Projects Development Group**  
**Pre-proposal Conference**  
**Testing and Inspection Services Arthur Perdue Stadium**  
**9/25/2024 12pm**

Name	Company	Email	Prime or Subcontractor	MDOT MBE Certified	SBR Certified	Attended
Kim Chan	ABC Consultants Inc.	Kim.Chan@abconsultantsinc.com	Subcontractor	Yes	Yes	No
Thia Graham	ABC Consultants, Inc.	thia.graham@abconsultantsinc.com	Subcontractor	Yes	Yes	Yes
Barry Catterton	CES Consulting, LLC	Bcatterton@ces-consultingllc.com	Subcontractor	Yes	No	Yes
Aashish Pathak	DMY Engineering Consultants	apathak@dmyec.com	Subcontractor	Yes	Yes	No
Nichole McGuire	ECS Mid-Atlantic, LLC	nmcguire@ecslimited.com	Prime	No	No	No
Mohammed Al Qadhi	ECS Mid-Atlantic, LLC	malqadhi@ecslimited.com	Prime	No	No	No
Terra Barnes	Froehling & Robertson	tbarnes@fandr.com	Prime	No	No	No
Lowell Hines	Geo Technology Associates, Inc.	lhines@gtaeng.com	Prime	No	No	Yes
Maxwell Abbey	Global Geotechnical Consultants, LLC	mabbey@globalgeotechllc.com	Subcontractor	Yes	No	Yes
Shaheen Dabestani	Intertek	SHaheen.Dabestani@intertek.com	Subcontractor	No	No	Yes
Andrew Sailo	Kim Engineering	andrewsailo@kimengineering.com	Subcontractor	Yes	Yes	Yes
Jason Fels	Sherwin-Williams	jason.r.fels@sherwin.com	Subcontractor	No	No	No
Charles Mitchell	SK&A	charlesm@skaengineers.com	Subcontractor	No	No	Yes

End of Addendum 1, Line item 3



## **REQUEST FOR PROPOSALS PRE-PROPOSAL CONFERENCE**

# **TESTING AND INSPECTION SERVICES ARTHUR PERDUE STADIUM IMPROVEMENTS**

**SEPTEMBER 25, 2024 – 12:00PM**

### **Notice**

In participating in this session you agree that you will not record, keep, share or post any content of this session without prior express permission from MSA. In particular, for the time of this meeting, the use of automated tools as provided, for instance, by open-loop Artificial Intelligence is strictly prohibited.

# PROCUREMENT & PROJECT TEAM



Yai Waite  
Associate VP, Procurement



Christian Kramer  
Procurement Officer



Chris Deremeik  
Project Manager



# POINT OF CONTACT

Christian Kramer

Maryland Stadium Authority






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Baltimore, Maryland 21201

Telephone: 443.202.3885

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# KEY DATES

	<u>ACTIVITY</u>	<u>DATE (Local Time)</u>
	Request for Proposals Issued	September 19, 2024
	Pre-Proposal Web Conference	September 25, 2024 at 12:00 p.m.
	Site Visit	Not applicable
	Questions Due	September 30, 2024 at 1:00 p.m.
	Technical & Financial Due	October 9, 2024 at 1:00 p.m.
	Anticipated NTP	late 2024

# SCOPE OF SERVICES

MSA issued this Request for Proposals to Testing and Inspection firms, to provide testing and inspection services for the Arthur Perdue Stadium.

As part of the requirements outlined in the construction documents and project specifications (see Attachment J), the scope of testing, inspection, and lab services may include, but is not limited to, the following:

1. Earthwork/Soils
2. Environmental Conditions
3. Concrete
4. Masonry
5. Steel
6. Roofing
7. Fireproofing/Fire Resistant Materials
8. Windows and skylights
9. Painting

Please refer to **Section 3** of the RFP for the full scope of work.



# OFFEROR'S QUALIFICATIONS

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

1. Has been in business for at least five (5) years;
2. Is a firm that is licensed operate in the State of Maryland;
3. Has a minimum of five (5) years of significant experience in providing testing and inspection services. List projects that your firm has performed as a prime consultant that demonstrate how you meet this requirement.
4. Is able to provide testing and inspection services in accordance with the applicable codes and practices, including, without limitation, the 2018 International Building Code, American Council of Independent Laboratories, Wicomico County Code, and as specified in the applicable Project construction documents.
5. Offeror shall clearly and accurately demonstrate specialized knowledge and experience in the aforementioned categories, as well as with the requirements for testing and inspections set forth in the 70% Construction Documents (Attachment J).
6. Has the ability to meet the insurance coverage requirements stated in the Sample Contract (Attachment L).

# MINORITY BUSINESS ENTERPRISES

**This RFP has a minimum MBE subcontractor participation goal of:**

- 10% overall with no sub-goal
- All subcontractors named by the Offeror as part of their MBE Schedule must be certified with the Maryland Department of Transportation (“MDOT”).
- Offerors’ submissions must also include the MBE subcontractor’s MDOT certification number & NAICS product and service description of work to be performed. MBE form D-1A must be submitted with the Technical Proposal.
- For information on certified MBE firms, the directory is available at <https://marylandmdbe.mdbecert.com/> On the right side, select the button labelled “Search Directory of Certified Firms”
- The most current information on MBE’s is available at the MDOT website.
- The Governor’s Office of Small, Minority & Women Business Affairs has issued a Q&A document regarding how to count participation by MBE primes. Information is available on GOSBA’s website <https://gomdsmallbiz.maryland.gov/Pages/default.aspx>.

# MINORITY BUSINESS ENTERPRISES

- **Submit D-1A form with your proposal. Make sure the form is fully completed.**
- Math needs to add to up.
- MBEs shall be currently and appropriately certified. Check the MDOT MBE directory to make sure that your proposed MBE firms are certified by MDOT.
- Keep in mind we are looking for MBE certified firms (NOT SBE, DBE, etc.).
- Check ONE box for the firm's classification (i.e. African-American, woman owned, etc.).
- **Review section 1.20 of the RFP for Minority Business Enterprise**
- **Note:** The fully executed subcontractor agreements must be submitted within 10 Business Days after notice of Award Recommendation.

# PROPOSAL SUBMISSIONS

- All submissions must be sent electronically via the ShareFile links provided in the Key Information Summary Sheet. No other form is permissible!
- See Section 4 of the RFP for all submission requirements, including formatting
- Technical Proposal (Volume I)
  - Transmittal letter
  - Title and Table of Contents
  - Executive Summary
  - Experience and Qualifications
    - Experience Form (Attachment I)
    - Corporate Profile (Attachment E)
    - Capacity Summary Worksheet (Attachment G)
  - Work Plan
    - Staffing Plan (Attachment F)
  - Other Required Submissions
    - Bid/Proposal Affidavit (Attachment A)
    - Conflict of Interest Disclosure (Attachment B)
    - MBE Form D1-A (Attachment D)
    - Prime Contractor List of All Subcontractors (Attachment P)
    - Proof of Insurance/ability to meet insurance requirements
- Financial Proposal (Volume II)
  - Financial Proposals must be password protected.
  - Password will be requested from short-listed Offerors only.
  - Pricing Form (Attachment H)

**This slide is obsolete.  
Section 4.3 of the RFP was  
amended. Please refer to the  
cover letter of this addendum  
for a corrected list of required  
submissions.**

# EVALUATION AND SELECTION

- Technical criteria has more weight than Financial criteria.
- Proposals will be evaluated based on the adequacy of their proposed work plan, Offeror's and Key Personnel's experience and qualifications, and past performance, among other criteria listed in Section 5 of the RFP.
- The Selection Committee will review the Offerors' Technical Proposals. Firms deemed as meeting all requirements will be ranked and, based on the achieved rankings, selected firms may then be invited to conduct Oral Presentations.
- After the Technical Evaluation, the Selection Committee will short-list Offerors to participate in the financial phase of the procurement.
- Offerors will be required to provide the password to their Financial Proposal within one (1) Business Day of MSA's request.
- An award will be made to the Offeror whose Proposal is determined to be the most advantageous, considering technical and financial evaluation factors.

# SUBMISSION REMINDERS

- Make sure to use the forms issued with the RFP or its addenda. Outdated forms will be returned for Offeror's correction and could impact overall quality of submission.
- DO NOT ALTER State issued forms.
- MBE forms need to include both the NAICS code and a description of the work to be performed by the MBE on the project. DO NOT LIST NAICS code that are not relevant for this project.
- SDAT Compliance – Make sure that your firm is in Good Standing with the Maryland Department of Assessments and Taxation.
- Review the RFP (including attachments) and its addenda in their entirety.

# QUESTIONS

**This section is for informational purposes only. All questions regarding the respective RFP, must be submitted to the Procurement Officer in writing via the link included in the Key Information Summary Sheet prior to the deadline in order to receive an official response from the Maryland Stadium Authority.**

Only responses provided in writing by MSA's Procurement Officer will be considered official answers to questions regarding this RFP.

Addenda will be issued via GovDelivery and eMMA, and published on MSA's website. Please check your junk/spam folders and update your e-mail settings to ensure that you receive MSA Contracting GovDelivery e-mails.

# Addendum 1, Line item 5



## TESTING & INSPECTION SERVICES AGREEMENT

BETWEEN

MARYLAND STADIUM AUTHORITY

AND

[CONSULTANT FIRM NAME]

MSA CONTRACT No. \_\_\_\_\_



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**MARYLAND STADIUM AUTHORITY**  
**CONTRACT NO. \_\_\_\_\_ TESTING**  
**& INSPECTION SERVICES AGREEMENT**

THIS TESTING & INSPECTION SERVICES AGREEMENT (this "**Agreement**") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_ by and between the

MARYLAND STADIUM AUTHORITY, a body politic and corporate and an instrumentality of the State of Maryland ("**MSA**"), and [CONSULTANT FIRM NAME], a [State of Organization] [Type of Organization] ("**Consultant**"),

**RECITALS**

**WHEREAS**, Pursuant to Economic Development Article ("ED") § 10-622, Md. Code Ann., for units of the State, MSA may: prepare studies, including site studies, architectural programs, budget estimates, value engineering, and project schedules; design and construct projects; and enter into contracts, retain consultants, and make recommendations related to any of these project activities.  
;and

**WHEREAS**, MSA issued a Request for Proposals (the "**RFP**") on \_\_\_\_\_ for testing & inspection services (the "**Services**") for the Project; and

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

**WHEREAS**, MSA and Consultant desire to enter into this Agreement.

**AGREEMENT**

**Incorporation of Recitals.** The foregoing Recitals are incorporated herein by reference and made a part of this Agreement.

**NOW, THEREFORE**, for and in consideration of the promises and covenants, conditions, representations, and warranties contained herein, and for good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged, the Parties agree as follows:

**ARTICLE 1**  
**GENERAL PROVISIONS**

**Section 1.1 Relationship**

Consultant accepts the relationship of trust and confidence established with MSA by this Agreement, and covenants to provide Consultant's reasonable skill and judgment and to cooperate with MSA and its various partners and contractors, including those working on the Project, in furthering the interests of MSA in connection with the Project.

**Section 1.2 Compliance with Laws**

The Consultant 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 Agreement; and

(f) Consultant 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 Services required under this Agreement.

**Section 1.3 Quality of Work & Standard of Care**

In performing its duties hereunder, Consultant shall use a level of skill and exhibit a standard of care that is appropriate for a Consultant providing the requisite Services in connection with a large fast-track construction or renovation project of similar size and scope to the Project. Consultant understands and acknowledges that MSA's decision to appoint Consultant is based upon the experience, qualifications, and other materials submitted in response to the RFP. Consultant further represents and warrants that such

materials are, as of the date that they were submitted and as of the date hereof, accurate in all material respects and fairly represent the capabilities of Consultant and its subcontractors.

## **Section 1.4 Representations**

The Consultant represents that it is thoroughly familiar with, and understand the requirements of the Project and is experienced in providing testing & inspection services. It represents to MSA that it has all of the necessary architectural and engineering education, skill, knowledge and experience required for the Project.

## **Section 1.5 Contract Documents**

1.5.1 Contract Document Priority. The Contract Documents consist of this Agreement, the Contract Affidavit, the RFP including all attachments, exhibits and addenda, the Consultant's Technical Proposal and Financial Proposal (as amended by a best and final offer if applicable). The Technical Proposal and Financial Proposal are together the "**Proposal**".

If there is any conflict among the Contract Documents, then the following order of precedence will govern:

- a. This Agreement, including all exhibits and any amendments thereto,
- b. The Contract Affidavit;
- c. The RFP and subsequent addenda;
- d. The Consultant's Proposal.

1.5.2 The order of priority in section 1.5.1 notwithstanding, it is the Consultant's responsibility to inform MSA of any material inconsistencies and confirm any information necessary for the complete, successful prosecution of the Services.

1.5.3 Nothing in the Proposal or other submissions from the Consultant shall prevail over any Contract Document unless expressly agreed to in writing by MSA with a properly approved Change Order (*see* Article 9) or modification to the Agreement.

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

1.5.5 Interpretation of the Contract Documents. MSA's 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 Services.

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

1.5.7 Contract Representatives. Consultant's Project Manager identified in its Technical Proposal, shall be deemed to have authority to render any decision or take any action required under this Agreement. MSA's Project Manager identified in Section 14.18 is the Consultant's MSA contact for the purpose of communicating routine information, requesting assistance, or making routine inquiries regarding this Agreement. This subsection 1.5.8 notwithstanding, only an authorized MSA official acting in the capacity of Contract Representative is authorized to make changes to the scope of Services or to consent to modifications to this Agreement. The Contract Representative may also be MSA's Project Executive.

1.5.8 Entire Agreement. This Agreement represents the entire and integrated agreement between MSA and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral.

1.5.9 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 1.6                      Period of Performance**

The period of performance (the "**Term**") shall commence on the date identified in the Notice to Proceed (the "**NTP**") and unless terminated sooner pursuant to this Agreement, terminate upon the earliest to occur of (i) Consultant's completion of its Services hereunder; or (ii) as agreed to by MSA and Consultant. The Agreement may be extended at the sole discretion of MSA and at the prices quoted and accepted in the Consultant's Proposal.

## **ARTICLE 2** **SERVICES**

### **Section 2.1        Scope of Work**

2.1.1 The general scope of work for this Agreement is set forth in the Contract Documents. Consultant shall provide services to MSA as described in the Contract Documents in order to assist with the Project.

2.1.2 In performing its duties hereunder, Consultant shall use a level of skill and exhibit a standard of care that is appropriate for a Consultant providing the requisite services in connection with projects of similar size and scope to the Program. Consultant understands and acknowledges that MSA's decision to appoint Consultant is based upon the experience, qualification, and other materials submitted in response to the RFP. Consultant further represents and warrants that such materials are, as of the date that they were submitted and as of the date hereof, accurate in all material respects and fairly represent the capabilities of Consultant and its subcontractors.

2.1.3 Consultant shall, at all times, meet the standard of care described above when fulfilling its duties and obligations under this Agreement and the Contract Documents. Consultant shall reasonably cooperate with MSA and its employees, agents, and contractors in delivering any service hereunder. At all times, Consultant shall keep MSA's Project Manager (as defined below) reasonably informed of the progress made in the performance of all assigned duties.

2.1.4 Any work product, whether written or in electronic format, prepared by Consultant during the term of this Agreement for MSA shall become the sole and exclusive property of MSA. Such work product shall not be used by Consultant or its subcontractors for other projects without the specific written consent of MSA.

2.1.5 Unless Consultant has obtained the prior written consent of MSA's Contract Representative (as defined below), Consultant shall not (a) release, disseminate, publish, distribute, or circulate, in any manner whatsoever, any information, data, document or materials related to the services or performance of the services under this Agreement, or (b) publish any final reports or documents.

### **Section 2.2        Additional Services**

Consultant shall perform additional services (hereinafter "Additional Services") upon the mutual consent of MSA and Consultant, and upon written authorization to proceed from MSA. Such Additional Services shall be paid in accordance with subsections 3.4 and 3.5 of this Agreement. Compensation for Additional Services shall be based on the hourly rates or fees set forth in Exhibit 4.

## **Section 2.4 Patents, Copyrights, Trade Secrets and Protected Matters**

2.4.1 The Consultant assumes the risk that any materials, equipment, processes, or other items required under this Agreement or furnished by the Consultant are subject to any patent, copyright, trademark, trade secret or other property right of another. Consultant 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. Consultant 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, the State, and the City from loss or expense on account thereof.

SAMPLE



**ARTICLE 3**  
**STAFFING**

**Section 3.1           The Project Team**

3.1.1 The Consultant shall not make any changes in the composition of its project team (the “**Project Team**”) identified in its Proposal, or as otherwise consented to in writing by MSA. Any change to the Project Team without MSA’s written consent shall be cause for Termination.

3.1.2 If required by applicable State or federal law, Consultant’s personnel – including members of the Project Team and any subcontractors, shall be subject to a security and/or criminal background check. Before or after award of the contract, at the sole discretion of MSA, those persons found to be unfit to work on State contracts may be excluded from work on the Project at no additional cost to MSA.

3.1.3 Only personnel thoroughly trained and skilled in the tasks assigned them may be employed for any portion of the services. Any Consultant employee, Project Team member, or subcontractor found to be unskilled or untrained shall be removed.

3.1.4 When municipal, county, State or federal laws require that certain personnel (electricians, plumbers, etc.) be licensed, then all such personnel, including subcontractors, employed by, or under contract with, the Consultant for the Project shall be so licensed.

3.1.5 If the MSA in its sole discretion determines that any employee, including a Project Team member or Consultant subcontractor is not performing satisfactorily, MSA shall have the right to direct that Consultant to replace the individual(s). The Consultant shall provide MSA with resumes of possible replacements and MSA shall have the opportunity, but not the obligation to interview replacement candidates.

**ARTICLE 4**  
**SUBCONTRACTORS**

**Section 4.1 Contractual Responsibility**

4.1.1 Except as specified in the Proposal, Consultant shall not subcontract any of the Services to be performed under this Agreement without the prior written consent of MSA.

4.1.2 The Consultant is fully responsible to MSA, the State and the City for the acts and omissions of its subcontractors at any tier, and persons either directly or indirectly employed by them, as well as for the acts and omissions of itself and persons directly employed by it.

4.1.3 Nothing contained in the Contract Documents shall create any contractual relationship between a subcontractor at any tier and MSA, the State, or the City, and nothing in the Contract Documents is intended to make any such entity a beneficiary of the contract between MSA and Consultant. No subcontractor at any tier shall have or make any claim or cause of action directly against MSA, the State or the City.

**Section 4.2 Prompt Payment of Subcontractors**

4.2.1 If the Consultant withholds payment of an undisputed amount to its subcontractor, MSA, at its option and in its sole discretion, may take one or more of the following actions:

- (a) Not process further payments to the Consultant until payment to the subcontractor is verified;
- (b) Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
- (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
- (d) Place a payment for an undisputed amount in an interest-bearing, escrow account; or
- (e) Take other or further actions as appropriate to resolve the withheld payment.

4.2.2 An "undisputed amount" means an amount owed by the Consultant to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation;

(a) Retainage which had been withheld and is, by the terms of the agreement between the Consultant and subcontractor, due to be distributed to the subcontractor; and

(b) An amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

4.2.3 An act, failure to act, or decision of a Procurement Officer or a representative of MSA, concerning a withheld payment between the Consultant and a subcontractor under this provision, may not:

- (a) Affect the rights of the contracting parties under any other provision of law;
- (b) Be used as evidence on the merits of a dispute between MSA and the contractor in any other proceeding; or
- (c) Result in liability against or prejudice the rights of MSA.

4.2.4 The remedies enumerated above are in addition to those provided under COMAR 21. 11. 03. 13 with respect; to subcontractors that have contracted pursuant to the Minority Business Enterprise (MBE) program.

4.2.5 To ensure compliance with certified MBE subcontract participation goals, MSA may, consistent with GOMAR.21. 1 1.03. 13, take the following measures:

(a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate:

- (i) Inspecting any relevant records of the Consultant;
  - (ii) Inspecting the jobsite; and
  - (iii) Interviewing subcontractors and workers.
- (b) Verification shall include a review of the:
- (i) The Consultant's monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
  - (ii) ii. The monthly report of each certified MBE subcontractor, which lists payments received from the Consultant in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.

(c) If MSA determines that the Consultant is not in compliance with certified MBE participation goals, then MSA will notify the Consultant in writing of its findings, and will require the Consultant to take appropriate corrective action, Corrective action

may include, but is not limited to, requiring the Consultant to compensate the MBE for work performed as set forth in the MBE participation schedule.

(d) If MSA determines that the Consultant is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the MSA requires, then MSA may:

- (i) Terminate the contract;
- (ii) Refer the matter to the Office of the Attorney General for appropriate action; or
- (iii) Initiate any other specific remedy identified by the contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.

(e) Upon completion of the Contract, but before final payment or release of retainage or both, the Consultant shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

**Section 4.3            RESERVED**

**Section 4.4            Subcontract – Contract Provisions**

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

442 Subcontractor agrees to be bound to the Consultant by the terms of the Contract Document between the Consultant and MSA, and to assume toward it all obligations and responsibilities that the Consultant, by those documents assumes towards MSA.

443 Subcontractor agrees to submit to the Consultant applications for payment in such reasonable time as to enable the Consultant to apply for payment under Article 6.

444 The provisions required by Sections 4.2 and 4.4.

445 Each contract shall be assignable to MSA at MSA's election in the event the Consultant is terminated or fails to perform its obligations under the Contract Documents. MSA may assign its rights under those documents and this Agreement to any other unit or instrumentality of the State without notice to the subcontractor.

446 The Consultant shall have the right to require the subcontractor to accelerate performance of its work at its own cost (and not as a cost to MSA) as necessary to satisfy the time requirements set forth in the Project Progress Schedule.

447 The provisions of this Section 4.4 notwithstanding, unless there is an assignment of contract pursuant to this Section the Consultant shall be solely responsible for all subcontractors and none of MSA, the City, or the Architect shall have privity of contract with, or, obligations or liabilities to the subcontractors.

SAMPLE

**ARTICLE 5**  
**PREVAILING WAGE REQUIREMENTS**

Not applicable.

SAMPLE

**ARTICLE 6**  
**COMPENSATION AND PAYMENT PROVISIONS**

**Section 6.1 Compensation and Method of Payment**

6.1.1 Contract Price. For performing the Services specified in the Contract Documents, MSA shall pay Consultant the not-to-exceed amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) as identified in Consultant's Financial Proposal attached hereto as Exhibit 3.

6.1.2 Additional Services. Additional Services performed pursuant to subsection 2.2 shall be paid for in accordance with this Article 6. Compensation for Additional Services shall be based on actual time spent at hourly rates mutually agreed upon by Consultant and MSA.

6.1.3 Invoices. Consultant shall submit detailed invoices (“**Invoice**”), setting forth (i) the name of the employee or subcontractor performing services; (ii) the date(s) of service(s); (iii) a complete description of services performed; (iv) the agreed upon rates charged for said services; and (v) the hours - or fractional hours expended.

6.1.4 Payment Consultant’s compensation will be based upon a reasonable number of actual hours expended by Consultant's employees and subcontractors in the performance of Services, as approved by MSA, multiplied by the agreed upon rates for such Services.

**Section 6.2 State Payment Provisions**

6.2.1 Invoices are reviewed and approved by MSA. Payment is made by the Maryland State Treasurer subject to the following:

(a) In addition to any other information required by the Procurement Officer, the Consultant’s invoices shall include a tax payer identification number and contract identification number and MSA's Blanket Purchase Order Number (to be provided by MSA).

(b) Payments to the Consultant pursuant to this Agreement and which are not in dispute shall be made no later than thirty (30) days after MSA’s receipt of a proper invoice from the Consultant.

(c) Charges for late payment of invoices, other than as prescribed by SF Title 15, Subtitle 1, or by the Public Service Commission of Maryland with respect to regulated public utilities as applicable, are prohibited.

6.2.2 Consultant shall be paid by Electronic Funds Transfer as required by the RFP unless it has requested and been granted an exemption.

6.2.3 Taxes. The State nor MSA shall not withhold federal, State, local or FICA taxes, if any, from payments made pursuant to this Agreement.

### **Section 6.3 Reimbursable Expenses**

631 Consultant shall be reimbursed for all reasonable, allowable and allocable direct costs and expenses incurred by the Consultant in the performance of this Agreement, subject to the terms and conditions set forth in the RFP, this Agreement, and the approval of MSA, and shall include but not be limited to:

632 The *actual costs* of reproducing and delivering (via USPS, messenger or overnight delivery services) project documents to MSA and other State agencies that will issue permits for the Project or for required review submissions.

633 Transportation and travel related expenses are included with Services. Therefore, reimbursement will only apply to transportation expenses incurred by the Consultant in connection to travel that is (a) over and above what is included with Services; and (b) requested by, or with the prior approval of MSA. Reimbursement shall be at the standard State rate of travel.

634 Such other expenses incurred in connection with the Project with the prior written authorization by MSA.

635 Reimbursable expenses shall be documented with receipts and highlighted in expense reports if combined with non-reimbursable expense. Any reimbursable expenses in excess of \$1,000 requires prior written approval from MSA.

636 Consultant's projected itemized schedule of reimbursable expenses is included in Exhibit 3.

### **Section 6.4 Non-Reimbursable Expenses**

6.4.1 Consultant shall not be reimbursed for indirect or miscellaneous office expenses such as: (i) secretarial services; (ii) preparation and review of billings; (iii) in-house messenger services; (iv) employee overtime costs; (v) long distance telephone or other communication services between Consultant and MSA or between employees or subcontractors of Consultant; and (vi) cost to reproduce and deliver documents between Consultant's (or its subcontractors') offices.



**ARTICLE 7**  
**MINORITY BUSINESS ENTERPRISE**

**Section 7.1 MBE Certification**

7.1.1 Consultant submitted an MDOT-Certified MBE Utilization and Fair Solicitation Affidavit (the “**MBE Affidavit**”) with its Proposal. A copy of the MBE Affidavit is attached hereto as Exhibit 6. Unless otherwise permitted by MSA in accordance with SF Title 14, subtitle 3 and the regulations promulgated pursuant thereto, Consultant shall utilize the MBE’s as specified in the MBE Affidavit. Consultant may not terminate, cancel, or change the scope of work/value of a subcontract with a certified MBE listed on the MBE Affidavit without:

- (a) Showing good cause why the subcontract with the certified MBE should be terminated or cancelled;
- (b) Obtaining the prior written consent of MSA's MBE liaison and Executive Director; and
- (c) Subsequently amending this Agreement.

**Section 7.2 Reporting Requirements**

7.2.1 Consultant shall:

- (a) Permit MSA to inspect any relevant matter, including records and the jobsite and to interview subcontractors and workers;
- (b) Using MSA’s web-based system (B2G), submit monthly to MSA a report listing payments made to each MBE subcontractor in the preceding thirty (30) days and any unpaid invoices over thirty (30) days old received from a certified MBE subcontractor, and the reason payment has not been made;
- (c) Include in its agreements with its certified MBE subcontractors a requirement that the certified MBE subcontractors (through MSA’s web-based system (B2G)) submit monthly to MSA a report identifying the prime contract, and listing:
  - (i) Payments received from Consultant in the preceding thirty (30) days, and
  - (ii) Invoices for which the subcontractor has not been paid; and
  - (iii) Before final payment and release of any retainage, submit a final report, in affidavit form and under penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

### Section 7.3 MBE Liquidated Damages

7.3.1 If MSA has determined that Consultant will not fulfill its MBE requirements as identified in the Contract Documents, MSA may withhold an amount equal to the liquidated damages set forth below until Consultant 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.

#### 7.3.2 Violations and Liquidated Damages Amounts

<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 Construction Manager'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.

**ARTICLE 8**  
**INSURANCE**

During the Term of this Agreement, including any extension, Consultant shall obtain, maintain, and provide satisfactory evidence of insurance coverage satisfying at least the minimum requirements set forth in Exhibit 8 of this agreement.

SAMPLE

**ARTICLE 9**  
**CHANGES TO SERVICES OR AGREEMENT**

**Section 9.1      Change Directives**

9.11 MSA may, without invalidating the Agreement, and without notice to or approval of any surety, order changes in the Services required under the Agreement, including additions, deletions or modifications. Any such change must be conveyed by MSA to Consultant via an executed written change directive (a “**Change Directive**”).

Subject to provision of prompt notice set forth in subsection 9.1.2, Consultant may be entitled to a Change Directive extending the time for performance, or increasing the price for Services, upon discovery of conditions or events (together “**Conditions**”) having a material impact on the schedule or the cost.

9.12 Prompt Notice. If Consultant encounters or discovers Conditions which it reasonably believes may have a material impact on the Services to be provided it shall promptly notify MSA in writing of such Conditions, and the possible effect on cost and schedule. Any notice shall be given as soon as possible, but in no event more than five (5) calendar days following the earlier of when Consultant knew or should have known of the Conditions. Consultant acknowledges that failure to provide timely notice may limit or eliminate MSA's ability to investigate, verify or mitigate such Conditions. Any adjustment to Consultant's price shall be determined by MSA after its review and consideration of the Conditions. Consultant shall include provisions similar to this provision in all of its subcontracts.

9.13 Failure to Agree. In the event of a dispute between MSA and the Consultant as to whether any Services are included in the scope of the Agreement such that the Consultant would be obligated to provide that Service at no additional cost to MSA, the Project Manager may order the Consultant under this Section 9.1 to perform the Service with issuance of a Change Directive. Consultant shall proceed with the work and MSA's Change Directive, without interruption or delay, and may make a claim as provided in Section 10 of this Agreement. Failure to proceed due to a dispute over a Change Directive shall constitute a material breach of this Agreement and entitle MSA to all available remedies for such breach, including, without limitation, termination for default.

**ARTICLE 10**  
**DISPUTES**

**Section 10.1      Dispute Resolution**

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 shall be resolved in accordance with this Section.

10.1.1 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 Agreement. 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.

10.1.2 A claim shall be made in writing and submitted to the Project Executive for decision within thirty days of when the basis of the claim was known or should have been known, whichever is earlier.

10.1.3 When a claim cannot be resolved by mutual agreement, the Consultant shall submit a written request for final decision to the Project Executive. The written request shall set forth all the facts surrounding the controversy.

10.1.4 The Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its claim.

10.1.5 The Project Executive shall render a written decision on all claims within 90 days of receipt of the Consultant'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 90 days, the Project Executive shall notify the Consultant of the time within which a decision shall be rendered and the reasons for such time extension. The decision shall be furnished to the Consultant, 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.

10.1.6 The Project Executive's decision shall be final and conclusive without prejudice to the rights of the Consultant to institute suit after completion of the Services in a court of competent jurisdiction for losses incurred by Consultant as a result of the Project Executive's decision. Consultant 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 Services under the Contract Documents.

10.1.7 Pending resolution of a claim, the Consultant shall proceed diligently with the performance of the Agreement in accordance with the Project Executive's decision.

**ARTICLE 11**  
**INDEMNIFICATION AND RESPONSIBILITY**  
**FOR CLAIMS AND LIABILITY**

**Section 11.1 Indemnification**

(a) Consultant agrees to indemnify, defend, protect and hold harmless MSA and its officers, agents, members and employees from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses, including reasonable attorney fees, arising out of, caused by, or resulting from Consultant's negligence or willful misconduct.

(b) Consultant shall not be responsible for the acts or omissions of MSA, or any contractor or subcontractor hired or engaged directly by MSA with respect to the Project.

(c) Neither Consultant nor MSA shall be liable to the other for any delays in the performance of their obligations and responsibilities occurring beyond their reasonable controls and/or without their fault or negligence, including but not limited to, any of the following events or occurrences: fire, flood, earthquake and epidemic, atmospheric condition of unusual severity, war, and strikes.

(d) The above indemnity shall survive expiration or termination of this Agreement.

**Section 11.2 Responsibility for Claims and Liability**

The Consultant shall be responsible for all damage to life and property due to its activities or those of its agents or employees, in connection with the Services required under the Agreement. Further, it is expressly understood that Consultant shall indemnify and save harmless MSA, its officers, agents, and employees from and against all claims, suits, judgments, expenses, actions, damages and costs of every name and description, including reasonable attorney's fees and litigation expenses arising out of or resulting from the negligent performance of the Services of the Consultant under the contract.

**ARTICLE 12**  
**RETENTION OF RECORDS**

The Consultant shall retain and maintain all records and documents relating to this Agreement for *three* years after final payment by MSA or the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of MSA, including the procurement officer or designee, at all reasonable times.

SAMPLE

**ARTICLE 13**  
**DISSEMINATION OF INFORMATION**

Unless Consultant has obtained the prior written consent of MSA, Consultant shall not (a) release, disseminate, publish, distribute, or circulate, in any manner whatsoever, any information, data, document or materials related to the Services or performance of the Services under this Agreement, or (b) publish any final reports or documents.

SAMPLE



**ARTICLE 14**  
**STATE TERMS**

**Section 14.1 General State Terms**

14.1.1 Governing Law. The provisions of this Agreement 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.

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

14.1.3 Assignment. This Agreement 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 Consultant 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 Consultant.

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

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

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

14.1.7 Personal Liability of Public Officials. In carrying out any of the provisions of the Agreement, or in exercising any power or authority granted to them by or within the scope of this Agreement, there shall be no personal liability upon the members of MSA, either personally or as officials of the State, it being understood that in all such matters the act solely as agents and representation of MSA.

**Section 14.2 Non-Discrimination Provisions**

14.2.1 Nondiscrimination in Employment. Consultant 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.

**14.2.2 Commercial Nondiscrimination.** As a condition of entering into this Agreement, the Consultant 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 Consultant retaliate against any person for reporting instances of such discrimination. The Consultant 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 Consultant 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 Consultant 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 Consultant 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 14.3           Disclosures and Ethics**

**14.3.1 Financial Disclosure.** Consultant 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.

14.3.2 Statement of Political Contributions. Consultant 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.

14.3.3. 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.

14.3.4 Anti-Bribery. Consultant 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.

14.3.5 Contingent Fees. Consultant 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 Consultant, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Agreement.

14.3.6 Appropriation of Funds. If funds are not appropriated or otherwise made available to MSA to support continuation of this Agreement, this Agreement 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 Consultant and MSA from future performance of this Agreement, but not from their rights and obligations existing at the time of termination. The Consultant shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of this Agreement. MSA shall notify the Consultant 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. Consultant may not recover anticipatory profits or costs incurred after termination.

14.3.7 False Statements. Consultant shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to MSA in connection with this Agreement.

#### **Section 14.4 Drug and Alcohol Free Workplace**

The Consultant warrants that it shall comply with COMAR 21.11.08 Drug and Alcohol Free Workplace, and that it shall remain in compliance throughout the term of this Agreement.

#### **Section 14.5 Tax Exemption**

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

#### **Section 14.6 Governmental Immunities**

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 14.7 Tort Claims Acts**

Consultant agrees for itself and for its insurers, that neither Consultant 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, the State or the City, unless requested by MSA.

#### **Section 14.8 Independent Contractor Status**

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

#### **Section 14.9 No Arbitration**

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

#### **Section 14.10 Approvals**

This Agreement shall not be effective until all required approvals of the Maryland Stadium Authority Board and the State of Maryland Board of Public Works (if required) have been

obtained. No work shall be commenced hereunder until MSA notifies the Consultant that such approvals have been obtained.

#### **Section 14.11 No Third Party Beneficiaries**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either MSA or the Consultant. There are no intended third party beneficiaries of this Agreement.

#### **Section 14.12 Time of the Essence**

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

#### **Section 14.13 Counterparts**

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 14.14 Termination**

14.14.1 Termination for Default. If the Consultant fails to fulfill its obligation under this Agreement properly and on time, or otherwise violates any provision of the Agreement, MSA may terminate the contract by written notice to the Consultant. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Consultant shall, at MSA's option, become MSA's property. The State / MSA shall pay Consultant fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Consultant's breach. If the damages are more than the compensation payable to the Consultant, the Consultant will remain liable after termination and MSA or the State can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

14.14.2 Termination for Convenience. The performance of work under this Agreement may be terminated by MSA in accordance with this clause in whole, or from time to time in part, whenever MSA or the State shall determine that such termination is in the best interest of the State. The State /MSA will pay all reasonable costs associated with this Agreement that the Consultant has incurred up to the date of termination and all reasonable costs associated with termination of the Agreement. However, the Consultant shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

**Section 14.15 Severability**

If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.

**Section 14.16 Contract Affidavit**

Simultaneously with the execution of this Agreement, Consultant shall execute, seal and deliver to MSA the signed contract affidavit attached hereto as Exhibit 5.

**Section 14.17 Authority to Execute**

The individual signing this Agreement on behalf of Consultant represents and warrants that (i) Consultant is duly organized and authorized to do business in the State of Maryland; and (ii) this Agreement has been duly authorized and is validly executed by an authorized officer of the Consultant.

**Section 14.18 Contract Representatives**

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

MSA Contract Representatives: Gary McGuigan

Project Manager: Chris Deremeik

Project Executive: Al Tyler

Consultant's Contract Representative(s):

Project Manager:

**Section 14.19 Notices**

All notices required or permitted hereunder shall be in writing and delivered personally or by registered or certified mail (restricted delivery) return receipt requested, postage prepaid to the addresses set forth below:

**If to MSA:**

Maryland Stadium Authority  
351 West Camden Street, Suite 300  
Baltimore, MD 21201-2435  
Attn: Christopher Deremeik, Asst.  
Vice President

**With copy to:**

Office of the Attorney General  
Attn: Cynthia Hahn, Counsel / MSA  
200 St. Paul Place, 20<sup>th</sup> Floor  
Baltimore, MD 21202

**If to Consultant:**

Name  
Address  
City, State, Zip  
Attn: (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.

The effective date (the “**Effective Date**”) of this Agreement shall be the last date that this Agreement is executed either by the Consultant or the Maryland Stadium Authority.

MARYLAND STADIUM AUTHORITY

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

By: \_\_\_\_\_ (SEAL)

Michael J. Frenz, Executive Director

[CONSULTANT FIRM NAME]

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

By: \_\_\_\_\_ (SEAL)

Authorized Officer

Approved for legal form and sufficiency

\_\_\_\_\_  
Amy K. Mataban  
Assistant Attorney General  
Maryland Stadium Authority



## **TESTING & INSPECTION SERVICES AGREEMENT**

### **LIST OF EXHIBITS**

- |           |  |
|-----------|--|
| Exhibit 1 | Request for Proposals  |
| Exhibit 2 | Technical Proposal   |
| Exhibit 3 | Price Proposal   |
| Exhibit 4 | Bid/Proposal Affidavit   |
| Exhibit 5 | Contract Affidavit/Disclosure                                  |
| Exhibit 6 | MDOT-Certified MBE Utilization and Fair Solicitation Affidavit |
| Exhibit 7 | Conflict-of-Interest Information and Disclosure Affidavit      |
| Exhibit 8 | Insurance Requirement  |

*Arthur Perdue Stadium Improvements*

*Testing & Inspection Services Agreement  
Maryland Stadium Authority | Firm Name  
**List of Exhibits***

**Exhibit 1**  
**Request for Proposals**

SAMPLE

**Exhibit 2**  
**Technical Proposal**

SAMPLE

**Exhibit 3  
Price Proposal**

SAMPLE

**Exhibit 4**  
**Bid/Proposal Affidavit**

SAMPLE

**Exhibit 5**  
**Contract Affidavit**

SAMPLE

**Exhibit 6**  
**MDOT-Certified MBE Utilization and Fair Solicitation Affidavit**

SAMPLE

*Arthur Perdue Stadium Improvements  
Testing & Inspection Services Agreement  
Maryland Stadium Authority | Firm Name*

**Exhibit 7**  
**Conflict-of-Interest Information and Disclosure Affidavit**

SAMPLE



## **Exhibit 8 Insurance Requirements**

Insurance coverage shall include:

### **A. Professional Liability (PL) Insurance**

The Consultant shall obtain and maintain, from and after the date of the Contract, Professional Liability (PL) Insurance to protect MSA, the State of Maryland, Wicomico County and 7<sup>th</sup> Inning Stretch, LP from damages arising from, and against liability for, errors and omissions in design work performed by the Consultant or any member of the Consultant's team. A minimum coverage limit of \$1,000,000 Aggregate is required.

Additional PL insurance requirements:

1. The Consultant shall furnish evidence demonstrating that the limits of coverage stated above are available and unencumbered by previous losses on the policy. During the Contract term, if the available limits in aggregate fall below 50%, the Consultant shall notify the Procurement Officer and take action promptly to restore the limits to the required level.
2. Deductible shall be the responsibility of the Consultant and may not exceed \$25,000 without prior approval by the Procurement Officer.
3. There shall be no exclusion for environmental claims arising out of the performance of the professional services.
4. Firms performing work under a joint venture agreement must furnish evidence in the form of an endorsement by the issuer that the joint venture is insured under the policy.

### **B. Commercial General Liability Insurance**

The Consultant shall obtain and maintain, from and after the date of the Contract, insurance coverage for general liability claims (including, but not limited to, claims for bodily injury and property damage, including loss of use) arising from the operations of the Consultant, subcontractors, and suppliers that satisfies the following requirements:

1. Commercial General Liability ("CGL") insurance to be provided through the use of ISO Coverage Form CG-00-01-1001 or its equivalent.
2. Minimum coverage limits of: \$1,000,000 as a per occurrence limit; \$2,000,000 as a general aggregate limit (applied separately to claims arising from the Consultant's performance under the Contract); and \$2,000,000 as a products/completed operations limit.

3. Maryland Stadium Authority, the State of Maryland, Wicomico County and 7<sup>th</sup> Inning Stretch, LP (collectively “Additional Parties”) shall be added as Additional Insureds by additional insured endorsements ISO CG-20-10 and CG-20-37 or their equivalents. As Additional Insureds, the Additional Parties shall have coverage for liability arising out of the Consultant’s ongoing and completed operations performed for either or both of Wicomico County or 7<sup>th</sup> Inning Stretch, LP.
4. The CGL insurance policy shall include waivers of subrogation in favor of the Additional Parties.
5. The CGL insurance policy shall be primary and noncontributory with respect to the coverage afforded to the Additional Parties.
6. The CGL insurance policy shall not contain any exclusion for: X, C and/or U hazards; third party actions over claims; or punitive damages.
7. The CGL insurance policy shall include Blanket Written Contractual Liability covering all contractual liabilities and indemnities assumed by the Consultant pursuant to the Contract.
8. The CGL insurance policy shall also include the following extensions:
  - a. The general aggregate limit shall apply separately to the Contract;
  - b. Premises/Operations;
  - c. Actions of Independent Consultants;
  - d. Products/Completed Operations to be maintained for at least two (2) years after the expiration or termination of the Contract;
  - e. Personal injury liability including coverage for offenses related to employment and for offenses assumed under the Contract (including deletion of any standard employment and/or contractual exclusions if contained in the personal injury coverage section); and
  - f. If a Program encroaches within fifty (50) feet of the centerline of a railroad, the CGL insurance policy shall include ISO Endorsement CG-24-17 or its equivalent prior to the Consultant beginning any work on such Project.

### C. Automobile Liability

The Consultant shall obtain and maintain, from and after the date of the Contract, insurance coverage for third party legal liability claims arising from bodily injury and/or damage to property of others resulting from the ownership, maintenance, or use of any motor vehicle (whether owned, hired, or not owned), both on-site and off-site. Such Business Automobile Liability (“BAL”) insurance shall also include coverage against uninsured motorists and automobile contractual liability. The BAL insurance shall satisfy the following requirements:

1. Minimum \$2,000,000 combined single limit on coverage.
2. The BAL insurance policy shall include waivers of subrogation in favor of the Additional Parties.
3. The BAL insurance policy shall name the Additional Parties as Additional Insureds.
4. If a Project encroaches within fifty (50) feet of the centerline of a railroad, the BAL insurance policy shall include ISO Endorsement CA- 20-70 or its equivalent prior to the Consultant beginning any work on such Project.

### D. Workers Compensation and Employers Liability

The Consultant shall obtain and maintain, from and after the date of the Contract, insurance coverage for claims arising from Workers Compensation statutes and from Employer’s Liability or other third party legal liability claims arising from bodily injury, disease, or death of the Consultant’s employees. Such insurance shall satisfy the following requirements:

1. The Consultant shall provide Workers Compensation coverage for all employees and require that their subcontractors provide Workers Compensation coverage for all their employees in accordance with the statutory requirements of the jurisdiction in which the work is being performed.
2. The policy shall provide for both Workers Compensation coverage (“Part A”) and Employers Liability coverage (“Part B”).
3. The minimum limits of coverage for Part A (Workers Compensation) shall be in accordance with the statutory requirements of the jurisdiction in which the work is being performed. The minimum limits of coverage for Part B (Employers Liability) shall be \$1,000,000 for each accident, \$1,000,000 for each employee, and a \$1,000,000 aggregate policy limit for disease.
4. Part B (Employers Liability) of such insurance policy shall include waivers of subrogation in favor of the Additional Parties. The Additional Parties shall

be named as Additional Insureds with respect to Part B (Employers Liability).

E. Excess Liability / Umbrella Liability

The Consultant shall obtain and maintain, from and after the date of the Contract, insurance coverage for third party legal liability claims against the Consultant that exceed the per occurrence or general aggregate limits of the CGL insurance policy, the BAL insurance policy, and Part B (Employer's Liability) of the Workers' Compensation and Employer's Liability insurance policy. Such excess/umbrella insurance shall satisfy the following requirements:

1. Unless otherwise specified by the Procurement Officer, the required minimum coverage limits for such insurance is \$2,000,000 per occurrence.
2. The Additional Parties shall be named as Additional Insureds with respect to such excess/umbrella liability insurance.
3. The excess/umbrella liability insurance policy shall include waivers of subrogation in favor of the Additional Parties.
4. The excess/umbrella liability insurance shall be primary and noncontributory with respect to the coverage afforded to the Additional Parties.

F. Additional insurance requirements

1. The amount of insurance coverage specified herein shall be the minimum amount of insurance available to satisfy claims. The Consultant shall purchase and maintain such insurance with a minimum of the limits of liability as specified herein, as otherwise specified by the Procurement Officer with respect to a particular project, or as required by law, whichever is greatest.
2. A policy is not acceptable if it allows the costs associated with investigating, managing, or defending against any claim or any other costs incurred by the insured or the insurer to be deducted from the policy limits.
3. Required insurance shall be purchased from and maintained with a company or companies lawfully authorized to do business in the State of Maryland. Insurance companies providing coverage as required herein shall have an AM Best rating of A-VII or better. All policies must be on a primary basis. All policies, except Professional Liability and Workers' Compensation, shall name the Additional Parties as "Additional Insured."
4. Consultant shall be responsible for the maintenance of this insurance regardless of whether the work is performed directly by Consultant, by any

subcontractor, by any person employed by the Consultant or any subcontractor, or by anyone for whose acts the Consultant may be liable.

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

**End of Addendum 1, Line item 5**