



**Maryland Stadium Authority
Request for Proposals
Construction Management Services
Redevelopment of the Pimlico Racing Facility**

Issue Date: April 16, 2024

Minority Business Enterprises are encouraged to respond to this Request for Proposal. Please refer to Section 1.20 of this RFP for information regarding the MBE submission and compliance requirements.

KEY INFORMATION SUMMARY SHEET

**MARYLAND STADIUM AUTHORITY
Request for Proposals
Construction Management Services
Redevelopment of the Pimlico Racing Facility**

RFP Issue Date: **April 16, 2024**

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

Procurement Method: Competitive Sealed Proposals

MBE Participation Goal: 32% overall and sub-goals of
8% for African-American firms and
11% for women-owned firms
for preconstruction services.

NOTE: The overall goal and associated sub-goals for
Construction Services will be determined during the
preconstruction phase and prior to bidding.

Pre-Proposal Conference: **April 24, 2024 at 10:00 a.m. (Local Time)**

**Closing Date and Time
Technical Proposals:** **May 20, 2024 at 1:00 p.m. (Local Time)**

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SECTION 1

GENERAL INFORMATION

1.1 Summary Statement

On January 5, 2024, the Maryland Thoroughbred Racetrack Operating Authority (the “MTROA”) released a study titled “Report of The Maryland Thoroughbred Racetrack Authority” (the “Study”). Among a number of items, the Study recommends extensive renovations and improvements at the Pimlico Racing Facility in Baltimore (the “Project”). The renovations and improvements are identified in the Study as the “Pimlico Plus” model.

The Study, which is inclusive of the following reports, “Review and Analysis of Thoroughbred Racing Operating Models” dated January 2024 by Crossroads Consulting and “Racing & Training Center Development Report” dated January 5, 2024 by Populous, is attached hereto as Attachment C.

Maryland Stadium Authority (the “MSA”) will manage and oversee the design and construction of the Project. The “Pimlico Option 2” concept as shown on page 66 of the Racing & Training Center Development Report – January 5, 2024 by Populous is the concept being developed.

Through this Request for Proposals (“RFP”), MSA is seeking a highly qualified Construction Management (“CM”) firm to provide Preconstruction Services for this Project. The CM may be offered the opportunity to enter into a Guaranteed Maximum Price (“GMP”) contract Agreement for the construction of the Project as described in Section 1.3 and Section 3.2 of this RFP.

The scope of work for Preconstruction Services includes, without limitation, design and constructability reviews, logistics planning, cost estimating, and project scheduling as described in Section 3 of this RFP.

1.2 Abbreviations and Definitions

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

- a. A/E - The team of architects, engineers, and other professional A/E’s required and assembled to perform the feasibility studies and/or design and construction administration services associated with the Program.
- b. Agreement – The written contract titled “Preconstruction Services Agreement” that will be entered into by MSA and the selected Offeror responding to this RFP. The Agreement will include all general MSA terms and conditions, and will incorporate the entire RFP, including any

amendments/addenda, and all or indicated portions of the selected Offeror's proposal. A sample of the agreement is attached hereto as **Attachment M**.

- c. COMAR - Code of Maryland Regulations (available at <http://www.dsd.state.md.us>).
- d. Construction Manager ("CM") – The construction management firm that executes an Agreement with MSA as a result of this RFP.
- e. eMMA – eMaryland Marketplace Advantage (<https://emma.maryland.gov>).
- f. Guaranteed Maximum Price ("GMP") – As defined in Article 15 of the Guaranteed Maximum Price Agreement attached as **Attachment N** and the GMP Calculation Form included in the Request for Financial Proposal included as **Attachment I**.
- g. Guaranteed Maximum Price Agreement – The GMP Agreement for Construction Management services entered between MSA and the selected Offeror. The GMP Agreement includes all general terms and conditions and will incorporate the entire RFP, including any addenda to the RFP, and all or indicated portions of the selected Offeror's proposal. A sample of the GMP Agreement is included as **Attachment N**.
- h. Local Time – Time in the Eastern Time Zone as observed by the State.
- i. MBE –Minority Business Enterprise certified by the Maryland Department of Transportation ("MDOT").
- j. MSA – Maryland Stadium Authority (<http://www.mdstad.com>)
- k. MSA Business Hours – 8:30 A.M. to 5:00 P.M., local time, Monday through Friday, excluding State holidays and official State closures.
- l. MSA Procurement Policies – MSA procurement policies and procedures (available at <http://www.mdstad.com>).
- m. MTROA - Maryland Thoroughbred Racetrack Operating Authority (<https://mtroa.maryland.gov/Pages/default.aspx>)
- n. Notice to Proceed ("NTP") – A formal notification issued by the Procurement Officer that directs the successful Offeror to perform work and establishes the date on which the work is to commence on the Project.
- o. Offeror - An individual or entity, regardless of legal status or organization, which submits a Proposal in response to this RFP. The Offeror is the individual or entity that will be executing the Agreement with MSA.

- p. Pimlico Racing Facility - The Pimlico Racecourse in Baltimore City generally bounded by Northern Parkway, Park Heights Avenue, Belvedere Avenue, and Pimlico Road.
- q. Procurement Officer (“PO”) – The MSA representative responsible for this RFP. MSA may change the Procurement Officer at any time and will provide written notice to the Offerors of any such change.
- r. Project – The work being procured through this RFP for renovations and improvements at the Pimlico Racecourse in Baltimore, MD.
- s. Project Manager (“PM”) – The MSA representative that is primarily responsible for monitoring the daily activities associated with, and providing technical guidance for, the Project. The Project Manager is the point of contact, post-award, by whom work will be assigned and to whom invoices will be submitted. MSA may change the PM at any time by written notice to the CM.
- t. Project Team – The Maryland Jockey Club, MTROA, Baltimore City and any firm, entity or government agency MSA may engage on the Project.
- u. Proposal - The submissions provided by an Offeror in response to this RFP. “Proposal” includes the technical proposal, clarifications, and/or any financial or Best and Final Offer(s) requested by the Procurement Officer or her/his Procurement designee.
- v. RFP - This Request for Proposals.
- w. Selection Committee- The persons responsible for evaluating the Proposals and oral presentations, and recommending to the Procurement Officer which Offeror to select as the CM.
- x. State - The State of Maryland.

1.3 **Agreement Type**

The Agreement that results from this RFP will include a fixed fee for preconstruction services and a contingency amount to be used by MSA in its sole discretion. If the Project moves into the construction phase and a GMP can be achieved, an at-risk GMP Agreement (**Attachment N**) will be issued for the construction of the Project. The value of the preconstruction services Agreement shall not be exceeded without the required modification to the Agreement.

1.4 **Agreement Duration**

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

1.5 **Procurement Officer**

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

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

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

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

A virtual pre-proposal conference (“Conference”) will be held on **April 24, 2024 at 10:00 a.m.** Please use the link below to register:

https://us02web.zoom.us/meeting/register/tZUpdemrrjluHdb_qL9TZ1PH5OWoYENwH6zn

A site visit will take place on **May 3, 2024 at 11:00 a.m.** Click on the link below to register.

<https://www.eventbrite.com/e/site-visit-cm-services-for-redevelopment-of-the-pimlico-facility-tickets-883546931657>

1.7 **The Project Manager**

The Project Manager is:

Chris Deremeik
Maryland Stadium Authority
351 West Camden Street, Suite 300
Baltimore, Maryland 21201

Prior to Project award, MSA may change the Project Manager at any time and will provide written notice to the Offerors. After Project award, MSA may change the Project Manager at any time by written notice to the CM.

1.8 **e-Maryland Marketplace Advantage**

In order to receive a Project award, a vendor must be registered on eMMA. Registration is free. You can register at: <https://emma.maryland.gov/>

Click on “New Vendor? Register Now” to begin the process and follow the prompts.

1.9 **Questions**

Questions regarding this RFP shall be submitted electronically, in Word or PDF format, via the following upload link no later than **May 15, 2024 at 1:00 p.m. (Local Time)**:

<https://mdstad.sharefile.com/r-r870cc9cc629947019b1f717afc89f555>

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

1.10 **Technical Proposals - Closing Date and Time**

To be considered, technical Proposals must be uploaded to the following link no later than **May 20, 2024 at 1:00 p.m. (Local Time)**:

<https://mdstad.sharefile.com/r-rb55f1037d0624352a5ac4fe00b5a54b1>

Requests for an extension of this date and/or time will not be granted. Offerors should allow sufficient electronic transmission time to ensure timely receipt of their proposals. Proposals received by MSA after the deadline will not be considered. Proposals will not be reviewed publicly. Proposals submitted in a manner not consistent with the instructions provided in this section will not be accepted.

1.11 **Oral Presentations**

Short-listed Offerors will be required to make oral presentations to the Selection Committee. The Offeror’s Key Personnel shall be the primary participants in the oral presentation. Significant representations made by an Offeror during their oral presentation must be confirmed in writing. All such representations will become part of the Offeror’s Proposal and are binding if an Agreement is awarded as a result of this RFP.

Oral presentations will take place on **June 11-13, 2024**. MSA will provide details regarding the oral presentation to short-listed Offerors only, approximately one week in advance. Offerors shall acknowledge their availability to conduct the oral presentation on each of these dates in their technical Proposal.

Typically, oral presentations will follow a specified format and generally be limited to 120 minutes [90 minutes for the presentation and 30 minutes for questions]. The Procurement Officer will notify the short-listed Offerors with details and instructions prior to the presentation. The presentation must consist of, but not be limited to, a discussion of the Offeror's specific approach to the project and understanding of the scope of work.

1.12 Duration of Offer

Proposals submitted in response to this RFP are irrevocable for **180 days** following the closing date for proposals. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

1.13 Reserved

1.14 Affidavits

a. Proposal Affidavit

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

b. Corporate Diversity Addendum and Affidavit

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

c. Contract Affidavit

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

1.15 Procurement Method

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

1.16 **Arrearages**

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

1.17 **Revisions to the RFP**

If it becomes necessary to revise this RFP before the closing date for proposals, an addendum/addenda will be posted on eMMA and MSA's website. Addenda issued after the closing date for proposals will be sent only to those Offerors who submitted a responsive and timely proposal, or, if applicable, Offerors that were short-listed to participate in the next phase of the procurement process. Acknowledgment of the receipt of all addenda to this RFP issued before the proposal closing date must accompany the Offeror's Proposal as identified in Section 4. Acknowledgement of receipt of addenda to the RFP issued after the proposal closing date shall be in the manner specified in the addendum notice. Failure to acknowledge receipt of addenda does not relieve the Offeror from complying with all terms of any such document.

1.18 **Cancellations; Discussions**

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

1.19 **False Statements**

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

- a. In connection with a procurement contract, a person may not willfully:
 1. Falsify, conceal, or suppress a material fact by any scheme or device;
 2. Make a false or fraudulent statement or representation of a material fact; or
 3. Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- b. A person may not aid or conspire with another person to commit an act under

- subsection of this section.
- c. A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five years or both.

1.20 **Minority Business Enterprise**

Minority Business Enterprises are encouraged to respond to this solicitation.

1. An overall MBE subcontractor participation goal as identified in the Key Information Summary Sheet has been established for this procurement, representing a percentage of the total contract dollar value, including all renewal option terms, if any. MBE goals for the construction phase will be determined prior to the bidding phase. All subcontractors named by the Offeror as part of their MBE Schedule must be certified with the Maryland Department of Transportation (MDOT).
2. Notwithstanding any subgoals established for this RFP, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.
3. By submitting a response to this solicitation, the Offeror acknowledges the overall MBE subcontractor participation goal and subgoals, and commits to achieving the overall goal and subgoals by utilizing certified minority business enterprises, or requests a full or partial waiver of the overall goal and subgoals.
4. An Offeror that does not commit to meeting the entire MBE participation goal outlined in this Section 1.20 must submit a request for waiver with its proposal submission that is supported by good faith efforts documentation to meet the MBE goal made prior to submission of its proposal as outlined in **Attachment D-1B**, Waiver Guidance.
5. If the Offeror fails to properly complete, sign, and submit **Attachment D-1A** at the time it submits its technical Proposal, the Procurement Officer may determine that the Proposal is not reasonably susceptible of being selected for award.
6. Attachments
 1. Minority Business Enterprise instructions and forms are provided in **Attachment D** to assist Offerors.
 2. The Offeror shall include with its technical Proposal a completed MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) whereby:
 - a) The Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
 - b) The Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of

Proposal submission. The Offeror shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE prime (including a prime participating as a joint venture) to be counted towards meeting the MBE participation goals, each MBE subcontractor's MDOT certification number and the North American Industry Classification System ("NAICS") code and product and service description of the work to be performed.

- c) An Offeror requesting a waiver should review **Attachment D-1B** (Waiver Guidance) and **D-1C** (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.
 - d) If the Offeror fails to submit a completed **Attachment D-1A** with the technical Proposal, as required, the Procurement Officer may determine that the Proposal is not reasonably susceptible of being selected for award.
7. Offerors are responsible for verifying that each MBE (including any MBE primes and MBE primes participating in a joint venture) selected to meet the goal and any subgoals, and subsequently identified in **Attachment D-1A**, is appropriately certified by the Maryland Department of Transportation and has the correct NAICS codes allowing it to perform the committed work.
8. Within ten (10) business days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, the Offeror must provide the following documentation to the Procurement Officer:
1. Outreach Efforts Compliance Statement (**Attachment D-2**);
 2. MBE Subcontractor/Prime Project Participation Certification (**Attachment D-3A/3B**); and
 3. A copy of each subcontract agreement, between the apparent awardee and any proposed MBE subcontractor that the parties intend to enter into contingent upon the MSA's award of the prime contract. The subcontract agreement must contain all necessary terms, including pricing, required for the MBE to perform its proposed work and for the apparent awardee to pay the MBE for its work during the term of the agreement; and
 4. Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.
 5. Further, if the selected Offeror believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11. If the recommended awardee fails

to return each completed document within the required time, the Procurement Officer may determine that the recommended awardee is not responsible and, therefore, not eligible for award. If the Project has already been awarded, the award is voidable.

9. A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are 410-865-1269, 1-800-544-6056, or TTY 410-865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.maryland.gov/directory/>. The most current and up-to-date information on MBEs is available via this website. Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.
10. An Offeror that requests a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (**Attachment D-1C**) and all documentation within ten (10) business days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in COMAR 21.11.03.11.
11. All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (**Attachment D-1A**), completed and submitted by the Offeror in connection with its certified MBE participation commitment shall be considered a part of the Agreement and are hereby expressly incorporated into the Agreement by reference thereto. All of the referenced documents will be considered a part of the Proposal for order of precedence purposes (see **Agreement – Attachment M**).
12. The Offeror is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the requirements of the MBE program and pertinent contract.

1.21 **Incurred Expenses; Economy of Preparation**

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

1.22 **Protests/Disputes**

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

1.23 **Access to Public Records Act Notice**

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

1.24 **Offeror Responsibilities**

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

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

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

1.26 Non-Availability of Funding

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

1.27 Financial Disclosure

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

1.28 Non-Exclusive Use

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

1.29 Sustainability Policies

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

1.30 Payments by Electronic Fund Transfer

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

1.31 **Confidentiality**

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

1.32 **Loss of Data**

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

1.33 **Non-Hiring of Employees**

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

1.34 **Nondiscrimination in Employment**

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

1.35 Contingent Fee Prohibition

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

1.36 Political Contribution Disclosure

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

1.37 Verification of Registration and Tax Payment

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

1.38 MBE and Prevailing Wage Compliance System

As part of MSA's commitment to assist firms in complying with legal and contractual requirements, MSA maintains a web-based MBE and prevailing wage compliance system. The system was designed to provide various work-flow automation features that improve the project reporting process. This system will monitor contract compliance for all Program contracts. The selected prime Offeror, its first-tier consultants, and all MBE participation subcontractors awarded contracts will be required to use the web-based system to submit project information including, but not limited to, certification of payments made

and received and certified payroll records (if the contract includes prevailing wage and/or workforce development requirements). MSA may require additional information related to the contract to be provided electronically through the system at any time before, during, or after Agreement award.

1.39 Bonding

The CM shall have bonding capacity (i.e., performance and payment) no less than \$250 million. Offerors are required to submit, at the time of submitting a response to this RFP, a letter from a surety identifying the CM's free bonding capacity. Sample copies of the Performance Bond Form and the Labor and Material Payment Bond Form are included in **Attachment K** and **Attachment L** of the RFP.

1.40 Maryland Law

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

1.41 Acceptance of Terms and Conditions

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

1.42 Procurement Regulations

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

1.43 Multiple Proposals

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

1.44 Web-Based Project Management System

MSA maintains a web-based project management system. The system was designed to provide various work-flow automation features that improve project management and financial processes. The selected prime Offeror will be required to use the web-based system to submit project information including, but not limited to, correspondence, submittal data, payment application, etc. There is no fee to utilize the system.

SECTION 2

OFFEROR'S QUALIFICATIONS

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

- a. Has been in business for at least five years;
- b. Is licensed to operate in the State of Maryland;
- c. Has experience completing projects of similar size, scope and complexity;
- d. Has experience completing projects under the Construction Manager at Risk, or similar, delivery method;
- e. Has experience providing the following services during both preconstruction and construction phases: quality assurance/quality control, estimating and budget control, CPM scheduling, value engineering, and evaluation and implementation of innovative construction techniques;
- f. Has experience completing highly complex construction projects that require working in locations that pose logistical challenges, occupied building environments, and the hosting of large gatherings/public events during construction operations;
- g. Has experience with community workforce development and implementation of training programs;
- h. Has the ability to meet the bonding and insurance requirements set forth in Section 1.39, and **Attachment M** and **Attachment N** of the RFP.

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

SECTION 3

PURPOSE AND SCOPE OF WORK

3.1 Purpose

The MSA is issuing this RFP to engage a highly qualified CM to provide preconstruction services related to the Project. For purposes of this RFP, Offerors shall assume that all construction management services will be a completely new effort. Information provided in this RFP must be the only basis for the response.

3.2 Overview

The Project is outlined in the “Report of The Maryland Thoroughbred Racetrack Authority” and supporting reports attached hereto as **Attachment C**.

The Project will develop the “Pimlico Option 2” concept as shown on page 66 of the Racing & Training Center Development Report – January 5, 2024 by Populous. The work includes, but is not limited to, demolition of the existing racing facility, rotation and construction of the tracks, construction of a new clubhouse, barns, infield tunnels, utilities, roadways, parking lots and equine facilities.

The scope of work for preconstruction services includes, but is not limited to, design and constructability reviews, logistics planning, cost estimating, and project scheduling as described in Section 3 of this RFP.

The Project will be designed and built under the Construction Manager at Risk with a Guaranteed Maximum Price delivery method. Pursuant to Section 2.03 of the Preconstruction Services Agreement (**Attachment M**), MSA may offer the CM the opportunity to enter into a GMP Agreement (**Attachment N**) for the construction of the project. This decision will be based on, in part, the CM’s performance during the preconstruction phase and the ability to negotiate an acceptable GMP.

The GMP is estimated to be approximately \$250 million. Preconstruction services are anticipated to start in the summer 2024.

a. Project Schedule

1. NTP for preconstruction services: September 2024
2. Demolish the grandstand and non-Preakness barns; public utilities: December 2024 to April 2025
3. Preakness 2025 at Pimlico
4. Full construction at Pimlico: May 2025 to May 2027

5. Preakness 2026 at Laurel
6. Substantial completion of all project components: May 2027
7. Preakness 2027 at Pimlico (grand opening)

b. At a minimum, MSA anticipates the following bid packages for the Project:

1. Public Utilities (i.e. BGE, Verizon)
2. Demolition
 - a. Phase 1 - Existing Grandstand and Equine Barns Only
 - b. Phase 2 - Remaining Facilities (i.e. Tracks, Clubhouse, Preakness Barns, etc.)
3. Civil and Site Utilities (Includes Roadways and Pedestrian and Vehicular Tunnels)
4. Tracks and Racing Surfaces
5. Equine Facilities (i.e. Barns, Racing/Training Amenities)
6. Clubhouse, Racing and Public Facilities

3.3 Scope of Work – Preconstruction Services

The CM will provide preconstruction services for the Project as outlined in this RFP and the Preconstruction Services Agreement (**Attachment M**). The CM shall be an active and vested participant in the overall planning and design of the Project. The scope of services includes, but is not limited to, the following:

a. Preliminary Evaluation

The CM shall coordinate with the Project Team to provide the preliminary evaluation of the Project as indicated in section 2.01 of the Preconstruction Services Agreement. A preliminary/progress draft of the preliminary evaluation shall be submitted to the MSA within fourteen (14) days of the NTP. The completed preliminary evaluation shall be submitted to the MSA within thirty (30) days from the date of NTP.

b. Meetings

Key Personnel shall participate in the following meetings:

1. Progress meetings will occur no less than every other week. The purpose of these meetings is to discuss and review the design, constructability, schedule and the overall status of the execution of the Project.
3. Value engineering meetings will occur after each estimate review and reconciliation meeting. A minimum of two (2) work sessions are anticipated for each value engineering effort.
4. The CM shall anticipate participating in a minimum of ten (10) community engagement and/or public outreach meetings.

5. Other: A minimum of fifteen (15) meetings are anticipated for the review of the design of public utilities, civil, racetrack construction, mechanical, electrical, plumbing, fire alarm, telecommunications, security, building enclosure, and other systems.

c. Cost Estimating and Budgeting

The CM shall develop project cost estimates and budgets for the Project.

1. The base cost estimate(s) and budget(s) shall be established early in the preconstruction phase and be based upon the Project program and anticipated project schedule. The cost estimate shall be kept current and updated at the conclusion of each progress meeting.
2. Due to the changing economic climate, cost models are to be construction based, not data based; that is, the CM shall obtain pricing of trade work based directly on its experience in the market.
3. The format of the cost models and all subsequent construction cost estimates are to include all items identified to be included in the GMP. The CM is expected to coordinate with the Project Team to clearly understand the design intent and to pre-establish estimating assumptions at each phase.
4. The CM shall provide a detailed cost estimate at the conclusion of each design phase of each bid package. Cost estimates are to be provided within ten (10) business days after receipt of the Schematic Design (SD) and within fifteen (15) business days of the Design Document (DD) and Construction Document (CD) submissions (e.g. 50% and 70%).
5. The base cost model and each of the subsequent cost estimate submissions are to include a written description of the CM's methodology for developing the specific estimate submitted.
6. In the event that the cost estimate exceeds the estimated GMP at any point during the preconstruction/design phase, the CM shall work in conjunction with the Project Team to redesign the facility as necessary to maintain the established program and meet the estimated GMP without additional compensation to the CM.
7. The Project Team will review the CM's cost estimates for reasonableness and compatibility with the estimated GMP. The CM shall be responsible for managing the process of reconciling its estimate with MSA's third party cost consultant's estimate, including meetings and negotiations with the Project Team that are necessary to explain and resolve questions and differences that may occur in any of the CSI divisions or trade packages expeditiously. In the event of a disparity between the two estimates, the CM shall work with the Project Team to reach a mutually agreed upon and acceptable cost estimate. Upon conclusion of this process, the two estimates shall be reconciled, and a final reconciled cost estimate shall be submitted for approval.

d. Scheduling

During the preconstruction period, the CM will develop the Preconstruction CPM Schedule in accordance with Exhibit D of the Preconstruction Services Agreement (**Attachment M**).

e. Project Phasing and Site Logistics Plan

The CM shall establish the Phasing and Site Logistics plan for execution of the Project. The CM shall prepare and discuss site logistic plans. The CM shall be prepared to share its current site logistics and phasing plan at each progress meeting.

f. Constructability

The CM shall be actively engaged with the Project Team during the design and planning of the Project to provide guidance and leadership on the constructability of the Project for the purpose of identifying errors and deficiencies, omissions, coordination, interdisciplinary design conflicts in the design for the purpose of improving the design, minimizing RFIs, achieving the most cost effective construction, eliminating added costs and negative effects on the quality of construction and ensuring completion of the work in accordance with the project schedule.

The CM shall assume delegated design requirements to apply to the following items of work: trellises, exit stairs, guardrails, handrails, non-load bearing interior metal stud partitions, cold formed steel framing, cold formed steel trusses, open web steel joists and joist girders, wood, trusses, combination wood, metal and plywood joists, precast concrete elements, prefabricated wood or metal buildings, tilt-up concrete panel reinforcement and hardware required for lifting to position, special foundation systems, precast concrete piles, precast concrete framing, post-tensioned concrete framing, engineered steel framing connection design, wood framing, mechanically stabilized earth (MSE) retaining walls, fire alarm system, fire protection in buildings and the tunnel, and racetrack irrigation design.

The CM is responsible for providing continuous constructability review with comments provided at each progress meeting. At the conclusion of each design phase, the CM shall provide organized constructability reviews of design submissions inclusive of the following:

1. A complete report identifying constructability issue(s); a description of why the issue is being identified; and the recommended approach to address/resolve the issue.
2. Marked up drawings and specifications as necessary to clearly convey the review comments and recommendations.

3. A statement verifying that the constructability comments and recommendations have been implemented or addressed in the design phase following each review.

g. Building Information Modeling

The A/E is required to design utilizing Building Information Modeling (BIM) software to prepare construction documents. The A/E will prepare the document/model to a Level of Development (LOD) 300. The CM shall be an active participant in BIM process to ensure the ability to advance the BIM model to LOD 400 to coordinate between trades in the construction phase.

h. Value Management/Engineering

The CM shall lead the Value Engineering effort as required for the Project to be designed and constructed within the estimated GMP and schedule constraints.

i. Quality Assurance

The CM shall actively participate in the review and coordination of drawings and specifications as they are prepared to identify areas/items that may appear ambiguous, confusing, conflicting or erroneous. The CM shall provide feedback of such items at each progress meeting. The CM shall also provide a report with each design phase submission identifying any such items and provide a recommendation of alternative solutions whenever design details affect the cost of construction and/or the project schedule.

j. Collaborative Efforts

MSA expects the CM to develop plans addressing ways to maximize local economic benefits, which include; work-based learning, apprenticeship training, and contracting opportunities. Additionally, all trade contractors selected by the CM to perform on-site work on this project will be required to document and report the number of City residents employed on the project. To support this effort, CM's shall include and account for the following as part of their submission:

1. Workforce Development Plan (hereinafter "Plan")
 - a. For Preconstruction Submission:
 - A general approach to workforce development efforts to be implemented throughout the course of the Project.
 - Organizational chart showing responsibility and accountability for implementing the Plan, including the anticipated staffing requirements for the Plan and the roles/responsibilities of such staff.
 - A completed Baltimore City Resident Job Projections and Skill Requirements Chart (**Attachment P**).
 - A description of the Offeror's overall staffing model for construction of

the Project, including measures to ensure adequate labor supply and stability to fulfill the Project's workforce needs. The description shall include special hiring requirements/expectations for each job type.

b. During Preconstruction/Planning:

- The estimated percentage of positions and projected work hours that will be filled at the journeyman, apprentice/trainee, skilled and common laborer, untrained entry level new hire, including the specialized skills or certifications for each position, and the skills necessary to meet the basic position qualifications.
- A description of how the Offeror shall work with the MSA Mayor's Office of Employment Development (hereinafter "MOED"), State-certified training organizations, and the specific trade contractors to educate and train the workforce in each new position that may be available and include a process for providing review and input to the curricula offered by the training partners to meet additional project workforce needs.
- A process on how the potential applicants shall be screened, and how the Offeror and specific trade contractors will give feedback to the training providers on employee performance and curricula improvement.

c. GMP Negotiation/Award

Prior to acceptance of the GMP, the CM shall establish the percentage of skilled and unskilled labor hours for the Project to be performed by City residents. As part of the subcontractors' bids for the work, the CM shall require that each subcontractor submit a total number of the hours that will be required to complete the subcontracted work, and the number of hours of such work that will be performed by City residents. With the bid tabulations, the CM shall submit the Workforce Utilization Estimates provided by each subcontractor. The CM shall ensure that the Workforce Utilization Estimate is considered as part of its subcontractor selection process.

The CM shall submit the applicable reports included in **Attachment P** herein. The CM and its respective subcontractors shall make good faith efforts as noted below, but not limited to:

- Ensuring that MOED is made aware of employment opportunities to the fullest extent practicable through outreach and recruitment activities.
- Actively recruit City of Baltimore residents via MOED, MSA and collective and independent job fair recruiting efforts.
- Use the service and assistance of MOED as a first-choice recruiter to hire Baltimore City residents for job opportunities with the intention of maintaining their employment on the project for as long as professionally possible.

MSA will incur damages (including but not limited to loss of goodwill, detrimental impact on MSA's goals for economic development, and diversion of internal staff resources) if the CM does not comply with the minimum goals established in the CM's Workforce Development Plan, including the reporting requirements on progress toward attaining those goals set forth in the Plan. If negotiable terms are reached at the end of preconstruction, the resulting GMP Agreement will include a clause assessing liquidated damages to the CM if the CM fails to provide the required reporting information or to achieve the goals related to the Plan. The GMP Agreement will also provide that MSA may waive the right to collect liquidated damages upon MSA's determination that the CM has made good-faith efforts to comply with the reporting requirements and staffing goals of the Plan.

k. Bid Packaging, Bidding and GMP Development

1. The CM shall coordinate and assign the work, or any Owner purchased material to the trade contractor capable of performing the Work in the most economical and efficient way. The CM shall arrange and package scopes of work in a manner that will ensure fulfillment of the Project's procurement goals and requirements. Packaging multiple items of work as part of a "General Trades" package is not acceptable.
2. Upon MSA's approval of the seventy percent (70%) Construction Documents and the "Preconstruction CPM Schedule for Bidding and GMP Development" as required by Exhibit D of the Preconstruction Services Agreement (**Attachment M**), the CM shall prepare bid packages and advertise/solicit proposals from trade contractors as necessary to develop and provide a GMP proposal to the MSA. The GMP proposal shall be provided within the timeframe indicated in CM's technical Proposal.
3. The GMP proposal shall be organized in the format outlined in the GMP Calculation Form as Attachment B in the financial Proposal form included in **Attachment I**. The GMP proposal shall be calculated using the applicable lump sum amounts and the percentage multipliers included in the financial Proposal.

The GMP Proposal consists of the following items as described in the Article/Section identified below in the GMP Agreement.

- Cost of the Work (Article 16)
- General Conditions (Article 17)
- Construction Manager Fee (Article 18)
- CM Contingency (Section 19.3)
- CM Allowances and Holds (Section 19.4)
- Owner Contingency (Section 19.7)
- Owner Allowance (Section 19.8)

4. The CM shall take all measures necessary to maximize the participation and competition of trade contractors/vendors/suppliers in the pre-qualification and bidding process and to maximize MBE participation. The CM shall advertise the opportunity to participate in the Project to a broad spectrum of potential sources including but not limited to its own network, local newspaper(s) of record, trade associations, local chambers of commerce and other outlets expected to promote interest in competing for the trade packages.
5. MSA will post public notice on the MSA website (<http://www.mdstad.com/current-contract-opportunities>) and the eMMA website informing prospective trade contractors of the opportunity available and directing interested parties to contact the CM for specific information. Such trade contract bidding will be directly between the CM and the trade contractor and despite public posting it shall not constitute procurement by the MSA.
6. The CM shall conduct a pre-qualification process for all prospective trade contractors prior to solicitation of bids for trade packages and/or materials for the GMP proposal to ensure that all bidders/proposers have the necessary expertise required for the Project. Pre-qualification procedures, including any forms to be used for this purpose, are to be submitted to the MSA for review and approval, at least ten (10) calendar days in advance of any solicitation of trade contractors for this purpose.
7. The CM shall conduct “Outreach Sessions” designed to encourage local and minority businesses to participate in the pre-qualification and bidding process. The CM shall utilize media to advertise its “Outreach Session” at least ten (10) days in advance of the event.
8. The CM shall receive a minimum of three (3) competitive bids for all trade packages/materials/equipment. Should three (3) competitive bids not be received on each package, the CM will be asked to provide all documentation showing sufficient efforts were made to obtain the minimum number of bids on each bid package. If MSA determines the level of effort to be insufficient, CM will be required to re-bid select packages to obtain a competitive number of bids. In the event that some or all packages are re-bid, the CM shall mitigate any time or monetary impacts so that the overall project budget and schedule are not affected.
9. The CM shall receive bids at a single location to facilitate attendance and oversight of the process by the MSA. In the event that the CM elects to receive electronic bids, the process and system for doing so must be submitted to MSA for review and approval. MSA intends to be involved in the bidding process, which includes, but is not limited to, being present when the bids are opened, participating in scope review sessions with the bidders, etc.
10. The CM may reject some or all bids and repeat the bidding for the trade work or re-package the trade work activity with the MSA’s approval. The

MSA may reject any trade contractor recommended by the CM, upon which the CM shall recommend an acceptable substitute.

11. In the event that the CM's GMP Proposal includes any recommendation for award to other than the lowest bidder on any trade contract, the CM must provide a written explanation for any such recommendation for review and approval by MSA.

I. CM Contingency

CM Contingency is subject to the provisions of the Section 19.3 of the GMP Agreement.

m. Allowances and Holds

The inclusion of allowances and holds is subject to the provisions of Section 19.4 of the GMP Agreement. The use of an allowance or hold shall be limited to items authorized or requested by the MSA, and the MSA expects the number of allowances/holds to be minimal.

1. Allowances/holds are not allowed within the trade contracts or the trade contractor bids.
 2. Allowance/hold items are inclusive of bonds, insurances, fee, etc. The amount for allowance/hold items shall be clearly identified and tabulated in the GMP in accordance with the format outlined in the CM Allowances and Holds form (Attachment B1) in the financial Proposal included in **Attachment I**.
- n.** Each GMP proposal submission shall be accompanied by all applicable documentation including, but not limited to, the MBE and Contract Affidavit forms attached hereto as **Attachment D** and **Attachment O**.
- o.** The GMP Proposal submission will be reviewed by the Project Team for reasonableness and compatibility with the estimated GMP. Meetings and negotiations between the Project Team may be held to resolve questions and differences that may occur between the estimated GMP, Preconstruction GMP Schedule and the GMP Proposal submission.
- p.** In the event that the GMP Proposal exceeds the estimated GMP and/or Schedule constraints, the CM shall work in conjunction with the A/E to redesign the Project as necessary to maintain the Program and meet the estimated GMP and/or Schedule as follows:
1. After consultation with the MSA, the CM shall coordinate and cooperate with the Project Team to alter and redraft Construction Documents as necessary to accomplish the required reduction in cost and/or time.

2. The CM shall develop and provide to the MSA a GMP Proposal in connection with the redrafted and altered Construction Documents to accomplish the necessary reductions in cost and/ or time.
- q. Upon approval of the initial GMP by the MSA Board of Directors and Board of Public Works, the MSA and CM will enter into the GMP Agreement attached hereto as **Attachment N**. At this point, the CM will provide Construction Management at Risk services accordingly.

GMP Proposal(s) beyond the initial approved GMP Proposal will be treated as an Owner Change Order pursuant to Section 19.6.2(a)(i) of the GMP Agreement attached hereto as **Attachment N**.

- r. MSA has the right to reject any GMP Proposal as originally submitted or adjusted. In this case, the Agreement will terminate according to its terms.

3.4 **Scope of Work – Construction**

The Project will be designed and built under the Construction Manager at Risk with a Guaranteed Maximum Price delivery method as stated in Section 3.2. If awarded, the CM will provide construction services in accordance with the GMP Agreement attached hereto as **Attachment N**.

The scope of services includes, but is not limited to, the following:

- a. The CM shall utilize the preconstruction CPM schedule approved with the GMP Proposal to develop the detailed construction schedule in accordance with Exhibit J of the GMP Agreement (**Attachment N**).
- b. The CM shall advance the BIM model(s) developed during the preconstruction and design phases to LOD 400 to coordinate and execute the work.

SECTION 4

PROPOSAL SUBMISSION AND REQUIREMENTS

4.1 **Solicitation Process**

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

a. Step 1 – Submission of Technical Proposal

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

b. Step 2 – Review of Technical Proposals

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

c. Step 3 - Short-List and Oral Presentation

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

d. Step 4 – Selection for the Financial Proposal Phase

After oral presentations and based on achieved rankings, the Selection Committee will select which short-listed firms will be requested to submit a financial Proposal. Offerors that are not short-listed will be notified that they are not reasonably susceptible of being selected for award.

e. Step 5 – Recommendation for Award

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

4.2 **Instruction for Submission of Proposals – General Requirements**

Offerors shall submit proposals labeled “**Redevelopment of the Pimlico Racing Facility - Request for Proposals – Construction Management Services - Volume I - Technical Proposal.**” All pages of each proposal volume must be consecutively numbered from beginning (Page 1) to end (Page “x”). The final page shall state “Final Page.”

Technical proposals shall be uploaded electronically to the link provided in this RFP. **The electronic submissions (formatted as .pdf file) shall include the firm’s name in the file name and shall be formatted so each page can be legibly printed in 8 1/2” x 11” format.**

4.3 **Volume I - Technical Proposal**

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

a. Transmittal Letter

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

b. Title and Table of Contents

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

c. Executive Summary

The Offeror shall condense and highlight the contents of the technical Proposal in a separate section titled “Executive Summary.” The summary shall acknowledge the receipt of any amendments or addenda associated with this RFP and identify its tax identification number. The Executive Summary shall not exceed two (2) pages. Offerors shall also identify any joint ventures at the time of submission, if any, and the roles these relationships will have in the performance of a Contract. Upon MSA’s request, Offerors shall make available within 24 hours the joint venture scope of work documents and/or agreement.

d. Required Submissions – Tab 1

Offerors must submit the following items in the technical Proposal:

1. A completed Bid/Proposal Affidavit (Attachment A). The form must be completed by the Offeror and all joint venture partners (if applicable).
2. A completed Conflict of Interest Information/Affidavit and Disclosure (Attachment B). The form must be completed by the Offeror and all joint venture partners (if applicable).
3. A completed MBE Attachment D-1A.
4. Bid/Proposal Bond Attachment J.
5. Capacity Summary Sheet for all Key Personnel, including subcontractors (Attachment Q).
6. Corporate Diversity Addendum and Affidavit (Attachment R).
7. Prime Contractor List of All Subcontractors (Attachment S).

e. Experience and Qualifications – Tab 2

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

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

Warning: Exceptions to the terms and conditions of the RFP and/or contract Agreement(s) may result in having the proposal deemed unacceptable or not reasonably susceptible of being selected for award.

Offerors that are short-listed to participate in oral presentations for this procurement must provide a redlined version of their proposed exceptions and modifications to the contract Agreement(s) along with the Offeror's reason/explanation for the exceptions/modifications, ***prior*** to the presentation. If MSA and the Offeror are not able to agree upon the Offeror's exceptions/modifications MSA may deem the Offeror not reasonably susceptible of being selected for award.

2. Corporate Experience

Using the Project Experience Form (**Attachment F**) provide information regarding three (3) relevant projects, valued at approximately \$250 million or greater, that have achieved Substantial Completion within the past (10) years, and which demonstrate the Offeror's experience and any of its proposed subconsultants.

The project examples shall include the following information:

- b. Project title, role of Offeror (preconstruction, construction, etc.), project location, project gross square footage, project type, and building type.
- c. Method of delivery such as: D/B with GMP, D/B, CM at Risk, GC, CM Agency.
- d. Original project construction cost at time of award, final project cost and percentage change, explain variance.
- e. Original completion date at time of award and actual completion date, explain variances.
- f. Similarities of the referenced project(s) to this Project. If performed within an occupied environment, detail the level of occupancy/major events hosted during construction operations and any measures taken to accommodate ongoing operations during the construction process.
- g. Project owner's name, email address, and telephone number.
- h. Include the name(s) of the Project Executive, Project Manager, Project Superintendent, and Project Scheduler for the project.
- i. Identification of any of the proposed Key Personnel who were involved in the project, including their role and responsibilities.
- j. Project color photographs.

3. Key Personnel Experience and Past Performance

- a. Provide an organizational chart to identify the Key Personnel that will be assigned to the Project. At a minimum, the Key Personnel shall include the positions listed in subsection (f) herein.
- b. Clearly identify the individual(s) that will attend design meetings and serve as the day-to-day contact for the Project Team.

- c. Provide a brief narrative outlining the anticipated roles and responsibilities of the Key Personnel during preconstruction and construction.
- d. Provide a detailed, but concise, resume for the Key Personnel proposed to be assigned to the preconstruction and construction phases. Include all information required regarding the Key Personnel with each individual's resume. Information included elsewhere in the Proposal may not be considered in the evaluation of the Key Personnel. Resumes shall include the following information:
 1. Educational background, including degree (s) received;
 2. Work experience with current employer, including duration of employment, with dates, and position(s) held;
 3. Work experience with prior employers if relevant with dates;
 4. Project experience, preferably on one or more of the projects submitted in response to the Corporate Experience section herein, with emphasis on projects similar in size and nature to this Project. Include:
 - project design start and completion dates (month and year), and construction start and Substantial Completion dates (month and year) for each project;
 - the individual's specific role in both preconstruction/design and the construction phases of each project listed in the resume; and
 - the exact period the individual performed the specific role in the design/preconstruction phase (month and year) and in construction phase (month and year), even if the role was performed for the entire design and/or construction phases. If the specific role was performed for a particular part or aspect of the project, provide details.
- e. Reserved.
- f. Qualifications for Key Personnel
 1. Project Executive: Served in a similar role on three (3) projects. One of the three projects must have had an approximate construction cost of \$75 million.
 2. Project Manager: Served in a similar role on three (3) projects. One of the three projects must have had an approximate construction cost of \$75 million. One of the three projects must have been completed in an occupied setting.
 3. Project Superintendent: Served in a similar role on three (3) projects. One of the three projects must have had an approximate

construction cost of \$75 million. One of the three projects must have been completed in an occupied setting.

4. Cost Estimator: Served in a similar role during the preconstruction/design phase on five (5) projects utilizing the construction management at risk or design build delivery method; three (3) of which shall be approximately \$75 million in construction cost. Explain specific experience estimating early design concepts and value engineering.
 5. Lead Scheduler: The Lead Scheduler shall meet the qualifications and experience outlined in Exhibit D in the preconstruction services Agreement (**Attachment M**).
 6. BIM Manager: Served in a similar role during the preconstruction/construction phase on five (5) projects utilizing the construction management at risk or design build delivery method; three (3) of which shall be approximately \$75 million in construction cost. Explain specific experience and its application to this Project.
- g. Key Personnel Previous Working Relationships Matrix. Include information that identifies the experience of the key people working together on the Key Personnel Project Experience Matrix form included with **Attachment H**.

f. Work Plan - Tab 3

1. Estimated GMP. Comment on the adequacy of the Estimated GMP amount identified in Section 3.2 to meet the goals of the Project as presented in the RFP. Highlight any issues or circumstances (e.g., market, administrative, contractual, etc.) that could impact the Offeror's ability to ensure the execution of the Project occurs within the Estimated GMP.
2. Anticipated Project Schedule. Comment on the adequacy of the anticipated project identified in Section 3.2 to meet the goals of the Project as presented in the RFP. Highlight any issues or circumstances (i.e., market, administrative, contractual, etc.) that could impact the Offeror's ability to ensure the execution of the Project occurs within the timeframe established.
3. Staffing Plan. Provide a Staffing Plan in the format included in **Attachment G**, for the preconstruction/design and construction phases. Based on the scope and complexity of this Project, include the estimated amount of time that each team member will dedicate to the Project. The Staffing Plan shall identify the actual hours for each individual during the preconstruction phase and the percentage of time for each individual during the construction phase.

4. Work Plan. Provide a detailed narrative that is both technical in nature and effective in communicating the Offeror's approach to executing the requirements of the Scope of Work outlined in Section 3 of the RFP. Identify the roles, responsibilities and reporting structure for the key personnel during the execution of the work.
5. Preconstruction CPM Schedule. Describe how the Offeror will create, utilize, update and maintain the Preconstruction CPM Schedule required by Exhibit C of the Preconstruction Services Agreement (**Attachment M**).
6. Detailed Construction CPM Schedule. Describe the how the Offeror will create, utilize, update and maintain the Detailed Construction CPM Schedule required by Exhibit J of the GMP Agreement (**Attachment N**). Describe in detail the Offeror's process for the tasks listed below and identify what staff will have primary and supporting responsibility for each item.
 - a. Transitioning from the approved Preconstruction CMP Schedule to the Detailed Construction CPM Schedule;
 - b. Revenue loading the schedule per Section 2.0(e) Technical Requirements;
 - c. Updating the schedule per Section 5.0 Schedule Updates including the calculation of the "earned value" as described in (b) 9;
7. Building Information Modeling: Provide a detailed narrative that is both technical in nature and effective in communicating the Offeror's approach to utilizing the BIM Model(s) to help guide the design, coordinate the work and how the CM will advance the model(s) to LOD 400 during the construction phase.
8. Project Challenges: Identify the five (5) most significant challenges to executing the Project in order of importance based on the information made available in this RFP and any site visit(s). Provide a brief description of the Offeror's approach to addressing each, including specific experience resolving similar challenges.
9. Bidding and GMP Proposal Preparation. Describe the Offeror's approach to conducting the bidding and GMP Proposal development activities. At a minimum, discuss the following topics.
 - a. The process for organizing and packaging the items of Work.
 - b. The process for advertising and soliciting bids from trade contractors and/or suppliers.
 - c. The process for receiving, evaluating and comparing bids from trade contractors and/or suppliers.
 - d. The criteria used to recommend trade contractors and/or Suppliers for incorporation into the GMP Proposal.

- e. The process for managing the preparation, submission and execution of multiple GMPs, if applicable.

g. Work Samples – Tab 4

Provide a sample of the items listed below. Without violating confidentiality obligations, the project samples shall provide sufficient information to determine capability by the prime Offeror to engage in a project of this size and complexity. All items are to be original work products prepared by one of the Key Personnel proposed by the Offeror and which are from one of the completed example projects provided in response to the Corporate Experience section herein.

1. Cost Estimate for the same project at the following stages of development: Design Development; 50% Construction Documents; and Bidding/GMP Proposal Development.
2. Constructability Report
3. Detailed Revenue Loaded CPM Schedule

4.4 Volume II - Financial Proposal

Information about the due date and submission instructions will be included in the notification to the selected short-listed Offerors as set forth in Section 4.1. A sample copy of the Request for Financial Proposal is attached hereto as Attachment I.

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

SECTION 5

EVALUATION CRITERIA AND SELECTION PROCEDURE

5.1 Evaluation Criteria

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

5.2 Technical Criteria

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

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

5.3 Financial Criteria

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

5.4 Reciprocal Preference

Although Maryland law does not authorize procuring agencies to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors.

Therefore, as described in COMAR 21.05.01.04, a resident business preference may be given if: a responsible Offeror whose headquarters, principal base of operations, or principal site that will primarily provide the services required by this RFP is in another state submits the most advantageous offer; the other state gives a preference to its residents through law, policy, or practice; and the preference does not conflict with a federal law or grant affecting the contract.

The preference given will be identical to the preference that the other state, through law, policy, or practice gives to its residents.

5.5 **General Selection Process**

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

5.6 **Award Determination**

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

ATTACHMENTS

All attachments can be accessed via the following ShareFile link:

<https://mdstad.sharefile.com/d-s80f9e54dd1ec42c8a5d9ece1688863aa>

A. BID/PROPOSAL AFFIDAVIT

B. CONFLICT OF INTEREST AFFIDAVIT

**C. REPORT OF THE MARYLAND THOROUGHBRED
RACETRACK AUTHORITY**

C.1 - Review and Analysis of Thoroughbred Racing Operating Models dated
January 2024 by Crossroads Consulting

C.2 - Racing & Training Center Development Report dated January 5, 2024
by Populous

D. MBE INSTRUCTIONS AND FORMS

E. CORPORATE PROFILE

F. PROJECT EXPERIENCE FORM

G. STAFFING PLAN

H. KEY PERSONNEL PROJECT EXPERIENCE MATRIX

I. SAMPLE REQUEST FOR FINANCIAL PROPOSALS

J. BID PROPOSAL BOND FORM

K. PERFORMANCE BOND FORM

L. LABOR AND MATERIAL PAYMENT BOND FORM

M. SAMPLE CM PRECON AGREEMENT

N. SAMPLE CM GMP AGREEMENT

O. CONTRACT AFFIDAVIT

P. WORKFORCE DEVELOPMENT GUIDE

Q. CAPACITY SUMMARY SHEET

R. CORPORATE DIVERSITY ADDENDUM AND AFFIDAVIT

S. PRIME CONTRACTOR LIST OF ALL SUBCONTRACTORS

T. MBE GOAL SETTING FACTORS

ATTACHMENT A

BID/PROPOSAL AFFIDAVIT

Attachment A. Bid/Proposal Affidavit

A. AUTHORITY

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

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

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

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

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

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

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

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

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

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

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

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

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

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

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

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

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

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

G. SUBCONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

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

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

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

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

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

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

I FURTHER AFFIRM THAT:

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

M. PROHIBITING DISCRIMINATORY BOYCOTTS OF ISRAEL

I FURTHER AFFIRM THAT:

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

N. I FURTHER AFFIRM THAT:

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

O. ACKNOWLEDGEMENT

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

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

By:

Signature of Authorized Representative and Affiant

Printed Name:

Printed Name of Authorized Representative and Affiant

Title:

Title

Date:

Date

ATTACHMENT B

CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

Attachment B. Conflict of Interest Affidavit and Disclosure

Reference COMAR 21.05.08.08

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

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

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

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

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

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

Date: _____ By: _____

(Authorized Representative and Affiant)

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

ATTACHMENT C (C, C.1 & C.2)

Report of the Maryland Thoroughbred

Racetrack Authority

**REPORT OF THE
MARYLAND THOROUGHBRED
RACETRACK OPERATING AUTHORITY**

In fulfillment of requirements of SB720 and §10-1002 of the
Economic Development Article

Maryland Thoroughbred Racetrack Operating Authority

JANUARY 5, 2024

January 5, 2024

The Honorable Guy Guzzone
Budget and Taxation Committee
3 W Miller Senate Office Building
Annapolis, MD 21401

The Honorable Ben Barnes
Appropriations Committee
121 House Office Building
Annapolis, MD 21401

The Honorable Vanessa E. Atterbeary
Ways and Means Committee
131 House Office Building
Annapolis, MD 21401

Re: Report Required by SB720 and §10-1002 of the Economic Development Article (MSAR #14988)

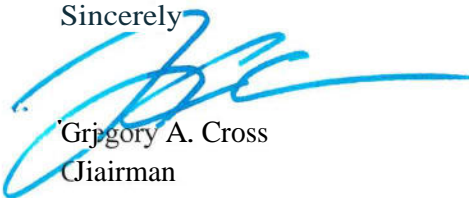
Dear Chairman Guzzone, Chairman Barnes and Chairwoman Atterbeary:

The Maryland Thoroughbred Racetrack Operating Authority, established in 2023 under §10-1002 of the Economic Development Article, is pleased to submit its initial report containing recommendations for the future of horseracing in Maryland. The Authority has met regularly since convening in August 2023, conducting research and receiving testimony from a wide variety of stakeholders.

The recommendations contained in this report represent the Authority's consensus on the steps needed to return Maryland to a best-in-class location for thoroughbred horseracing, and were unanimously approved by an e-mail poll conducted on Jan. 4, with a ratification vote scheduled for the next meeting. The Authority believes the plan outlined in the report will maintain and grow an industry that contributes \$2 billion yearly to the economy of Maryland and will protect the health and safety of horses and jockeys. Additionally, the Authority has concluded that a new path for Maryland racing will align the interests of the State of Maryland with all segments of the horse industry and will produce significant economic development benefits for the City of Baltimore.

I and members of the Authority remain ready to answer any questions you may have as you review initial findings.

Sincerely



Gregory A. Cross
Chairman

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Executive Summary

Introduction and Topline Findings

The Maryland Thoroughbred Racetrack Operating Authority (the Authority) was established in 2023 to return the state of Maryland to a best-in-class location for thoroughbred horse racing.

The formation of the Authority followed a significant commitment to racing facilities made by the Maryland General Assembly in 2020 through the Racing and Community Development Act (RCDA) Chapter 590, which envisioned major improvements to Pimlico and Laurel Park funded with bond proceeds. The improvements, premised on a consolidation of horse racing at Laurel Park and renovations at Pimlico to host only the Preakness and a limited number of racing days, have yet to take place, with cost estimates greatly exceeding available resources.

The Authority has been working since its creation to meet twin objectives mandated by the 2023 legislation: reimagining the State's horse racing infrastructure to better align with the budget contemplated by the RCDA and conducting a review of Maryland horse racing operations in order to recommend the best path forward for the deployment of the State's industry investment.

Based on analysis and review since August 2023, the Authority is releasing the following topline findings:

- A new model, **Pimlico Plus**, with racing centered in Baltimore and supported by the construction of a new training facility elsewhere, is the recommended path forward. The **Pimlico Plus** model can be undertaken at a cost significantly below previous two-track estimates and within the range of General Assembly allocations contemplated in Chapter 590.
- Under **Pimlico Plus**, Pimlico can be rebuilt as a best-in-class facility to serve as the hub of the Maryland racing industry and as a source of year-round economic activity that includes a hotel, event space, development parcels and parking that can be shared with the neighboring community.
- The combination of a rebuilt Pimlico augmented by an industry-run training center will place Maryland's \$2 billion-per-year horse industry on solid footing and position it to thrive into the 21st century.
- Maryland should fundamentally change the operating model for racing, including the promotion and operation of Maryland's premier thoroughbred races, the Preakness Stakes and the Black-Eyed Susan Stakes, to one that mirrors that in use by the New York Racing Association (NYRA). Facilities would be owned by the State and leased to a professional not-for-profit operator. This structure will better align operations with the needs of the horse racing industry and the State's significant financial investments.

The **Pimlico Plus** investment and changes will come at an ideal time for the horse racing industry as it repositions itself to maximize all available revenue streams, attract younger audiences and focus on equine health and safety, allowing Maryland to remain an industry leader

in the 21st century. It will also align Maryland with the Triple Crown venues in Kentucky and New York, which have undertaken or are undertaking similar investments.

The Maryland Thoroughbred Racetrack Operating Authority and the Scope of its Year-One Review

The Authority is composed of appointees of the governor and legislative leaders and representatives of horse industry organizations, the Maryland Stadium Authority, the Maryland Economic Development Corporation and areas surrounding Pimlico, Laurel Park and the Bowie Race Course Training Center.

The Authority convened for the first time in August 2023, and has met regularly since in furtherance of its mission: to make recommendations that it views to be in the best interest of Maryland racing and the State's citizens, and to develop new and existing racing and training facilities in coordination with other State entities.

Via presentations at public meetings and in fact-finding and outreach discussions, the Authority and its leaders and members have gathered information from: the Maryland Stadium Authority; 1/ST/The Stronach Group (which is the parent company of the Maryland Jockey Club and the owner of the Preakness Stakes); the Maryland Thoroughbred Horsemen's Association; the Maryland Horse Breeders Association; the federal Horseracing Integrity and Safety Authority; the Fair Hill Training Center in Cecil County; Tapeta Footings Inc., the Maryland-based manufacturer of a widely used synthetic racing track surface; and others.

The Authority retained two primary consultants: Populous, the leading global design firm for equine facilities, which reviewed a programmatic footprint for Pimlico and the feasibility of acquiring potential training facility locations; and Crossroads Consultants Inc., which reviewed comparable racing operations and comparable racing operating models for Maryland vis-a-vis other racing states.

This report, which was required by the General Assembly to be submitted by a revised date of Jan. 5, 2024, is based on those presentations, interviews, consultant conclusions and subsequent deliberations.

Specifically, the General Assembly sought information in three main areas: an update on the progress of the Pimlico and Laurel Park racing facility redevelopment plans under Chapter 590 of the Acts of the General Assembly of 2020; an evaluation of the feasibility of at least two alternative thoroughbred training facilities in the State; and a review of best practices for thoroughbred racing industry operating models and recommendations for operating models in the State.

Update on Redevelopment Planning and Feasibility

Under Chapter 590 of the Acts of the General Assembly of 2020 (the Racing and Community Development Act, or RCDA), the state authorized up to \$375 million in bonding authority and the use of accumulated Racetrack Facilities Renewal Account (RFRA) funds for major necessary

improvements at Pimlico and Laurel Park undertaken by the Maryland Stadium Authority, under a concept in which Maryland racing would be centered at Laurel Park and Pimlico would then be used as a Preakness-only facility with other ancillary redevelopment benefits.

After many iterations, an agreed-upon program was finalized in late 2021 and estimates were generated. The estimates were significantly over the available bonding capacity for the project.

The General Assembly called for additional input and studies in 2022, and that year, the Maryland Thoroughbred Horsemen's Association, the Maryland Horse Breeders Association, and others proposed an alternative scenario that would maintain year-round training and racing at both facilities. The alternative programming effort resulted in a revised concept plan for Laurel Park and two different Pimlico concept scenarios. In total, six scenarios have been analyzed by the Maryland Stadium Authority (MSA) since the adoption of Chapter 590, and all of them significantly exceeded available project funding.

Additionally, federal tax consequences identified and analyzed since the adoption of Chapter 590 make public investment at privately owned facilities not feasible. Therefore, the authorized concept of centering Maryland racing at Laurel Park and reconstructing Pimlico as a Preakness-only venue, given the needs of all parties and other constraints, is neither practical nor affordable.

Introduction of New Pimlico Plus Program

The Authority embarked on an exploration of a different model – shifting from a so-called “two-track solution” that redeveloped Laurel Park and Pimlico to a **Pimlico Plus** concept that centers Maryland thoroughbred racing at its historic home in northern Baltimore with the construction of a new track, new state-of-the-art right-sized clubhouse, stables for approximately 700 horses, event space and a hotel built by a private partner. Public entities would be involved in constructing structured parking needed for the project and workforce housing in the Park Heights community.

The second component of the **Pimlico Plus** model involves the acquisition and development of a training location, with barns and stables for approximately 650 horses and track facilities, discussed in greater detail below. Together, the combined stabling at Pimlico and the new training center will replace the 1,400 stalls at Laurel Park and Pimlico combined that are currently in use for Maryland racing.

The **Pimlico Plus** model has significant economic development benefits for both Baltimore and the community that will house the new training center. These include the creation of jobs and year-round economic activity at both locations, with between 140 and 160 racing days at Pimlico; workforce housing to be constructed in the Park Heights community near the Pimlico site to serve track workers; the creation of a 1,000-seat event space and new hotel at Pimlico; potential for partnerships with workforce development and higher education programs to prepare for jobs and careers in the racing and hospitality industries; and the creation of development parcels adjoining the newly redeveloped Pimlico racetrack.

Analysis by consultants shows that execution of a Pimlico-centered plan costs significantly less than options previously studied and is affordable within the range of the financial commitment made by the State via the RCDA in 2020.

Information on Proposed Training Facility

A training facility for the thoroughbred industry to complement the **Pimlico Plus** model would have the capacity for a full track, barns for approximately 650 horses, dormitory housing, and would meet related horse health and safety needs.

Working with its consultant, Populous, the Authority identified eight potential locations within a 50-mile radius of Pimlico to be examined for suitability. Those are: Bowie Race Track (Bowie), Fair Hill Training Center (Elkton), Laurel Park (Laurel), Mitchell Farm (Aberdeen), U.S. Naval Academy Dairy Farm (Gambrills), Rosecroft Raceway (Fort Washington), Maryland State Fairgrounds (Timonium), and Shamrock Farm (Woodbine).

The eight sites were reviewed extensively and ranked on a scoring mechanism that evaluated nine criteria: location, natural resources (and impact on permitting/mitigation), topography, transportation and access, utility infrastructure, jurisdictional approvals, size, acquisition cost, and relative cost of development.

Based on those criteria and scoring, the three top-ranking sites are Shamrock Farm, Mitchell Farm and Bowie Race Track, and it is the recommendation and conclusion of the Authority that those three locations move to a next stage for final consideration and subsequent acquisition. The Authority, however, will continue to evaluate and consider additional suitable properties if and when they become known.

Information on Operating Models

Crossroads Consulting was tasked with examining operating models in other states, metrics including races, purses, handle, thoroughbred development funds, and general overviews of an oversight entity. Crossroad examined models in California, Delaware, Kentucky, New York, Virginia and West Virginia.

Maryland differs from most states because racetracks are not paired with onsite gaming facilities to supplement operations. The absence of gaming creates financial pressures on a for-profit operator which leads to operational decisions that the Authority has concluded are not in the best interests of Maryland racing or the State. Crossroads highlighted the Del Mar track in California and Belmont in New York as similar prominent racetracks without onsite gaming operations as examples of alternative successful operating models for Maryland.

- Del Mar is owned by the State of California, overseen by an authority, and operated by a nonprofit consisting of the horsemen and does not have onsite gaming.
- Belmont, along with Aqueduct and Saratoga, is owned by the State of New York and operated by a nonprofit (NYRA) as a business.

The Authority concluded that, given the level of State investment required to rehabilitate and sustain the industry, a public ownership structure for the tracks and subsequent lease of them to a nonprofit entity led by Maryland industry professionals, is the best path forward.

In furtherance of these conclusions, the Authority has also engaged in negotiations with 1/ST/The Stronach Group which, subject to legislative approval of the recommendations contained in this report and final documentation, has resulted in the framework for an agreement in principle pursuant to which:

- 1/ST/The Stronach Group will transfer ownership of Pimlico to the State of Maryland as part of the redevelopment plan;
- 1/ST/The Stronach Group will transfer control of all day-to-day Maryland thoroughbred racing to a new not-for-profit operating entity created by the Authority as of January 1, 2025;
- The Authority will operate the Preakness Stakes and the Black-Eyed Susan Stakes through a licensing agreement with 1/ST/The Stronach Group; and
- The Authority will use the Laurel Park racing complex as a transition facility while Pimlico and the newly envisioned training facility are constructed, after which all racing at Laurel Park will end and the property will be redeveloped.

MARYLAND THOROUGHBRED RACETRACK OPERATING AUTHORITY

REPORT TO THE MARYLAND GENERAL ASSEMBLY **JANUARY 2024**

Legislative History

The Maryland Thoroughbred Racetrack Operating Authority (the Authority) was established through an act of the Maryland General Assembly (SB 720) in 2023.

Per statute, the mission and purpose of the Authority are to maintain the state of Maryland as a best-in-class location for thoroughbred horse racing, via recommendations it finds to be in the best interest of racing and the development of new and existing racing and training facilities in coordination with other state entities.

Additionally, under the statute, the Authority may assume management and oversight of day-to-day thoroughbred horse racing operations if it is determined to be in the best interests of the state of Maryland. Such management would come only after an executive order or determination of the Maryland Racing Commission, subject to the review of the General Assembly's Legislative Policy Committee.

Property and/or contractual obligations can be acquired in coordination with the Maryland Economic Development Corporation.

The creation of the Authority in 2023 was the most recent legislative step in a continuing effort by the State to support the equine industry in Maryland and is intended to be a mechanism to identify a path forward after years of unsuccessful efforts.

Prior to SB720, the Maryland General Assembly authorized significant investment in facilities related to thoroughbred horse racing. In 2020, the General Assembly adopted Chapter 590, the Racing and Community Development Act (RCDA), which authorized the Maryland Stadium Authority to issue 30-year bonds and draw upon funds allocated to the Racetrack Facilities Renewal Account (RFRA) for financing, planning, design, construction, and related expenses for racing facilities at both Pimlico and Laurel Park. These bonds were intended to support improvements to clubhouses, racetracks, stables, barns, and more.

In 2022, the Assembly took steps to untangle emergent challenges with language in HB 897 (Economic Development - Sports Entertainment Facilities and Events, Prince George's County Blue Line Corridor Facilities, and Racing Facilities). As authorized by that bill, the Maryland Economic Development Corporation (MEDCO) conducted a preliminary evaluation of the feasibility of an acquisition of the Laurel Park racing facility site by a government or nonprofit entity.

Plan development led by the MSA, taking into account the needs and desires of all stakeholders, led to cost estimates at both facilities far exceeding the authorized bonding capacity. As a result, those investments have yet to be undertaken.

An initial obligation of the Authority was to provide a report to the General Assembly that addresses:

- a. A review of the feasibility of least two alternative thoroughbred training facilities in the State;
- b. A review of best practices for thoroughbred racing industry operating models and recommendations for operating models in the State; and
- c. The progress of the Pimlico and Laurel Park racing facility redevelopment plans under Chapter 590 of the Acts of the General Assembly of 2020.

Authority Investigation

In June 2023, Governor Wes Moore and General Assembly leaders named members to the Authority, and appointed Gregory A. Cross, an attorney from Venable with experience in racing industry issues, as chair. The governor's selections were subject to Maryland Senate advice and consent, and by statute included nominees from the Maryland Thoroughbred Horsemen's Association and the Maryland Horse Breeders Association. Designees from the Maryland Stadium Authority and the Maryland Economic Development Corporation are also Authority voting members.

The Authority first convened on August 3, 2023, and held several multi-hour meetings and solicited presentations and testimony from relevant stakeholders.

In meetings and presentations, those providing valuable information and insight to Authority members included:

- The Maryland Stadium Authority, which reviewed cost estimates and programmatic details of previously planned improvements to Pimlico racecourse and Laurel Park;
- The 1/ST/The Stronach Group, which is the parent company of the Maryland Jockey Club and the owner of the Preakness Stakes, Pimlico and Laurel Park, reviewing its operations of facilities and events;
- Maryland Thoroughbred Horsemen's Association, which reviewed industry economic trends and operating needs;
- Maryland Horse Breeders Association, which reviewed equine industry costs and trends;
- Leadership of the Horseracing Integrity and Safety Authority, a private authority established by Congress that is providing rules and guidance on track safety, doping, and jockey safety;

- Representatives of the Fair Hill Training Center in Cecil County; and of Tapeta Footings Inc., the Maryland-based manufacturer of a widely used synthetic racetrack surface; and
- A representative of the New York Racing Association who described the association's organizational structure and ongoing facility improvements.

Together, these individuals and groups provided a comprehensive overview of all aspects of the thoroughbred racing industry in Maryland and nationwide, including operational needs, trends and safety considerations.

To assist in its analysis, research and recommendations, the Authority retained:

- Populous, a global firm with a background in equestrian, racing and sports design that had previously been selected by the Maryland Stadium Authority to redefine the built environment at the Pimlico and Laurel Park racing facilities, with a focus on integration into their surrounding communities. Populous evaluated training facility locations and revised the design concept for Pimlico.
- Crossroads Consulting Services, which has experience in the sports and entertainment industry and is familiar with the Maryland market. Crossroads has served as on-call economic advisor to Maryland Stadium Authority for more than a decade – performing cost-benefit analyses and economic and market studies of facilities including racetracks. Crossroads reviewed thoroughbred racing industry operating models throughout the United States to serve as a basis for recommended changes to Maryland's operating model.

In addition, Authority leadership engaged in productive discussions with 1/ST/The Stronach Group about mutually recognized challenges presented by the current operating model and facilities in Maryland.

Additionally, the Authority reviewed prior agreements with the communities surrounding Pimlico, and the chair and executive director began discussions with the local legislative and community leaders surrounding Park Heights and adjacent areas concerning the need for and value of a comprehensive racing-centered redevelopment plan for Baltimore.

The Authority's initial work has been undertaken amid a time of crisis and reflection in the horse racing industry. The issue of racing-related deaths of thoroughbred horses has been in the spotlight in recent years, with a number of high-profile fatalities raising concerns about the safety of the sport.

Significant steps toward broad national standards and data collection for horse health are being taken by the Horseracing Integrity and Safety Authority (HISA), created through an act of Congress in 2020. HISA is committed to a robust data analytics effort to analyze the factors that contribute to horse fatalities, including gait and stride biometrics, track and weather data. HISA has established a Blue-Ribbon Commission to work toward the ultimate introduction of synthetic surface options. The HISA executive director met with the Authority to provide background on its work.

Maryland has historically been a leader in equine health and safety, and the **Pimlico Plus** plan positions Maryland to continue in this leadership role. Under the RCDA, an Equine Health, Safety and Research Center had been studied and scoped for inclusion as part of a Laurel Park facility redevelopment. Those services, in line with what HISA has proposed – including biometric analysis, imaging and the availability of triaging veterinarian care – will be included as part of the **Pimlico Plus** plan and will be present at both the rebuilt Pimlico and the proposed training center discussed below.

National Jockey Club data shows significantly reduced injury rates for horses that race and train on synthetic tracks. The Pimlico redevelopment will be designed to allow for the installation of a synthetic track surface, as may be recommended nationally by the HISA Blue Ribbon Commission.

Progress of Pimlico and Laurel Redevelopment Plans

Legislative language: Report on the progress of the Pimlico and Laurel Park racing facility redevelopment plans under Chapter 590 of the Acts of the General Assembly of 2020.

The MSA has diligently pursued the design of the program contemplated by the 2020 RCDA, navigating the competing (and sometimes conflicting) desires of 1/ST/The Stronach Group (which via the Maryland Jockey Club owns both Pimlico and Laurel Park) and horse industry groups.

After discussions and a series of iterations, an agreed-upon program was finalized in late 2021, with estimates generated for the desired components. The estimates were significantly over the available bonding capacity for the project and were shared with legislative leaders in early 2022.

In November 2022, the Maryland Thoroughbred Horsemen's Association expressed a desire to analyze an alternative program scenario that would maintain year-round training and racing at both facilities.

The alternative programming effort resulted in a revised concept plan for Laurel Park and two different Pimlico concept scenarios. Estimates were generated for these concepts. These additional scenarios still far exceeded available project funding.

In total, over a two-year period in 2021 and 2022, six different scenarios were developed and analyzed, with cost estimates produced. They exceed available funds by a range of \$126 million to \$311 million. A review of the cost estimate of each scenario can be found in the presentation given by the MSA to the Authority on Sept. 8, 2023, which is available on the Maryland Stadium Authority [website](#).

An additional issue complicates any public investment at either Pimlico or Laurel Park under the current ownership structure. Under Section 118 of the Federal Tax Code, expenditures made by a government unit to construct improvements at a facility owned by a for-profit entity will constitute taxable income to that entity. Tax advisors have concluded that MSA expenditures at either racetrack may be treated as taxable income to any private owner.

In short, thorough analysis and evaluation have demonstrated that the original scope of MSA investments authorized by Chapter 590 are not economically feasible, even as the objectives remain as important as ever.

Therefore, the Authority is recommending a new way forward.

Discussion of Pimlico Plus Alternative Recommendations

The new direction is built on the preeminence of the Preakness – one of the world’s great sporting events – along with the undeniable investment needs at Pimlico and the opportunity to leverage state commitment in the RCDA to build world-class, safe and vibrant racing facilities. The Authority undertook an analysis of a revised concept consisting of two broad components:

1. The redevelopment of the Pimlico site under a new public ownership structure, creating a new primary racing venue in Maryland and stable facilities for 700 horses, along with a state-of-the-art equine diagnostic health facility with space for veterinary services, a right-sized clubhouse with event space that is reconfigurable for large events, a privately funded hotel, garages and development parcels.
2. The construction of a new equine training facility with 650 stable spaces and equine diagnostic and health components, on property in reasonable proximity to Pimlico that would also be acquired and developed under a non-private ownership structure.

This concept, which the Authority has dubbed **Pimlico Plus**, has been fully explored by the design consultant Populous. The consulting firm has determined that the components that have been scoped and designed by the Maryland Stadium Authority – including a clubhouse, terraced seating, jockey facilities, broadcasting, mutuels/money room, racing administration, media facilities, and spaces to accommodate daily live racing patrons – can all be incorporated at the Pimlico site. A copy of the Populous report is available on the Maryland Racing Commission/Authority [website](#).

The Authority believes that this alternative plan, which rotates the axis of the Pimlico racetrack, offers an unrivaled opportunity to create the best-in-class facilities needed as a platform to make Maryland racing sustainable and successful in the 21st century, and it does so within the economic framework approved by the General Assembly.

Following a **Pimlico Plus** strategy will create major opportunities for the equine industry, the State of Maryland, Baltimore, Park Heights, and the community that is chosen for the training center location:

- **Maintain and Expand Economic Impact of Horse Industry:** Research shows that the overall economic impact of the state’s horse industry now totals \$2.06 billion. Twenty-five percent of the state’s agricultural land - some 705,000 acres - is devoted to the support of horses, meaning that the horse industry is a key driver maintaining Maryland’s threatened but cherished green spaces. The number of direct and indirect jobs associated with the industry is 28,000, and industry participants spend \$1 billion annually on goods and services. Within the broader equine industry, the racing sector has the largest

economic impact, estimated at \$572 million, with 37,183 thoroughbreds in the state. The **Pimlico Plus** strategy recommended by the Authority will preserve this vital industry and create conditions for future sustainability and growth.

- **Full-year Economic Activity at Pimlico:** A reconstructed Pimlico course would host approximately 140 to 160 live racing days per year, the number believed to be needed in Maryland to ensure future viability of the racing industry. Racing and daily training will provide year-round economic activity, entertainment and jobs for the Park Heights community.
- **The Triple Crown:** The Preakness Stakes, the second leg of the Triple Crown, is one of the most-viewed and most-anticipated sporting events in the United States and a showpiece for Maryland and Baltimore. Sadly, the facilities at Pimlico no longer match the reputation of the event and lag behind other Triple Crown hosts that are each currently investing hundreds of millions of dollars in their facilities. The **Pimlico Plus** plan will responsibly elevate Pimlico facilities to serve as an appropriate home for the second leg of the Triple Crown.
- **Workforce Housing Investment:** With horses and track facilities in need of daily care, training and maintenance, nearby affordable housing for track workers such as riders, hot-walkers and grooms is vital. In the **Pimlico Plus** plan, housing would be constructed in Baltimore neighborhoods through an investment of funds (targeted at \$10 million-\$20 million) in partnership with the Maryland Department of Housing and Community Development.
- **Onsite Hotel:** The plan envisions a hotel to be constructed through a private investment partnership, a model that has proved successful at racing venues in other states.
- **Event Space:** The **Pimlico Plus** plan will create convertible space in the clubhouse, of sufficient size to host seated events for up to 1,000 guests.
- **Grandstand:** A right-sized grandstand would be constructed with overlays that could be activated for the Preakness and other large events.
- **Parking Facilities:** Two structured parking facilities would be constructed as part of the project. One would be as part of the privately constructed hotel. A second garage developed in conjunction with MEDCO could be used daily by patients and staff at Sinai Hospital, which is adjacent to the racecourse, and be available as event parking for the Preakness and for daily racing, festivals and large events with adjacent tunnel access to the Pimlico infield. MEDCO will explore financing options to include public/private partnership alternatives and potential application of its real estate development, construction, and project management expertise for the proposed garage projects.
- **Workforce Training Partnerships:** Daily racing, hotel operations and event space functions provide an opportunity for jobs and training for students and job seekers at all levels. For example, a potential partnership among hotel operators, event space operators, track management and the Morgan State University Hospitality Management Program

would provide training and jobs for those seeking careers in the global hospitality industry.

- **Community:** The build-out of these components would take place in recognition of the Pimlico Redevelopment Community Compact. Community interests surrounding Pimlico Race Course are integrally entwined with the future of the 140-acre site, and any redevelopment should take community needs and interests into account.
- **Horse Health:** The Authority spent considerable time discussing issues surrounding horse health and is committed to creating facilities that provide the safest equine environment. It has been widely reported that track surface is a cause of horse breakdowns, which can be minimized using synthetic track surfaces – built upon a uniform and well-drained base surface topped by a synthetic layer that is resistant to water pooling and other weather and wear factors. One of Maryland’s peer Triple Crown tracks, Belmont, is including a transition to a synthetic surface as part of a \$455 million improvement to racing facilities and preparing its main track for potential conversion to the Tapeta surface. HISA is expected to issue its track surface recommendations in early 2024, and the Pimlico track redesign will be built to allow for the installation of a synthetic surface. Pimlico will also include important diagnostic and data collection capabilities to comply with HISA standards, and the opportunity to add an equine therapeutic center.

The consultant study estimates the cost of the Pimlico portion of construction to be \$279 million, plus contingencies and soft costs.

Feasibility of New/Replacement Training Facilities in Maryland

Legislative language: Report on the feasibility of establishing at least two alternative thoroughbred training facilities in the State.

To execute the model described above, a companion training facility is needed to accommodate the 700-800 horses that currently reside at the Maryland racetracks but cannot be stabled at Pimlico because of site limitations.

The Authority has determined that such a training facility should be constructed at a new location. The training facility should have capacity for a full track with required stabling spaces and veterinary facilities to meet related horse health and safety needs.

Working with its consultant, Populous, the Authority developed size, location and accessibility criteria and identified eight potential locations to be examined for suitability. Those are: Bowie Race Track (Bowie), Fair Hill Training Center (Elkton), Laurel Park (Laurel), Mitchell Farm (Aberdeen), U.S. Naval Academy Dairy Farm (Gambrills), Rosecroft Raceway (Fort Washington), Maryland State Fairgrounds (Timonium), and Shamrock Farm (Woodbine).¹

¹ During the Authority investigation of possible sites, the Authority learned through industry sources that Shamrock Farm, which is currently owned by the family of Authority member Tom Rooney, may be for sale. Those members leading the search reached out to Mr. Rooney about its availability, and he confirmed that a sale may be possible.

As discussed in the Populous report, eight sites were reviewed extensively and ranked on a scoring mechanism that graded nine criteria: location, natural resources (and impact on permitting/mitigation), topography, transportation and access, utility infrastructure, jurisdictional approvals, size, acquisition cost, and relative cost of development. Laurel Park, which currently hosts training and racing activity, was determined not to be a suitable location for the **Pimlico Plus** training center because of costs involved with acquisition, demolition and reconstruction as well as environmental factors. State-of-the-art equine health facilities are also contemplated as part of the training center program.

It is the recommendation of the Authority that the three top-scoring sites on that grading system – Shamrock Farm, Mitchell Farm and Bowie Race Course – move to final consideration and toward acquisition. The consultant study estimates that development costs of the top three potential sites, exclusive of site acquisition costs, will range from \$113 million to \$116 million, plus contingencies and soft costs.

In total, the 2020 Racing Community Development Act authorized a State investment of \$375 million plus accumulated RFRA funds. The aggregate total investment contemplated by the **Pimlico Plus** plan falls within the allocated funds.

Assessment of and Recommendations for the Organization of Thoroughbred Racing and Training Operations in Maryland

Legislative language: a review of best practices for thoroughbred racing industry operating models and recommendations for operating models in the State.

Maryland racing enjoys a storied past, but the general contours of the industry have been largely unchanged for decades. The status quo of racing in Maryland centers on a private, for-profit entity, 1/ST/The Stronach Group, which is the parent company of the Maryland Jockey Club. The Stronach Group (or its predecessors) purchased the assets of the Maryland Jockey Club in two stages, with a minority interest acquired in 2002 and a majority interest purchased in 2007. Assets include the two major racing facilities in Maryland – Pimlico and Laurel Park - and the Preakness Stakes Triple Crown race.

As discussed above, the physical plants of both tracks are in dire need of investment, with clubhouse and grandstand areas that are both unnecessarily large and failing. At Pimlico, no significant renovations have been made to the clubhouse since construction in 1960, and according to the Crossroads report, “the overall conditions of Pimlico threatens its continued existence and the success of the Preakness Stakes.” At Laurel Park, roofs, HVAC, plumbing, and electrical systems are failing, and backstretch barns, stalls and housing fall well below applicable standards.

Mr. Rooney immediately recused himself from the Authority’s consideration of the site and has had no involvement in the Authority’s inclusion of Shamrock as a potential training facility location. If a decision is made to move forward with Shamrock Farm as a training center location, a third-party appraisal process will be used to substantiate a purchase price.

1/ST/The Stronach Group indicated in response to questions that it will not undertake private capital investments in its physical holdings without a corresponding return on investment, which, given the cost of needed renovations, current industry conditions and the available revenue streams in Maryland, will not materialize, in the Authority's view.

Ownership of Maryland Jockey Club facilities by 1/ST/The Stronach Group has coincided with a precarious trajectory for thoroughbred racing in Maryland. Thoroughbred racing has experienced a decline in attendance that was exacerbated by the pandemic. As a result, live on-track wagering accounted for just 2.1 percent of the total \$542 million handle at Maryland tracks in 2022, with the remainder coming from export broadcast wagering (88.2 percent) and simulcast wagering (9.8 percent).

Other metrics have held steady. There has been a modest 7.2% increase in total races in the prior 10-year period, and a 9.4% increase in race days.

In the early to mid-2000s, partly in response to a decline in the horse racing industry, the Maryland General Assembly debated and then approved a video-lottery terminal gaming program that was eventually approved by voters as a constitutional amendment. One of the available licenses was for a geographic area that included Laurel Park, with the intention that video gaming at Laurel would provide revenue to support the horse industry. But the Maryland Jockey Club did not submit a valid application for the license, depriving the industry of a significant revenue source for future operations.

Via statute, some gaming revenues do supplement purses and other revenues supplement track operating repairs. Under an agreement that was negotiated in 2011, the horsemen and breeders agreed to allocate certain non-gaming revenues to the track operators, effectively purchasing additional racing days via a subsidy (commonly referred to as the "Ten-Year Agreement".)

Maryland, because of video lottery funding contributions, has done a good job relative to its peers of maintaining purses at reasonable levels and preserving race days, which directly support strong racing and breeding industries that contribute to significant economic impacts and the preservation of green space.

The original Ten-Year Agreement between industry groups and track owners expired but has been extended through December 31, 2024.

This history has led Maryland horsemen and breeders to raise valid concerns about the sustainability of Maryland racing operations in a for-profit ownership model.

All stakeholders agree that a future operating model must allow for safe facilities, industry stability, the right number of racing days, and the development of new revenue streams.

Maryland Jockey Club, the Maryland Thoroughbred Horsemen's Association and the Maryland Horse Breeders Association have been involved in discussions about alternative structures.

With no direct video lottery gaming and capital needs that will almost certainly be met with public funds only, a consensus has developed that Maryland would best be served by a different ownership and operating structure.

Consultant Crossroads reviewed track operations in all states with significant racing operations, including California, Delaware, Florida, Kentucky, New York, Virginia and West Virginia. This group contains a mix of public, private and not-for-profit entities, and all but a few rely on onsite gaming revenues to succeed. The detailed findings of Crossroads are available on the Maryland Racing Commission/Authority [website](#).

In examining the landscape, the Del Mar track in California and Belmont in New York are similar prominent racetracks without onsite gaming operations and offer examples of alternative operating models for Maryland.

- Del Mar is owned by the State of California and is leased to and operated by a nonprofit consisting of the horsemen and does not have onsite gaming.
- Belmont is owned by the State of New York and operated by a nonprofit (the New York Racing Association, or NYRA) that operates as a business.

The Authority believes that NYRA offers the best model for Maryland moving forward because it recognizes and provides accountability for the scope of public investment necessary to right the industry, and preserves and advances the broader State economic interests that do not manifest in an ROI to a private for-profit operator. It also functions as a business, led by professionals.

Under this approach, Pimlico and the training center would be owned by the State and leased to a not-for-profit operator to be created by the Authority (similar to NYRA).

This structure would justify the significant investments contemplated by the State and maximize benefits to the industry at large without the competing profit objectives of a private operator.

Next Steps

The initial work of the Authority has demonstrated that expenditures authorized by the Racing Community Development Act of 2020 can achieve the intended goal of the Authority and the legislation – creating best-in-class racing facilities and adequate training facilities to provide Maryland with a sustainable horse racing industry into the 21st century and the continued accrual of agricultural, open space and other benefits.

The Authority's review has also shown that a revised operating model, with not-for-profit ownership and management of facilities, is the best vehicle for undertaking these improvements and managing racing operations in Maryland going forward.

To make progress toward these objectives, the Authority, subject to approval of its recommendations by the General Assembly and Governor, will seek to:

- Finalize an agreement with 1/ST/The Stronach Group to transfer control of day-to-day Maryland racing and acquire title to Pimlico.
- Finalize a licensing agreement with 1/ST/The Stronach Group to operate and promote the Preakness Stakes and the Black-Eyed Susan Stakes.
- Develop a detailed transition plan for Maryland racing to move from a for-profit model to a public/not-for-profit model by January 1, 2025.
- Seek approval to assume control of Maryland horse racing and to fund the Authority recommendations.
- Take all necessary steps to finalize a decision for the acquisition of property for a training location.
- Engage a design consultant to develop detailed plans for the Pimlico site and the training location and launch the permitting process.
- Identify or create a not-for-profit operator for Maryland racing, in consultation with all necessary Maryland officials and industry professionals.
- Maintain Laurel Park as a transitional facility for live racing and training during the expected four-year construction and transition period needed to develop Pimlico as a premier racing hub.



REVIEW AND ANALYSIS OF THOROUGHBRED RACING OPERATING MODELS

PRESENTED TO: MARYLAND THOROUGHBRED RACETRACK
OPERATING AUTHORITY

FINAL REPORT

JANUARY 2024

Report Letter

January 5, 2024

Mr. Greg Cross, Chairman
Maryland Thoroughbred Racetrack Operating Authority

Dear Mr. Cross:

Crossroads Consulting Services, LLC has completed its advisory services engagement related to reviewing and analyzing Thoroughbred racing industry operating models throughout the U.S. to serve as a basis for future recommended changes to the existing operating model in Maryland. This report summarizes our findings and principal conclusions from the research and analysis.

The findings contained in the report reflect analysis of information provided by secondary sources including, but not limited to, data obtained from the Maryland Thoroughbred Racetrack Operating Authority, Maryland Stadium Authority, Maryland Racing Commission, Maryland Thoroughbred Horsemen's Association, Maryland Horse Breeders Association, Maryland Jockey Club, The Jockey Club, Equibase Company along with racing and gaming organizations from other states.

We have utilized sources that are deemed to be reliable but cannot guarantee their accuracy. All information provided to us by others was not audited or verified and was assumed to be correct. We have no obligation, unless subsequently engaged, to update our report or revise the information contained therein to reflect events and transactions occurring after the date of this report.

In accordance with the terms of our engagement letter, the accompanying report is restricted to internal use by the Maryland Thoroughbred Racetrack Operating Authority and may not be relied upon by any other party for any purpose, including financing.

We have enjoyed serving you on this engagement and look forward to the opportunity to provide you with continued services in the future.

Sincerely,

Crossroads Consulting Services, LLC

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Introduction and Key Takeaways



Introduction and Key Takeaways

Maryland has a significant history and presence in the horse racing industry. The two primary thoroughbred tracks in the State include Pimlico and Laurel Park. Pimlico is home of the Preakness Stakes, which is the second leg of the Triple Crown, and is one of the most highly anticipated annual sporting events nationally, drawing large crowds and widespread media attention for Baltimore and the State. The Preakness, along with other year-round racing, contributes significant benefits to the State's economy and cultural heritage.

In 2020, Legislation passed The Racing and Community Development Act of 2020 which authorized the Maryland Stadium Authority ("MSA") to issue up to \$375 million to fund improvements to both the Pimlico and Laurel Park Racing Facilities. At the time, it was anticipated that Laurel Park would serve as the primary home for year-round training and racing once the facility was redeveloped with a minimum investment of \$155 million. It was further envisioned that Pimlico Race Course would host a short race session around the Preakness Stakes but would no longer operate as a year-round training and racing facility. The primary focus of redevelopment efforts at Pimlico would be to utilize an overlay configuration that optimizes year-round use and development of surrounding parcel which would require a minimum investment of \$180 million.

In July 2020, MSA issued solicitation for A/E Services. In February 2021, Ayers Saint Gross ("ASG"), who was teamed with Populous, was awarded the contract. After significant programming workshops were conducted, a program was agreed to in late 2021. However, the substantial changes in the desired program resulted in significantly higher cost estimates which were above the available bonding capacity for the project.

In 2022, legislation was passed that directed MSA to issue additional reports that summarized efforts to reduce overall project costs as well as the cost and schedule for Laurel Park based on two scenarios: 1) programming desired by the current owner, The Stronach Group ("TSG"); and 2) implementation of recommendations from a horse industry led program.

MSA generated estimates for the various program concepts and the cost of the Maryland Thoroughbred Horsemen's Association's ("MTHA") desired program was more than that of the TSG desired model. Further programming alternatives, concept plans and cost estimates were developed for different scenarios involving both Laurel Park and Pimlico, but the costs associated with the options were still higher than the allocated project funding. The results of these efforts were summarized in a report issued by MSA on January 1, 2023.

Planning efforts among the various parties have been ongoing with the primary goal of finding a solution that meets programmatic needs within the desired project budget.

In 2023, the Maryland Thoroughbred Racetrack Operating Authority ("MTROA" or "Client") was formed to study and make recommendations in the best interests of thoroughbred racing in Maryland. MTROA's next major milestone is to report on the following:

1. The progress of the Pimlico and Laurel Park redevelopment plans;
2. The feasibility of establishing at least two alternative thoroughbred training facilities;
3. Best practices for thoroughbred industry operating models and recommendations for operating models in the State.

Introduction and Key Takeaways (cont'd)

Crossroads Consulting Services, LLC was retained by Populous on behalf of the MTROA to review and analyze other Thoroughbred racing industry operating models and provide recommendations for potential changes to Maryland's current model. This analysis is intended to serve as a tool for MTROA to utilize in the preparation of its report to the Senate Budget and Taxation Committee, the House Appropriations Committee and the House Ways and Means Committee as a condition of Senate Bill 720.

Our scope of services for this engagement consisted of the following:

- Meeting with Client representatives to develop an understanding of the key issues related to the project; confirm the study scope and objectives; understand the role and operating objectives of MTROA related to other entities involved in thoroughbred racing; and review existing documentation related to the project including the current live racing agreement that is in place, and any other relevant studies and analyses that have been collected by MTROA.
- Obtaining input from key stakeholders such as the Maryland Racing Commission, Maryland Thoroughbred Horsemen's Association, Maryland Horse Breeders Association, etc. to gain their perspective on potential operating models.
- Compiling information on different racing entities based on direct conversations with management and other available data from industry resources and other secondary sources which may include the following: legal structure, track oversight role, number of operating racetracks, race dates, attendance, purses, subsidized/gaming revenue streams, racing and breeding tax incentive structures, and approaches to horse health.

- Profiling a select number of operating models used in the thoroughbred industry in the U.S. in the form of case studies.
- Outlining lessons learned and/or best practices and commenting on how these may or may not be applicable to Thoroughbred racing in Maryland.
- Summarizing our research, analysis and observations in a written report.

Although this analysis includes observations and recommendations, all decisions relating to the implementation of such recommendations shall be the Client's responsibility.

It is important in reviewing the materials that follow, to note that in 2020 and to some extent in 2021, the COVID-19 pandemic significantly impacted the thoroughbred horse racing industry across the country due to track closures and other operating restrictions.

Introduction and Key Takeaways (cont'd)

This section summarizes key takeaways from the research and analysis conducted as part of this study effort. The information presented in this section is extracted from the full report. As such, it is important for the reader to review this report in its entirety to gain a better understanding of the research and methodology used.

Key Takeaways

Racing is an important industry to the State of Maryland and its economy. As a point of reference, a study conducted by the American Horse Council in 2023 estimates the Maryland racing sector of the horse industry generates an economic impact of \$466 million and supports 2,988 jobs. Further, the industry provides significant contributions to agricultural promotion and the preservation of green space. As such, and consistent with other racetracks, it is important that racetrack capital improvements are prioritized in Maryland to enhance and sustain the industry and related economic benefits.

Maryland, because of video lottery terminal (“VLT”) funding contributions, has done a good job relative to its peers of maintaining purses at reasonable levels and preserving race days, which directly support the perpetuation of strong racing and breeding industries in the State and their collateral benefits to the agriculture industry and preservation of green space.

Both Laurel Park and Pimlico require substantial improvements to appropriately service the industry, offer long-term sustainability, and in the case of Pimlico, showcase Baltimore and the State. In 2020, State Legislation authorized the MSA to issue up to \$375 million in bonds to fund track improvements.

The other Triple Crown tracks are in the process of making significant renovations and modernization efforts. Churchill Downs has been implementing multiple improvements since 2015 as part of its long-term master planning efforts. Examples include adding the Turf Club, Stakes Room, Directors Room and Homestretch Club; renovating the Starting Gate Suites; constructing the new \$90 million First Turn Experience; and a \$185 to \$200 million Paddock redevelopment project including new club areas, new premium seating, and other design enhancements, which is scheduled to be completed in 2024. Belmont Park is currently planning for a \$455 million redevelopment of its racing facilities including a new right-sized grandstand and clubhouse.

The operating model is a key component of enhancing the horse racing product in Maryland and helping to ensure the sustainability of the industry. Ideally, the track operator should be invested in day-to-day Maryland racing and be committed to making the investments needed to support the sustainability of Maryland horse racing for the foreseeable future. Recommendations related to future thoroughbred racing operations in Maryland should take into consideration the needs of the horsemen, breeders, and racetracks, which are interdependent and share common, yet unique, objectives.

The ownership and operating structures of the other profiled tracks in this report contain a mix of public, private, and not-for-profit entities. All the states profiled, excluding California, have other gaming operations at the tracks or in some cases other satellite gaming facilities. Private ownership of tracks appears most viable in cases where other owned gaming operations exist to support track needs and investments. Without gaming operations, the economics of racing typically require significant support from public funds.

Introduction and Key Takeaways (cont'd)

It is possible to have a financially viable operating model in Maryland without ancillary casino operations; however, thoughtful and strategic changes are needed. Consideration should be given to implementing a public ownership structure for the tracks which recognizes a substantial need for a public investment with the involvement of industry participants to leverage otherwise strong economic foundations. Further, it is recommended that consideration be given to leasing the tracks to a not-for-profit corporation similar to the New York Racing Association ("NYRA"). This approach would allow for 100% of State investment to go towards the interests of Maryland racing. Del Mar and Belmont are prominent racetracks without on-site gaming that offer an alternative operating model to Maryland. While Belmont doesn't have on-site gaming, they receive contributions from satellite gaming facilities.

Additionally, opportunities exist to improve the business operations of the track through strategies to further enhance and support the quality of the racing product, marketing and promotion, distribution models, and thoroughbred development.

- Steps should be taken to emulate the strategies for successful boutique meets at other tracks throughout the country (e.g., Saratoga, Del Mar, Keeneland, Kentucky Downs), maintain a minimum of 140 to 165 live race days, target a 35% increase in purses to bring the average purse per race to \$60,000 in line with Virginia and higher than other Mid-Atlantic states but still significantly lower than New York, and seek to increase the number of starts by about 15% to achieve an average field size of 8.5.
- Operating efficiencies can be achieved through consolidation of racing operations at Pimlico and improved operations of the Preakness present significant opportunities for increased profitability.
- Wagering distribution model and practices should be reviewed, along with more aggressive marketing and promotion, to further channelize distribution, expand audience, and reach new or emerging markets.
- Agreements with advance deposit wagering ("ADW") licensees should be evaluated for opportunities to increase fees. Additionally, enhance marketing/promotion efforts to raise profile with online betting platforms and seek opportunities for improved integration with traditional online sports betting platforms.
- A 15% to 20% increase in thoroughbred development funds should be targeted to maintain a strong breeding industry in Maryland and ensure future competitiveness with neighboring states. Additionally, the merits of offering out-of-state race awards should be evaluated.
- Future operating plans and projections should be based on both existing revenue sources and potential new gaming alternatives such as Historical Horse Racing ("HHR").

Overview of Existing Maryland Thoroughbred Racing



Overview of Existing Maryland Thoroughbred Racing

Horse racing has been an important part of Maryland's history and economy for years. A study conducted in 2023 by the American Horse Council estimates the Maryland racing sector of the horse industry generates an economic impact of \$466 million and supports 2,988 jobs. The State's horse industry is critical to maintaining green space. According to Maryland Horse Council, 705,000 acres of 25% of all land in preservation is in equine use and additional green space throughout parks and other properties in the State is being supported by the horse industry.

This section of the report focuses on providing an overview of key metrics related to Maryland thoroughbred racing including the following:

- Track overviews
- Trends in thoroughbred racing metrics such as races, purses, average purse per race, race days and average field size
- Trends in thoroughbred racing handle including sources of handle
- Takeout, fees and breakage
- Purse funds
- Trends in breeding metrics
- Thoroughbred development funds
- Breeding and racing Incentives
- Horseracing integrity and safety act ("HISA")
- Overview of the Maryland Racing Commission

This analysis will serve as the baseline to which key metrics of thoroughbred racing in other select states will be compared. This comparison will help guide the development of recommendations related to the future racing operations in Maryland.



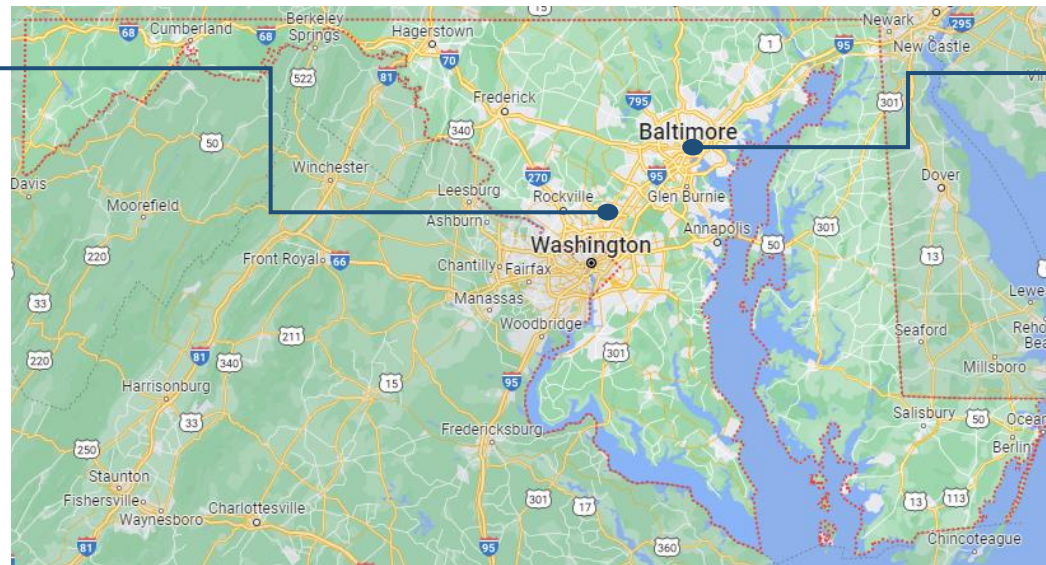
Maryland – Thoroughbred Racetracks

Laurel Park and Pimlico are the two primary thoroughbred racetracks operating in Maryland. Both these tracks are currently owned and operated by The Stronach Group. In addition to these tracks, Timonium hosts thoroughbred racing during the Maryland State Fair. The table below provides track attributes of Laurel Park and Pimlico and the map illustrates the location of the tracks.

Maryland Thoroughbred Racetracks								
Track	Year Opened	Owner	Operator	Seating Capacity		Track Length		Stabling (stalls)
				Grandstand	Clubhouse	Dirt (miles)	Turf (furlongs)	
Laurel Park	1911	The Stronach Group, Inc.	The Stronach Group, Inc.	2,964	1,216	1	7 1/2	1,058
Pimlico	1870	The Stronach Group, Inc.	The Stronach Group, Inc.	5,691	1,269	1	7 1/2	665

Source: Facility websites.

**Laurel Park
Laurel, MD**



**Pimlico Race Course
Baltimore, MD**



Sources: Google Maps, facility websites

Maryland – Thoroughbred Racetracks (cont'd)

Maryland racing facilities are in dire need of investment. Pimlico's clubhouse was constructed in 1960 and no significant renovations have been made to the structure since its original construction. The grandstand building was originally constructed in 1954 and enclosed in 1973. Nearly 6,700 grandstand seats were decommissioned in 2019 due to safety concerns. If not addressed, the overall conditions of Pimlico threaten its continued existence and success of the Preakness Stakes.

Laurel Park's clubhouse and grandstand date to 1951 and 1911, respectively, and are too large for current needs beyond their usable life. The grandstand is connected to the clubhouse, which are both enclosed in a glass curtain wall erected in 1966. Previous studies indicated that demolition or significant and costly renovations would be required for the customer facing structures. There are also major issues related to the roof, HVAC system, plumbing and electrical system. Backstretch stalls, barns and staff housing are also in generally poor condition, with significant code and life safety violations.

TSG has previously stated that it would not pay the entire bill for a renovation or rebuild and that such an undertaking would require substantial public investment.



Maryland – Live Race Days and Attendance

The total number of live race days in the State increased from 145 in 2013 to 164 in 2022, representing an increase of 13.1% over the 10-year period. In 2020 and to some extent in 2021, the COVID-19 pandemic significantly impacted the thoroughbred horse racing industry in Maryland, like other areas of the country due to track closures and other operating restrictions. Attendance at Maryland tracks, however, has shown signs of recovery. These trends are shown in the adjacent tables and chart.

It should be noted that in 2021, certain races were moved from Laurel Park to Pimlico due to an emergency closure at Laurel Park for track repairs. Also, the number of race days and attendance for Pimlico include the Preakness.

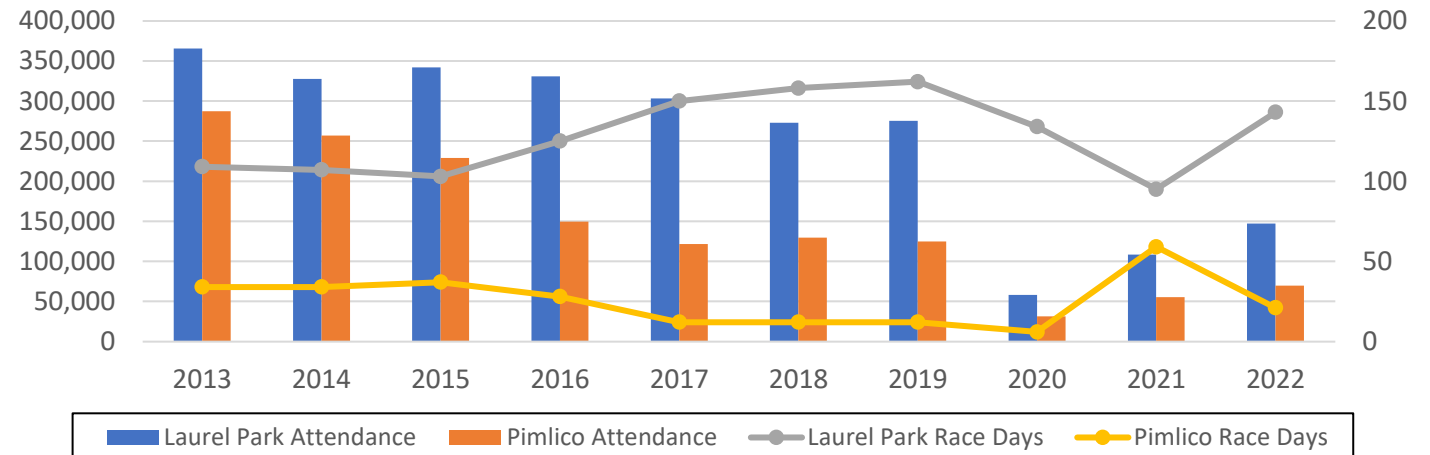
Annual Live Race Days Maryland Thoroughbred Racetracks			
Year	Laurel Park	Pimlico	Total
2013	109	36	145
2014	107	35	142
2015	103	37	140
2016	125	28	153
2017	150	12	162
2018	158	12	170
2019	162	12	174
2020	134	6	140
2021	95	59	154
2022	143	21	164
10-Year Change	31.2%	-41.7%	13.1%
CAGR 2013-2022	3.1%	-5.8%	1.4%
CAGR 2018-2022	-2.5%	15.0%	-0.9%

Note: Excludes State Fair racing at Timonium Race Track.
Source: Maryland Racing Commission annual reports.

Annual Attendance Maryland Thoroughbred Racetracks			
Year	Laurel	Pimlico	Total
2013	365,551	287,140	652,691
2014	327,690	256,725	584,415
2015	341,867	228,919	570,786
2016	330,817	149,544	480,361
2017	303,114	121,402	424,516
2018	272,926	129,474	402,400
2019	275,214	124,952	400,166
2020	58,138	31,272	89,410
2021	108,254	55,458	163,712
2022	147,106	69,862	216,968
10-Year Change	-59.8%	-75.7%	-66.8%
CAGR 2013-2022	-9.6%	-14.5%	-11.5%
CAGR 2018-2022	-14.3%	-14.3%	-14.3%

Note: Excludes State Fair racing at Timonium Race Track.
Source: Maryland Racing Commission annual reports.

Attendance & Live Race Days



Maryland – Thoroughbred Racing Metrics

Based on data compiled by The Jockey Club and Equibase Company LLC, the Maryland thoroughbred racing industry experienced a moderate increase of 7.2% in the number of races and a 9.4% increase in race days over the 10-year period from 2013 through 2022. It experienced a slight decrease (3.5%) in the average field size per race from 7.7 in 2013 to 7.4 in 2022. Total purses and the average purse per race have shown steady increases in recent years. These trends and other performance metrics are detailed in the table below.

Maryland Thoroughbred Racing Statistics							
Year	Races	Purses	Avg Purse per Race	Starters	Starts	Race Days	Avg Field Size
2013	1,465	\$45,859,950	\$31,304	3,969	11,255	160	7.7
2014	1,411	\$48,266,643	\$34,207	3,817	10,910	154	7.7
2015	1,380	\$48,245,039	\$34,960	3,792	11,718	152	8.5
2016	1,500	\$51,168,821	\$34,113	4,111	12,701	166	8.5
2017	1,649	\$56,343,187	\$34,168	4,029	12,932	174	7.8
2018	1,716	\$63,040,134	\$36,737	3,918	13,256	180	7.7
2019	1,691	\$63,094,149	\$37,312	3,883	12,949	187	7.7
2020	1,230	\$46,649,144	\$37,926	3,123	9,271	140	7.5
2021	1,442	\$57,610,158	\$39,952	3,308	10,865	165	7.5
2022	1,571	\$69,179,297	\$44,035	3,363	11,644	175	7.4
10-Year Change	7.2%	50.8%	40.7%	-15.3%	3.5%	9.4%	-3.5%
CAGR 2013-2022	0.8%	4.7%	3.9%	-1.8%	0.4%	1.0%	-0.4%
CAGR 2018-2022	-2.2%	2.4%	4.6%	-3.7%	-3.2%	-0.7%	-1.0%



Notes: Purses represent all available money, including monies not won and returned to state breeder or other funds.

Statistical data shown in the table above may differ from that presented earlier as it is provided by industry resources that allow for consistent comparisons across states in the peer analysis section of this report.

Source: The Jockey Club and Equibase Company LLC.

Notable races in Maryland include the Preakness Stakes and the Maryland Million Classic. The Preakness Stakes, a Grade I thoroughbred race for three-year-olds and the second leg of the Triple Crown, is held annually at Pimlico in May and carried a purse of \$1,500,000 in 2023. The Maryland Million Classic is part of the Maryland Million Day, an 11-race program held annually in October at Laurel with eligibility limited to horses sired by stallions who stand in Maryland. It was the first State-bred showcase event with its launch in 1986 and since that time, many other states have replicated the approach.

Maryland – Thoroughbred Racing Handle

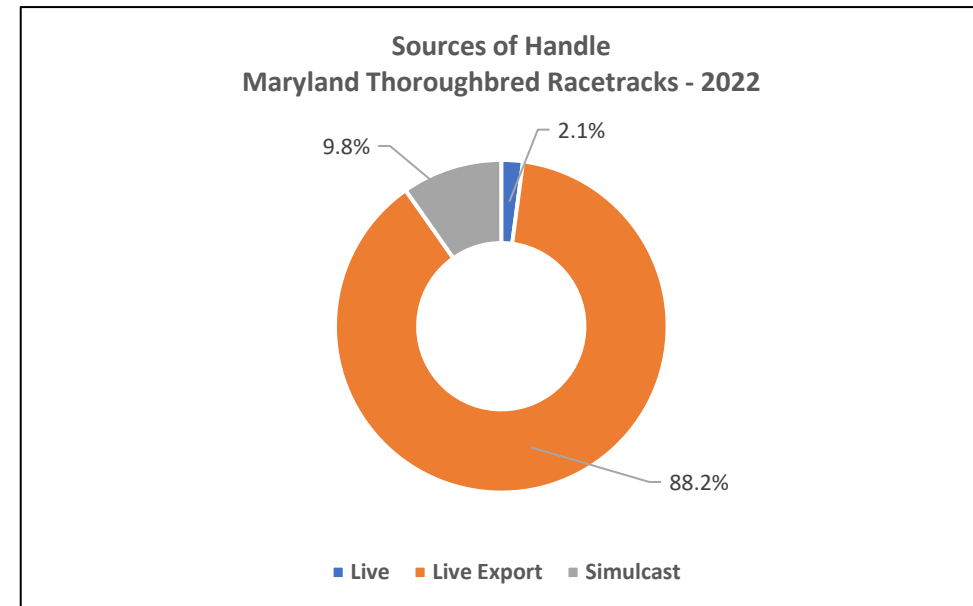
The annual total handle from all sources attributable to Maryland thoroughbred racetracks, excluding Timonium, was nearly \$541.9 million in 2022 compared to approximately \$444.7 million in 2013, which reflected an increase of 21.9% over that timeframe. Pimlico, however, saw a decrease (5.8%) in its annual total handle over that same period, while the 10-year change in the total handle at Laurel Park experienced an increase of 44.7%. It should be noted that in 2021, certain races were moved from Laurel Park to Pimlico due to an emergency closure at Laurel Park for track repairs. The handle associated with live export wagering, which is generated from the broadcasting of races at the Maryland tracks to other locations, accounted for 88.2% of the total handle in 2022, while live on-track wagering accounted for just 2.1%. Simulcast wagering accounted for 9.8% of total handle in 2022, which includes on-track wagering for races taking places at other tracks inside the state and out-of-state, as well as wagering at Maryland’s satellite betting facilities for races taking place at Laurel Park and Pimlico. These trends are illustrated in the table and chart below. Advanced Deposit Wagering (“ADW”), which is done through online platforms and mobile apps, is regulated by the MRC, but is not included in these figures as it is maintained separately from the reporting of handle associated with the individual tracks.

Annual Total Handle (All Sources) Maryland Thoroughbred Racetracks			
Year	Laurel Park	Pimlico	Total
2013	\$243,692,666	\$200,970,647	\$444,663,313
2014	\$218,068,994	\$199,770,127	\$417,839,121
2015	\$254,737,026	\$218,041,544	\$472,778,570
2016	\$334,964,268	\$193,084,639	\$528,048,907
2017	\$413,127,811	\$159,252,341	\$572,380,152
2018	\$427,235,441	\$151,535,702	\$578,771,143
2019	\$419,331,090	\$161,161,848	\$580,492,938
2020	\$321,279,599	\$75,071,207	\$396,350,806
2021	\$243,816,491	\$298,325,403	\$542,141,894
2022	\$352,529,886	\$189,349,826	\$541,879,712
10-Year Change	44.7%	-5.8%	21.9%
CAGR 2013-2022	4.2%	-0.7%	2.2%
CAGR 2018-2022	-4.7%	5.7%	-1.6%

Notes: Excludes State Fair racing at Timonium Race Track.

ADW is tracked separately and not included above.

Source: Maryland Racing Commission.



Note: Excludes State Fair racing at Timonium Park.

Source: Maryland Racing Commission.

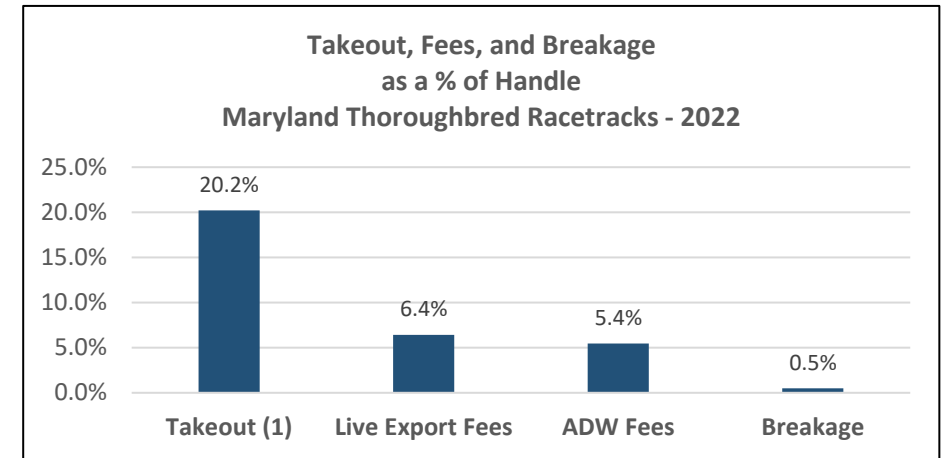
Maryland – Takeout, Fees and Breakage

The takeout is a commission that is retained from all wagers made at any given racetrack. The established takeout rates as a percentage of handle at Maryland tracks ranges from 18.0% on straight wagers to 25.75% on exotic wagers with 3 or more horses. In 2022, the total blended takeout rate on wagering at Maryland thoroughbred racetracks was 20.2%, which generated approximately \$12.9 million, after taxes and other expenses, as illustrated in the adjacent charts.

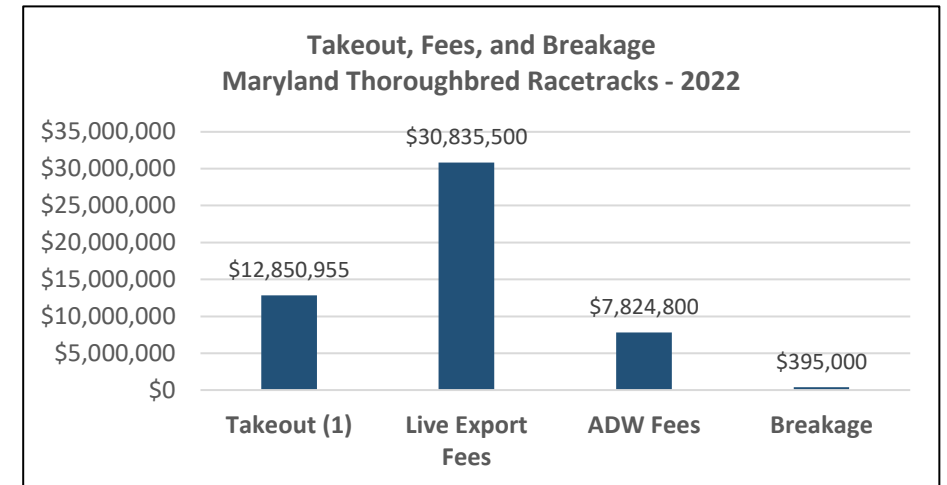
In addition to the takeout, revenues from wagering are generated through signal transmission and other fees associated with live export wagering, source market and other fees associated with ADW, and breakage. The fees charged in connection with live export wagering vary by track as they are dependent upon the specific agreements in place with those broadcasting and accepting wagers. In 2022, the total live export fees at Maryland thoroughbred racetracks was 6.4% of live export handle, which generated approximately \$30.8 million, as illustrated in the adjacent charts.

Source market and other fees paid by ADW licensees in Maryland were 5.4% of ADW wagering in 2022 which generated approximately \$7.8 million, as illustrated in the adjacent charts. These amounts are subject to negotiated agreements.

Breakage reflects amounts associated with the rounding down of payouts to the nearest 10 cents. In 2022, breakage at Maryland thoroughbred racetracks accounted for approximately \$395,000, as illustrated in the adjacent charts.



Sources: Maryland Racing Commission and secondary sources.



(1) - Reflects net commissions for on-track and off-track wagering after taxes and other expenses.

Sources: Maryland Racing Commission and secondary sources.

Maryland – Takeout Allocation

The allocation of the takeout to different uses in Maryland is relatively consistent for both on-track and off-track wagering. In 2022, the greatest share was allocated to track operators, while purse accounts garnered the second most, followed by contributions to thoroughbred development. These allocations are detailed in the adjacent tables. It is important to note that these amounts reflect net commissions after taxes, signal fees and other miscellaneous expenses.



Takeout Allocation Maryland Thoroughbred Racetracks - 2022			
Use	On-Track	Off-Track	Total
Track Operators	\$4,842,229	\$1,583,249	\$6,425,478
Purse	\$4,293,120	\$1,415,634	\$5,708,754
Thoroughbred Development	\$549,109	\$167,615	\$716,724
Total	\$9,684,458	\$3,166,497	\$12,850,955

Note: These amounts reflect net commissions after taxes and other expenses.

Sources: Maryland Racing Commission and secondary sources.

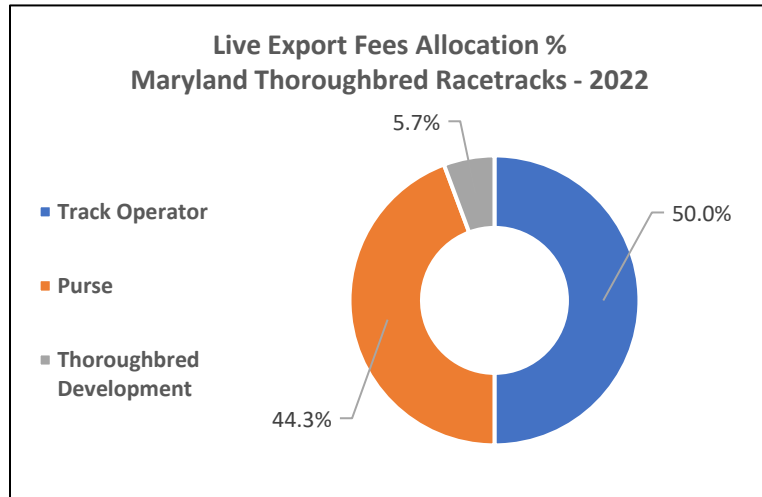
Takeout Allocation % Maryland Thoroughbred Racetracks - 2022			
Use	On-Track	Off-Track	Total
Track Operators	50.0%	50.0%	50.0%
Purse	44.3%	44.7%	44.4%
Thoroughbred Development	5.7%	5.3%	5.6%
Total	100.0%	100.0%	100.0%

Note: These amounts reflect net commissions after taxes and other expenses.

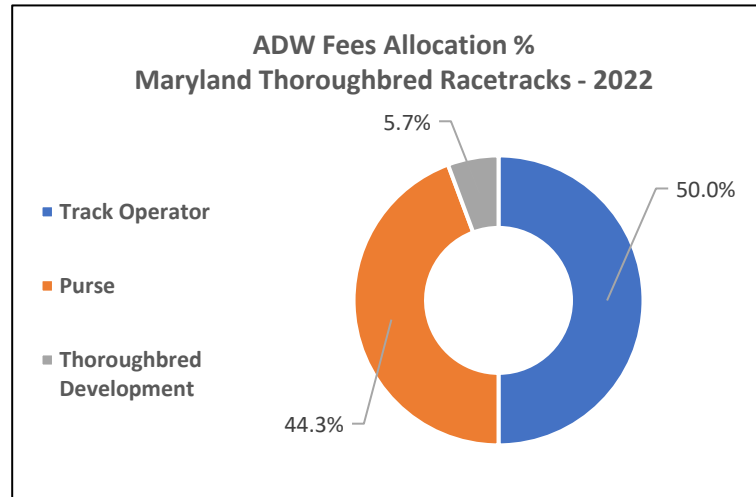
Sources: Maryland Racing Commission and secondary sources.

Maryland – Other Fees and Breakage Allocation

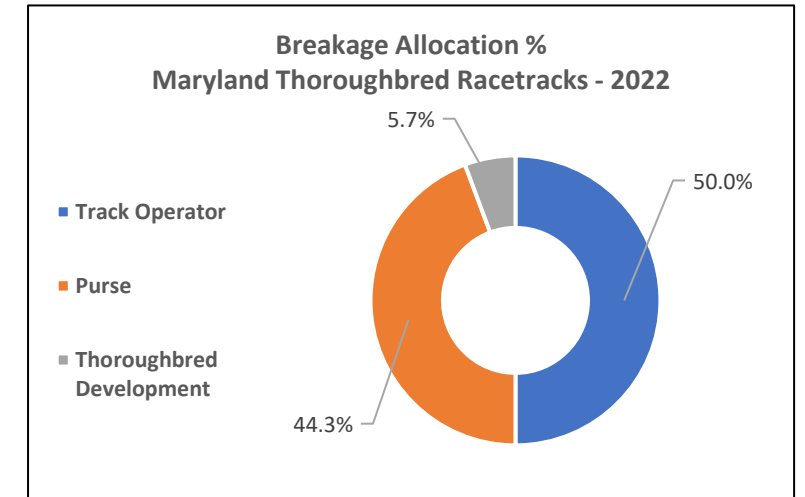
The allocation of live export fees received by the Maryland racetracks, ADW fees, and breakage are dedicated primarily to track operator and purse accounts, with lesser amounts going to the MBF for thoroughbred development. In all cases, track operator and purse payments represent 50.0% and 44.3%, respectively. The specific allocation amounts for these funding sources are detailed in the charts and tables below.



Sources: Maryland Racing Commission and secondary sources.



Sources: Maryland Racing Commission and secondary sources.



Sources: Maryland Racing Commission and secondary sources.

Live Export Fees Allocation Maryland Thoroughbred Racetracks - 2022	
Use	Total
Track Operator	\$15,417,700
Purse	\$13,669,400
Thoroughbred Development	\$1,748,400
Total	\$30,835,500

Sources: Maryland Racing Commission and secondary sources.

ADW Fees Allocation Maryland Thoroughbred Racetracks - 2022	
Use	Total
Track Operator	\$3,912,400
Purse	\$3,468,700
Thoroughbred Development	\$443,700
Total	\$7,824,800

Sources: Maryland Racing Commission and secondary sources.

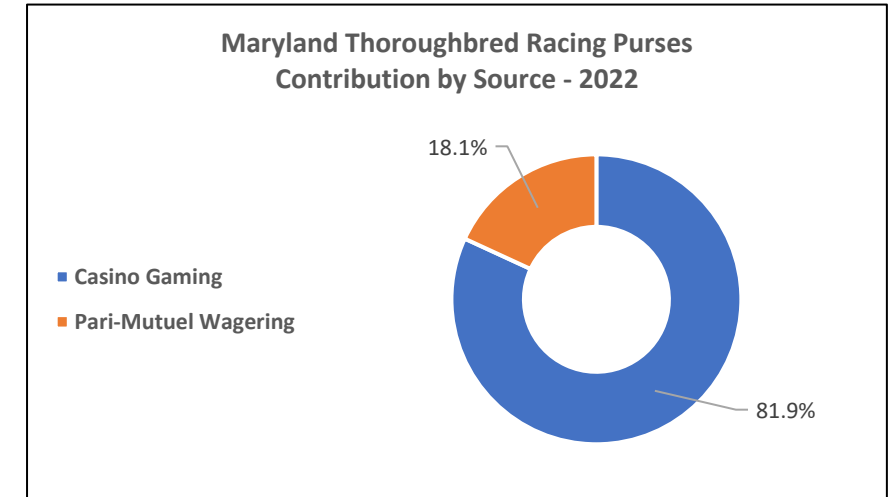
Breakage Allocation Maryland Thoroughbred Racetracks - 2022	
Use	Total
Track Operator	\$197,500
Purse	\$175,102
Thoroughbred Development	\$22,398
Total	\$395,000

Sources: Maryland Racing Commission and secondary sources.

Maryland – Purse Funds

As previously detailed, the purses for Maryland thoroughbred racing receive funding contributions from pari-mutuel wagering. Additionally, Maryland purses benefit via funding contributions from casino gaming operations in the State. In 2022, casino gaming contributed approximately \$55.4 million, or 81.9% to the total purses, as illustrated and detailed in the adjacent chart and table.

In 2008, the Maryland General Assembly passed a bill that was later endorsed by the public in the general election setting the stage for the operation of video lottery terminals (“VLTs”), which are effectively slot machines, under the authority of the Maryland Lottery and Gaming Control Agency (“MLGCA”). Legislation originally provided for 7% of gross terminal revenue from VLTs to be allocated to a Purse Dedication Account (“PDA”), under the authority of the MRC, with 80% of the PDA funds going to the thoroughbred industry and 20% to the standardbred industry. Of those amounts, original legislation stipulated that 85% go directly to purses and 15% to Maryland-bred funds. These amounts were later revised to the allocations in place today, which are for 6% of gross terminal revenue from VLTs to be allocated to the PDA, the same split between the thoroughbred and standardbred industries, with 89% of those funds going directly to purses and 11% to Maryland-bred funds.



Note: Includes Timonium as MLGCA PDA data is consolidated.
Source: Maryland Racing Commission and Maryland Lottery and Gaming Control Agency.

Maryland Thoroughbred Racing Purses Sources and Funding Amounts - 2022	
Source	Amount
Casino Gaming	\$55,350,359
Pari-Mutuel Wagering	\$12,255,990
Total	\$67,606,349

Note: Includes Timonium as MLGCA PDA data is consolidated.
Sources: Maryland Racing Commission, and Maryland Lottery and Gaming Control Agency.

Maryland – Breeding Metrics

During 2022, Maryland's 26 reported stallions covered 744 mares, or 2.6% of all the mares reported bred in North America. The number of mares bred to Maryland stallions increased by 14.6% from 2013 through 2022. The average book size (number of mares bred per stallion) in Maryland increased from 20.3 in 2013 to 28.6 in 2022. By comparison, the average North America book size increased from 15.5 to 23.2 during that same timeframe.

Maryland-bred thoroughbred earnings by racing area show that in 2022, approximately 63% of earnings were garnered in-state, down slightly from approximately 66% in 2018. These and other breeding metrics are detailed in the adjacent tables.



Annual Thoroughbred Mares Bred to Maryland Stallions						
Year	Mares Bred	% of North America	Stallions	% of North America	Average Book Size	Average North America Book Size
2013	649	1.7%	32	1.3%	20.3	15.5
2014	778	2.1%	39	1.7%	19.9	16.5
2015	801	2.1%	41	2.0%	19.5	18.1
2016	930	2.6%	37	1.9%	25.1	18.4
2017	784	2.3%	33	1.7%	23.8	18.2
2018	888	2.7%	33	1.9%	26.9	18.7
2019	804	2.5%	33	2.0%	24.4	18.9
2020	842	2.8%	34	2.2%	24.8	19.3
2021	780	2.7%	26	1.9%	30.0	21.2
2022	744	2.6%	26	2.1%	28.6	23.2
10-Year Change	14.6%	52.9%	-18.8%	61.5%	41.1%	49.7%
CAGR 2013-2022	1.5%	4.8%	-2.3%	5.5%	3.9%	4.6%
CAGR 2018-2022	-4.3%	-0.9%	-5.8%	2.5%	1.5%	5.5%

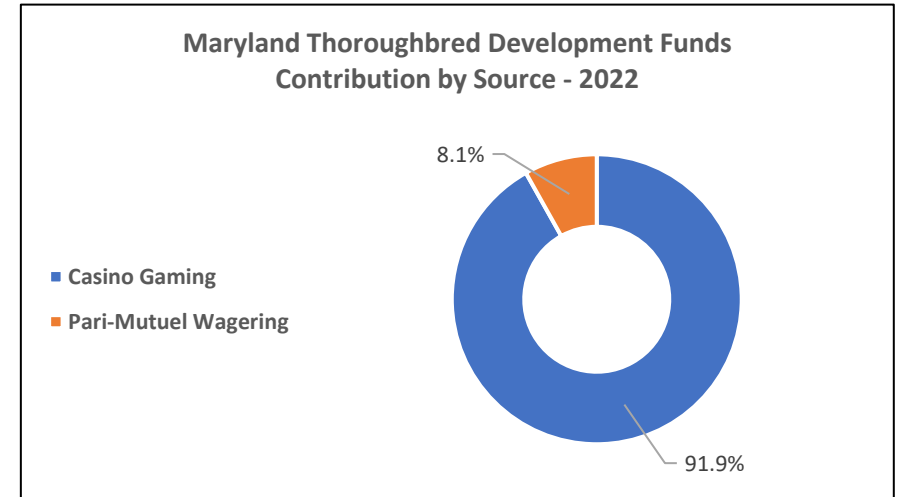
Source: The Jockey Club.

Percentage of Maryland-Bred Thoroughbred Earnings by Racing Area						
Racing Area	2018	2019	2020	2021	2022	2018 to 2022 Change
Maryland	66.4%	65.1%	61.3%	51.7%	63.1%	-5.1%
Delaware	5.6%	5.2%	8.5%	6.1%	7.8%	40.7%
Pennsylvania	6.8%	7.6%	6.1%	5.1%	6.4%	-5.2%
West Virginia	4.5%	5.2%	5.1%	5.1%	6.0%	32.4%
Other	16.8%	17.1%	19.0%	32.0%	16.8%	-0.1%

Source: The Jockey Club and Equibase Company.

Maryland – Thoroughbred Development Funds

The MRC is responsible for administering the Maryland-Bred Fund (“MBF”) with assistance and advice from the Maryland-Bred Race Fund Advisory Committee. The purpose of the fund is to award the State’s accredited breeders, racehorse owners and sire owners to promote breeding and racing in the State. The MBF receives funding contributions from pari-mutuel wagering, which totaled approximately \$724,000 in 2022. Additionally, the MBF benefits from significant funding contributions by VLT operations in the State. In 2022, casino gaming contributed approximately \$8.2 million, or 91.9% of the total MBF funding, as illustrated in the adjacent chart and table. The total actual distributions out of the MBF in 2022 were approximately \$8.7 million, which was lower than the total funding received due to eligible deductions in the administration of the fund.



Note: Includes Timonium as MLGCA PDA data is consolidated.
Source: Maryland Racing Commission and Maryland Lottery and Gaming Control Agency.

Maryland Thoroughbred Development Funds Sources and Funding Amounts - 2022	
Source	Amount
Casino Gaming	\$8,176,000
Pari-Mutuel Wagering	\$724,000
Total	\$8,900,000

Note: Includes Timonium as MLGCA PDA data is consolidated.
Sources: Maryland Racing Commission, and Maryland Lottery and Gaming Control Agency.

Maryland – Breeding and Racing Incentives

Trainer Magazine focuses on the training and development of the thoroughbred racehorse in both Europe and North America. The magazine covers profiles on leading racehorse trainers and subjects such as welfare, training, nutrition and the racing business.

Based on data from Trainer Magazine, the following outlines breeding and racing incentives in Maryland in 2023.

- Breeders Awards: 22.5% top 3 in all races; additional 7.5% if MD-bred and MD-sired winner of a Maiden Race.
- Owners Awards: 15% top 3 in overnight races.
- Stallion Owner Awards: 7.5% top in all races if the horse is by Maryland stallion.
- Restricted Races for 2023: Yes
- What you need to know: Maryland Million program for eligible Maryland-sired horses.

Sources: TrainerMagazine.com; MarylandThoroughbred.com

There are additional incentives beyond these that are funded through Maryland-bred race funds and purse accounts. For instance, there is a 15% Developer bonus funded by the Maryland Thoroughbred Purse Account and administered by the MTHA on share of purse for overnight races for registered Maryland-bred horses finishing in the top 3. Developer is the owner of the horse in its first career start. Bonuses will continue to be paid to the Developer throughout the horse's racing career, regardless of how many times ownership changes, unless the horse changed hands prior to the start of the program on January 22, 2021. Because Developer bonuses are not paid as part of the purse, they are not reflected in horse's Equibase earnings.

Maryland – HISA Funding and Assessment

The total HISA assessment for Maryland Thoroughbred tracks in 2023 was approximately \$3.6 million, as shown in the table below.

The assessment formula for any given State is based on its prior year starts with adjustments for the ratios of the State’s purses and starts to the U.S. total for each, excluding Breeder’s Cup World Championship races. Specifically, HISA assigns a start fee for projected starts and that amount is the same for each state, which was \$142.64 per start for the 2023 assessment. HISA then adds an additional start fee for each State that is based on the ratio of a State’s share of total U.S. purses divided by a state’s share of total U.S. starts and then multiplied by the \$142.64 start fee. The two amounts are additive to arrive at a total start fee, which is then multiplied by the projected starts, which is based upon prior year data. Additionally, any given state assessment cannot exceed 10% of the total purses paid within that state, with all amounts in excess of that 10% cap being allocated proportionately to the other states that do not exceed the maximum.

Further, HISA provides credits to the annual assessment amounts dependent upon the level to which any given state’s regulatory commission or racetracks may provide the personnel, investigative services and testing, and/or other compliance related activities to administer and conform to HISA program rules.

For 2023, the credit provided to Maryland was approximately \$860,000, lowering the actual amount owed by Maryland to approximately \$2.7 million. Maryland’s HISA assessment is being paid via an allocation of 50.0% paid by the respective track, 44.3% paid through a redirection of purse account funds, and 5.7% paid by the MBF.

Maryland HISA Assessment - 2023												
State	Purses Paid (1)	Starts (1)	Purses per Start	% of Starts	% of Purses	% Purses/ % Starts	Start Fee for Projected Starts	Start Fee for Projected Purse Starts	Total Start Fee	Initial State Total	10% Cap Adjustment	Revised State Total
Maryland	\$67,214,562	11,475	\$5,857	4.9%	5.7%	1.16	\$142.64	\$166.07	\$308.71	\$3,542,464	\$ 11,225	\$ 3,553,689
U.S. Total	\$1,172,603,109	233,067	\$5,031	100.0%	100.0%	1.00	\$142.64	\$142.64	\$285.28	\$66,490,436	\$0	\$66,490,436

(1) - The Purses Paid and Starts data is for the period Oct. 1, 2021 thru Sep. 30, 2022. This excludes Breeder's Cup World Championship races.

Source: Horse Racing Integrity and Safety Authority.

Maryland – Racing Commission

Established under Maryland Code §11-101, the Maryland Racing Commission (“MRC”) is a public corporation. The MRC consists of nine commissioners appointed by the Governor with Senate advice and consent. No more than six members may belong to the same political party. At least three members must be knowledgeable in some aspect of thoroughbred racing, and at least three in some aspect of harness racing. The Governor designates the Chairperson, and the Secretary of Labor appoints the Executive Director.

The MRC is tasked with overseeing and regulating both the harness and thoroughbred horse racing industry in Maryland, which also includes Maryland’s seven off-track betting sites.

Key activities of the MRC include:

- Make all regulations governing the races and through its stewards and judges, officiates the conduct of racing.
- Regulate size of purses, price of admissions, or charges made for any article or service sold at the meets.
- Conduct hearings on appeals, collect taxes and fees, distribute the taxes and fees collected to various subdivisions and other entities.
- Collect and test specimens at its equine laboratory of horses participating in the races and oversee the administration of the breeding enhancement programs.



Source: Maryland Racing Commission.

Maryland Racing – Key Takeaways

The following summarizes key takeaways from our analysis of Maryland racing:

- The facilities that host racing in the State are in dire need of repairs, but the current operating model provides insufficient return in investment (“ROI”) for the track operators to make these investments.
- The State maintained competitive purses over the 10-year period from 2013 to 2022.
- Maryland racing continued with a solid number of race days in recent years.
- As a percentage of total handle (all-sources), live on-track handle represents a very small amount of wagering, which is not surprising given attendance and broader industry trends.
- Live Export Wagering and ADW are increasingly important sources of pari-mutuel wagering for funding track operators, purses, and thoroughbred development initiatives.
- The State’s market share of the thoroughbred breeding industry has remained relatively flat in recent years.
- The funding of Maryland thoroughbred racing is highly reliant on VLT revenues generated at casino operations throughout the State, which provide significant funding for purses and thoroughbred development funds.



Peer Racing Analysis



Peer Racing Analysis

This section summarizes our observations on key metrics related to thoroughbred racing in other states including California, Delaware, Florida, Kentucky, New York, Virginia and West Virginia. These profiled states were identified by the MTROA due to their geographic location, market similarities and/or racetrack operating strategies. The racetracks within these states have various operating models which provides perspective on different operating scenarios. The key observations outlined in this section include:

- Owner/operator
- Comparison of Triple Crown tracks
- Trends in thoroughbred racing metrics such as total race days, total handle, purses, average purse per race, average field size
- Trends in breeding metrics
- Takeout allocation for on-track wagering and off-track betting (“OTB”) facilities
- Live export fees and advanced deposit wagering (“ADW”) fees allocation
- Purse and thoroughbred development funds
- Horseracing and integrity and safety act (“HISA”) assessments

The data presented reflects available information gathered from various sources including, but not limited to, MTROA, Maryland Racing Commission, Maryland Thoroughbred Horsemen’s Association, Maryland Horse Breeders Association, Maryland Jockey Club, The Jockey Club, Equibase Company and racing organizations in the aforementioned states. Certain data was not available as the metrics reported vary by state and there is no single entity that reports all the profiled metrics for each state. The Jockey Club and Equibase Company LLC compile and maintain breeding and racing statistics on the thoroughbred industry.

A challenge is ensuring accurate comparisons given the differences in reporting for each state. Further, in some instances the data related to a metric within the same state may differ from one source to the next. The sources used in this analysis are deemed to be reliable but we cannot guarantee their accuracy. The information obtained was not audited or verified and was assumed to be correct. For comparative purposes, we have utilized sources that allow for accurate and consistent comparisons across each state. In addition, in some instances, the reported data was adjusted to allow for direct comparisons.

The section that follows provides supporting case studies which serve as a guide in identifying industry best practices and our recommendations to MTROA. In 2020 and to some extent in 2021, the COVID-19 pandemic significantly impacted the thoroughbred horse racing industry across the country due to track closures and other operating restrictions.

Observations – Owner / Operator

The table below summarizes owner/operator and gaming operations at each of the tracks. Several of the profiled tracks are operated by private entities like the Stronach Group. The Stronach Group owns and operates Pimlico, Laurel Park, Santa Anita, Calder Race Course and Golden Gate Fields. Calder Race Course closed in 2021 and Golden Gate Fields is expected to close in 2024. Del Mar, which is owned by the State of California, is operated by a non-profit. The State of New York owns three tracks, which are operated by NYRA, a not-for-profit corporation that operates as a business. Churchill Downs, Inc., whose successful operations have been fueled by a growing gaming portfolio, is a public company that owns and operates Churchill Downs, Ellis Park, Turfway Park and Colonial Downs Racetrack. Both Charles Town Races and Mountaineer Racetrack are owned by a Real Estate Investment Trust and operated by a public gaming/ entertainment company. Among the other states profiled and excluding California, all have other gaming operations at the tracks, and/or in some cases other satellite gaming facilities.

Peer Analysis - Track Owner / Operator						
Thoroughbred Track	State	Owner		Operator		Other Gaming Operations at Track
Del Mar	California	State of California	Public	Del Mar Thoroughbred Club	Non-Profit	No
Golden Gate Fields	California	The Stronach Group, Inc.	Private	The Stronach Group, Inc.	Private	No
Los Alamitos	California	Dr. Edward C. Allred	Private	Los Alamitos Racing Association	Private	No
Santa Anita	California	The Stronach Group, Inc.	Private	The Stronach Group, Inc.	Private	No
Delaware Park	Delaware	Clairvest Group Inc.	Private	Rubico Acquisition Corporation	Private	Yes
Calder Race Course	Florida	The Stronach Group, Inc.	Private	The Stronach Group, Inc.	Private	Yes
Gulfstream Park	Florida	The Stronach Group, Inc.	Private	The Stronach Group, Inc.	Private	Yes
Tampa Bay Downs	Florida	Stella F. Thayer & Howell Ferguson	Private	Tampa Bay Downs, Inc.	Private	Yes
Churchill Downs	Kentucky	Churchill Downs Inc.	Public Company	Churchill Downs Inc.	Public Company	Yes
Ellis Park	Kentucky	Churchill Downs Inc.	Public Company	Churchill Downs Inc.	Public Company	Yes
Keeneland	Kentucky	Keeneland Association Inc.	For profit company	Keeneland Association Inc.	For profit company	No ¹
Kentucky Downs	Kentucky	Kentucky Downs, LLC	Private	Kentucky Downs, LLC	Private	Yes
Turfway Park	Kentucky	Churchill Downs Inc.	Public Company	Churchill Downs Inc.	Public Company	Yes
Laurel Park	Maryland	The Stronach Group, Inc.	Private	The Stronach Group, Inc.	Private	No
Pimlico	Maryland	The Stronach Group, Inc.	Private	The Stronach Group, Inc.	Private	No
Aqueduct Race Track	New York	State of New York	Public	New York Racing Association, Inc.	Not-for-Profit Corporation	Yes
Belmont Park	New York	State of New York	Public	New York Racing Association, Inc.	Not-for-Profit Corporation	No ¹
Finger Lakes Gaming and Racetrack	New York	Delaware North Companies, Inc.	Private	Delaware North Companies, Inc.	Private	Yes
Saratoga Race Course	New York	State of New York	Public	New York Racing Association, Inc.	Not-for-Profit Corporation	No ¹
Colonial Downs Racetrack	Virginia	Churchill Downs Inc.	Public Company	Churchill Downs Inc.	Public Company	Yes
Charles Town Races	West Virginia	Gaming and Leisure Properties, Inc.	Real Estate Investment Trust	Penn Entertainment, Inc.	Public Company	Yes
Mountaineer Racetrack	West Virginia	VICI Properties	Real Estate Investment Trust	Century Casinos, Inc.	Public Company	Yes

Note: ¹ Satellite facilities with other gaming operated in partnership with tracks.

Observations – Triple Crown Tracks

Pimlico has not undergone any major renovations to its structure in recent years and requires substantial improvements to its grandstand, amenities, and other areas throughout the facility to appropriately service the industry and offer long-term sustainability. The other Triple Crown racetracks (i.e., Churchill Downs and Belmont Park) have placed significant emphasis on modernization and renovation efforts to secure and enhance the future of thoroughbred racing. Both Churchill Downs and Belmont Park benefit from significant contributions resulting from other gaming operations beyond traditional pari-mutuel wagering.

Churchill Downs, which opened in 1875 and currently offers grandstand seating for approximately 20,100 and clubhouse seating for 32,100, underwent a \$121 million renovation in 2004. In 2021, it announced three major multi-year capital investments, totaling over \$300 million. Details of the recently completed and ongoing investments are as follows:

- \$45 million renovation and modernization of the grandstand area, which was completed in 2022.
- \$90 million investment for the conversion of temporary seating to permanent stadium seating, a new climate-controlled hospitality venue, new concourses, and other amenities, which was completed in 2023.
- \$185 to \$200 million Paddock redevelopment project including new club areas, new premium seating, and other design enhancements, which is scheduled to be completed in 2024.

In addition to these recently completed/planned enhancements, Churchill Downs has completed other major enhancements in recent years including a \$10 million investment for the installation of a new turf course in 2022 and a \$32 million project to improve parking and transportation infrastructure in 2018, among others.

Belmont Park, which opened in 1905 and currently offers grandstand seating for approximately 90,000 and clubhouse seating for 30,000, is operated by a not-for-profit. It recently received approval to utilize a \$455 million loan, granted by the State, for the redevelopment of its racing facilities. Current plans for Belmont Park include:

- Right-sizing the grandstand and clubhouse, replacing the existing 1.25 million square-foot structure with a new 275,000 square-foot facility.
- New food and beverage options and other modern amenities.
- A new synthetic track.
- Modernization of backstretch housing and stabling facilities.
- Significant increases to the amount of parkland onsite.

Consistent with trends in attendance, many tracks use overlay (temporary facilities and infrastructure) to support the permanent venue and event spaces and allow for right-sizing of both seating and hospitality. Overlay is an operating cost, not a one-time capital cost. In general, newer clubhouses are being significantly reduced in size to better accommodate year-round racing needs/crowds, not premium races and specialty events. This is a similar approach to what is done for large-scale events like Super Bowls, Olympics and World Cups.

Observations – Total Race Days

The number of race days in Maryland has held steady over the past several years, as has been the case in Kentucky, Delaware and Virginia, while other states have experienced reductions. Maintaining a solid number of racing days creates opportunities and is critical to supporting a strong breeding industry.

In terms of attendance, data is not reported for many of the racetracks that were profiled. However, for those tracks in which attendance data is available, most have rebounded significantly since the Covid-19 pandemic. Tracks offering boutique meets such as Saratoga and Kentucky Downs have fared better than others.

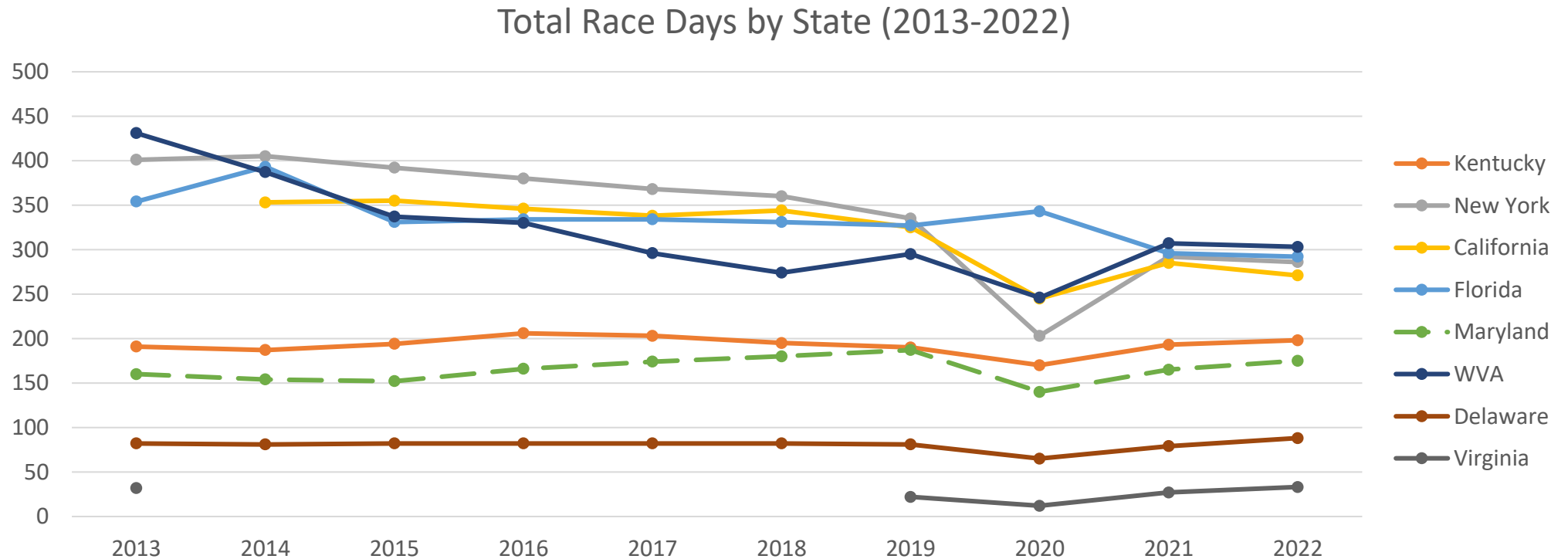
Several factors have contributed challenges that tracks across the country face in drawing attendance, including:

- Expanded access to online wagering
- Industry perception
- Shifting demographics
- Proliferation of alternate forms of gambling



Observations – Total Race Days by State

The graph below illustrates total races days by state. As shown, total race days in Maryland ranged from 140 to 187 during the profiled period, which ranked 6th of the eight profiled states. Total races days in Maryland are most similar to Kentucky, which has more tracks than Maryland. Multiple variables can impact total race days including weather.



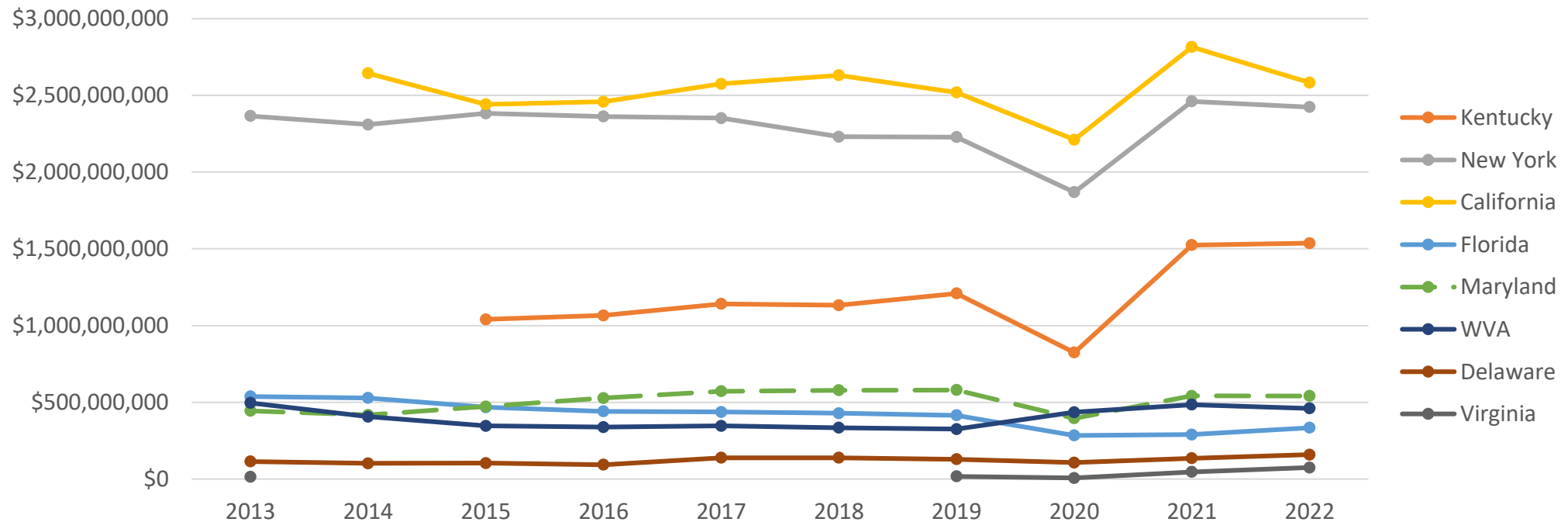
Notes: To provide a more meaningful comparison, race days in 2013 are not shown for California as Hollywood Racetrack closed at the end of 2013. Race days from 2014 to 2018 are not shown for Virginia as Colonial Downs ceased operations during that time.

Sources: State gaming and racing commissions/boards and other secondary research.

Observations – Total Handle by State

The annual total handle in 2022 from all sources for Maryland thoroughbred racing, excluding Timonium, ranked 4th amongst the states profiled and higher than other bordering states, but significantly lower than California, New York, and Kentucky. Over the past 10 years, many of the states profiled have experienced only limited growth in total handle with some experiencing a decrease. Maryland, however, saw its total handle increase by nearly 22% during this timeframe, which was only behind Delaware and Kentucky.

Total Handle by State (2013-2022)

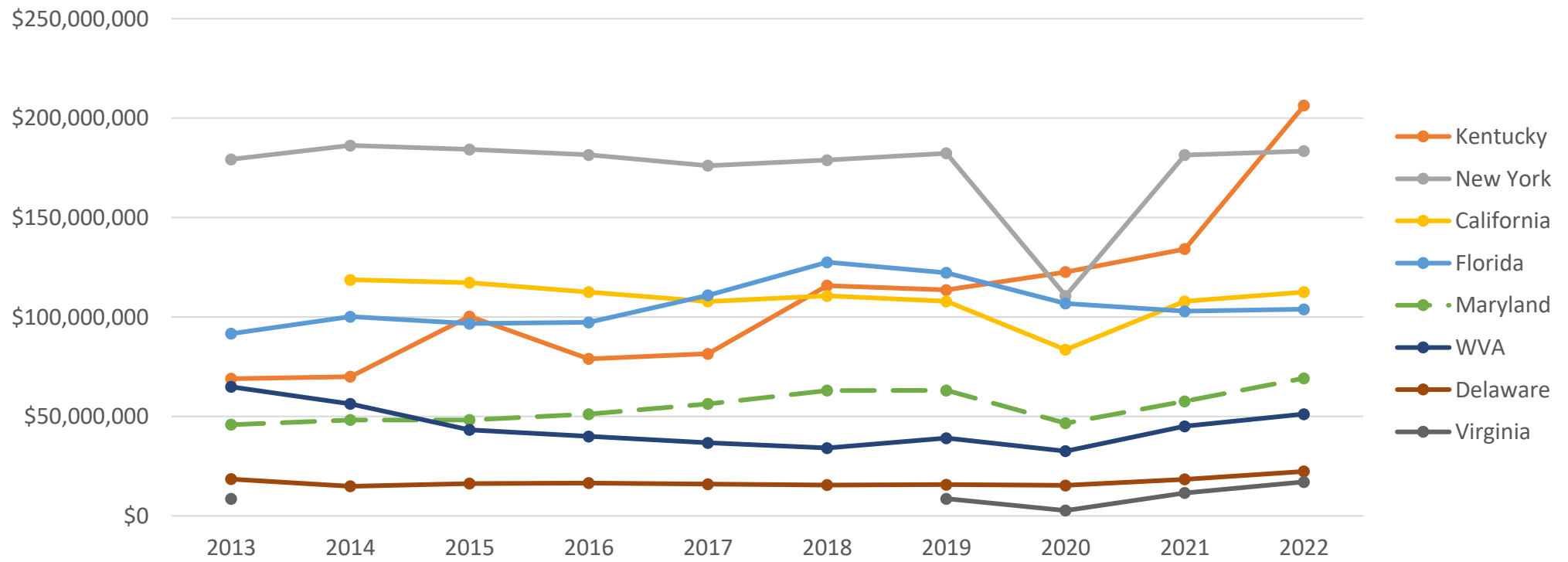


Notes: 2013 data is excluded for California due to the closure of Hollywood Park Racetrack at the end of that year.
 Data prior to 2015 was unavailable online for Kentucky.
 Colonial Downs in Virginia ceased operations in 2014 and reopened in 2019.
 Sources: State gaming and racing commissions/boards and other secondary research.

Observations – Total Purses by State

The annual total purses in 2022 for Maryland thoroughbred racing ranked 5th amongst the states profiled. Excluding Virginia, for which its lone track was closed from 2014 through 2018, the growth rate of total purses in Maryland was higher over the past 10 years for all states profiled other than Kentucky. Purses are the lifeblood of the industry, as both a revenue source to owners and breeders and a contributor to the quality of racing and thus wagering activity. The impact of higher purses can lead to both the ability to retain state-bred horses for in-state races, and also attracting out-of-state thoroughbreds.

Purses by State (2013-2022)



Notes: 2013 data is excluded for California due to the closure of Hollywood Park Racetrack at the end of that year.

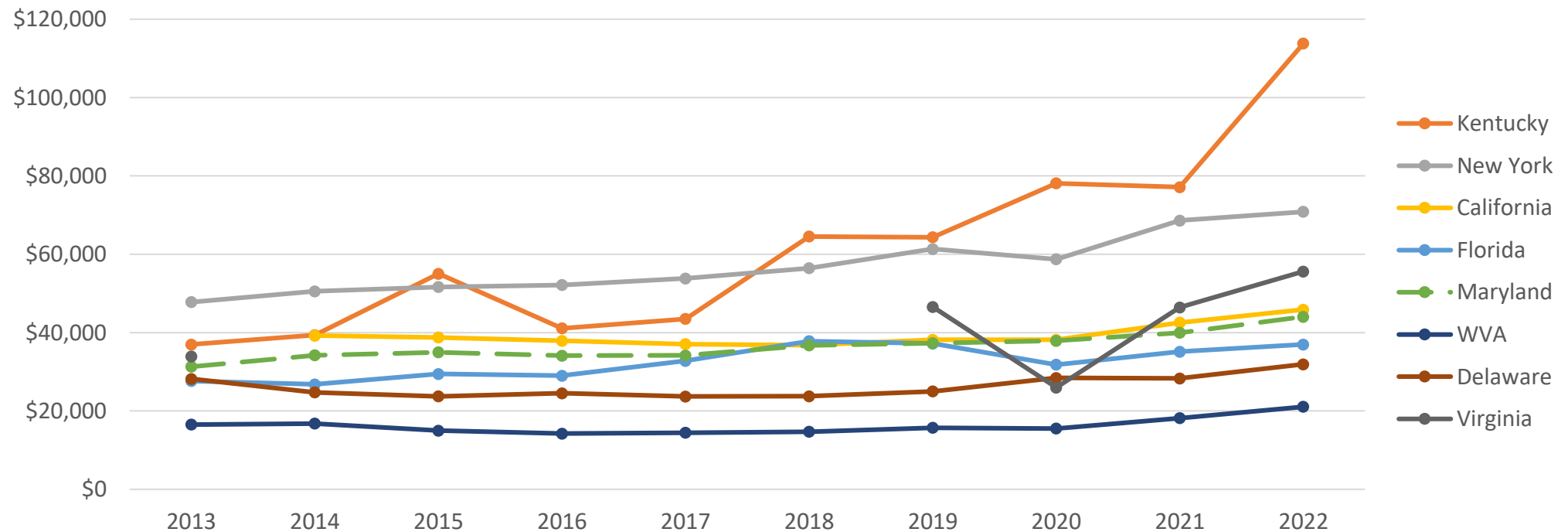
Colonial Downs in Virginia ceased operations in 2014 and reopened in 2019.

Sources: The Jockey Club and Equibase Company.

Observations – Average Purse Per Race by State

The average total purse per race in 2022 for Maryland thoroughbred racing ranked 5th amongst the states profiled. While Maryland purse levels in 2022 were comparable to many bordering states as well as California, they were significantly lower than Kentucky and New York which have experienced the most significant growth amongst the profiled states over the past 10 years. The growth rates in those two states along with Virginia have been largely attributable to increasing revenues and contributions from other gaming operations beyond thoroughbred horse racing.

Average Purse Per Race by State (2013-2022)



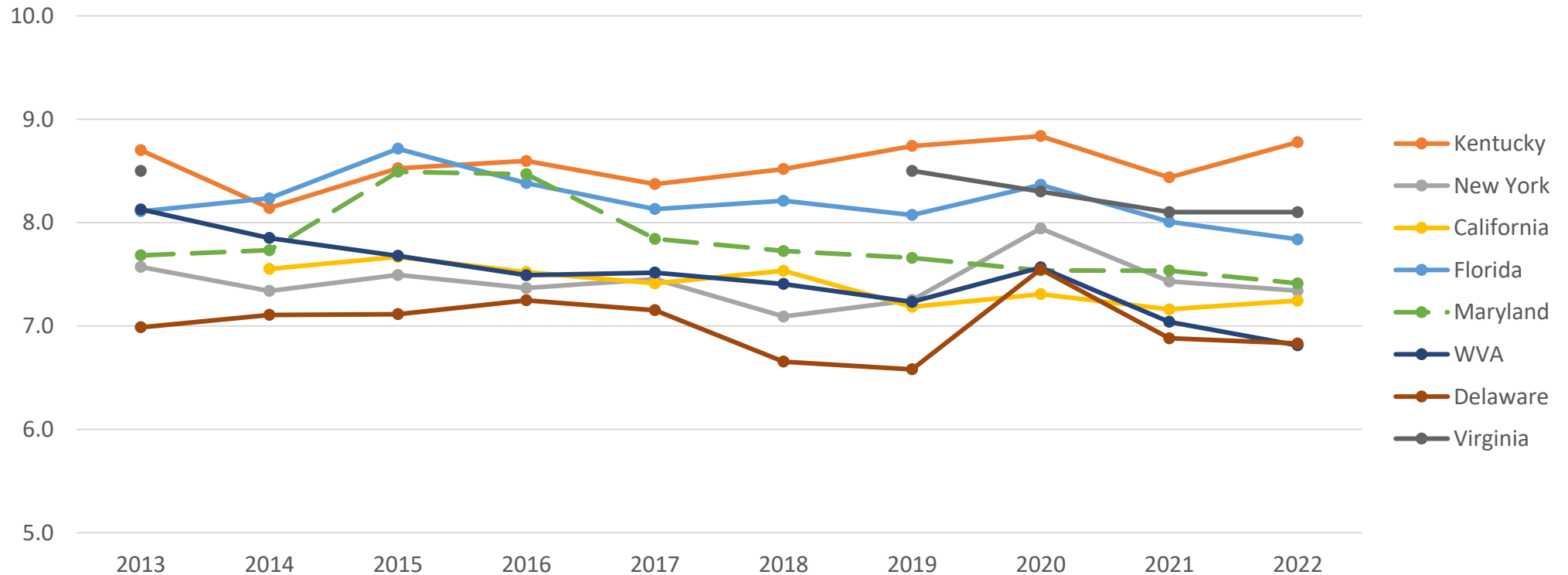
Notes: 2013 data is excluded for California due to the closure of Hollywood Park Racetrack at the end of that year.
Colonial Downs in Virginia ceased operations in 2014 and reopened in 2019.

Sources: The Jockey Club and Equibase Company.

Observations – Average Field Size by State

The average field size per race in 2022 for Maryland thoroughbred racing ranked 4th amongst the states profiled. Over the past 10 years, all of the states profiled, with the exception to Kentucky, had lower field sizes in 2022 compared to 2013. Several variables have contributed to this, however many in the industry have often argued that higher field size has a positive correlation to the quality of racing and level of wagering.

Average Field Size by State (2013-2022)

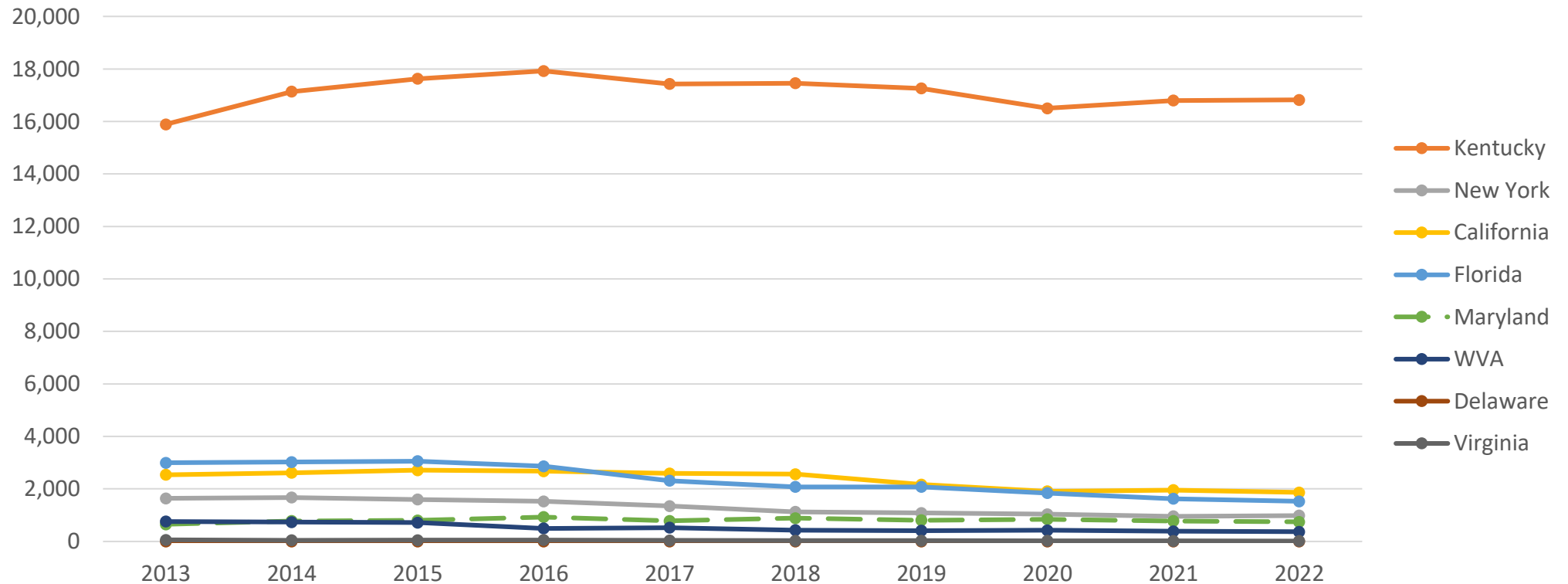


Notes: 2013 data is excluded for California due to the closure of Hollywood Park Racetrack at the end of that year.
Colonial Downs in Virginia ceased operations in 2014 and reopened in 2019.
Sources: The Jockey Club and Equibase Company.

Observations – Mares Bred by State

The number of mares bred to Maryland stallions in 2022 ranked 5th amongst the profiled states and represented 2.6% of the total North America market. The breeding industry for all states is significantly lower than Kentucky, in which the mares bred comprised nearly 60% of the total market in North America in 2022. Over the past 10 years, Maryland and Kentucky were the only states that had increases in the number of mares bred. The health of the breeding industry is critical to support racing demand and quality.

Mares Bred by State (2013-2022)



Note: Figures reflect mares bred to stallions in that specific state.
Source: The Jockey Club.

Observations – Takeout Allocation for On-Track Wagering

The takeout is a commission that is retained from all wagers made at any given racetrack for both live and simulcast racing. The takeout rates vary by state and in some cases, further differences exist by track. The takeout is also dependent upon the type of wager being made. The blended takeout rates observed for the states profiled were relatively consistent in 2022, ranging from approximately 19% to 21% of live and simulcast handle. However, the manner in which these funds are allocated and the associated uses do differ amongst the states profiled.

In Maryland, California, Virginia, and West Virginia, the takeout is directly allocated between the track operators, purses, thoroughbred development funds, and other uses (e.g., state and local taxes, regulatory fees, horse health and safety, and simulcast fees). In those states, the track operators receive anywhere from approximately 27% to 54% of the takeout associated with on-track wagering while purses and thoroughbred development receive approximately 27% to 44% and 3% to 6%, respectively. In three (3) other states however, most of the available funds (approximately 90% to 92%) are retained by the track operators as a commission and the respective track operators may then enter into agreements with the horsemen regarding purse and other allocations. The following table illustrates the on-track wagering takeout allocation for the profiled states.

On-Track Wagering Takeout Allocation Profiled States				
State	Track Operators	Purse	Thoroughbred Development	Other
California (1)	35.8%	39.8%	3.1%	21.3%
Florida (2)	91.9%	0.0%	0.0%	8.1%
Kentucky (3)	89.7%	0.0%	3.8%	6.5%
New York (1)	89.8%	0.0%	2.8%	7.4%
Maryland (1)(4)	50.0%	44.3%	5.7%	0.0%
Virginia (1)	53.6%	29.7%	4.7%	11.9%
West Virginia (1)	26.7%	26.7%	4.3%	42.2%

(1) - Based on calendar year 2022 reporting.

(2) - Based on fiscal year ending June 2022 reporting.

(3) - Estimated based on the State's new excise tax structure and historical wagering.

(4) - Reflects net commissions after taxes and other expenses.

Sources: State racing and gaming commissions/boards and other secondary research.



Observations – Takeout Allocation for OTBs

Outside of Maryland, satellite wagering facilities or Off-Track Betting (OTB) facilities, which are state-sanctioned facilities (other than those offering live racing) that accept wagers for both in-state and out-of-state races are prevalent in three (3) of the states profiled (California, New York, and Virginia). In California, the OTBs are jointly controlled by the State’s racing industry, consisting of the track operators, racing fairs, and the horsemen. Similar but slightly different, satellite wagering facilities in Virginia are owned and operated by Virginia’s lone thoroughbred racetrack, Colonial Downs. In New York, the structure is significantly different with ownership consisting of a mix of private entities and public benefit corporations.

Similar to on-track wagering, the takeout associated with OTB wagering typically ranges from 19% to 21% of handle. As to be expected and especially given the different ownership structures of the OTBs for the profiled states, the distribution of these funds vary from state to state, as detailed in the table below. The allocations to thoroughbred development funds are relatively consistent, but significant differences exist for other distributions. In New York for example, the allocation to “other” is considerably higher, largely reflecting the net commissions retained by the OTB operators.

OTB Takeout Allocation Profiled States				
State	Track Operators	Purse	Thoroughbred Development	Other
California (1)	23.7%	32.6%	3.0%	40.7%
New York (1)	21.6%	0.0%	2.2%	76.2%
Maryland (1) (2)	50.0%	44.7%	5.3%	0.0%
Virginia (1)	59.8%	23.2%	4.6%	12.4%

(1) - Based on calendar year 2022 reporting.

(2) - Reflects net commissions after taxes and other expenses.

Sources: State racing and gaming commissions/boards.



Observations – Live Export Fees Allocation

The handle associated with live export wagering, which is generated from the broadcasting of races at any given track to out-of-state locations, is a significant source of revenue for most racetracks. In connection with this type of wagering, revenues are generated through signal transmission and other host fees. These fees vary by state and further by track, dependent upon the agreements any given track has with out-of-state wagering providers for the export of its signal. Furthermore, how these fees are divided can vary significantly. In some cases, these allocations are based on statutory requirements, but in others it is left to negotiation between the racetrack and horsemen.

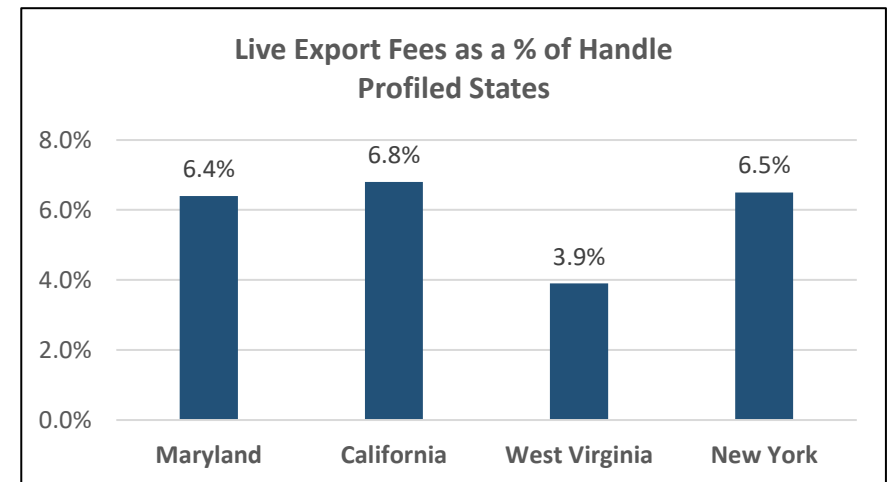
The live export fees generated and associated distribution in the profiled states are not reported by many racing and gaming commissions/boards or other secondary sources. The fees as a percentage of associated handle in Maryland for 2022 was 6.4%, while the fees in the other states ranged from 3.9% to 6.8%. In these states, the fees received are dedicated primarily to purses and track operator payments, with lesser amounts helping to fund thoroughbred development and other uses. In New York, while the fees as a percentage of live export handle are not reported, New York statutes provide that any such fees collected are shared equally between the track operator and purse contributions. These fees and allocations are detailed in the table and chart below.

Live Export Fees Allocation Profiled States				
State	Track Operators	Purse	Thoroughbred Development	Other
Maryland (1)	50.0%	44.3%	5.7%	0.0%
California (1)	38.9%	49.7%	2.3%	9.1%
New York (2)	50.0%	50.0%	0.0%	0.0%
West Virginia (1)	45.0%	45.0%	5.6%	4.4%

(1) - Based on calendar year 2022 reporting.

(2) - Based on New York statutes.

Sources: State racing and gaming commissions/boards and other secondary sources.

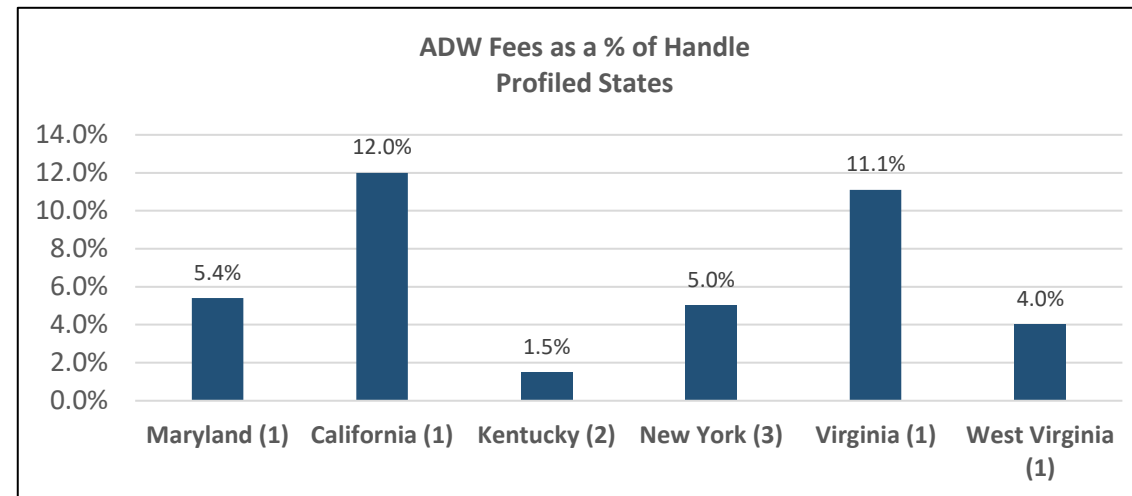


Observations – ADW Fees Allocation

Advanced Deposit Wagering ("ADW"), which is done through online platforms and mobile apps, is a growing source of revenue for the thoroughbred racing industry across the United States. In connection with this type of wagering, source market and other fees are often paid by ADW licensees. How these revenues are allocated perhaps varies the most among different states due to the evolution of ADW in recent years and the steps taken by some states, but not others, to regulate this type of wagering.

In Maryland, source market and other fees collected from ADW licensees totaled 5.4% of associated ADW wagering in 2022. In California, these fees totaled 12.0% of associated ADW wagering in 2022. The fees in California are negotiated by the racetracks, but subject to caps set forth by California statutes. In New York and West Virginia, the fees are statutory and are 5.0% and 4.0%, respectively while fees in Virginia were 11.1% in 2022, as detailed in the adjacent chart. In Kentucky, an excise tax of 1.5% is collected for distribution from ADW, but additional source market and other fees may be collected by the track operator based on agreements with the ADW licensees, the details of which are unknown.

The allocation of ADW fees collected vary by state, but in most cases, these fees are dedicated largely to purse and track operator payments, with lesser amounts helping to fund thoroughbred development and other uses, as detailed in the adjacent table. It is worth noting that in Virginia, rather than payments to the track operator, various other horsemen associations receive funding from ADW.



State	Track Operators	Purse	Thoroughbred Development	Other
Maryland (1)	50.0%	44.3%	5.7%	0.0%
California (1)	25.1%	30.0%	3.2%	41.7%
Kentucky (2)	42.5%	42.5%	0.0%	15.0%
New York (1)	36.0%	36.0%	18.0%	10.0%
Virginia (1)	0.0%	43.5%	8.7%	47.8%
West Virginia (1)	45.0%	45.0%	10.0%	0.0%

(1) - Based on calendar year 2022 reporting.

(2) - Based on fiscal year ending June 2022 reporting. Solely reflects allocation of excise tax, and associations may generate additional source market and other fees.

Sources: State racing and gaming commissions/boards, regulations, and other secondary research.

Observations – Purse and Thoroughbred Development Funds

The purses and thoroughbred development funds for racing in all of the states profiled receive funding contributions from pari-mutuel wagering, as detailed in previous slides. Nearly all the states also fund purses and thoroughbred development funds through significant contributions from other gaming operations, including VLTs and Historical Horse Racing (“HHR”) located at racinos and other casino gaming operations. The exception to this is California, which is funded exclusively through pari-mutuel wagering. The contributions from other gaming operations vary significantly by state, as shown in the adjacent tables.

In 2022, contributions to Maryland thoroughbred racing purses from VLT operations located at casinos throughout the State represented nearly 82% of the total funding for purses, second only to West Virginia. Similarly, Maryland thoroughbred development funds received nearly 92% of funding from the State’s VLT operations, second only to Kentucky. It should be noted that Kentucky is not included in the purse funding comparisons and Florida is not included in either of these comparisons, due to data limitations.



Thoroughbred Racing Purses - Contribution by Source in 2022			
Profiled States			
State	Pari-Mutuel Wagering	Other Gaming	Total
Maryland	18.1%	81.9%	100.0%
California	100.0%	0.0%	100.0%
Delaware	52.6%	47.4%	100.0%
New York	62.7%	37.3%	100.0%
Virginia	41.2%	58.8%	100.0%
West Virginia	17.4%	82.6%	100.0%

Sources: State racing and gaming commissions/boards, regulations, The Jockey Club, Equibase, and other secondary research.

Thoroughbred Development Funds - Contribution by Source in 2022			
Profiled States			
State	Pari-Mutuel Wagering	Other Gaming	Total
Maryland	8.1%	91.9%	100.0%
California	100.0%	0.0%	100.0%
Delaware	22.0%	78.0%	100.0%
Kentucky	5.0%	95.0%	100.0%
New York	27.0%	73.0%	100.0%
Virginia	59.4%	40.6%	100.0%
West Virginia	23.4%	76.6%	100.0%

Sources: State racing and gaming commissions/boards, regulations, The Jockey Club, Equibase, and other secondary research.

Observations – HISA Assessments

In 2020, Congress passed a bill authorizing the Horseracing Integrity and Safety Authority ("HISA") as a private self-regulatory organization, with implementation of HISA rules and regulations having begun in July 2022. HISA was created to establish and implement a national, uniform set of integrity and safety rules that are applied consistently to every thoroughbred racetrack and participants across the country. HISA is funded through assessments to each state and its tracks. The assessment formula is described in the Overview of Maryland Thoroughbred Racing section of this report.

The following table summarizes the 2023 assessments for each state profiled, along with strategies being employed to fund these assessments.

HISA Assessments and Funding Strategies Profiled States		
State	2023 Assessment (1)	Funding Approach
Maryland	\$3,553,689	Maryland's HISA assessment is being paid via an allocation of 50% paid by the respective track, 44.3% paid through a redirection of purse account funds, and 5.7% paid by the MBF.
California	\$6,729,297	The California Horse Racing Board approved a stakeholder proposal to fund the 2023 HISA assessment through a reallocation of a portion of ADW fees..
Delaware	\$1,194,832	In 2022, the Delaware Thoroughbred Racing Commission chose not to remit and collect HISA fees. At that time, the Delaware Department of Agriculture was considering options in pursuing a State grant to cover the State's HISA assessment. However, it is unclear if any such grant was obtained.
Florida	\$5,905,640	In May 2023, the Florida Legislature passed a tax bill including pari-mutuel tax credits to the Thoroughbred racetracks to cover costs of HISA assessments.
Kentucky	\$6,821,847	The Kentucky Horse Racing Commission has placed the burden on the State's tracks. Kentucky Downs, increased its takeout rate by 1.0% to help offset the fees. It is unknown if any measures are being taken by any of the other tracks in the State with respect to the HISA fees.
New York	\$7,935,427	HISA approved a structure that will equally split the payments for New York's assessment between NYRA and the New York Thoroughbred Horsemen's Association (NYTHA) with NYRA paying half out of its operating budget and NYTHA charging a per-start fee at each NYRA track for the remainder.
Virginia	\$708,276	N/A
West Virginia	\$3,814,169	Not being funded at this time, pending litigation.

(1) - Not adjusted for any credits that may have been issued.

Source: Horseracing Integrity and Safety Authority, state racing and gaming commissions/boards, and other secondary research.

Summary of Conclusions



Summary of Conclusions

This section presents a summary of conclusions based on the research and analysis conducted as part of this study effort as well as our extensive industry experience.

GENERAL OBSERVATIONS

- Racing is an important industry to the State of Maryland and its economy, particularly given that it hosts the Preakness Stakes, one of the three races that comprise the Triple Crown. As a point of reference, a study conducted by the American Horse Council in 2023 estimates the Maryland racing sector of the horse industry generates an economic impact of \$466 million and supports 2,988 jobs annual. As such, and consistent with other racetracks, it is important that racetrack capital improvements are prioritized in Maryland to enhance and sustain the industry and related economic benefits.
- Maintaining or enhancing the breeding industry in the State helps to preserve green space and promote agriculture. In a scenario where the industry is not maintained or enhanced, the sustainability of the agriculture industry in the State could be compromised.
- Both tracks in Maryland require substantial improvements to appropriately service the industry and offer long-term sustainability. In 2020, State Legislation authorized the MSA to issue up to \$375 million in bonds to fund track improvements. Collateral economic and fiscal benefits to the State are disproportionate to the returns of a for-profit operator.

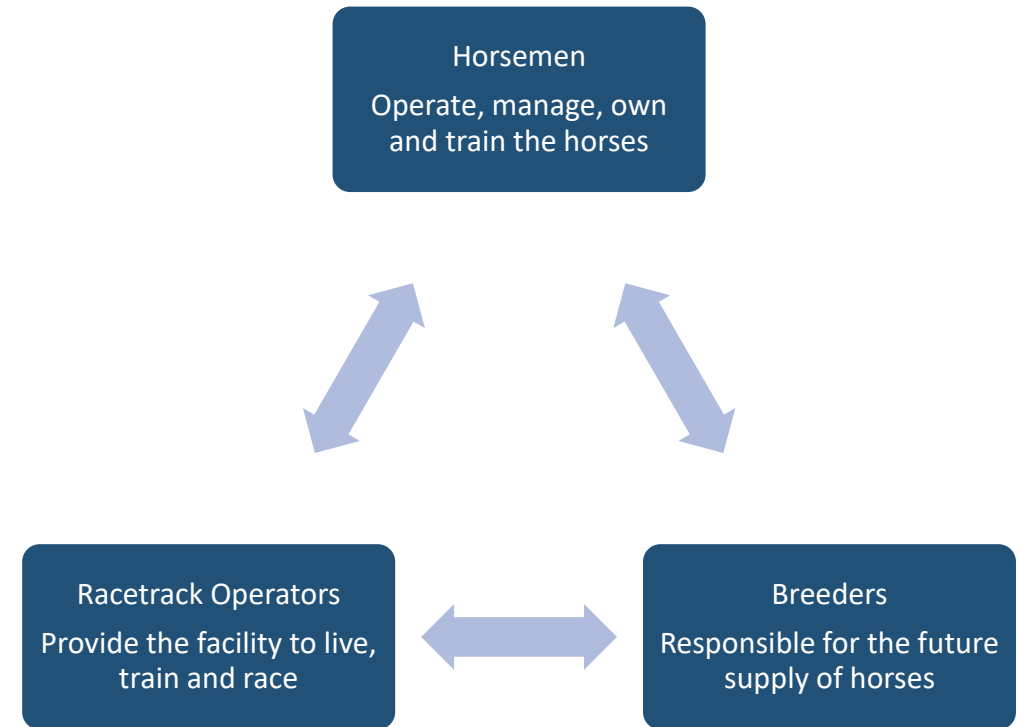
- The other Triple Crown tracks are in the process of making significant renovations and modernization efforts with Churchill Downs investing more than \$300 million and Belmont Park planning for a \$455 million redevelopment. The for-profit track operating model in Maryland does not currently provide sufficient ROI for the track operators to make necessary investments.
- The Maryland racing industry is under competitive pressures.
- It is important to understand and be proactive about what is going on in surrounding states such as Delaware, New York, West Virginia and Virginia as trainers and breeders can start to migrate operations to these states if they are more financially viable which would lead to a decline in Maryland.
- Churchill Downs Inc. has been increasing its portfolio of racetracks which now includes Colonial Downs in Virginia. By contrast, TSG has been closing/consolidating tracks including Calder Race Course and Golden Gate Fields.

The pages that follow provide observations and recommendations for consideration related to the topics of operating models, live on-track wagering/racing product, advance deposit wagering (“ADW”), thoroughbred development, and funding.

Summary of Conclusions (cont'd)

OPERATING MODEL

- A key component of enhancing the horse racing product in Maryland and helping to ensure the sustainability of the industry is the operating model.
- It is critical that the track operator have strong business acumen and be well-funded to appropriately support ongoing racing expenses and capital improvements, while maintaining safety and quality racetracks.
- The ownership and operating structures of the profiled tracks contain a mix of public, private, and not-for-profit entities.
- All the states profiled, excluding California, have other gaming operations at the tracks or in some cases other satellite gaming facilities.
- Private ownership of tracks is most viable in cases where other owned gaming operations exist to support track needs and investments. In the absence of gaming operations, the economics of racing typically require significant support from public funds.
- Maryland, because of video lottery terminal (“VLT”) funding contributions, has done a good job relative to its peers of maintaining purses at reasonable levels and preserving race days, which directly support strong racing and breeding industries that contribute to significant economic impacts and the preservation of green space.
- Recommendations related to future thoroughbred racing operations in Maryland should take into consideration the needs of the horsemen, breeders, and racetracks, which are interdependent and share common, yet unique objectives.



Summary of Conclusions (cont'd)

OPERATING MODEL (cont'd)

- It is possible to have a financially viable operating model in Maryland, but thoughtful and strategic changes are needed.
- Revenues from all-sources wagering may not be adequate to enable a for-profit operator to run a sufficient number of race days and also make the necessary capital improvements.
- Both tracks in Maryland require substantial improvements to appropriately service the industry, offer long-term sustainability, and in the case of Pimlico, showcase Baltimore and the State.
- Implementing a not-for-profit operating model would allow for 100% of State investment to go towards the interests of Maryland racing.
- Del Mar and Belmont are similar prominent racetracks without on-site gaming operations that offer an alternative operating model to Maryland.
 - Del Mar is owned by the State of California and operated by a non-profit consisting of the horsemen and does not have on-site gaming.
 - Belmont is owned by the State of New York and operated by the New York Racing Association, Inc. ("NYRA"), a non-profit that operates as a business. While Belmont doesn't have on-site gaming, they receive contributions from satellite gaming facilities.

Recommendation for Consideration: Implementing a public ownership structure for the tracks which recognizes a substantial need for a public investment with the involvement of industry participants to leverage otherwise strong economic foundations is recommended for consideration. Further, it is recommended that consideration be given to leasing the tracks to a not-for-profit corporation similar to NYRA.



Summary of Conclusions (cont'd)

BUSINESS OPERATIONS

Live On-Track Wagering/Racing Product

- Live on-track wagering and attendance at Maryland thoroughbred tracks have faced challenges, like many other states throughout the country, However, horse racing is still popular and maximizing live on-track wagering is beneficial, given the higher margins associated with it compared to other sources of wagering.
- On a per race day basis, the handle associated with this type of wagering in Maryland compares favorably to neighboring states, but significantly lower than what is generated in various other states throughout the country.
- Notably, those states enjoying greater turnouts and higher levels of live on-track wagering offer higher purses and generally larger field sizes, both of which contribute to the quality and attractiveness of the racing product. Many tracks in these states have also had success in offering boutique meets and an emphasis on other special events, while also maintaining a relatively consistent number of annual live race days.

Recommendation for Consideration: While the levels of live on-track wagering are unlikely to ever return to historical levels due to general trends in the horse racing industry and the proliferation of other forms of gambling, the success demonstrated in other states indicate the potential to develop strategies to reverse the trend of declining attendance and live on-track wagering at Maryland thoroughbred tracks. Steps should be taken to emulate the strategies for successful boutique meets at other tracks throughout the country (e.g., Saratoga, Del Mar, Keeneland, Kentucky Downs), maintain a minimum of 140 to 165 live race days, target a 35% increase in purses to bring the average purse per race to \$60,000 in line with Virginia and higher than other Mid-Atlantic states but still significantly lower than New York, and seek to increase the number of starts by about 15% achieving an average field size of 8.5. Additionally, evaluate opportunities to create a racing circuit(s) with other neighboring states to further improve the racing product and attract new or increased wagering interest.

Summary of Conclusions (cont'd)

BUSINESS OPERATIONS (cont'd)

Live Export Wagering

- Live export wagering, which is generated from the broadcasting of races at the Maryland tracks to other locations represents the most significant source of handle for Maryland racing.
- The signal transmission and other negotiated fees in place for this type of wagering in Maryland are in line with other states.
- On a per race day basis, the handle associated with this type of wagering in Maryland compares favorably to neighboring states, but significantly lower than what is generated in other states throughout the country.

Recommendation for Consideration: Review wagering distribution model and practices, along with more aggressive marketing and promotion, to further channelize distribution, expand audience, and reach new or emerging markets. While existing fee arrangements are in line with industry standards, enhancements to the racing product through previous recommendations would also command higher fees and better terms with existing receiving sites.

Advance Deposit Wagering ("ADW")

- Advancements in technology and other trends in consumer behavior have fueled significant shifts in wagering from traditional brick-and-mortar betting locations to online platforms (i.e., ADW). This was further accelerated during the pandemic with stay-at-home orders and other restrictions in place.
- While ADW provides a significant source of revenue to the horse racing industry and an opportunity to introduce and expand its customer base, the margins for this type of wagering available to the tracks, horsemen, and breeders is significantly lower than on-track wagering.
- The source market and other fees collected by Maryland as a percentage of ADW handle are comparable to some states, yet significantly lower than what has been negotiated in others.

Recommendation for Consideration: Agreements with ADW licensees should be evaluated for opportunities to increase fees. Additionally, enhance marketing/promotion efforts to raise profile with online betting platforms and seek opportunities for improved integration with traditional online sports betting platforms. Churchill Downs Inc., for example, recently reached agreements to bring its racing content to two different major online/mobile sports betting platforms (FanDuel and Draft Kings). Others have also recognized this opportunity, including NYRA Bets, the official ADW platform of NYRA, which in 2021 became the first horse racing partner providing integrated content with BetMGM, a leading online bookmaker focused traditionally on sports wagering.

Summary of Conclusions (cont'd)

FUNDING CONSIDERATIONS

- It is possible to have a financially viable racing operation in Maryland under the current economics, but a sufficient ROI may not exist for a for-profit to operate in a manner that is consistent with the State's objectives.
- Efficiencies can be achieved through consolidation of racing operations at Pimlico. Further, improved operations of the Preakness present significant opportunities for improved profitability. The need to maintain an operational track at all times requires a detailed transition plan.
- Beyond pari-mutuel wagering, the other primary source of funding for profiled states, with the exception of California, is other gaming operations (e.g., VLTs, table games, sports wagering, and HHRs). Maryland purses and thoroughbred development funds do benefit from other gaming operations, which in its specific case is from the VLTs at casinos located throughout the State.
- Unlike Maryland, many of these other gaming operations are located at the tracks and in some cases other satellite locations, which are owned and operated by the same parties as the tracks themselves. Thus, beyond the statutory or otherwise agreed distributions of revenues to racing industry stakeholders, additional substantial profits may be available for operating expenses, reinvestment, or other uses that benefit thoroughbred racing.
- The introduction of HHR facilities at Kentucky and Virginia tracks and other satellite gaming facilities in those states has had significant positive impacts to their horse racing industries, fueling growth in purses, thoroughbred development funds, and supporting track operations and investments.
- The manner in which revenues from pari-mutuel wagering are distributed and the associated allocations to the tracks, horsemen, and breeders in Maryland are relatively comparable to that of other states. Similarly, while the mechanics differ among the states profiled, HISA assessments are typically shared amongst track operators, horsemen, and breeders.

Recommendation for Consideration: If a not-for-profit operating structure is pursued, the newly formed entity should develop operating plans and projections based on both existing revenue sources and potential new gaming alternatives as highlighted above.

Summary of Conclusions (cont'd)

THOROUGHBRED DEVELOPMENT FUNDING

- Maryland has maintained a level of thoroughbred development funding to offer breeder, owner, and stallion awards that are competitive with neighboring states. However, higher revenues to support thoroughbred development from other gaming operations in these states could pose future risks to Maryland's breeding industry.
- Reductions in thoroughbred breeding for most states has been a contributing factor to declining field sizes at many tracks.
- While up over 2013, the level of breeding in Maryland has declined moderately in recent years, as has its average field size. At the same time and based on various breeding metrics, Maryland has maintained relatively steady market share of the overall breeding industry.
- In some states, such as Virginia and Kentucky, breeding incentive awards are available for racing performances in other Mid-Atlantic states.

Recommendation for Consideration: Previous recommendations to the racing product place further importance on maintaining a strong breeding industry in Maryland. To achieve these objectives and ensure future competitiveness with neighboring states, a 15% to 20% increase in thoroughbred development funds should be targeted. Additionally, the merits of offering out-of-state race awards should be evaluated.



Case Studies - Thoroughbred Industry Operating Models



Case Studies - Select Thoroughbred Industry Operating Models

This section provides detailed case studies of racetrack operating models in California, Delaware, Florida, Kentucky, New York, Virginia, and West Virginia.

Metrics profiled include:

- Track overviews
- Trends in thoroughbred racing metrics such as races, purses, average purse per race, race days and average field size
- Trends in thoroughbred racing handle including sources of handle
- Takeout, fees and breakage
- Purse funds
- Trends in breeding metrics
- Thoroughbred development funds
- Breeding and Racing Incentives
- Horseracing and integrity and safety act ("HISA")
- General overview of racing commission / oversight entity

As previously mentioned, the data presented reflects available information gathered from various sources including, but not limited to, MTROA, Maryland Racing Commission, Maryland Thoroughbred Horsemen's Association, Maryland Horse Breeders Association, Maryland Jockey Club, The Jockey Club, Equibase Company, and racing organizations in the aforementioned states. Certain data was not available as the metrics reported vary by state and there is no single entity that reports all the profiled metrics for each state.

A challenge is ensuring accurate comparisons given the differences in reporting for each state. Further, in some instances the data related to a metric within the same state may differ from one source to the next. For comparative purposes, we have utilized sources that allow for accurate and consistent comparisons across each state. In addition, in some instances, the reported data was adjusted to allow for direct comparisons.

The case studies within this section provide significant data that is meant to serve as a guide in identifying industry best practices and our recommendations to MTROA.

California – Thoroughbred Racetracks

There are four thoroughbred racetracks in California. The Stronach Group owns and operates two tracks including Golden Gate Fields and Santa Anita. Golden Gate Fields is planned to close in 2024. Del Mar and Los Alamitos are privately owned and operated. The following table provides track particulars, and the map that follows show location details.

California Thoroughbred Racetracks								
Track	Year Opened	Owner	Operator	Seating Capacity		Track Length		Stabling (stalls)
				Grandstand	Clubhouse	Dirt (miles)	Turf (furlongs)	
Del Mar	1937	State of California	Del Mar Thoroughbred Club	7,350	2,183	1	7	2,000
Golden Gate Fields	1941	The Stronach Group, Inc.	The Stronach Group, Inc.	9,000	4,500	1	7	1,420
Los Alamitos	1947	Dr. Edward C. Allred	Los Alamitos Racing Association	12,000	5,500	1	N/A	1,500
Santa Anita	1934	The Stronach Group, Inc.	The Stronach Group, Inc.	26,000	4,500	1	6.5	2,000

Sources: Facility website, Twinspires, Advantage Wagering, CasinoCity, and horsereading-tracks.

Santa Anita Park
Arcadia, CA



Del Mar Racing
Del Mar, CA



Source: Google Maps, facility websites

Golden Gate Fields
Berkeley, CA



Los Alamitos Race Course
Cypress, CA



California – Live Race Days and Attendance

The number of live race days at all of the California thoroughbred racetracks experienced measurable decreases for the 9-year period from 2014 through 2022, the most significant of which was at Santa Anita with live race days decreasing (28.8%) from 132 in 2014 to 94 in 2022. Annual attendance experienced an even greater decrease at all of the California thoroughbred racetracks over that same timeframe, with attendance down in excess of 40% at every track in 2022 compared to 2014. These trends are detailed in the tables below. It should be noted that Hollywood Park Racetrack closed at the end of 2013, as such and to provide a more meaningful comparison, we excluded 2013 data from this analysis.

Annual Live Race Days California Thoroughbred Racetracks					
Year	Del Mar	Golden Gate Fields	Los Alamitos	Santa Anita	Total
2014	51	152	18	132	353
2015	60	149	20	126	355
2016	54	148	20	126	348
2017	52	147	19	122	340
2018	52	149	20	123	344
2019	49	158	16	104	327
2020	42	120	7	76	245
2021	46	133	14	94	287
2022	44	120	13	94	271
9-Year Change	-13.7%	-21.1%	-27.8%	-28.8%	-23.2%
CAGR 2014-2022	-1.8%	-2.9%	-4.0%	-4.2%	-3.3%
CAGR 2018-2022	-4.1%	-5.3%	-10.2%	-6.5%	-5.8%



Annual Attendance California Thoroughbred Racetracks					
Year	Del Mar	Golden Gate Fields	Los Alamitos	Santa Anita	Total
2014	731,078	314,423	52,864	956,884	2,055,249
2015	702,378	303,160	41,747	901,140	1,948,425
2016	611,823	262,837	37,784	1,038,546	1,950,990
2017	623,816	267,825	30,692	968,000	1,890,333
2018	544,443	261,169	29,272	959,354	1,794,238
2019	465,650	228,827	26,174	831,953	1,552,604
2020	4,611	44,422	0	234,630	283,663
2021	318,854	35,725	18,423	227,472	600,474
2022	326,235	72,014	14,679	572,627	985,555
9-Year Change	-55.4%	-77.1%	-72.2%	-40.2%	-52.0%
CAGR 2014-2022	-9.6%	-16.8%	-14.8%	-6.2%	-8.8%
CAGR 2018-2022	-12.0%	-27.5%	-15.8%	-12.1%	-13.9%

Notes: Excludes races at fairs and fair meets at Los Alamitos. Additionally and to provide a more meaningful comparison, 2013 data was not included as Hollywood Park Racetrack closed at the end of 2013.

█ indicates Breeders Cup was hosted in that year.

Source: California Horse Racing Board.

Notes: Excludes races at fairs and fair meets at Los Alamitos. Additionally and to provide a more meaningful comparison, 2013 data was not included as Hollywood Park Racetrack closed at the end of 2013.

Source: California Horse Racing Board.

California – Thoroughbred Racing Metrics

The California thoroughbred racing industry experienced a measurable decrease in the number of races (18.9%) and race days (23.2%) over the 9-year period from 2014 through 2022. It also saw a decrease (4.1%) in the average field size per race from 7.6 in 2014 to 7.2 in 2022. Despite these trends and while total purses were moderately lower in 2022 compared to 2014, the total purses have increased in recent years. Additionally, the average purse per race increased from approximately \$39,200 in 2014 to \$45,900 in 2022, representing an increase of 17.0%. These trends and other performance metrics are detailed in the table below.

California Thoroughbred Racing Statistics							
Year	Races	Purses	Avg Purse per Race	Starters	Starts	Race Days	Avg Field Size
2014	3,026	\$118,689,600	\$39,223	4,920	22,849	353	7.6
2015	3,026	\$117,296,400	\$38,763	4,739	23,202	355	7.7
2016	2,968	\$112,528,800	\$37,914	4,584	22,322	346	7.5
2017	2,910	\$107,837,945	\$37,058	4,575	21,569	338	7.4
2018	3,006	\$110,622,800	\$36,801	4,567	22,644	344	7.5
2019	2,828	\$107,890,600	\$38,151	4,405	20,321	325	7.2
2020	2,189	\$83,550,900	\$38,169	3,788	15,995	245	7.3
2021	2,537	\$107,922,012	\$42,539	4,082	18,165	285	7.2
2022	2,454	\$112,579,660	\$45,876	3,954	17,776	271	7.2
9-Year Change	-18.9%	-5.1%	17.0%	-19.6%	-22.2%	-23.2%	-4.1%
CAGR 2014-2022	-2.6%	-0.7%	2.0%	-2.7%	-3.1%	-3.3%	-0.5%
CAGR 2018-2022	-4.9%	0.4%	5.7%	-3.5%	-5.9%	-5.8%	-1.0%

Notes: Excludes races at fairs and fair meets at Los Alamitos. Additionally and to provide a more meaningful comparison, 2013 data was not included as Hollywood Park Racetrack closed at the end of 2013.

Source: California Horse Racing Board.



Notable races in California include the Pacific Classic Stakes, the Santa Anita Handicap, and the Santa Anita Derby. The Pacific Classic Stakes, a Grade I thoroughbred race for three-year-olds and older, is held annually at Del Mar in August and carried a purse of \$1,000,000 in 2023. The Santa Anita Handicap, a Grade I thoroughbred race and one of the country's most important races for four-year-olds and older, is held annually in March and carried a purse of \$500,000 in 2023. The Santa Anita Derby, also a Grade I thoroughbred race and one of the final prep races for the Kentucky Derby, is held annually in April and carried a purse of \$750,000 in 2023. Additionally, both Santa Anita and Del Mar have hosted the Breeders Cup World Championships multiple times over the years.

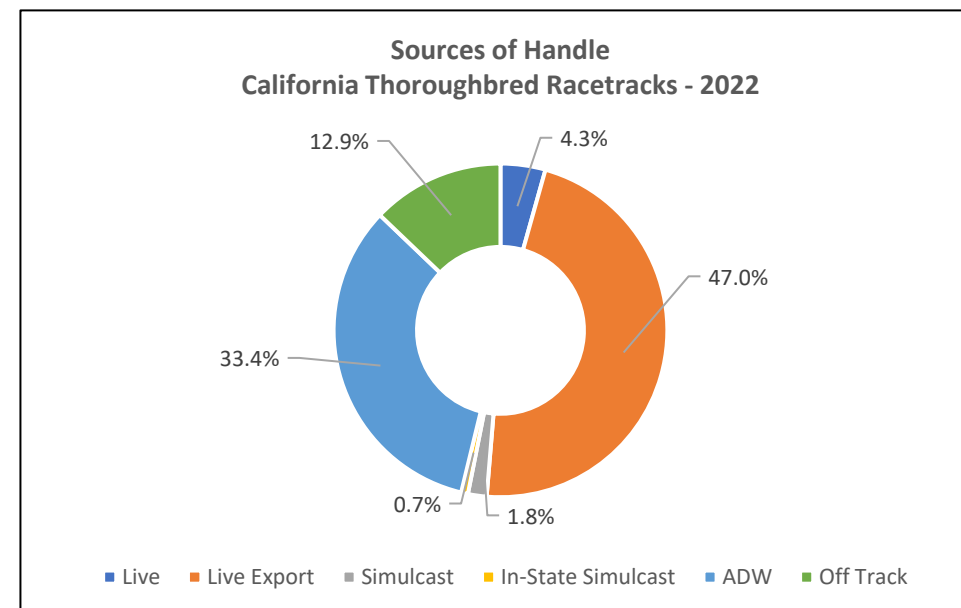
California – Thoroughbred Racing Handle

The annual total handle from all sources attributable to California thoroughbred racetracks was approximately \$2.58 billion in 2022 compared to \$2.64 billion in 2014, which reflected a slight decrease of 2.3% over that timeframe. Del Mar, however, saw an increase in its annual total handle of 26.4% over that same period. The handle associated with live export wagering, which is generated from the broadcasting of races at the California tracks to other locations, accounted for 47.0% of the total handle in 2022, while live on-track wagering accounted for just 4.3%. Simulcast wagering at California thoroughbred tracks for races taking place outside the state accounted for 1.8% of the total handle in 2022 and in-state accounted for 0.7%. The wagering generated from the many off-track betting facilities located in the State accounted for 12.9% of the total handle in 2022. Advanced Deposit Wagering ("ADW"), which is done through online platforms and mobile apps, accounted for 33.4% of the total handle in 2022 and has been a major driver of growth in the State's handle. These trends are illustrated in the table and chart below.

Annual Total Handle (All Sources) California Thoroughbred Racetracks					
Year	Del Mar	Golden Gate Fields	Los Alamitos	Santa Anita	Total
2014	\$569,369,495	\$464,622,598	\$115,098,448	\$1,494,088,242	\$2,643,178,783
2015	\$549,397,624	\$456,842,086	\$122,750,393	\$1,312,511,421	\$2,441,501,524
2016	\$461,585,071	\$454,690,772	\$130,667,086	\$1,411,403,025	\$2,458,345,954
2017	\$749,838,089	\$434,168,483	\$114,921,696	\$1,275,695,700	\$2,574,623,968
2018	\$625,614,989	\$507,163,750	\$117,453,487	\$1,379,849,702	\$2,630,081,928
2019	\$559,363,769	\$540,382,052	\$107,882,147	\$1,311,432,389	\$2,519,060,357
2020	\$642,324,911	\$533,619,648	\$56,361,304	\$978,393,406	\$2,210,699,269
2021	\$913,691,403	\$530,946,320	\$101,647,015	\$1,268,462,011	\$2,814,746,749
2022	\$719,750,449	\$524,162,413	\$81,568,125	\$1,257,474,917	\$2,582,955,904
9-Year Change	26.4%	12.8%	-29.1%	-15.8%	-2.3%
CAGR 2014-2022	3.0%	1.5%	-4.2%	-2.1%	-0.3%
CAGR 2018-2022	3.6%	0.8%	-8.7%	-2.3%	-0.5%

Notes: Excludes races at fairs and fair meets at Los Alamitos. Additionally and to provide a more meaningful comparison, 2013 data was not included as Hollywood Park Racetrack closed at the end of 2013.

Source: California Horse Racing Board.



Source: California Horse Racing Board.

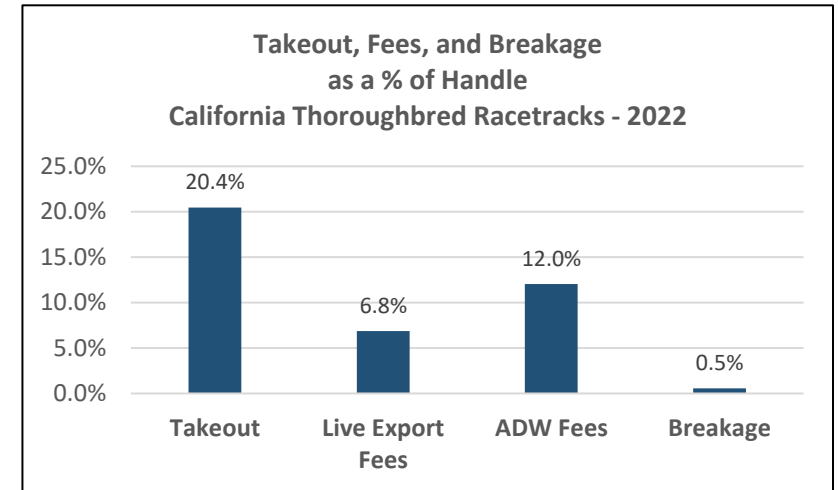
California – Takeout, Fees and Breakage

The takeout rates at California racetracks are applicable to live on-track betting as well as simulcast wagering (both for in-state and out-of-state tracks) and off-track betting establishments. The established takeout rates as a percentage of handle at California tracks ranges from 15.43% on straight wagers to 23.68.% on exotic wagers with 3 or more horses. In 2022, the total blended takeout rate on wagering at California thoroughbred racetracks was 20.4% of live on-track, simulcast, and off-track handle, which generated approximately \$103.9 million, as illustrated in the adjacent charts.

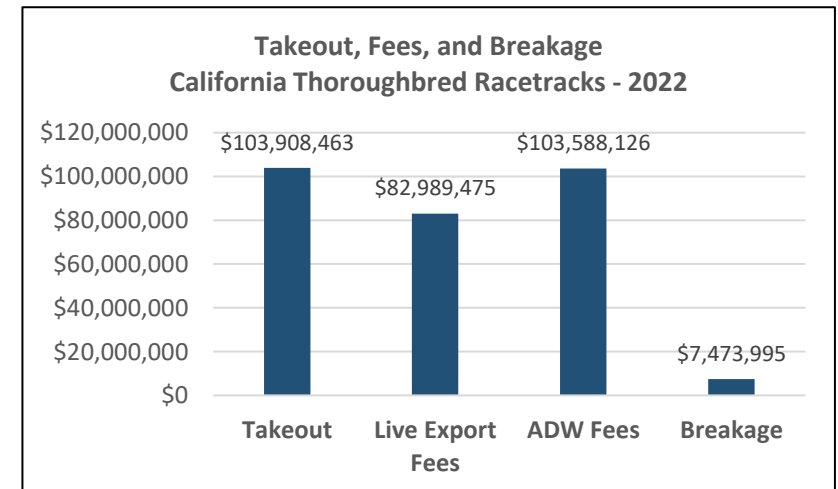
In 2022, the total live export fees at California thoroughbred racetracks was 6.8% of live export handle, which generated nearly \$83.0 million, as illustrated in the adjacent charts.

Source market and other fees paid by ADW licensees in California were 12.0% of ADW wagering in 2022 which generated approximately \$103.6 million, as illustrated in the adjacent charts. These amounts are subject to negotiated agreements and California law that caps an ADW's provider hub fee and host fees paid to tracks at which the wagering is taking place.

In 2022, breakage at California thoroughbred racetracks accounted for approximately \$7.5 million, as illustrated in the adjacent charts.



Source: California Horse Racing Board.



Source: California Horse Racing Board.

California – Takeout Allocation

The allocation of the takeout to different uses in California varies dependent upon the type of wagering taking place. In 2022 and in aggregate, the greatest share (35.1%) was allocated to purses, while track operators garnered the second most (27.9%). The aggregate takeout allocated to funding CHRB operations was 5.0% in 2022 and 3.1% was allocated to the California Thoroughbred Breeders Association (“CTBA”) for thoroughbred development/breeder incentive awards and programs. For simulcast wagering at California racetracks and off-track betting facilities, and dependent upon the agreements in place for each, transmission and host track payments are made (i.e., payments to the track for which the wager is being accepted), which in 2022 accounted for 10.5% of the total takeout. Other allocations accounted for 18.5% in 2022 and include backstretch retirement and welfare funds, equine health and safety programs, local taxes, stabling funds, and various other uses. These allocations, details by type of wager, and the actual amounts allocated are detailed in the adjacent tables.



Takeout Allocation % California Thoroughbred Racetracks - 2022					
Use	Live	Simulcast	In-State Simulcast	Off Track	Total
Track Operator	41.0%	24.9%	31.2%	23.7%	27.9%
Purse	47.1%	23.2%	37.0%	32.6%	35.1%
Racing Board	4.7%	4.1%	3.6%	5.4%	5.0%
Host Track/Transmission	0.0%	30.3%	13.5%	11.1%	10.5%
Thoroughbred Development	3.1%	3.0%	3.0%	3.0%	3.1%
Other	4.0%	14.5%	11.7%	24.3%	18.5%
Total	100.0%	100.0%	100.0%	100.0%	100.0%

Note: Excludes races at fairs and fair meets at Los Alamitos.

Source: California Horse Racing Board.

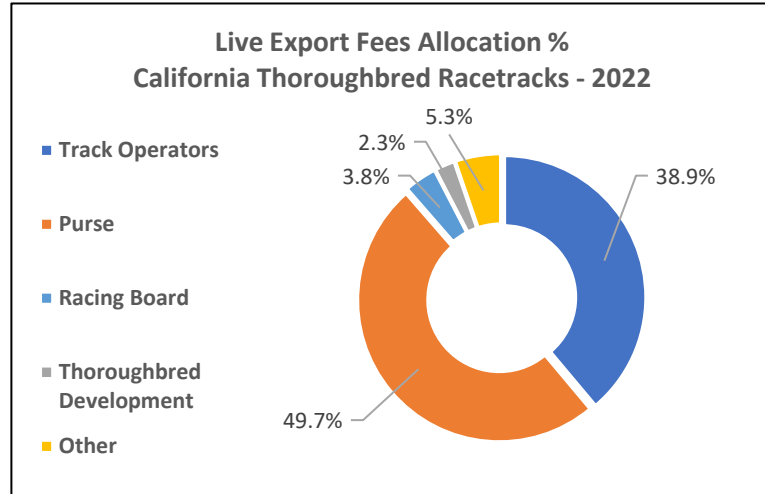
Takeout Allocation California Thoroughbred Racetracks - 2022					
Use	Live	Simulcast	In-State Simulcast	Off Track	Total
Track Operator	\$9,417,358	\$2,382,312	\$1,084,633	\$16,075,958	\$28,960,260
Purse	\$10,824,812	\$2,221,918	\$1,288,640	\$22,133,090	\$36,468,460
Racing Board	\$1,087,058	\$391,548	\$124,104	\$3,634,280	\$5,236,990
Host Track/Transmission	\$0	\$2,891,796	\$469,214	\$7,530,489	\$10,891,500
Thoroughbred Development	\$720,891	\$283,047	\$105,403	\$2,062,699	\$3,172,041
Other	\$915,418	\$1,386,930	\$408,013	\$16,468,853	\$19,179,213
Total	\$22,965,537	\$9,557,551	\$3,480,007	\$67,905,369	\$103,908,463

Note: Excludes races at fairs and fair meets at Los Alamitos.

Source: California Horse Racing Board.

California – Other Fees and Breakage Allocation

The allocation of live export fees received by California racetracks are dedicated primarily to purses and track operator payments, with lesser amounts helping to fund thoroughbred development and other uses. The allocation of ADW fees is similar, but a larger proportion go to other uses, and breakage is split equally between track operators and purses. The specific allocation amounts for these funding sources are detailed in the charts and tables below.

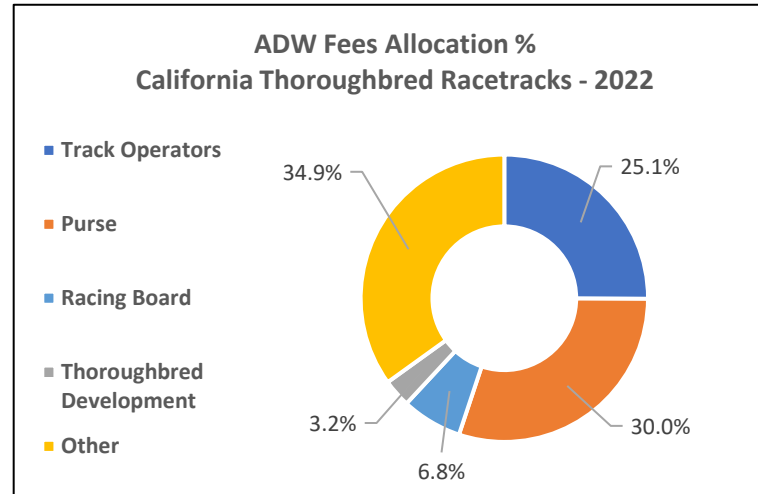


Source: California Horse Racing Board.

Live Export Fees Allocation California Thoroughbred Racetracks - 2022	
Use	Total
Track Operators	\$32,273,685
Purse	\$41,252,078
Racing Board	\$3,154,571
Thoroughbred Development	\$1,941,274
Other	\$4,367,867
Total	\$82,989,475

Note: Excludes races at fairs and fair meets at Los Alamitos.

Source: California Horse Racing Board.

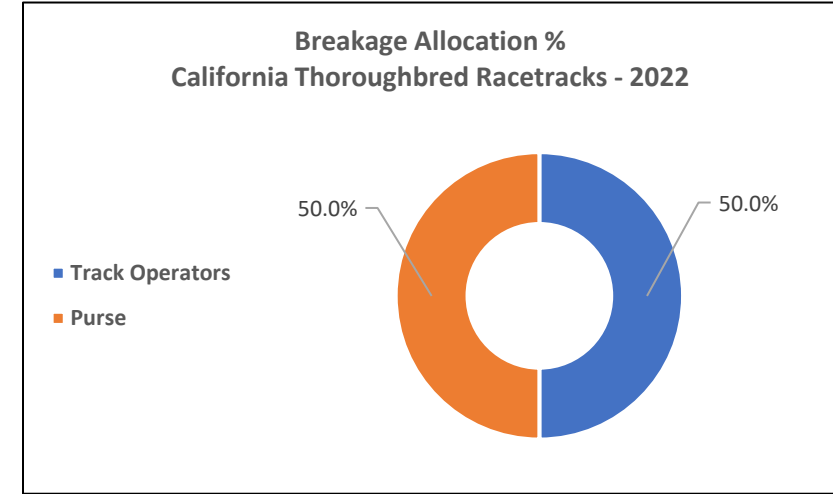


Source: California Horse Racing Board.

ADW Fees Allocation California Thoroughbred Racetracks - 2022	
Use	Total
Track Operators	\$25,967,231
Purse	\$31,122,125
Racing Board	\$7,047,354
Thoroughbred Development	\$3,269,107
Other	\$36,182,309
Total	\$103,588,126

Note: Excludes races at fairs and fair meets at Los Alamitos.

Source: California Horse Racing Board.



Source: California Horse Racing Board.

Breakage Allocation California Thoroughbred Racetracks - 2022	
Use	Total
Track Operators	\$3,736,997
Purse	\$3,736,997
Total	\$7,473,995

Note: Excludes races at fairs and fair meets at Los Alamitos.

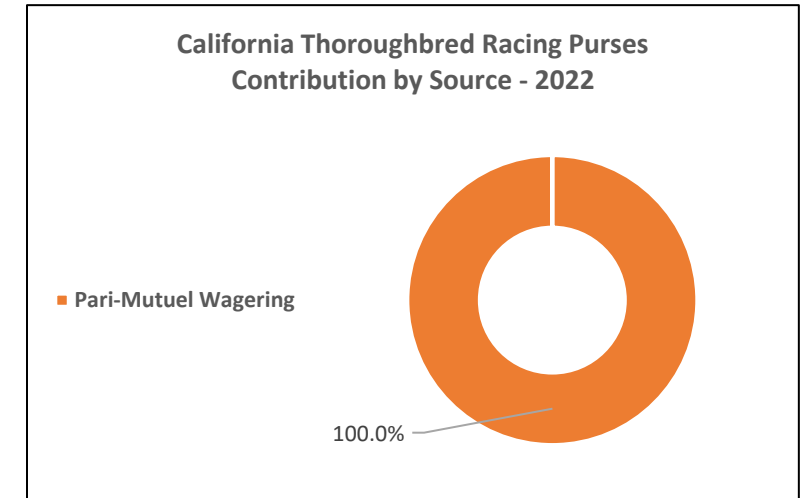
Source: California Horse Racing Board.

California – Purse Funds

As previously detailed, the purses for California thoroughbred racing receive funding contributions from pari-mutuel wagering, which totaled approximately \$112.6 million in 2022. Unlike many other states, purses in California are funded exclusively through pari-mutuel wagering at this time, as illustrated and detailed in the adjacent chart and table.

In the State's November 2022 general election, California Proposition 26, which would have legalized sports wagering at California's horse racetracks was voted down. While not detailed in California Proposition 26, it was anticipated subsequent agreements would be enacted to allocate a portion of the revenues generated via sports wagering at the racetracks to purses and other thoroughbred racing uses.

California horse racing stakeholders are however considering the pursuit of other supplemental funding sources. Scott Chaney, the Executive Director of the CHRB, has recently noted that he does not believe the current model for California racing is sustainable and that additional funding sources are needed to maintain the desired quality level for racing in the State, competitiveness of purses, and field sizes. He further indicated that exploring Historical Horse Racing ("HHR") as a possibility. HHR machines are very similar to slot machines in terms of play and other visual aspects, but unlike traditional slot machines, they use the outcomes of previously run races to determine payouts of any given wager instead of a random number generator. This method of determining payouts has allowed these games to be considered pari-mutuel wagering and offered in certain states where other casino gaming may have otherwise been illegal.



Note: Excludes races at fairs and fair meets at Los Alamitos.
Source: California Horse Racing Board.

California Thoroughbred Racing Purses Sources and Funding Amounts - 2022	
Source	Amount
Pari-Mutuel Wagering	\$112,579,660
Total	\$112,579,660

Note: Excludes races at fairs and fair meets at Los Alamitos.
Source: California Horse Racing Board.

California – Breeding Metrics

During 2022, California's 112 reported stallions covered 1,866 mares, or 6.6% of all the mares reported bred in North America. The number of mares bred to California stallions decreased by 26.5% from 2013 through 2022. The average book size (number of mares bred per stallion) in California increased moderately from 13.7 in 2013 to 16.7 in 2022. By comparison, the average North America book size increased from 15.5 to 23.2 during that same timeframe.

California-bred thoroughbred earnings by racing area show that in 2022, 78.3% of earnings were garnered in-state, down slightly from 79.6% in 2018. These and other breeding metrics are detailed in the adjacent tables.



Annual Thoroughbred Mares Bred to California Stallions						
Year	Mares Bred	% of North America	Stallions	% of North America	Average Book Size	Average North America Book Size
2013	2,540	6.8%	186	7.7%	13.7	15.5
2014	2,612	6.9%	171	7.5%	15.3	16.5
2015	2,713	7.2%	176	8.5%	15.4	18.1
2016	2,675	7.3%	182	9.2%	14.7	18.4
2017	2,591	7.5%	172	9.0%	15.1	18.2
2018	2,563	7.8%	160	9.1%	16.0	18.7
2019	2,165	6.9%	157	9.4%	13.8	18.9
2020	1,906	6.3%	130	8.4%	14.7	19.3
2021	1,954	6.7%	131	9.5%	14.9	21.2
2022	1,866	6.6%	112	9.1%	16.7	23.2
10-Year Change	-26.5%	-2.9%	-39.8%	18.2%	22.0%	49.7%
CAGR 2013-2022	-3.4%	-0.3%	-5.5%	1.9%	2.2%	4.6%
CAGR 2018-2022	-7.6%	-4.1%	-8.5%	0.0%	1.0%	5.5%

Source: The Jockey Club.

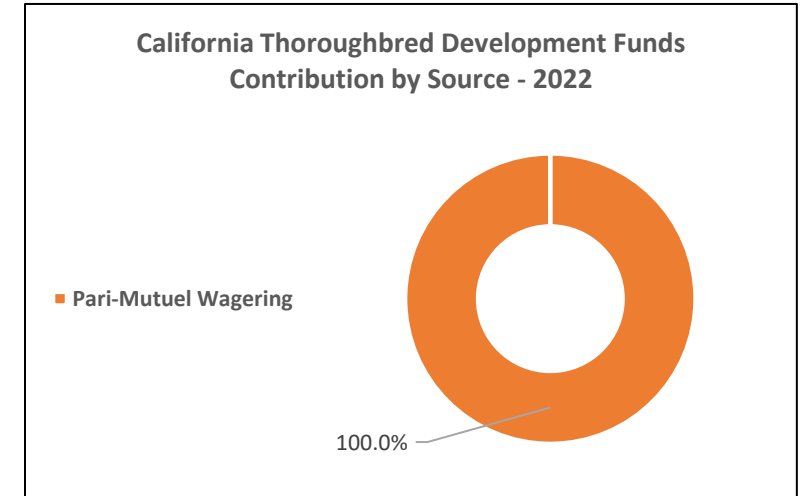
Percentage of California-Bred Thoroughbred Earnings by Racing Area						
Racing Area	2018	2019	2020	2021	2022	2018 to 2022 Change
California	79.6%	79.3%	83.0%	80.7%	78.3%	-1.7%
Arizona	4.3%	4.9%	2.1%	5.8%	7.2%	66.6%
New Mexico	2.6%	2.1%	1.5%	1.2%	2.3%	-9.8%
Washington	1.8%	1.8%	1.6%	1.6%	2.2%	24.7%
Other	11.7%	11.9%	11.9%	10.8%	10.0%	-14.5%

Source: The Jockey Club and Equibase Company.

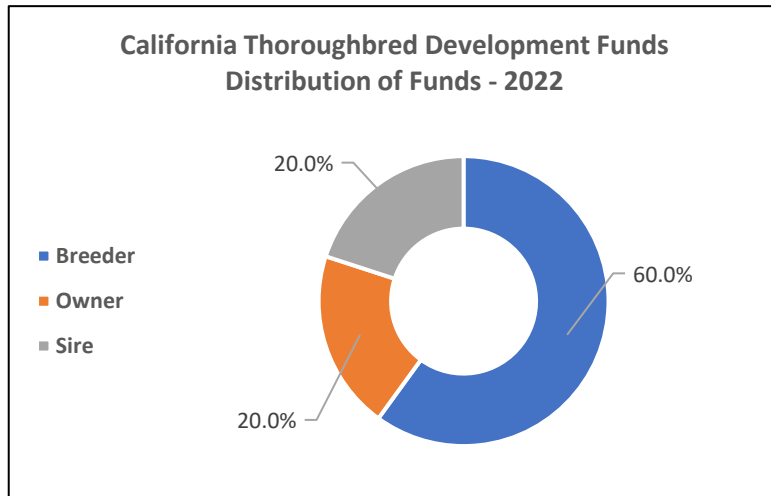
California – Thoroughbred Development Funds

The California Thoroughbred Breeders Association (“CTBA”), a 501(c)(3) not-for-profit organization, is responsible for administering thoroughbred development funds for California-bred awards. The purpose of the funds is to award accredited breeders, thoroughbred racehorse owners and sire owners of California-bred and/or sired horses to promote breeding and racing. Unlike some other states however that only provide awards involving in-state races, awards are available to breeders of California-bred horses in a graded stakes race outside of the State.

As previously detailed the CTBA receives funding contributions from pari-mutuel wagering, which totaled approximately \$8.4 million in 2022. Similar to the funding of purses in the State, funding is exclusively through pari-mutuel wagering, as illustrated and detailed in the adjacent chart and table. State legislation dictates the manner in which the awards are distributed and in 2022, California-bred awards were allocated as follows: 60% breeder, 20% owner, and 20% sire.



Source: California Horse Racing Board.



California Thoroughbred Development Funds Sources and Funding Amounts - 2022	
Source	Amount
Pari-Mutuel Wagering	\$8,382,422
Total	\$8,382,422

Note: Excludes races at fairs and fair meets at Los Alamitos.

Source: California Horse Racing Board.

California – Breeding and Racing Incentives

Based on data from Trainer Magazine, the following outlines breeding and racing incentives in California in 2023.

- Breeding Awards: Monetary award that is paid to the breeder of a registered California-bred Thoroughbred finishing first, second, or third in any race run in California and any graded Stakes Races conducted within the US. Breeders will receive 75% of the remainder of the total incentive award monies after Owner Awards are paid, with an individual breeder receiving a prorated share of this Breeders Fund. The maximum purse considered earned in any qualifying race within the state shall be \$300,000 for a win, \$120,000 for a second, and \$90,000 for a third-place finish. Breeder Awards are always paid exclusive of nomination, entry, and starting fees.
- Owners Awards: A monetary award that is paid to the owner of a registered California-bred Thoroughbred horse that runs in qualifying races in California. Owners can receive at least a 20% bonus for finishing first in an open starter allowance above \$15,000 and open non-maiden Claiming Races with a claiming price of \$40,000 or greater in Southern California and \$20,000 or greater in Northern California. These levels are purposely set high to encourage the ownership of high-quality runners and to restrict the number of qualifiers so that the awards will function as a major incentive. Owner Awards always are paid exclusive of nomination, entry, and starting fees. They are listed in the racing program and will be distributed at the same time as the purse by the paymaster.
- Stallion Owner Awards: To stimulate the acquisition in California of nationally prominent stallions, and retain high caliber California stallions monetary awards are paid annually to the owners of registered California stallions whose California-conceived or California-bred get have won a qualifying race or finished first, second, or third in a Stakes Race in the state or any graded Stakes Race within the US during the year. Qualifying races are any non-claiming races, including maiden allowance and starter Allowance Races, with a purse of at least \$15,000, and open non-maiden Claiming Races with a claiming prize of \$40,000 or greater in Southern California and \$20,000 or greater in Northern California also qualify. Stallion Awards are exclusive of nomination, entry, and starting fees. Stallions must be registered by Feb. 15 each year to be eligible for Stallion Awards. Stallion owners will receive 25% of the remainder of the total incentive award monies after Owner Awards are paid, with an individual owner of a registered California Stallion (as of Dec. 31st) receiving a prorated share of the stallion fund based on the total qualifying earnings of the get during the year. The maximum purse considered earned in any qualifying race within this state shall be \$330,000 for a win, \$120,000 for a second, and \$90,000 for a third-place finish. The stallion must be continuously present in California from Feb. 1st to July 15th, inclusive, of the year or any subsequent calendar year which he stood at stud and fathered the participant in the race. If a sire dies in this state in the year or any subsequent year and stood his last season as a stud in this state, or was standing at stud in this state on the date of his death or any subsequent year, he shall thereafter continue to be considered an eligible Thoroughbred Stallion regarding a race participant fathered by him in that season. The California Thoroughbred Breeders Association ("CTBA") will help compile all data, but is the ultimate responsibility of the stallion owner to advise that official registering agency, on or before Feb. 15th of any year, of any and all purses earned during the preceding year that shall be considered in determining the amount of the Stallion Award to which the owner is entitled.

Source: TrainerMagazine.com; California Thoroughbred Breeders Association (ctba.com)

California – HISA Funding and Assessment

In April 2022, California became the first state to opt into the Horseracing and Integrity and Safety Authority ("HISA") enforcement structure. The total HISA assessment for California thoroughbred tracks, including racing fairs, in 2023 was approximately \$6.7 million, as detailed in the table below.

As mentioned previously, HISA provides credits to the annual assessment amounts dependent upon the level to which any given state's regulatory commission or racetracks may provide the personnel, investigative services and testing, and/or other compliance related activities to administer and conform to HISA program rules. For 2023, the credit provided to California was approximately \$5.3 million, lowering the actual amount owed by California to \$1.45 million. The CHRB approved a stakeholder proposal to fund the 2023 HISA assessment through a reallocation of a portion of ADW fees collected in the State.

California HISA Assessment - 2023												
State	Purses Paid (1)	Starts (1)	Purses per Start	% of Starts	% of Purses	% Purses/ % Starts	Start Fee for Projected Starts	Start Fee for Projected Purse Starts	Total Start Fee	Initial State Total	10% Cap Adjustment	Revised State Total
California	\$131,726,512	20,845	\$6,319	8.9%	11.2%	1.26	\$142.64	\$179.16	\$321.80	\$6,708,041	\$ 21,256	\$ 6,729,297
U.S. Total	\$1,172,603,109	233,067	\$5,031	100.0%	100.0%	1.00	\$142.64	\$142.64	\$285.28	\$66,490,436	\$0	\$66,490,436

(1) - The Purses Paid and Starts data is for the period Oct. 1, 2021 thru Sep. 30, 2022. This excludes Breeder's Cup World Championship races. Additionally, the data for California includes fairs and fair meets held at Los Alamitos, which differs from other California data presented in our analysis.

Source: HISA.

California – Horse Racing Board

Established under California Code §19613.2, the California Horse Racing Board (“CHRB”) is a public corporation. The CHRB consists of seven commissioners appointed by the Governor with a term of four years and may serve any number of successive terms.

The CHRB is tasked with ensuring the integrity, viability, and safety of the California horse racing industry by regulating pari-mutuel wagering for the protection of the public, promoting horse racing, breeding, and wagering opportunities, and fostering safe racing through the development and enforcement of track safety standards and regulations for the health and welfare of all participants.

Key activities of the CHRB include:

- Adopting rules and regulations to protect the public and ensure the safety of human and equine participants.
- Licensing racing associations and racing-industry participants and officials.
- Allocating racing days and charity days conducted by racing associations and fairs.
- Encouraging innovative expansion of wagering opportunities, such as mini-satellites.
- Monitoring and auditing pari-mutuel handle and takeout, and the appropriate use of takeout distributions.
- Assessing racing surfaces to determine safety standards for the benefit of the participants.
- Enforcing laws, rules, and regulations pertaining to horse racing meets.
- Collecting the state’s lawful share of revenue derived from horse racing meets.
- Enforcing regulations and policies required by the Horseracing Integrity and Safety Authority/Agency (“HISA”).



Source: California Horse Racing Board

Delaware – Thoroughbred Racetracks

There is currently one privately owned and operated thoroughbred racetrack operating in Delaware, which is Delaware Park. The following table provides track particulars, and the map that follows show location details.

Delaware Thoroughbred Racetracks								
Track	Year Opened	Owner	Operator	Seating Capacity		Track Length		Stabling (stalls)
				Grandstand	Clubhouse	Dirt (miles)	Turf (furlongs)	
Delaware Park	1937	Clairvest Group Inc.	Rubico Acquisition Corporation	7,500	N/A	1	7	1,226

Sources: CasinoCity and horseracing-tracks.



Source: Google Maps, facility website

Delaware – Thoroughbred Racing Metrics

The Delaware thoroughbred racing industry, which consists solely of operations at Delaware Park, experienced moderate increases of 6.8% in the number of races and 7.3% in race days over the 10-year period from 2013 through 2022. It saw a slight decrease (2.2%) in the average field size per race from 7.0 in 2013 to 6.8 in 2022. Total purses were 21.0% higher in 2022 compared to 2013 and have shown strong growth in recent years. Additionally, the average purse per race increased from approximately \$28,200 in 2013 to nearly \$31,900 in 2022, representing an increase of 13.2%. These trends and other performance metrics are detailed in the table below.

Delaware Thoroughbred Racing Statistics							
Year	Races	Purses	Avg Purse per Race	Starters	Starts	Race Days	Avg Field Size
2013	657	\$18,506,789	\$28,169	2,080	4,590	82	7.0
2014	602	\$14,883,680	\$24,724	1,876	4,278	81	7.1
2015	686	\$16,288,227	\$23,744	2,060	4,880	82	7.1
2016	674	\$16,515,413	\$24,504	2,060	4,885	82	7.2
2017	674	\$15,970,096	\$23,695	2,150	4,820	82	7.2
2018	653	\$15,508,575	\$23,750	1,967	4,345	82	6.7
2019	628	\$15,698,684	\$24,998	1,782	4,132	81	6.6
2020	539	\$15,330,803	\$28,443	1,893	4,068	65	7.5
2021	649	\$18,382,293	\$28,324	1,964	4,465	79	6.9
2022	702	\$22,392,920	\$31,899	2,089	4,795	88	6.8
10-Year Change	6.8%	21.0%	13.2%	0.4%	4.5%	7.3%	-2.2%
CAGR 2013-2022	0.7%	2.1%	1.4%	0.0%	0.5%	0.8%	-0.3%
CAGR 2018-2022	1.8%	9.6%	7.7%	1.5%	2.5%	1.8%	0.7%

Note: Purses represent all available money, including monies not won and returned to state breeder or other funds.

Source: The Jockey Club and Equibase Company.



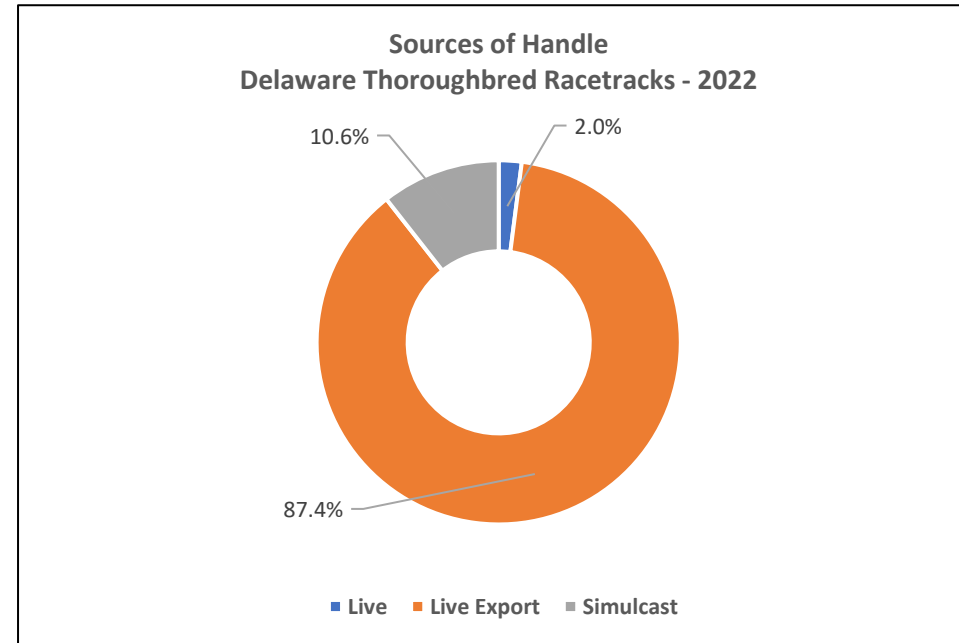
Notable races in Delaware include the Delaware Handicap and the Delaware Oaks. The Delaware Handicap, a Grade II thoroughbred race for fillies and mares aged three years old and up, is held annually in July and carried a purse of \$500,000 in 2023. The Delaware Oaks, a Grade III thoroughbred race for three-year-old fillies, is held annually in July and carried a purse of \$300,000 in 2023.

Delaware – Thoroughbred Racing Handle

The annual total handle from all sources attributable to the lone Delaware thoroughbred racetrack was approximately \$159.2 million in 2022 compared to \$115.2 million in 2013, which reflected a significant increase of 38.2% over that timeframe. The handle associated with live export wagering, which is generated from the broadcasting of races at Delaware Park to other locations, accounted for just over 87% of the total handle in 2022, while live on-track wagering accounted for only 2%. Simulcast wagering at Delaware Park accounted for nearly 11% of the total handle in 2022. These trends are illustrated in the table and chart below.

Annual Total Handle (All Sources) Delaware Thoroughbred Racetracks		
Year	Delaware Park	Total
2013	\$115,151,678	\$115,151,678
2014	\$102,834,201	\$102,834,201
2015	\$104,789,404	\$104,789,404
2016	\$93,952,394	\$93,952,394
2017	\$139,560,720	\$139,560,720
2018	\$139,560,720	\$139,560,720
2019	\$129,480,393	\$129,480,393
2020	\$107,919,676	\$107,919,676
2021	\$136,187,390	\$136,187,390
2022	\$159,172,113	\$159,172,113
10-Year Change	38.2%	38.2%
CAGR 2013-2022	3.7%	3.7%
CAGR 2018-2022	3.3%	3.3%

Source: Paulick Report and Delaware Thoroughbred Racing Commission.



Source: Delaware Thoroughbred Racing Commission.

It should be noted that while many Advance Deposit Wagering ("ADW") sites offer betting for races at Delaware Park and accept Delaware customers, the State has not formally legalized ADW, nor has it established regulatory oversight of ADW. Therefore, handle associated with ADW is not reported for Delaware and fees are not collected. In 2017, Delaware House Bill 251 was introduced to provide for the licensing and regulatory oversight of ADW and the associated allocation of ADW source market fees to be collected, but the proposed legislation never advanced beyond the chamber.

Delaware – Takeout, Fees and Breakage

The takeout rates at Delaware's lone thoroughbred racetrack is applicable to live on-track betting as well as simulcast wagering. The established takeout rates as a percentage of handle at Delaware Park ranges from 17.0% on straight wagers to 25.0% on exotic wagers with 3 or more horses.

Additional data related to takeout amounts, live export fees, etc. was not made available and therefore is not included.

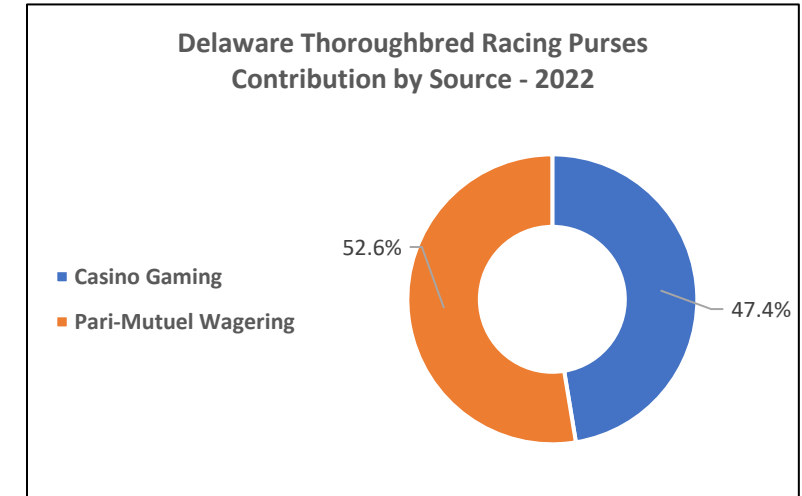


Delaware – Purse Funds

The purses for Delaware’s lone thoroughbred racetrack receives funding contributions from pari-mutuel wagering, which totaled an estimated \$11.8 million in 2022. Additionally, Delaware Park purses benefit via significant funding contributions from racetrack casino gaming operations. In 2022, casino gaming at Delaware Park contributed approximately \$10.6 million, or 47.4% to the total purses, as illustrated and detailed in the adjacent chart and table.

In 1995, the Delaware General Assembly passed the Horse Racing Redevelopment Act (“HRRRA”), which authorized racetracks (both thoroughbred and harness) to operate VLTs, which are effectively slot machines, under the authority of the Delaware Lottery. In 2010, the legislation was expanded to allow for the racetracks to also offer table games. In 2012, Delaware became one of the earliest states in the country to legalize iGaming (online gambling) which are also operated by the racetracks, and in 2018 sportsbooks were legalized at the racetracks.

Under the original provisions of the HRRRA, 10% of gross VLT revenues at Delaware Park was allocated to track purses, and while the allocation was revised slightly over the years, it is currently set at 9.6%. With respect to table games, 4.5% of gross revenues is currently allocated to track purses at Delaware Park. The aforementioned rates are applicable to both traditional casino gaming operations at the track as well as its iGaming operations. The allocation of gross revenues from the sportsbook at Delaware Park to purses is 9.6%, the same as for VLTs. The allocation rates at the State’s harness tracks differ slightly from those at Delaware Park.



Source: Delaware Lottery and Equibase Company..

Delaware Thoroughbred Racing Purses Sources and Funding Amounts - 2022	
Source	Amount
Casino Gaming	\$10,613,959
Pari-Mutuel Wagering	\$11,778,961
Total	\$22,392,920

Source: Delaware Lottery and Equibase Company.

Delaware – Breeding Metrics

As shown in the adjacent tables, Delaware’s thoroughbred breeding industry is essentially non-existent.



Annual Thoroughbred Mares Bred to Delaware Stallions						
Year	Mares Bred	% of North America	Stallions	% of North America	Average Book Size	Average North America Book Size
2013	0	0.0%	0	0.0%	0.0	15.5
2014	1	0.0%	1	0.0%	1.0	16.5
2015	0	0.0%	0	0.0%	0.0	18.1
2016	1	0.0%	1	0.1%	1.0	18.4
2017	0	0.0%	0	0.0%	0.0	18.2
2018	0	0.0%	0	0.0%	0.0	18.7
2019	0	0.0%	0	0.0%	0.0	18.9
2020	0	0.0%	0	0.0%	0.0	19.3
2021	0	0.0%	0	0.0%	0.0	21.2
2022	0	0.0%	0	0.0%	0.0	23.2
10-Year Change	0.0%	0.0%	0.0%	0.0%	0.0%	49.7%
CAGR 2013-2022	0.0%	0.0%	0.0%	0.0%	0.0%	4.6%
CAGR 2018-2022	0.0%	0.0%	0.0%	0.0%	0.0%	5.5%

Source: The Jockey Club.

Percentage of Delaware-Bred Thoroughbred Earnings by Racing Area						
Racing Area	2018	2019	2020	2021	2022	2018 to 2022 Change
Delaware	N/A	N/A	N/A	N/A	N/A	N/A
Other	N/A	N/A	N/A	N/A	N/A	N/A

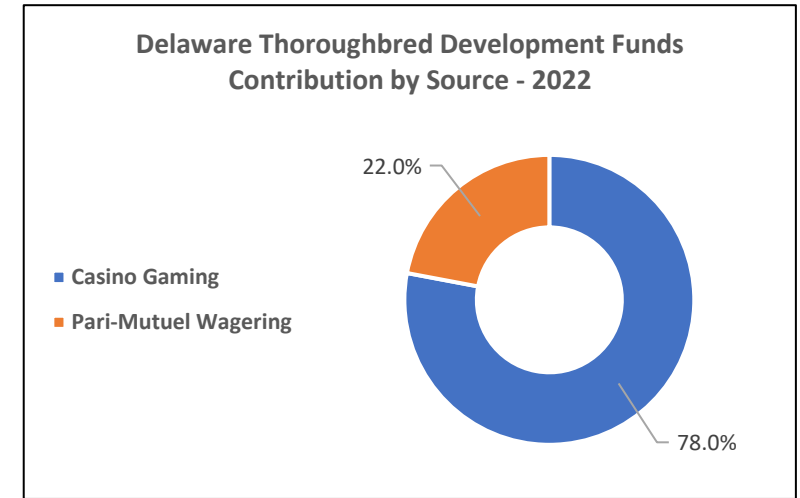
Source: The Jockey Club and Equibase Company.

Delaware – Thoroughbred Development Funds

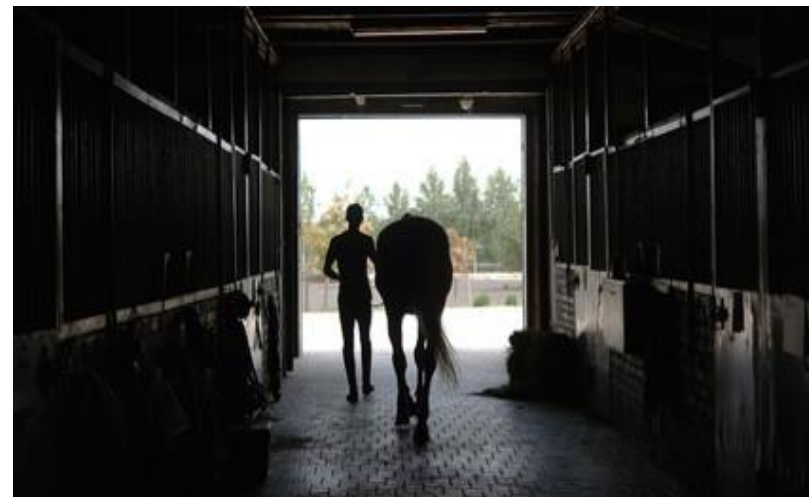
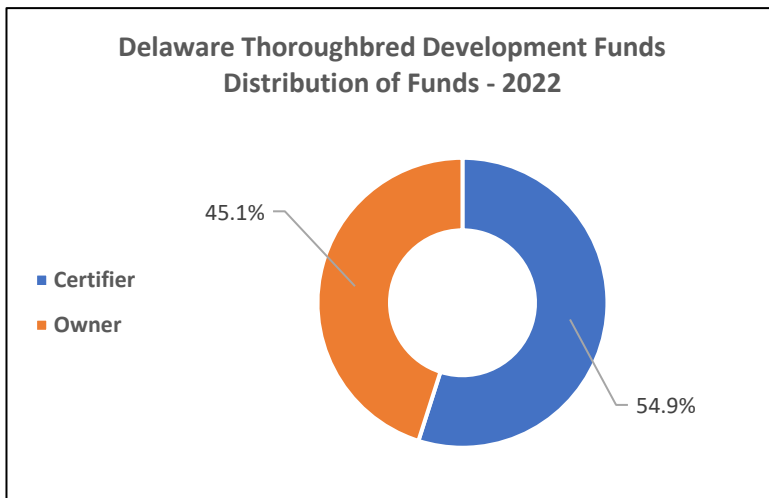
Although thoroughbred breeding is non-existent in the State, the Delaware Certified Thoroughbred Program (“DCTP”) was established to compete with surrounding area breeding programs, encourage preservation of the State’s farmland, and promote thoroughbred racing in the State by rewarding horsemen who board weanlings or yearlings at certified Delaware farms or training facilities.

The DCTP fund is administered by the Delaware Thoroughbred Horsemen’s Association (“DTHA”), a non-profit organization representing the State’s thoroughbred owners and trainers. The DCTP receives funding contributions from pari-mutuel wagering, which totaled an estimated \$424,000 in 2022. Additionally, the DCPT benefits from significant funding contributions by Delaware Park casino gaming operations in the State. In 2022, casino gaming contributed \$1.5 million, or 78.0% of the total WVTDF funding, as illustrated in the adjacent chart and table.

In 2022, DTCP awards were allocated as follows: 54.9% certifier and 45.1% horse owner, as illustrated in the chart below. The “certifier” represents the owner of the stable at which the horse resides.



Source: Delaware Thoroughbred Racing Commission and Delaware Lottery.



Source: Delaware Thoroughbred Horsemen’s Association.

Source	Amount
Casino Gaming	\$1,500,000
Pari-Mutuel Wagering	\$423,988
Total	\$1,923,988

Source: Delaware Thoroughbred Racing Commission and Delaware Lottery.

Delaware – Breeding and Racing Incentives

Based on data from Trainer Magazine, the following outlines breeding and racing incentives in Delaware in 2023.

- Breeders Awards: 25% Bonus- Certifier Award.
- Owners Awards: 25% Bonus- Owner Award.
- Restricted Races: 10 Restricted Stake Races.

Source: TrainerMagazine.com; DTHA.com - Vincent Moscarelli.

Delaware – HISA Funding and Assessment

In 2022, the DTRC chose not to remit and collect Horseracing and Integrity Safety Authority ("HISA") fees. At that time, the Delaware Department of Agriculture was considering options in pursuing a State grant to cover the State's HISA assessment. However, it is unclear if any such grant was obtained. Delaware Park has publicly stated that it is a participant in the HISA program and all associated regulations, but no additional information has been obtained as to the mechanism for funding.

The total HISA assessment for the lone Delaware thoroughbred racetrack in 2023 was approximately \$1.2 million, as detailed in the table below.

The amount, if any, to which the Delaware HISA assessment was credited for 2023 is unknown at the time of this study.

Delaware HISA Assessment - 2023												
State	Purses Paid (1)	Starts (1)	Purses per Start	% of Starts	% of Purses	% Purses/ % Starts	Start Fee for Projected Starts	Start Fee for Projected Purse Starts	Total Start Fee	Initial State Total	10% Cap Adjustment	Revised State Total
Delaware	\$19,797,533	4,415	\$4,484	1.9%	1.7%	0.89	\$142.64	\$127.13	\$269.77	\$1,191,058	\$ 3,774	\$ 1,194,832
U.S. Total	\$1,172,603,109	233,067	\$5,031	100.0%	100.0%	1.00	\$142.64	\$142.64	\$285.28	\$66,490,436	\$0	\$66,490,436

(1) - The Purses Paid and Starts data is for the period Oct. 1, 2021 thru Sep. 30, 2022. This excludes Breeder's Cup World Championship races.

Source: HISA.

Delaware – Thoroughbred Racing Commission

Established under Delaware Code §10101, the Delaware Thoroughbred Racing Commission (“DTRC”) is a public corporation. The DTRC consists of five commissioners appointed by the Governor. Not more than 3 commissioners shall be of the same political party. One commissioner shall be appointed from each county of the State and shall be a bona fide resident of the county for which appointed. Each commissioner should also be a qualified voter of this state, shall not be less than 30 years of age and shall have been a resident of this State for a period of at least 2 years prior to his or her appointment.

The DTRC is tasked with regulating and overseeing the sport of Thoroughbred and Arabian racing in the state.

Key activities of the DTRC include:

- Eliminating fraudulent activity that would undermine the public trust, bringing violators of commission rules, regulations, and Delaware law to justice.
- To protect, preserve and promote agriculture and horse racing by preventing and eliminating corrupt practices.
- Ensure fairness in licensing and patron decisions.
- Ensure that the state and betting public receive fair percentages of the wagering dollar by overseeing audits.



Source: Delaware Thoroughbred Racing Commission

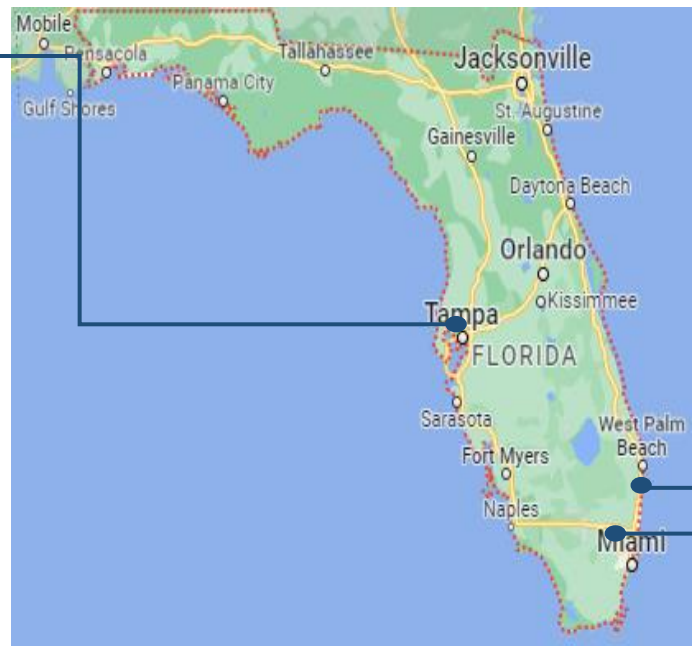
Florida – Thoroughbred Racetracks

Prior to 2021 there were three thoroughbred racetracks operating in Florida. The Stronach Group currently owns and operates Gulfstream Park. The Stronach Group also owned and operated Calder Race Course before it closed in 2021. Tampa Bay Downs is also privately owned and operated. The following table provides track particulars, and the map that follows show location details.

Florida Thoroughbred Racetracks								
Track	Year Opened	Owner	Operator	Seating Capacity		Track Length		Stabling (stalls)
				Grandstand	Clubhouse	Dirt (miles)	Turf (furlongs)	
Gulfstream Park	1939, reopened 1944	The Stronach Group, Inc.	The Stronach Group, Inc.	240	N/A	1	7	1,026
Tampa Bay Downs	1926	Stella F. Thayer & Howell Ferguson	Tampa Bay Downs, Inc.	4,300	1,700	1	7	1,460
Calder Race Course	1971	The Stronach Group, Inc.	The Stronach Group, Inc.	N/A	N/A	1	7	1,800

Sources: America's Best Racing, Advantage Wagering, and facility website.

**Tampa Bay Downs
Tampa, FL**



Source: Google Maps, BloodHorse

**Gulfstream Park Racing
Hallandale Beach, FL**



**Calder Race Course
Miami Gardens, FL**



Florida – Live Race Days and Attendance

The number of live race days at Gulfstream Park increased significantly from 91 in FY 2013 to 205 in FY 2022, representing an increase of 125.3% over this 10-year period. To the contrary the number of live race days at Calder Race Course decreased throughout this same timeframe before closing after its 2021 season, while the number of live race days at Tampa Bay Downs remained relatively flat over this period. It should be noted that the annual Tropical Park Meet was held at Calder Race Course in FY 2013 and FY 2014, before moving to Gulfstream Park in FY 2015, which impacted the number of live race days at both of these tracks. Attendance data for Florida thoroughbred racetracks is limited as it only reflects paid attendance. Tampa Bay Downs experienced a decrease (45.5%) in paid attendance from approximately 100,900 in FY 2013 to 55,000 in FY 2022. These trends are detailed in the tables below.

Annual Live Race Days Florida Thoroughbred Racetracks				
Year (1)	Gulfstream Park	Tampa Bay Downs	Calder Race Course (2)	Total
FY 2013	91	92	149	332
FY 2014	168	91	158	417
FY 2015	200	91	44	335
FY 2016	200	91	40	331
FY 2017	203	91	37	331
FY 2018	194	91	40	325
FY 2019	199	90	40	329
FY 2020	194	110	40	344
FY 2021	187	89	39	315
FY 2022	205	91	0	296
10-Year Change	125.3%	-1.1%	-100.0%	-10.8%
CAGR 2013-2022	9.4%	-0.1%	-100.0%	-1.3%
CAGR 2018-2022	1.4%	0.0%	-100.0%	-2.3%



Annual Attendance (2) Florida Thoroughbred Racetracks				
Year (1)	Gulfstream Park	Tampa Bay Downs	Calder Race Course (3)	Total
FY 2013	0	100,925	0	100,925
FY 2014	0	94,103	0	94,103
FY 2015	0	101,165	0	101,165
FY 2016	0	93,242	0	93,242
FY 2017	2,211	92,537	0	94,748
FY 2018	2,053	78,941	0	80,994
FY 2019	1,738	75,078	0	76,816
FY 2020	1,609	38,148	0	39,757
FY 2021	0	35,861	0	35,861
FY 2022	2,953	55,035	0	57,988
10-Year Change	N/A	-45.5%	N/A	-42.5%
CAGR 2013-2022	N/A	-6.5%	N/A	-6.0%
CAGR 2018-2022	9.5%	-8.6%	N/A	-8.0%

(1) - Fiscal year ending June 30.

(2) - Reporting only reflects paid attendance and not complimentary admission.

(3) - Calder Race Course ceased operations in November 2020.

Source: Florida Gaming Control Commission.

(1) - Fiscal year ending June 30.

(2) - Calder Race Course ceased operations in November 2020.

Source: Florida Gaming Control Commission.

Florida – Thoroughbred Racing Metrics

The Florida thoroughbred racing industry experienced a measurable decrease in the number of races (15.1%) and race days (17.5%) over the 10-year period from 2013 through 2022. It also saw a slight decrease (3.3%) in the average field size per race from 8.1 in 2013 to 7.8 in 2022. Total purses were higher in 2022 compared to 2013 but have generally been declining since 2018. The average purse per race increased from approximately \$27,700 in 2013 to \$37,000 in 2022, representing an increase of 33.6%. These trends and other performance metrics are detailed in the table below.

Florida Thoroughbred Racing Statistics							
Year	Races	Purses	Avg Purse per Race	Starters	Starts	Race Days	Avg Field Size
2013	3,314	\$91,643,658	\$27,653	7,081	26,872	354	8.1
2014	3,738	\$100,208,070	\$26,808	7,510	30,781	393	8.2
2015	3,285	\$96,726,850	\$29,445	7,650	28,625	331	8.7
2016	3,356	\$97,328,100	\$29,001	7,543	28,130	334	8.4
2017	3,384	\$110,964,600	\$32,791	7,272	27,514	334	8.1
2018	3,374	\$127,574,693	\$37,811	7,173	27,701	331	8.2
2019	3,286	\$122,273,822	\$37,211	7,206	26,529	327	8.1
2020	3,356	\$106,819,140	\$31,829	7,560	28,071	343	8.4
2021	2,930	\$102,936,300	\$35,132	6,704	23,462	296	8.0
2022	2,812	\$103,907,050	\$36,951	6,320	22,040	292	7.8
10-Year Change	-15.1%	13.4%	33.6%	-10.7%	-18.0%	-17.5%	-3.3%
CAGR 2013-2022	-1.8%	1.4%	3.3%	-1.3%	-2.2%	-2.1%	-0.4%
CAGR 2018-2022	-4.5%	-5.0%	-0.6%	-3.1%	-5.6%	-3.1%	-1.2%

Note: Purses represent all available money, including monies not won and returned to state breeder or other funds.

Source: The Jockey Club and Equibase Company.



Notable races in Florida include the Florida Derby, Pegasus World Cup and the Tampa Bay Derby. The Florida Derby, a Grade I thoroughbred race for three-year-olds and an important prep race for the Kentucky Derby, is held annually at Gulfstream Park in late March or early April and carried a purse of \$1 million in 2023. The Tampa Bay Derby, a Grade III thoroughbred race for three-year-olds, is held annually at Tampa Bay Downs in March and carried a purse of \$400,000 in 2023.

Florida – Thoroughbred Racing Handle

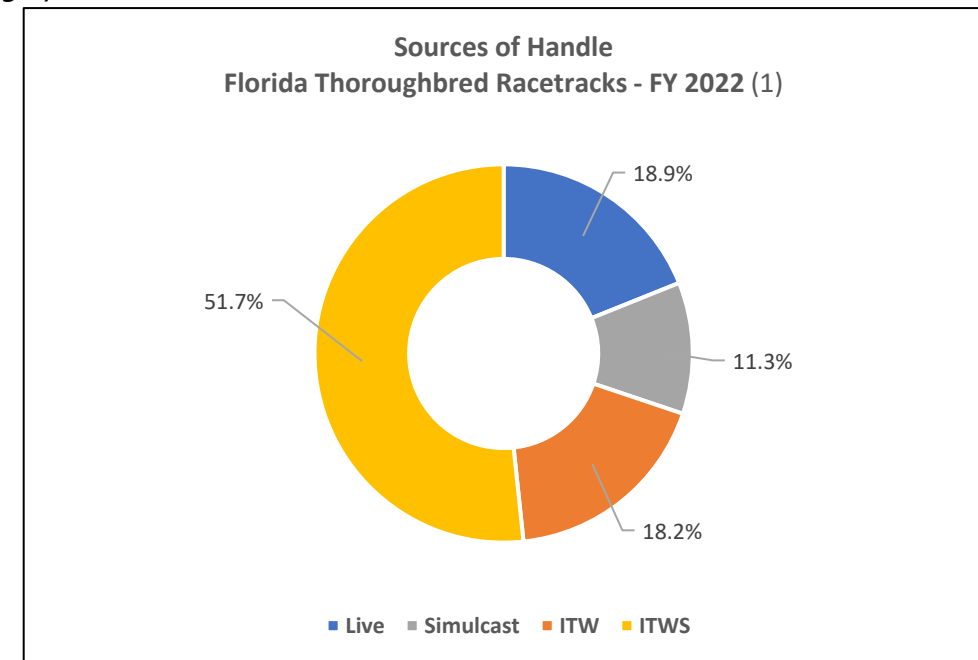
The annual total handle from all sources attributable to Florida thoroughbred racetracks was approximately \$335.0 million in FY 2022 compared to \$538.7 million in FY 2013, which reflected a significant decrease of 37.8% over that timeframe. It should be noted that the Tropical Park Meet was held at Calder Race Course in FY 2013 and FY 2014 before moving to Gulfstream Park in FY 2015 which contributed to significant fluctuations in annual handle for those tracks. The FGCC only reports four types of wagering handle which are live on-track, simulcast from races originating out-of-state and broadcast to a Florida track, intertrack ("ITW") from where a Florida track broadcast live races to another Florida track, and intertrack simulcast ("ITWS") from rebroadcasting simulcast signals received by a Florida track to another Florida track. Florida has no regulatory oversight over Advance Deposit Wagering ("ADW"), therefore handle associated with ADW is not reported and ADW fees are not collected, nor does the FGCC regulate live export wagering from Florida tracks to out-of-state operations. In FY 2022, live on-track wagering accounted for 18.9% of the State's total thoroughbred racing handle and ITWS accounted for the largest share with 51.7%. These trends are illustrated in the table and chart below.

Annual Total Handle (All Sources) Florida Thoroughbred Race Tracks				
Year (1)	Gulfstream Park	Tampa Bay Downs	Calder Race Course (2)	Total
FY 2013	\$194,473,634	\$96,403,307	\$247,782,937	\$538,659,878
FY 2014	\$279,723,102	\$119,855,506	\$128,858,508	\$528,437,116
FY 2015	\$349,354,123	\$98,075,808	\$20,681,861	\$468,111,792
FY 2016	\$334,797,498	\$84,371,779	\$22,145,376	\$441,314,653
FY 2017	\$335,181,784	\$82,208,208	\$20,250,047	\$437,640,039
FY 2018	\$327,032,768	\$81,539,601	\$20,614,063	\$429,186,432
FY 2019	\$316,279,171	\$78,272,774	\$20,923,563	\$415,475,508
FY 2020	\$219,100,004	\$46,365,708	\$19,230,166	\$284,695,878
FY 2021	\$226,768,181	\$49,369,801	\$14,580,781	\$290,718,763
FY 2022	\$266,446,276	\$68,571,567	\$0	\$335,017,843
10-Year Change	37.0%	-28.9%	N/A	-37.8%
CAGR 2013-2022	3.6%	-3.7%	N/A	-5.1%
CAGR 2018-2022	-5.0%	-4.2%	-100.0%	-6.0%

(1) - Fiscal year ending June 30.

(2) - Calder Race Course ceased operations in November 2020.

Source: Florida Gaming Control Commission.



(1) - Fiscal year ending June 30.

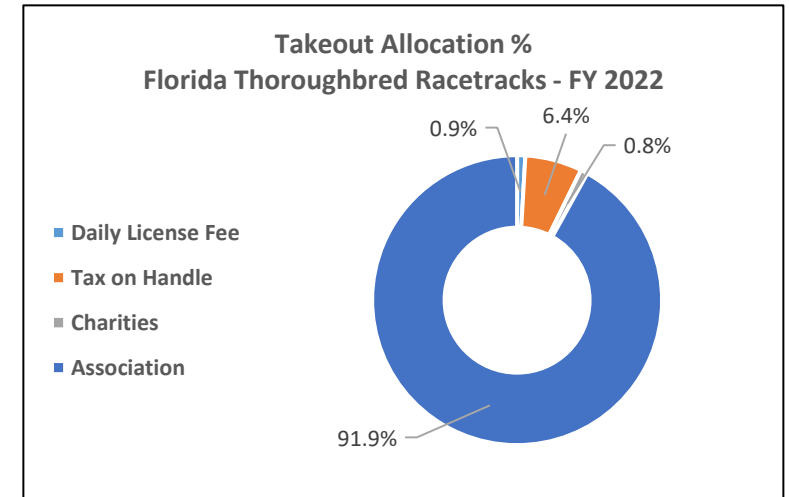
Source: Florida Gaming Control Commission.

Florida – Takeout and Distribution of Handle

The established takeout rates as a percentage of handle at Florida tracks ranges from 17.0% on straight wagers to 26.0% on exotic wagers with 3 or more horses. In 2022, the total blended takeout rate on wagering at Florida thoroughbred racetracks was 20.5% of total handle which generated approximately \$68.8 million.

The manner in which the takeout is distributed in Florida as well as the associated reporting from the FGCC differs from many other states. The FGCC collects various statutory payments which include daily license fees for live on-track racing (\$100 per race), daily license fees on broadcasted simulcast racing (\$100 per race, not to exceed \$500 per day), admission taxes (15% of admission charge or 10 cents, whichever is greater, but no tax on complimentary admissions), a 0.5% tax for live on-track handle, and other taxes on simulcast, ITW, and ITWS ranging from 0.5% to 2.4% of handle depending on the type of wager and other conditions being satisfied, and charitable contributions. The balance of the takeout is retained by the track operators, which amounted to approximately \$63.3 million, or 91.9% of the total takeout allocation in FY 2022, as illustrated in the adjacent table and chart.

Presumably, a portion of the revenues retained by the track operators in Florida benefit the horsemen through contributions to purses and other programs, but the agreements and details in place for the allocation of these funds is not reported by FGCC or any other secondary sources that could be identified.



(1) - Fiscal year ending June 30.

Source: Florida Gaming Control Commission.

Takeout Allocation Florida Thoroughbred Racetracks - FY 2022 (1)	
Use	Total
Daily License Fee	\$627,800
Tax on Handle	\$4,373,926
Charities	\$544,842
Track Operators	\$63,266,372
Total	\$68,812,940

(1) - Fiscal year ending June 30.

Source: Florida Gaming Control Commission.

Florida – Other Funding Sources

The Florida Legislature passed a tax bill in May 2023 that provided significant subsidies to the State's horse racing industry, which included:

- \$5 million to the Florida Thoroughbred Breeders' and Owners' Association for awards and incentives
- \$20 million, in aggregate, to Gulfstream Park and Tampa Bay Downs for purses and facility improvements
- \$2.5 million for Florida-bred stakes and purse bonuses in Florida races

Additionally, slot machines and electronic table games are offered at Gulfstream Park and Calder Race Course, which ceased racing operations in November 2020. Tampa Bay Downs is only authorized to operate a poker room. Florida legislation provides that the licensees of these other gaming operations must maintain binding agreements with the Florida Horsemen's Benevolent and Protective Association and the Florida Thoroughbred Breeders' and Owners' Association ("FTBOA") governing the payment of purses and thoroughbred development incentives on live thoroughbred races conducted at the licensee's racetrack. These agreements may direct the payment of such purses and awards from revenues generated by these other casino gaming operations. However, data related to, and details of such arrangements were not made available at the time of this study.



Florida – Breeding Metrics

During 2022, Florida's 77 reported stallions covered 1,528 mares, or 5.4% of all the mares reported bred in North America. The number of mares bred to Florida stallions decreased by 49.0% from 2013 through 2022. The average book size (number of mares bred per stallion) in Florida increased slightly from 18.8 in 2013 to 19.8 in 2022. By comparison, the average North America book size increased from 15.5 to 23.2 during that same timeframe.

Florida-bred thoroughbred earnings by racing area show that in 2022, only 41.4% of earnings were garnered in-state, down slightly from 42.2% in 2018. These and other breeding metrics are detailed in the adjacent tables.



Annual Thoroughbred Mares Bred to Florida Stallions						
Year	Mares Bred	% of North America	Stallions	% of North America	Average Book Size	Average North America Book Size
2013	2,994	8.1%	159	6.6%	18.8	15.5
2014	3,024	8.0%	158	6.9%	19.1	16.5
2015	3,057	8.2%	145	7.0%	21.1	18.1
2016	2,865	7.9%	134	6.8%	21.4	18.4
2017	2,311	6.7%	125	6.6%	18.5	18.2
2018	2,078	6.3%	117	6.7%	17.8	18.7
2019	2,078	6.6%	121	7.2%	17.2	18.9
2020	1,841	6.1%	104	6.7%	17.7	19.3
2021	1,625	5.5%	83	6.0%	19.6	21.2
2022	1,528	5.4%	77	6.3%	19.8	23.2
10-Year Change	-49.0%	-33.3%	-51.6%	-4.5%	5.4%	49.7%
CAGR 2013-2022	-7.2%	-4.4%	-7.7%	-0.5%	0.6%	4.6%
CAGR 2018-2022	-7.4%	-3.8%	-9.9%	-1.5%	2.8%	5.5%

Source: The Jockey Club.

Percentage of Florida-Bred Thoroughbred Earnings by Racing Area						
Racing Area	2018	2019	2020	2021	2022	2018 to 2022 Change
Florida	42.2%	44.0%	48.5%	42.0%	41.4%	-1.8%
Pennsylvania	10.7%	10.7%	7.2%	8.0%	9.2%	-14.2%
New York	9.2%	6.8%	5.1%	5.9%	6.7%	-27.8%
Kentucky	2.8%	3.3%	5.7%	4.3%	4.2%	49.3%
Other	35.1%	35.3%	33.5%	39.9%	38.6%	9.8%

Source: The Jockey Club and Equibase Company.

Florida – Thoroughbred Development / Breeding and Racing Incentives

The FTBOA, a 501(c)(3) not-for-profit organization, is responsible for administering thoroughbred development funds for breeders' awards and the Florida-bred Stakes Program. The purpose of these funds is to promote ownership and breeding of thoroughbred racehorses in the State. In FY 2022 and based on data from the Florida Gaming Control Commission, the FTBOA paid out approximately \$5.1 million in breeders' awards and \$1.8 million through the Florida-bred Stakes program. A portion of these funds are generated through pari-mutuel handle and likely other sources, but as previously noted, the specific details of these arrangements were unavailable at the time of this study.

Based on data from Trainer Magazine, the following outlines breeding and racing incentives in Florida in 2023.

- Breeders Awards: 15% of the announced gross purse for FTBOA-registered Florida breds. Winners 10% (\$10,500 limit), second 3% (\$3,000 limit) and third 2% (\$1,500 limit)
- Owners Awards: FTBOA purse supplements include: Gulfstream Park: up to twenty \$5,000 bonuses to eligible Florida-sired winners in Open Maiden Races plus up to \$250,000 total Florida-bred Incentive Fund (FBIF) supplements in selected overnights. \$100,000 bonus to eligible Florida-sired winner of Florida Derby, \$25,000 in Gulfstream Oaks. Tampa Bay Downs: \$25,000 and \$50,000 win bonuses or purse supplements (up to \$660,000 total) for eligible Florida-breds or Florida-sired in several Stakes Races. FTHA FOA ("Florida Owners' Awards") to the owner of a FTBOA-registered Florida Bred winner of certain races.
- Stallion Owners Awards: 15% of purse (up to maximum \$15,000/award) paid to the owners of Thoroughbred Stallions registered with the FTBOA and siring FTBOA-registered Florida-breds that finish first in a listed black-type Stakes Race at a Florida Thoroughbred track.
- Restricted Races: The Florida Sire Stakes 2yo series at Gulfstream Park offers total purses of \$1.4 million and a pathway to the Breeders' Cup. Plus, selected Florida-bred stakes and Florida-sired purse supplements. The Tampa Bay Downs Florida Cup Day offers six \$100,000 Florida bred-stakes in March. Plus, two \$100,000 FTBOA Florida-Sired 3 yo-and-up races in December.

Source: TrainerMagazine.com; Ftboa.com – Tammy A. Gantt.

Florida – HISA Funding and Assessment

In May 2023, the Florida Legislature passed a tax bill including pari-mutuel tax credits to the Thoroughbred racetracks to cover costs of Horseracing Integrity and Safety Act ("HISA") assessments, which are recurring in nature.

As shown in the table below, the total HISA assessment for Florida thoroughbred racetracks in 2023 was approximately \$5.9 million.

Florida HISA Assessment - 2023												
State	Purses Paid (1)	Starts (1)	Purses per Start	% of Starts	% of Purses	% Purses/ % Starts	Start Fee for Projected Starts	Start Fee for Projected Purse Starts	Total Start Fee	Initial State Total	10% Cap Adjustment	Revised State Total
Florida	\$96,412,404	22,108	\$4,361	9.5%	8.2%	0.87	\$142.64	\$123.64	\$266.28	\$5,886,986	\$ 18,654	\$ 5,905,640
U.S. Total	\$1,172,603,109	233,067	\$5,031	100.0%	100.0%	1.00	\$142.64	\$142.64	\$285.28	\$66,490,436	\$0	\$66,490,436

(1) - The Purses Paid and Starts data is for the period Oct. 1, 2021 thru Sep. 30, 2022. This excludes Breeder's Cup World Championship races.

Source: HISA.

Florida – Gaming Control Commission

Established under Florida Code §16.712, the Florida Gaming Control Commission (“FGCC”) is a public corporation. The FGCC is a five-member regulatory body appointed by the Governor and subject to confirmation by the Senate, for terms of four years. The Governor shall consider appointees who reflect Florida’s racial, ethnic, and gender diversity. Of the initial five members appointed by the Governor, and immediately upon appointment, the Governor shall appoint one of the members as the initial chair and one of the members as the initial vice chair. At the end of the initial chair’s and vice chair’s terms pursuant to subparagraph 1., the commission shall elect one of the members of the commission as chair and one of the members of the commission as vice chair.

The FGCC is tasked with the responsibility for exercising all regulatory and executive powers of the state with respect to gambling, including pari-mutuel wagering, cardrooms, slot machine facilities, oversight of gaming compacts, and other forms of gambling authorized by the State Constitution or law, excluding the state lottery.

Key activities of the FGCC include:

- Provide efficient regulation of licensed activity.
- Investigate, support, and provide information to oppose criminal gambling elements in the state of Florida.
- Protect the health and safety of Floridians.
- Secure state revenues.



Source: Florida Gaming Control Commission

Kentucky – Thoroughbred Racetracks

There are currently five thoroughbred racetracks operating in Kentucky. Three of the tracks are owned and operated by Churchill Downs Inc. Kentucky Downs is privately owned and operated and Keeneland is owned and operated by a for profit company. The following table provides track attributes and the map shows the track locations.

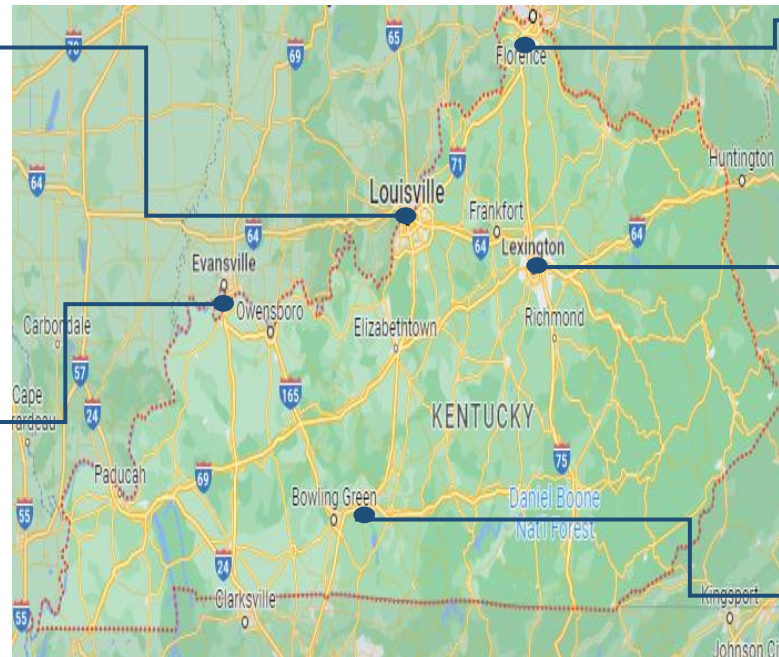
Track	Year Opened	Owner	Operator	Seating Capacity		Track Length		Stabling (stalls)
				Grandstand	Clubhouse	Dirt (miles)	Turf (furlongs)	
				Churchill Downs	1875	Churchill Downs Inc.	Churchill Downs Inc.	
Ellis Park	1922	Churchill Downs Inc.	Churchill Downs Inc.	6,000	430	1	7	N/A
Keeneland	1936	Keeneland Association Inc.	Keeneland Association Inc.	3,313	N/A	1	7 1/2	1,900
Kentucky Downs	1990	Kentucky Downs, LLC	Kentucky Downs, LLC	N/A	N/A	1	3/8	N/A
Turfway Park	1959	Churchill Downs Inc.	Churchill Downs Inc.	2,500	N/A	1	6	1,000

Sources: Horseracing-tracks, CasinoCity, Churchill Downs Incorporated, Evansville Living, Horse Racing Nation, and Thoroughbred Daily.

Churchill Downs
Louisville, KY



Ellis Park
Henderson, KY



Source: Google Maps, Thoroughbred Daily News, facility website

Turfway Park
Florence, KY



Keeneland Race Course
Lexington, KY



Kentucky Downs
Franklin, KY



Kentucky – Live Race Days

The number of live race days at all of the Kentucky thoroughbred racetracks remained relatively stable from FY 2015 through FY 2022, as detailed in the table below. Churchill Downs held 71 live race days in FY 2022, which was the most in the State, followed by Turfway Park with 55. The Kentucky Horse Racing Commission has not reported attendance data for several years, nor do any of the tracks on a regular basis.

Annual Live Race Days Kentucky Thoroughbred Racetracks						
Year (1)	Churchill Downs	Ellis Park	Keeneland	Kentucky Downs	Turfway Park	Total
FY 2015	74	28	33	5	53	193
FY 2016	68	31	33	5	62	199
FY 2017	72	30	32	5	66	205
FY 2018	70	31	33	5	54	193
FY 2019	68	30	33	5	56	192
FY 2020	63	26	17	5	53	164
FY 2021	76	26	37	6	51	196
FY 2022	71	29	32	6	55	193
8-Year Change	-4.1%	3.6%	-3.0%	20.0%	3.8%	0.0%
CAGR 2015-2022	-0.6%	0.5%	-0.4%	2.6%	0.5%	0.0%
CAGR 2018-2022	0.4%	-1.7%	-0.8%	4.7%	0.5%	0.0%

(1) - Fiscal year ending June 30. Data for FY 2013 and FY 2014 was unavailable online.

Source: Kentucky Horse Racing Commission.



Kentucky – Thoroughbred Racing Metrics

The Kentucky thoroughbred racing industry experienced a slight decrease in the number of races (2.0%) over the 10-year period from 2013 through 2022. The average field size per race remained relatively unchanged during this time period, increasing slightly from 8.7 in 2013 to 8.8 in 2022. Total purses were significantly higher in 2022 compared to 2013, increasing by nearly 200% over the past 10 years. Additionally, the average purse per race increased from approximately \$37,000 in 2013 to over \$113,800 in 2022, representing an increase of 207.8%. These trends and other performance metrics are detailed in the table below.

Kentucky Thoroughbred Racing Statistics							
Year	Races	Purses	Avg Purse per Race	Starters	Starts	Race Days	Avg Field Size
2013	1,867	\$69,034,068	\$36,976	6,204	16,242	191	8.7
2014	1,779	\$70,015,009	\$39,356	5,779	14,482	187	8.1
2015	1,823	\$100,325,081	\$55,033	6,111	15,542	194	8.5
2016	1,922	\$78,976,485	\$41,091	6,215	16,520	206	8.6
2017	1,874	\$81,505,742	\$43,493	5,990	15,688	203	8.4
2018	1,794	\$115,778,248	\$64,536	5,992	15,282	195	8.5
2019	1,766	\$113,642,903	\$64,350	6,112	15,435	190	8.7
2020	1,570	\$122,655,688	\$78,125	5,885	13,872	170	8.8
2021	1,740	\$134,198,984	\$77,126	6,061	14,680	193	8.4
2022	1,813	\$206,330,131	\$113,806	6,456	15,913	198	8.8
10-Year Change	-2.9%	198.9%	207.8%	4.1%	-2.0%	3.7%	0.9%
CAGR 2013-2022	-0.3%	12.9%	13.3%	0.4%	-0.2%	0.4%	0.1%
CAGR 2018-2022	0.3%	15.5%	15.2%	1.9%	1.0%	0.4%	0.8%



Note: Purses represent all available money, including monies not won and returned to state breeder or other funds.

Source: The Jockey Club and Equibase Company.

Notable races in Kentucky include the Kentucky Derby, the Kentucky Oaks, and the Blue Grass Stakes, among others. The Kentucky Derby, a Grade I thoroughbred race for three-year-olds and the first leg of the Triple Crown, is held annually at Churchill Downs in May and carried a purse of \$3 million in 2023. The Kentucky Oaks, a Grade I thoroughbred race for three-year-old fillies, is held annually at Churchill Downs on the Friday before the Kentucky Derby and carried a purse of \$1.25 million in 2023. The Blue Grass Stakes, a Grade I thoroughbred race for three-year-olds is held annually at Keeneland and carried a purse of \$1.0 million in 2023.

Kentucky – Thoroughbred Racing Handle

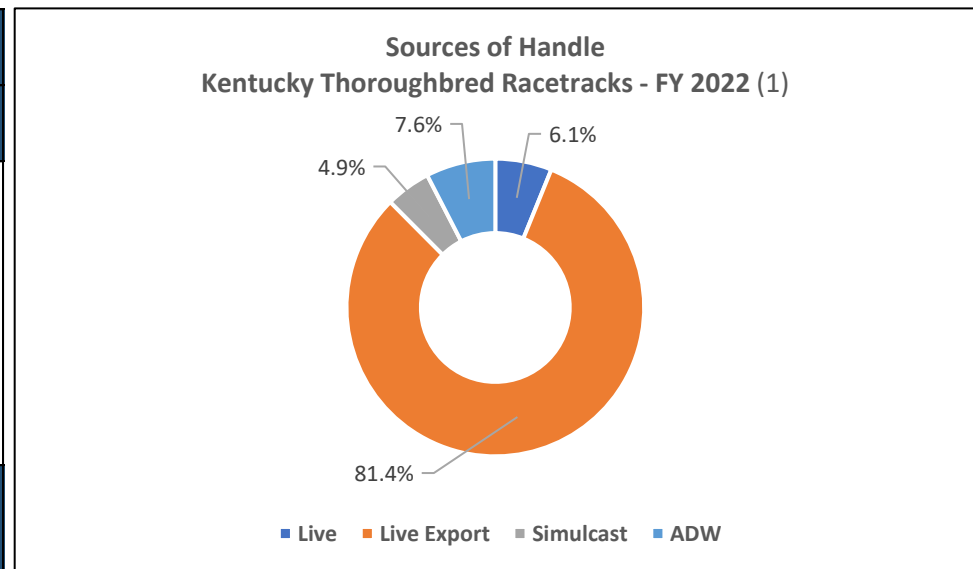
The annual total handle from all sources attributable to Kentucky thoroughbred racetracks was approximately \$1.54 billion in FY 2022 compared to \$1.04 billion in FY 2015, which reflected a significant increase of 47.7% over that timeframe. All tracks saw measurable increases over this period, excluding Turfway Park. The handle associated with live export wagering, which is generated from the broadcasting of races at the Kentucky tracks to other locations, accounted for 81.4% of the total handle in FY 2022, while live on-track wagering accounted for 6.1%. Simulcast wagering at Kentucky thoroughbred tracks for both in and out-of-state races accounted for 4.9% of the total handle in FY 2022. It should be noted that while the KHRC reports simulcast wagering for each track, it does not include that data in its total handle from all sources figure, but it has been included in this analysis to facilitate more meaningful comparisons with other states. Advanced Deposit Wagering ("ADW"), which is done through online platforms and mobile apps, accounted for 6.1% of the total handle in FY 2022. These trends are illustrated in the table and chart below.

Annual Total Handle (All Sources) Kentucky Thoroughbred Racetracks						
Year (1)	Churchill Downs	Ellis Park	Keeneland	Kentucky Downs	Turfway Park	Total
FY 2015	\$553,322,687	\$51,479,429	\$286,597,802	\$28,881,736	\$120,275,133	\$1,040,556,787
FY 2016	\$559,026,809	\$51,077,764	\$306,853,170	\$29,144,897	\$120,275,133	\$1,066,377,773
FY 2017	\$608,583,632	\$52,636,731	\$318,931,841	\$34,536,963	\$126,823,198	\$1,141,512,365
FY 2018	\$616,995,181	\$57,090,284	\$317,991,395	\$42,753,032	\$97,452,091	\$1,132,281,983
FY 2019	\$676,816,388	\$56,158,156	\$336,518,169	\$46,924,060	\$93,047,003	\$1,209,463,776
FY 2020	\$437,955,373	\$56,502,960	\$185,792,566	\$49,875,920	\$94,441,414	\$824,568,233
FY 2021	\$865,818,728	\$61,057,951	\$407,962,396	\$70,329,778	\$119,093,474	\$1,524,262,327
FY 2022	\$870,150,388	\$61,526,689	\$423,487,136	\$72,491,032	\$109,024,387	\$1,536,679,633
8-Year Change	57.3%	19.5%	47.8%	151.0%	-9.4%	47.7%
CAGR 2015-2022	6.7%	2.6%	5.7%	14.0%	-1.4%	5.7%
CAGR 2018-2022	9.0%	1.9%	7.4%	14.1%	2.8%	7.9%

(1) - Fiscal year ending June 30. Data for FY 2013 and FY 2014 was unavailable online.

Source: Kentucky Horse Racing Commission.

Indicates Breeders Cup was hosted in that year.



(1) - Fiscal year ending June 30.

Source: Kentucky Horse Racing Commission.

Kentucky – Takeout and Excise Taxes

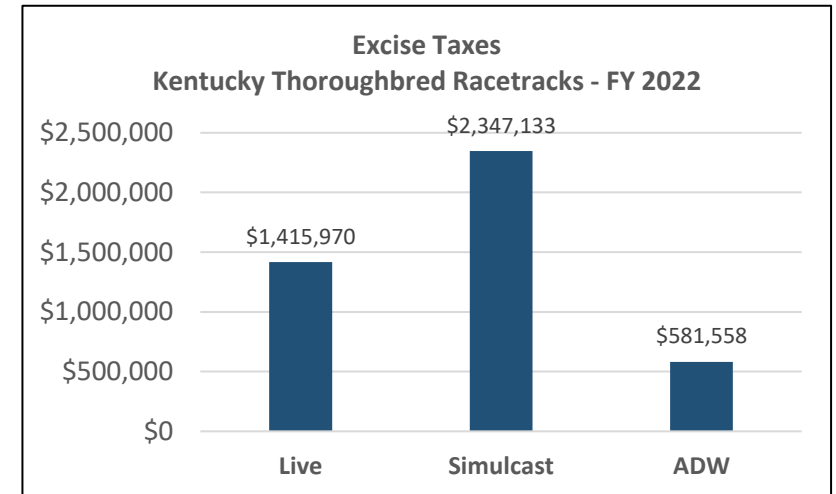
The established takeout rates as a percentage of handle in Kentucky vary slightly by track and range from 16.0% on straight wagers to 22.0% on exotic wagers with 3 or more horses. In 2022, the total blended takeout rate on wagering at Kentucky thoroughbred racetracks was 19.8%.

The manner in which the thoroughbred racing handle is distributed in Kentucky as well as the associated reporting from the KHRC differs from many other states. The Kentucky Department of Revenue administers excise taxes imposed on all thoroughbred tracks under the jurisdiction of the KHRC. Effective August 1, 2022, the excise taxes imposed at Kentucky thoroughbred tracks were revised. Previously, the excise taxes ranged from 0.5% to 3.0% of wagering handle, dependent upon the type of wagering, but is now 1.5% for all taxable sources, as detailed in the adjacent table. It should be noted that there are no excise taxes imposed upon live export wagering.

In FY 2022, which was prior to the revised rates, the total excise taxes collected on live wagering handle at Kentucky thoroughbred tracks was approximately \$1.4 million, \$2.3 million for simulcast wagering, and \$0.6 million for ADW, as illustrated in the adjacent chart.

Excise Taxes (% of Handle) Kentucky Thoroughbred Racetracks		
Type of Wager	Effective August 1, 2022	Prior to August 1, 2022
Live	1.5%	1.5%
Simulcast	1.5%	3.0%
ADW	1.5%	0.5%

Source: Kentucky Department of Revenue.



Source: Kentucky Horse Racing Commission.

Kentucky – Excise Taxes Allocation

The allocation of the excise taxes to different uses in Kentucky varies dependent upon the type of wagering taking place. In aggregate, the Kentucky Thoroughbred Development Fund (“KTDF”) receives the greatest share of the excise taxes with 51.9%, followed by 23.4% being dedicated to the State’s General Fund.

It is important to understand that a significant amount of revenue is generated from pari-mutuel wagering beyond the excise taxes. Similar to other states, revenues include commissions from live racing, signal transmission and other fees associated with live export wagering, and source market fees associated with ADW. A portion of these revenues in Kentucky undoubtedly benefit the horsemen through contributions to purses and other programs, but the agreements and details in place for the allocation of these funds is not reported by KHRC or any other secondary sources that could be identified.



Excise Tax Allocation % Kentucky Thoroughbred Racetracks - FY 2022				
Use	Live	Simulcast	ADW	Total
Thoroughbred Development	50.0%	65.9%	0.0%	51.9%
Kentucky General Fund	23.3%	25.6%	15.0%	23.4%
Equine Industry Program	13.3%	1.7%	0.0%	5.3%
Equine Drug Program	6.7%	3.4%	0.0%	4.0%
Higher Education Program	6.7%	3.4%	0.0%	4.0%
Host Track	0.0%	0.0%	42.5%	5.7%
Purse	0.0%	0.0%	42.5%	5.7%
Total	100.0%	100.0%	100.0%	100.0%

Source: Kentucky Horse Racing Commission.

Excise Tax Allocation Kentucky Thoroughbred Racetracks - FY 2022				
Use	Live	Simulcast	ADW	Total
Thoroughbred Development	\$707,985	\$1,546,761	\$0	\$2,254,746
Kentucky General Fund	\$329,921	\$600,866	\$87,234	\$1,018,021
Equine Industry Program	\$188,324	\$39,901	\$0	\$228,225
Equine Drug Program	\$94,870	\$79,803	\$0	\$174,673
Higher Education Program	\$94,870	\$79,803	\$0	\$174,673
Host Track	\$0	\$0	\$247,162	\$247,162
Purse	\$0	\$0	\$247,162	\$247,162
Total	\$1,415,970	\$2,347,133	\$581,558	\$4,344,661

Source: Kentucky Horse Racing Commission.

Kentucky – Historical Horse Racing

As previously detailed, the purses for Kentucky thoroughbred racing receive a small amount of funding through the allocation of excise taxes collected in connection with ADW, and the KTDF receives allocations of excise taxes from live and simulcast wagering. Additionally, a portion of revenues generated through other pari-mutuel wagering activities are undoubtedly utilized to fund purses and thoroughbred development programs, however the details of which are unknown. Additionally, Kentucky tracks and horsemen benefit via significant funding contributions from Historical Horse Racing ("HHR") operations in the State.

HHR machines are very similar to slot machines in terms of play and other visual aspects, but unlike traditional slot machines, they use the outcomes of previously run races to determine payouts of any given wager instead of a random number generator. This method of determining payouts has allowed these games to be considered pari-mutuel wagering and offered in certain states where other casino gaming may have otherwise been illegal. HHR was originally introduced in Kentucky in 2010. The State's HHR industry has seen significant growth since that time both in terms of revenues generated as well as the number and size of locations offering HHR. In 2020, the State's Supreme Court issued a ruling that deemed certain types of HHR machines in the State were illegal as they did not constitute pari-mutuel wagering. In February 2021, Senate Bill 120 was signed into law, which updated the State's definition of pari-mutuel wagering to specifically include HHR.

The State's HHR operations, like the other more traditional types of pari-mutuel wagering activities in the State, are subject to an excise tax of 1.5% on total handle, of which 50% is allocated to the KTDF. In FY 2022, this amounted to approximately \$43.0 million. Additionally, Kentucky law requires the track operators to enter into contractual arrangements with the horsemen to allocate a portion of HHR revenues to purses. In many states, this is a statutory payment rather than a negotiated contract. While the agreements between the track operators and the horsemen are not publicly available, an analysis of HHR tax rates prepared by Churchill Downs for the Kentucky State Legislature indicated that contractual purses paid to Kentucky horsemen are 15% of HHR net revenue (total handle less payouts and deductions for free play). Based on this assumption, an estimated \$73.5 million was contributed to Kentucky purses from HHR operations in FY 2022.



Estimated HHR Horsemen Distributions Kentucky Thoroughbred Racetracks - 2022	
Use	Total
Thoroughbred Development Purse	\$43,045,006
Purse	\$73,470,425
Total	\$116,515,431

Source: Kentucky Horse Racing Commission and Churchill Downs.

Kentucky – Breeding Metrics

During 2022, Kentucky's 207 reported stallions covered 16,823 mares, or 59.1% of all the mares reported bred in North America. The number of mares bred to Kentucky stallions increased by 5.9% from 2013 through 2022. The average book size (number of mares bred per stallion) in Kentucky increased significantly from 59.5 in 2013 to 81.3 in 2022. By comparison, the average North America book size increased from 15.5 to 23.2 during that same timeframe.

Kentucky-bred thoroughbred earnings by racing area show that in 2022, only 26.4% of earnings were garnered in-state, but that was up from 18.0% in 2018. These and other breeding metrics are detailed in the adjacent tables.



Annual Thoroughbred Mares Bred to Kentucky Stallions						
Year	Mares Bred	% of North America	Stallions	% of North America	Average Book Size	Average North America Book Size
2013	15,888	42.7%	267	11.1%	59.5	15.5
2014	17,134	45.4%	267	11.7%	64.2	16.5
2015	17,626	47.1%	227	11.0%	77.6	18.1
2016	17,922	49.2%	249	12.6%	72.0	18.4
2017	17,426	50.3%	242	12.7%	72.0	18.2
2018	17,458	53.1%	248	14.1%	70.4	18.7
2019	17,260	54.6%	234	14.0%	73.8	18.9
2020	16,499	55.0%	218	14.0%	75.7	19.3
2021	16,797	57.3%	208	15.1%	80.8	21.2
2022	16,823	59.1%	207	16.9%	81.3	23.2
10-Year Change	5.9%	38.4%	-22.5%	52.3%	36.6%	49.7%
CAGR 2013-2022	0.6%	3.7%	-2.8%	4.8%	3.5%	4.6%
CAGR 2018-2022	-0.9%	2.7%	-4.4%	4.6%	3.7%	5.5%

Source: The Jockey Club.

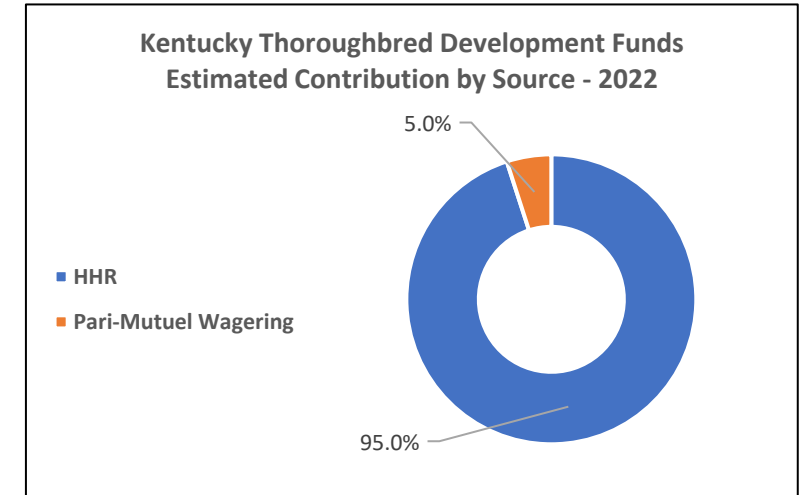
Percentage of Kentucky-Bred Thoroughbred Earnings by Racing Area						
Racing Area	2018	2019	2020	2021	2022	2018 to 2022 Change
Kentucky	18.0%	17.7%	23.1%	20.5%	26.4%	46.6%
New York	16.2%	16.0%	12.4%	15.0%	13.3%	-17.9%
California	12.0%	13.8%	10.6%	11.7%	9.0%	-25.2%
Florida	12.2%	10.1%	12.1%	8.4%	7.7%	-37.1%
Other	41.6%	42.5%	41.9%	44.4%	43.7%	4.9%

Source: The Jockey Club and Equibase Company.

Kentucky – Thoroughbred Development Funds

The KHRC is responsible for administering the Kentucky Thoroughbred Development Fund (“KTDF”) with assistance from an advisory committee that is appointed each year to help guide decisions on the uses of such funds. It is an incentive program to encourage owners to buy from Kentucky markets, to board and breed mares on Kentucky farms, to mate them with Kentucky stallions, and to race them in Kentucky. The KTDF receives funding through contributions from excise taxes on traditional pari-mutuel wagering, which totaled approximately \$2.3 million in FY 2022. Additionally, the KTDF benefits from significant funding contributions by HHR operations in the State. In 2022, HHR operations contributed approximately \$43.0 million, or 95.0% of the total KTDF funding, as illustrated in the adjacent chart and table.

In addition to the KTDF, the KHRC also administers the Kentucky Thoroughbred Breeders Incentive Fund (“KBIF”). The KBIF was established specifically for the promotion of breeding within the State. The KBIF is funded through an allocation of 80% of all receipts collected from the sales and use tax on fees paid for breeding a mare to a stallion in the State and money received from other funding sources, the details of which are unknown. In 2022, the KBIF paid out approximately \$14.5 million in incentive awards.



Source: Kentucky Horse Racing Commission and other secondary research.

Kentucky Thoroughbred Development Funds Sources and Estimated Funding Amounts - FY 2022	
Source	Amount
HHR	\$43,045,006
Pari-Mutuel Wagering	\$2,254,746
Total	\$45,299,752

Source: Kentucky Horse Racing Commission and other secondary research.

Kentucky – Breeding and Racing Incentives

Based on data from Trainer Magazine, the following outlines breeding and racing incentives in Kentucky in 2023.

- Breeders Awards: \$17,400,000
- Owners Awards: \$4,200,000
- Restricted Races for 2023: No
- Out of State Race Awards: \$13.8 million (included in \$17.4 million above)

Source: TrainerMagazine.com; Kentuckybred.org – Drew Conners

Kentucky – HISA Funding and Assessment

In March 2023, the KHRC opted into a voluntary agreement with the Horseracing and Integrity Safety Authority ("HISA") but chose not to collect and remit fees, evidently placing the burden on the State's tracks. Kentucky Downs, announced in the summer of 2023 that it was increasing its takeout rate by 1.0% to help offset the fees. It is unknown if any measures are being taken by any of the other tracks in the State with respect to the HISA fees.

The total HISA assessment for Kentucky thoroughbred racetracks in 2023 was approximately \$6.8 million.

Kentucky HISA Assessment - 2023												
State	Purses Paid (1)	Starts (1)	Purses per Start	% of Starts	% of Purses	% Purses/ % Starts	Start Fee for Projected Starts	Start Fee for Projected Purse Starts	Total Start Fee	Initial State Total	10% Cap Adjustment	Revised State Total
Kentucky	\$162,108,703	15,453	\$10,490	6.6%	13.8%	2.09	\$142.64	\$297.42	\$440.06	\$6,800,299	\$ 21,548	\$ 6,821,847
U.S. Total	\$1,172,603,109	233,067	\$5,031	100.0%	100.0%	1.00	\$142.64	\$142.64	\$285.28	\$66,490,436	\$0	\$66,490,436

(1) - The Purses Paid and Starts data is for the period Oct. 1, 2021 thru Sep. 30, 2022. This excludes Breeder's Cup World Championship races.

Source: HISA.

Kentucky – Horse Racing Commission

Established under Kentucky Code §230.215, the Kentucky Horse Racing Commission (“KHRC”) is a public corporation. The KHRC consists of fifteen members appointed by the Governor, with three ex-officio nonvoting members. The ex-officio members are the Secretaries of the Public Protection Cabinet, Economic Development Cabinet, and Tourism, Arts and Heritage. Of the fifteen appointed members, two must have no financial interest in the business or industry regulated. The members of KHRC are appointed to serve for a term of four years, with initial terms being staggered.

The KHRC is tasked with regulating the conduct of horse racing and pari-mutuel wagering on horse racing and related activities within the Commonwealth of Kentucky.

Key activities of the KHRC include:

- Developing and implementing programs designed to ensure the safety and well-being of horses, jockeys, and drivers.
- Developing programs and procedures that will aggressively fulfill its oversight and regulatory role on such matters as medical practices and integrity issues.
- Recommending tax incentives and implementing incentive programs to ensure the strength and growth of the equine industry.
- Designing and implementing programs that strengthen the ties between Kentucky’s horse industry and the state’s universities, with the goal of significantly increasing the economic impact of the horse industry on Kentucky’s economy, improving research for the purpose of promoting the enhanced health and welfare of the horse, and other industry related issues.
- Developing and supporting programs which ensure that Kentucky remains in the forefront of equine research.
- Developing monitoring programs which ensure the highest integrity of sporting events and sports wagering.
- Developing a program to share wagering information with sports governing bodies upon which sports wagering may be conducted.



Source: Kentucky Horse Racing Commission


New York – Thoroughbred Racetracks

There are four thoroughbred racetracks in New York. The State of New York owns three of the tracks, all of which are operated by the New York Racing Association, Inc. (“NYRA”) Finger Lakes Gaming and Racetrack is owned and operated by Delaware North Companies, Inc. The following table provides track particulars, and the map that follows show location details.


New York Thoroughbred Racetracks								
Track	Year Opened	Owner	Operator	Seating Capacity		Track Length		Stabling (stalls)
				Grandstand	Clubhouse	Dirt (miles)	Turf (furlongs)	
Aqueduct Racetrack	1894	State of New York	New York Racing Association, Inc.	20,000	10,000	1	7	547
Belmont Park	1905	State of New York	New York Racing Association, Inc.	90,000	30,000	1 1/2	9	1,830
Saratoga Race Course	1864	State of New York	New York Racing Association, Inc.	1,830	2,306	1	9	1,830
Finger Lakes Gaming and Racetrack	1962	Delaware North Companies, Inc.	Delaware North Companies, Inc.	4,000	2,000	1 1/4	6	1,214

Sources: Horseracing-tracks, New York Racing Association, and facility websites.

**Finger Lakes Gaming and Racetrack
Farmington, NY**




**Saratoga Race Course
Saratoga Springs, NY**





Source: Google Maps, New York Times

**Belmont Park
Elmont, NY**



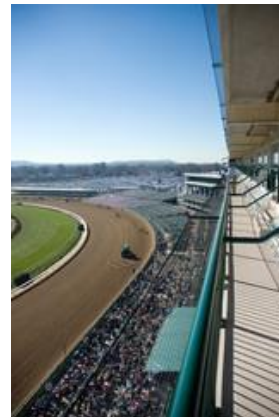
**Aqueduct Racetrack
Queens, NY**



New York – Live Race Days and Attendance

The number of live race days at Aqueduct, Belmont, and Finger Lakes experienced measurable decreases for the 9-year period from 2013 through 2021, the most significant of which was at Finger Lakes with live race days decreasing (44.1%) from 161 in 2013 to 89 in 2022, while the number of live race days at Saratoga was relatively flat during this timeframe. Annual attendance also experienced significant decreases, with the exception of Saratoga which actually saw its annual attendance increase by 20.7% from 2013 to 2021. These trends are detailed in the tables below. It should be noted that while included in the tables below, 2022 data was not included in the growth rate analysis as it was skewed due to the 28-day Belmont fall meet being held at Aqueduct, due to a capital improvement project.

Annual Live Race Days New York Thoroughbred Racetracks					
Year	Aqueduct	Belmont	Saratoga	Finger Lakes	Total
2013	106	93	40	161	400
2014	113	92	40	158	403
2015	100	97	40	153	390
2016	97	92	40	150	379
2017	96	89	40	142	367
2018	91	88	40	140	359
2019	93	85	39	117	334
2020	65	52	39	46	202
2021	82	79	40	90	291
2022 (1)	112	44	40	89	285
9-Year Change (2)	-22.6%	-15.1%	0.0%	-44.1%	-27.3%
CAGR 2013-2021 (2)	-3.2%	-2.0%	0.0%	-7.0%	-3.9%
CAGR 2017-2021 (2)	-3.9%	-2.9%	0.0%	-10.8%	-5.6%



Annual Attendance New York Thoroughbred Racetracks					
Year	Aqueduct	Belmont	Saratoga	Total NYRA	Finger Lakes (1)
2013	446,372	419,800	867,182	1,733,354	148,779
2014	525,978	651,655	1,086,822	2,264,455	136,484
2015	427,280	632,448	1,180,076	2,239,804	104,292
2016	255,905	381,604	1,123,647	1,761,156	124,540
2017	231,710	391,555	1,117,838	1,741,103	113,837
2018	190,950	400,670	1,124,149	1,715,769	111,318
2019	184,181	339,677	1,056,053	1,579,911	N/A
2020	71,072	0	1,056,053	1,127,125	N/A
2021	55,349	143,835	1,046,478	1,245,662	N/A
2022 (2)	277,533	183,222	1,075,586	1,536,341	N/A
9-Year Change (3)	-87.6%	-65.7%	20.7%	-28.1%	N/A
CAGR 2013-2021 (3)	-23.0%	-12.5%	2.4%	-4.0%	N/A
CAGR 2017-2021 (3)	-30.1%	-22.1%	-1.6%	-8.0%	N/A

(1) - In 2022, the 28-day Belmont fall meet was held at Aqueduct, due to capital improvement projects at Belmont.

(2) - The 2022 data was excluded from the growth rates to provide a more meaningful comparison given the change in location of the 2022 Belmont fall meet.

Source: New York State Gaming Commission.

(1) - Beginning in 2019, attendance data was no longer required or reported for Finger Lakes.

(2) - In 2022, the 28-day Belmont fall meet was held at Aqueduct, due to capital improvement projects at Belmont.

(3) - The 2022 data was excluded from the growth rates to provide a more meaningful comparison given the change in location of the 2022 Belmont fall meet.

Source: New York State Gaming Commission.

New York – Thoroughbred Racing Metrics

The New York thoroughbred racing industry experienced a significant decrease in the number of races (31.0%) and race days (28.7%) over the 10-year period from 2013 through 2022. It also saw a slight decrease (3.1%) in the average field size per race from 7.6 in 2013 to 7.3 in 2022. Despite these trends and while total purses were only moderately higher in 2022 compared to 2013, the average purse per race increased from approximately \$47,800 in 2013 to \$70,900 in 2022, representing an increase of 48.3%. These trends and other performance metrics are detailed in the table below.

New York Thoroughbred Racing Statistics							
Year	Races	Purses	Avg Purse per Race	Starters	Starts	Race Days	Avg Field Size
2013	3,752	\$179,309,957	\$47,791	5,931	28,405	401	7.6
2014	3,686	\$186,288,266	\$50,539	5,899	27,050	405	7.3
2015	3,568	\$184,265,863	\$51,644	6,124	26,736	392	7.5
2016	3,481	\$181,518,088	\$52,145	6,015	25,640	380	7.4
2017	3,272	\$176,121,338	\$53,827	5,899	24,388	368	7.5
2018	3,170	\$178,936,281	\$56,447	5,545	22,479	360	7.1
2019	2,972	\$182,360,497	\$61,360	5,535	21,547	335	7.3
2020	1,884	\$110,650,829	\$58,732	4,705	14,963	203	7.9
2021	2,645	\$181,455,727	\$68,603	5,322	19,654	292	7.4
2022	2,589	\$183,468,778	\$70,865	5,093	19,002	286	7.3
10-Year Change	-31.0%	2.3%	48.3%	-14.1%	-33.1%	-28.7%	-3.1%
CAGR 2013-2022	-4.0%	0.3%	4.5%	-1.7%	-4.4%	-3.7%	-0.3%
CAGR 2018-2022	-4.9%	0.6%	5.9%	-2.1%	-4.1%	-5.6%	0.9%



Note: Purses represent all available money, including monies not won and returned to state breeder or other funds.

Source: The Jockey Club and Equibase Company.

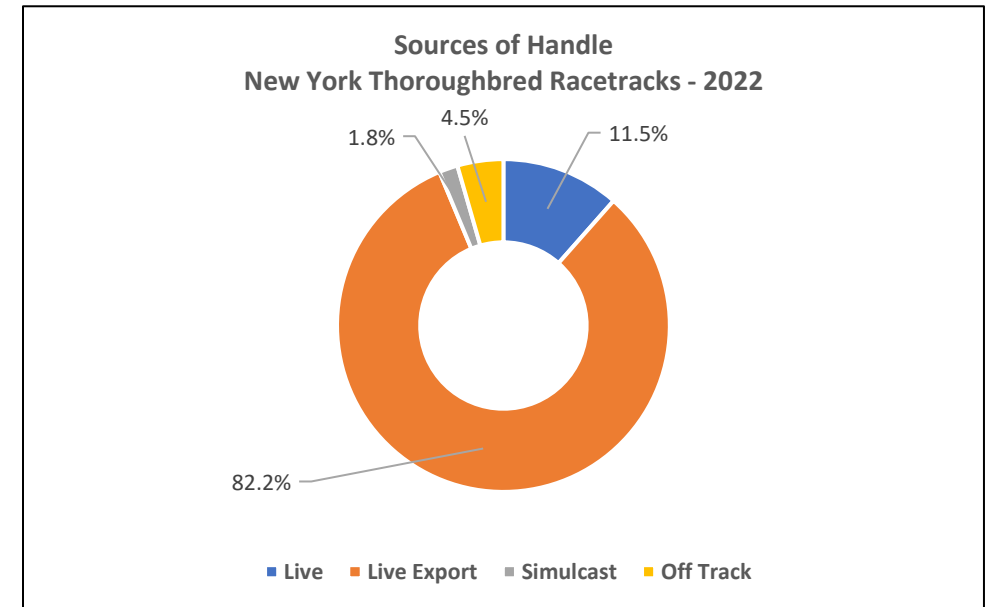
Notable races in New York include the Belmont Stakes, the Jockey Club Gold Cup, Travers Stakes, and the Wood Memorial Stakes, among others. The Belmont Stakes, a Grade I thoroughbred race for three-year-olds and the final leg of the Triple Crown, is held annually at Belmont Stakes in June and carried a purse of \$1.5 million in 2023. The Jockey Club Gold Cup, a Grade I thoroughbred race for horses of either gender aged three years old and up, is held annually at Belmont Park in the fall and carried a purse of \$1.25 million in 2023. The Wood Memorial Stakes, a Grade II thoroughbred race for three-year-olds and a major prep race for the Kentucky Derby, is held annually at Aqueduct Racetrack in April and carried a purse of \$750,000 in 2023.

New York – Thoroughbred Racing Handle

The annual total handle from all sources attributable to New York thoroughbred racetracks was approximately \$2.42 billion in 2022 compared to \$2.37 billion in 2013, which reflected a slight increase of 2.4% over that timeframe. Saratoga, however, was the only track that experienced growth over this period with total handle increasing by nearly 49%. The handle associated with live export wagering, which is generated from the broadcasting of races at the New York tracks to other locations, accounted for 82.2% of the total handle in 2022, while live on-track wagering accounted for 11.5%. Simulcast and off-track wagering accounted for 1.8% and 4.5%, respectively, of total handle in 2022. These trends are illustrated in the table and chart below. Advanced Deposit Wagering ("ADW"), which is done through online platforms and mobile apps, is regulated by the NYSGC, but is not included in these figures as it is maintained separately from the reporting of handle associated with the individual tracks.

Annual Total Handle (All Sources) New York Thoroughbred Racetracks					
Year	Aqueduct	Belmont	Saratoga	Finger Lakes	Total
2013	\$702,517,382	\$905,649,680	\$590,226,347	\$167,145,648	\$2,365,539,057
2014	\$704,265,907	\$898,640,975	\$575,072,191	\$131,409,480	\$2,309,388,553
2015	\$618,127,039	\$968,790,673	\$656,121,664	\$139,219,799	\$2,382,259,175
2016	\$652,605,659	\$919,221,728	\$654,499,446	\$135,938,749	\$2,362,265,582
2017	\$638,854,114	\$899,856,174	\$682,120,869	\$130,252,085	\$2,351,083,242
2018	\$551,046,022	\$903,279,013	\$659,083,459	\$116,937,497	\$2,230,345,991
2019	\$603,801,378	\$798,981,042	\$705,343,949	\$119,888,220	\$2,228,014,589
2020	\$456,801,703	\$654,597,916	\$702,535,472	\$55,194,372	\$1,869,129,463
2021	\$605,309,853	\$952,955,000	\$815,508,063	\$87,100,707	\$2,460,873,623
2022	\$613,959,314	\$829,692,551	\$878,211,963	\$101,480,407	\$2,423,344,235
10-Year Change	-12.6%	-8.4%	48.8%	-39.3%	2.4%
CAGR 2013-2022	-1.5%	-1.0%	4.5%	-5.4%	0.3%
CAGR 2018-2022	2.7%	-2.1%	7.4%	-3.5%	2.1%

Source: NYRA and New York State Gaming Commission.



Source: New York State Gaming Commission.

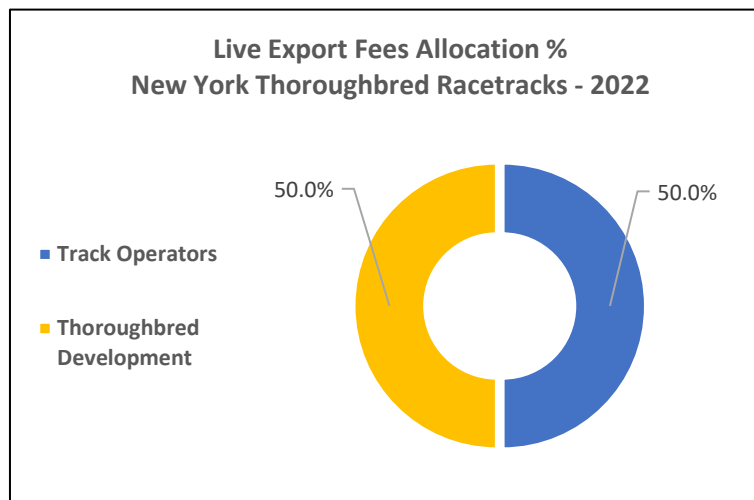
New York – Takeout and Other Fees Allocation

The takeout rates at New York racetracks are applicable to on-track wagering (both live races and simulcast) as well as wagering at off-track betting establishments. The established takeout rates as a percentage of handle in New York ranges from 16% on straight wagers to 24% on exotic wagers with 3 or more horses. In 2022, the total blended takeout rate for on-track and off-track wagering was 19.4%. The allocation of the takeout to different uses in New York varies dependent upon the type of wagering. In aggregate, the track operators receive the greatest share with 63.6%. A portion of these revenues are dedicated to purses and other payments, but the agreements and details in place for the allocation of these funds is not reported by the NYSGC or any other secondary sources that could be identified. Contributions to thoroughbred development funds represent 2.6% of the aggregated takeout and the remainder is allocated to other uses including taxes, regulatory fees, host track payments and OTB commissions. These takeout allocations are detailed in the adjacent table.

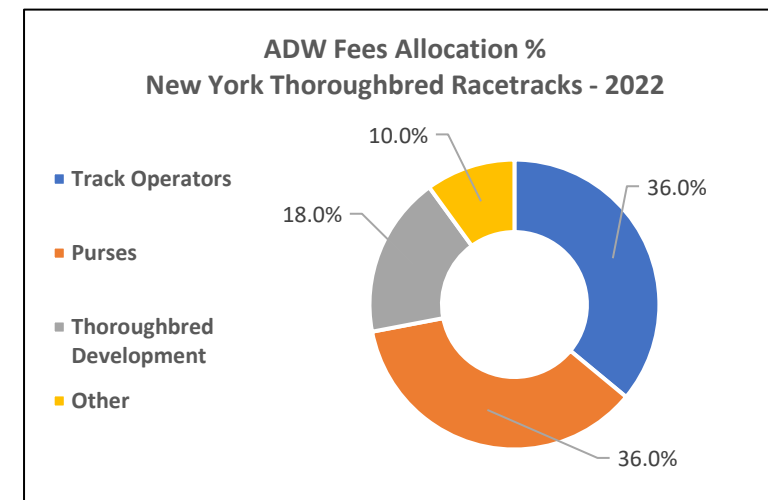
Like other states, New York thoroughbred tracks generate signal transmission and other fees associated with live export wagering along with ADW source market fees. Live export fees for New York thoroughbred tracks were approximately 6.5% of associated handle in 2022 and pursuant to New York statutes are shared equally between track operators and thoroughbred development. A portion of those funds may be dedicated to purses and other uses; however the details of these arrangements are unknown at this time. ADW fees in NY are statutory and represent 5.0% of associated wagering, which are then allocated primarily to the track operators, purses, and thoroughbred development.

Takeout Allocation % New York Thoroughbred Racetracks - 2022			
Use	On-Track	Off-Track	Total
Track Operators	89.8%	21.6%	63.6%
Thoroughbred Development	2.8%	2.2%	2.6%
Other	7.4%	76.2%	33.9%
Total	100.0%	100.0%	100.0%

Source: New York State Gaming Commission.



Source: New York statutes.

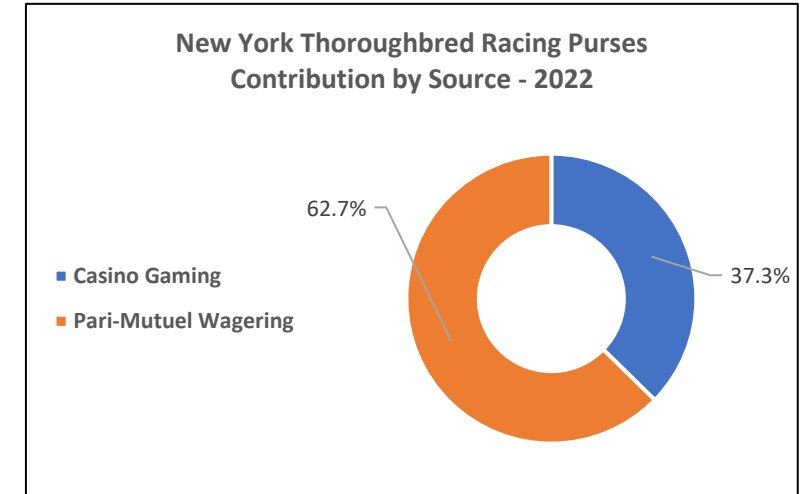


Source: New York State Gaming Commission.

New York – Purse Funds

The purses for New York thoroughbred racing receive funding contributions from pari-mutuel wagering, which totaled approximately \$115.0 million in 2022. Additionally, New York purses benefit via significant funding contributions from casino gaming operations in the State. In 2022, casino gaming contributed approximately \$68.5 million, or 37.3% to the total purses, as illustrated and detailed in the adjacent chart and table.

In 2001, the New York Legislature authorized the operation of video lottery terminals (“VLTs”), which are effectively slot machines, at New York racetracks under the authority of the NYSGC. In the years that followed, additional legislation provided for VLT operations at certain OTBs. Legislation dictating the allocation of VLT net terminal income to thoroughbred purses was modified over the years, but currently ranges from 2.3% to 8.8%, dependent upon the facility and subject to further agreements that may be entered into with the horsemen to either increase or decrease those allocations.



Source: NY State Gaming Commission and Equibase Company.

New York Thoroughbred Racing Purses Sources and Funding Amounts - 2022	
Source	Amount
Casino Gaming	\$68,498,427
Pari-Mutuel Wagering	\$114,970,351
Total	\$183,468,778

Source: NY State Gaming Commission and Equibase Company.

New York – Breeding Metrics

During 2022, New York's 43 reported stallions covered 984 mares, or 3.5% of all the mares reported bred in North America. The number of mares bred to New York stallions decreased by 40% from 2013 through 2022. The average book size (number of mares bred per stallion) in New York increased moderately from 21.6 in 2013 to 22.9 in 2022. By comparison, the average North America book size increased from 15.5 to 23.2 during that same timeframe.

New York-bred thoroughbred earnings by racing area show that in 2022, approximately 75% of earnings were garnered in-state, slightly down from 77% in 2018. These and other breeding metrics are detailed in the adjacent tables.



Annual Thoroughbred Mares Bred to New York Stallions						
Year	Mares Bred	% of North America	Stallions	% of North America	Average Book Size	Average North America Book Size
2013	1,639	4.4%	76	3.2%	21.6	15.5
2014	1,674	4.4%	70	3.1%	23.9	16.5
2015	1,596	4.3%	66	3.2%	24.2	18.1
2016	1,528	4.2%	60	3.0%	25.5	18.4
2017	1,349	3.9%	67	3.5%	20.1	18.2
2018	1,126	3.4%	53	3.0%	21.2	18.7
2019	1,082	3.4%	51	3.1%	21.2	18.9
2020	1,036	3.5%	46	3.0%	22.5	19.3
2021	955	3.3%	39	2.8%	24.5	21.2
2022	984	3.5%	43	3.5%	22.9	23.2
10-Year Change	-40.0%	-20.5%	-43.4%	9.4%	6.1%	49.7%
CAGR 2013-2022	-5.5%	-2.5%	-6.1%	1.0%	0.7%	4.6%
CAGR 2018-2022	-3.3%	0.7%	-5.1%	3.9%	1.9%	5.5%

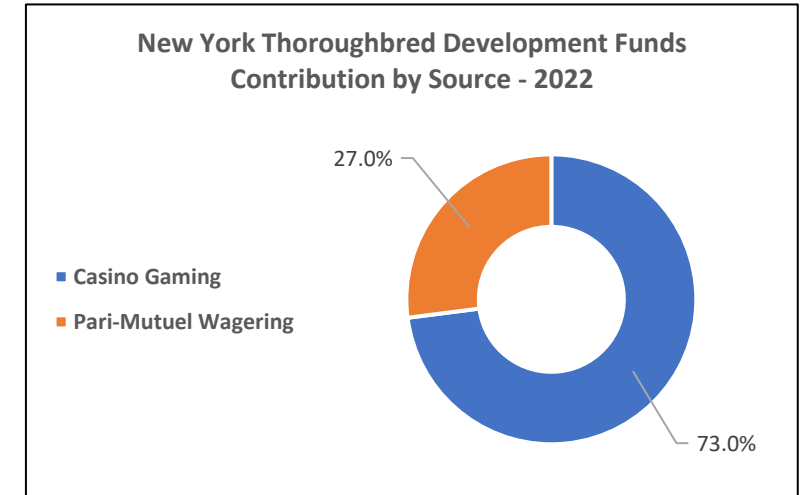
Source: The Jockey Club.

Percentage of New York-Bred Thoroughbred Earnings by Racing Area						
Racing Area	2018	2019	2020	2021	2022	2018 to 2022 Change
New York	76.6%	77.4%	71.9%	75.4%	74.6%	-2.6%
Pennsylvania	5.9%	5.6%	6.0%	6.1%	6.3%	6.3%
Florida	4.7%	3.4%	5.0%	2.7%	2.7%	-42.6%
Maryland	2.9%	2.5%	1.9%	2.6%	2.2%	-22.3%
Other	10.0%	11.1%	15.2%	13.2%	14.2%	42.2%

Source: The Jockey Club and Equibase Company.

New York – Thoroughbred Development Funds

The New York State Thoroughbred Breeding & Development Fund Corporation is responsible for administering the New York State Thoroughbred Breeding & Development Fund (“NYTBDF”). The purpose of the fund is to award the State’s breeders, racehorse owners and sire owners to promote breeding and racing in the State. The NYTBDF receives funding contributions from pari-mutuel wagering, which totaled approximately \$5.0 million in 2022. Additionally, the NYTBDF benefits from significant funding contributions by VLT operations in the State. Current legislation provides that 0.5% to 1.5% of net terminal income from VLTs at certain facilities in the State are allocated to thoroughbred development funds. In 2022, this source of casino gaming contributed approximately \$13.5 million, or 73.0% of the total NYTBDF funding, as illustrated in the adjacent chart and table.



Source: New York State Gaming Commission and New York State Thoroughbred Breeding & Development Fund Corporation.

New York Thoroughbred Development Funds Sources and Funding Amounts - 2022	
Source	Amount
Casino Gaming	\$13,469,211
Pari-Mutuel Wagering	\$4,990,232
Total	\$18,459,443

Source: New York State Gaming Commission and New York State Thoroughbred Breeding & Development Fund Corporation.

New York – Supplemental NYRA Funds

In addition to the previously detailed contributions to New York racing purses and thoroughbred development funds from VLTs, NYRA also receives significant track-level support for operating expenses and capital expenditures. Current legislation provides that 0.8% to 3.0% of net terminal income from VLTs at certain facilities in the State (the allocation amounts vary by facility) is allocated to NYRA operating expenses, which in 2022 accounted for approximately \$23.6 million. Additionally, a further 1.3% to 4.0% of net terminal is allocated to capital improvements, which in 2022 accounted for approximately \$31.9 million, as detailed in the adjacent table.

NYRA Track-Level Support from VLTs - 2022	
Use	Total
Operating Expenses	\$23,555,147
Capital Improvements	\$31,919,861
Total	\$55,475,008

Source: New York State Gaming Commission.



New York – Breeding and Racing Incentives

Based on data from Trainer Magazine, the following outlines breeding and racing incentives in New York in 2023.

- Breeders Awards: New York-Sired* Award (percent of purse money earned). First place: 30%, Second place: 15%, Third Place: 15%. Cap per award: \$40,000. Non-New York-Sired* Award (percent of purse money earned): First place: 15%, Second place: 7.5%, Third place: 7.5%. Cap per award: \$20,000
- Owners Awards: For all open-company races in New York State with a minimum claiming prize of \$30,000, there are 2 tier of Owner Awards: New York Sired Award (percent of purse money earned): 1st to 3rd place: 20% cap per award: \$20,000. Non-New York-Sired Award (percent of purse money earned): 1st to 3rd place: 10% cap per award: \$20,000
- Stallion Owner Awards: These awards are paid to owners of registered New York based (at the time of conception) covering stallions. Please note that only New York-bred progeny of New York-based stallions are eligible to earn Stallion Owner Awards. Stallion Owner Awards have been increased to 10% of purses earned from finishes in first through third place. All Stallion Owner Awards are capped at \$10,000 per horse, per race.
- # registered foals in 2022: 1,500
- What you need to know: *A New York-sired New York-bred is sired by a registered New York stallion. A non-New York-sired New York-bred is sired by an out-of-state stallion or an unregistered New York stallion.

Source: TrainerMagazine.com; NYBreds.com – Tracy Egan

New York – HISA Funding and Assessment

In July 2022, the Horseracing Integrity and Safety Authority ("HISA") approved a structure that will equally split the payments for New York's assessment between NYRA and the New York Thoroughbred Horsemen's Association ("NYTHA") with NYRA paying half of the assessment out of its operating budget and NYTHA charging a per-start fee at each NYRA track to cover the other half of the assessment. It should be noted that the per-start fee varies by track, and NYTHA also reimburses the fee for all horses finishing fourth place or lower. The following shows the HISA assessment which provides context to the funding approach.

New York HISA Assessment - 2023												
State	Purses Paid (1)	Starts (1)	Purses per Start	% of Starts	% of Purses	% Purses/ % Starts	Start Fee for Projected Starts	Start Fee for Projected Purse Starts	Total Start Fee	Initial State Total	10% Cap Adjustment	Revised State Total
New York	\$181,741,126	19,333	\$9,401	8.3%	15.5%	1.87	\$142.64	\$266.52	\$409.16	\$7,910,362	\$ 25,065	\$ 7,935,427
U.S. Total	\$1,172,603,109	233,067	\$5,031	100.0%	100.0%	1.00	\$142.64	\$142.64	\$285.28	\$66,490,436	\$0	\$66,490,436

(1) - The Purses Paid and Starts data is for the period October 1, 2021 thru September 30, 2022. This excludes Breeder's Cup World Championship races.

Source: HISA.

New York – Gaming Commission

Established under New York Code §4000.1, the New York State Gaming Commission (“NYSGC”) is a public corporation. The NYSGC consists of five commissioners who are appointed by the Governor to serve a five-year unpaid term. One member is recommended for appointment by the Speaker of the Assembly and one member is recommended for appointment by the Temporary President of the Senate.

The NYSGC is tasked with regulating all aspects of gaming activity in the State, including horse racing and pari-mutuel wagering, Class III Indian Gaming, the state lottery (including VLTs), commercial gaming, sports wagering, interactive fantasy sports, and charitable gaming.

Key activities of the NYSGC include:

- Ensuring that all stakeholders in the gaming and horse racing industries, including the consumers who wager on activities regulated or operated by the Commission, are treated in an equitable and responsible manner and to promote the health and safety of horses and all participants in racing.
- Seeks to ensure fair and strict regulation of all gaming activity while reducing costs and regulatory burdens to the gaming industry.
- Aspiring to provide the regulatory structure necessary for New York gaming activity to operate effectively in a global, evolving and increasingly competitive marketplace to generate revenue for aid to education and for the support of government, and to contribute to overall economic development and job creation in New York.



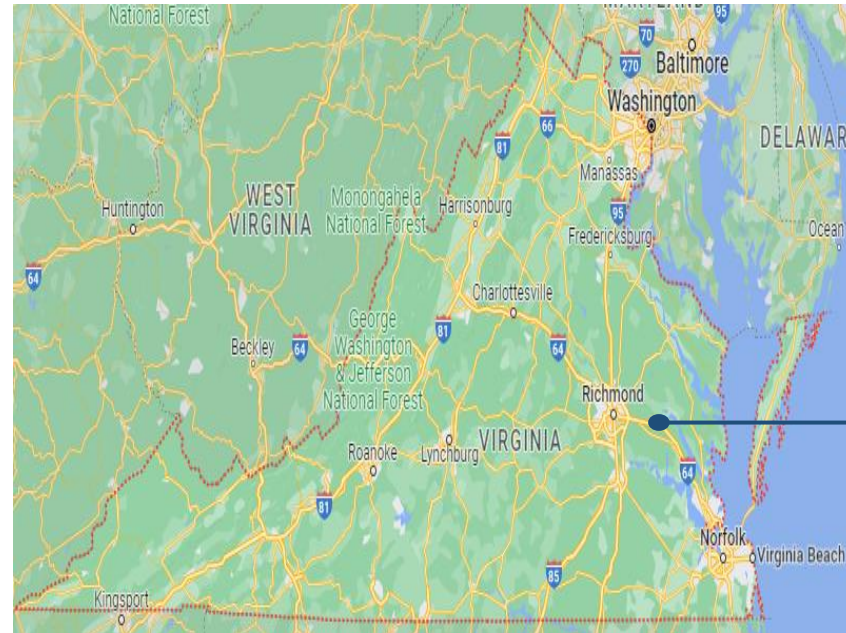
Source: New York State Gaming Commission

Virginia – Thoroughbred Racetracks

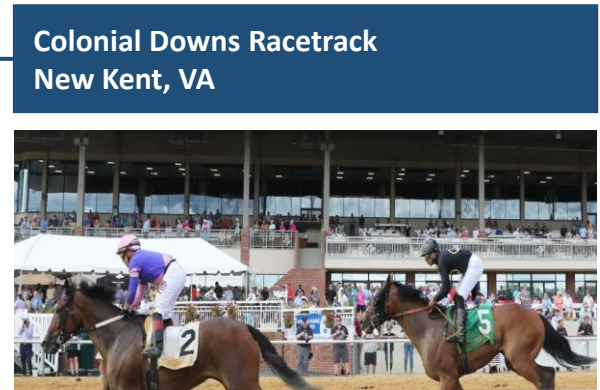
There is one thoroughbred racetrack in Virginia, which is owned and operated by Churchill Downs, Inc. The following table provides track particulars, and the map that follows show location details.

Virginia Thoroughbred Racetracks								
Track	Year Opened	Owner	Operator	Seating Capacity		Track Length		Stabling (stalls)
				Grandstand	Clubhouse	Dirt (miles)	Turf (furlongs)	
Colonial Downs Racetrack	1997	Churchill Downs Inc.	Churchill Downs Inc.	6,000	500	1 1/4	7 1/2	1,050

Sources: Horseracing-tracks and Churchill Downs Incorporated.



Source: Google Maps, facility website



Virginia – Live Race Days and Attendance

The number of live race days at Colonial Downs increased slightly from 24 in 2013 to 26 in 2022, while annual attendance decreased from approximately 46,600 to 39,800 over this same timeframe, as detailed in the tables below.

Annual Live Race Days Virginia Thoroughbred Racetracks	
Year	Colonial Downs
2013	24
2014	closed
2015	closed
2016	closed
2017	closed
2018	closed
2019	15
2020	7
2021	21
2022	26
10-Year Change	8.3%
CAGR 2019-2022	20.1%

Note: Colonial Downs ceased operations in 2014 and reopened in 2019.

Source: Virginia Racing Commission.



Annual Attendance Virginia Thoroughbred Racetracks	
Year	Colonial Downs
2013	46,608
2014	closed
2015	closed
2016	closed
2017	closed
2018	closed
2019	38,820
2020	1,806
2021	27,909
2022	39,754
10-Year Change	-14.7%
CAGR 2019-2022	0.8%

Note: Colonial Downs ceased operations in 2014 and reopened in 2019.

Source: Virginia Racing Commission.

Virginia – Thoroughbred Racing Metrics

The Virginia thoroughbred racing industry, which consists solely of operations at Colonial Downs, experienced a significant increase of 21.3% in the number of races in 2022 compared to 2013 while race days remained relatively flat. It experienced a decrease (4.7%) in the average field size per race from 8.5 in 2013 to 8.1 in 2022. The total purses have increased in recent years. Additionally, the average purse per race increased from approximately \$33,900 in 2013 to \$55,600 in 2022, representing an increase of 64.0%. It should be noted that Colonial Downs ceased operations in 2014 and reopened in 2019. These trends and other performance metrics are detailed in the table below.

Virginia Thoroughbred Racing Metrics							
Year	Races	Purses	Avg Purse per Race	Starters	Starts	Race Days	Avg Field Size
2013	253	\$8,577,056	\$33,901	1,219	2,148	32	8.5
2014	closed	closed	closed	closed	closed	closed	closed
2015	closed	closed	closed	closed	closed	closed	closed
2016	closed	closed	closed	closed	closed	closed	closed
2017	closed	closed	closed	closed	closed	closed	closed
2018	closed	closed	closed	closed	closed	closed	closed
2019	185	\$8,614,800	\$46,566	1,066	1,577	22	8.5
2020	104	\$2,700,300	\$25,964	655	864	12	8.3
2021	248	\$11,517,500	\$46,442	1,202	2,004	27	8.1
2022	307	\$17,064,713	\$55,585	1,490	2,501	33	8.1
10-Year Change	21.3%	99.0%	64.0%	22.2%	16.4%	3.1%	-4.7%
CAGR 2019-2022	18.4%	25.6%	6.1%	11.8%	16.6%	14.5%	-1.6%



Notes: Colonial Downs ceased operations in 2014 and reopened in 2019. Purses represent all available money, including monies not won and returned to state breeder or other funds.

Sources: Virginia Racing Commission, The Jockey Club, and Equibase Company.

Notable races in Virginia include the Virginia Derby, and in 2023, several other high-profile races were held at the Churchill-owned Colonial Downs that had previously taken place at the now closed Arlington Park. The Virginia Derby, a Grade III thoroughbred race for three-year-olds, is held annually in September at Colonial Downs and carried a purse of \$300,000 in 2023. It was held at Laurel Park during years in which Colonial Downs was closed.

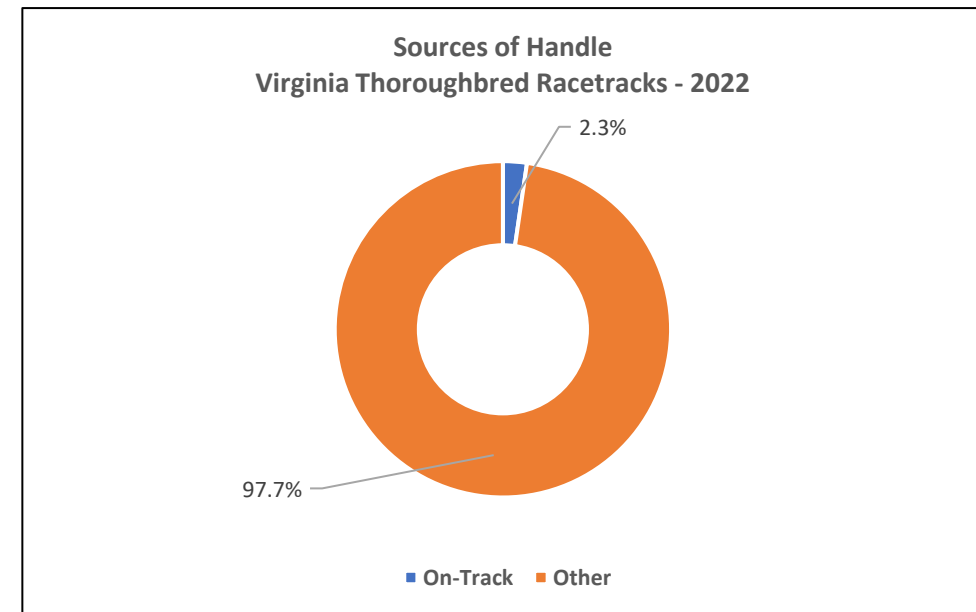
Virginia – Thoroughbred Racing Handle

The annual total handle from all sources attributable to the lone Virginia thoroughbred racetrack was approximately \$75.2 million in 2022 compared to \$14.3 million in 2013, which reflected a significant increase of 424.0% over that timeframe. The VRC only reports handle for on-track and other wagering, with no further breakdown on the composition of this wagering for Colonial Downs. On-track wagering at Colonial Downs accounted for 2.3% of the total handle in 2022, while other sources comprised the balance of 97.7%. These trends are illustrated in the table and chart below.

Annual Total Handle (All Sources) Virginia Thoroughbred Racetracks	
Year	Colonial Downs
2013	\$14,343,174
2014	closed
2015	closed
2016	closed
2017	closed
2018	closed
2019	\$18,101,453
2020	\$7,774,939
2021	\$47,087,640
2022	\$75,157,080
CAGR 2019-2022	60.7%

Note: Colonial Downs ceased operations in 2014 and reopened in 2019.

Source: Virginia Racing Commission.

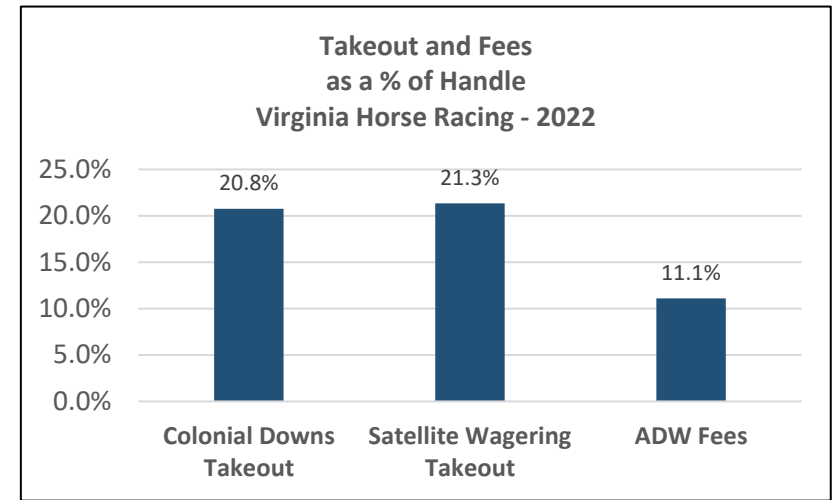


Source: Virginia Racing Commission.

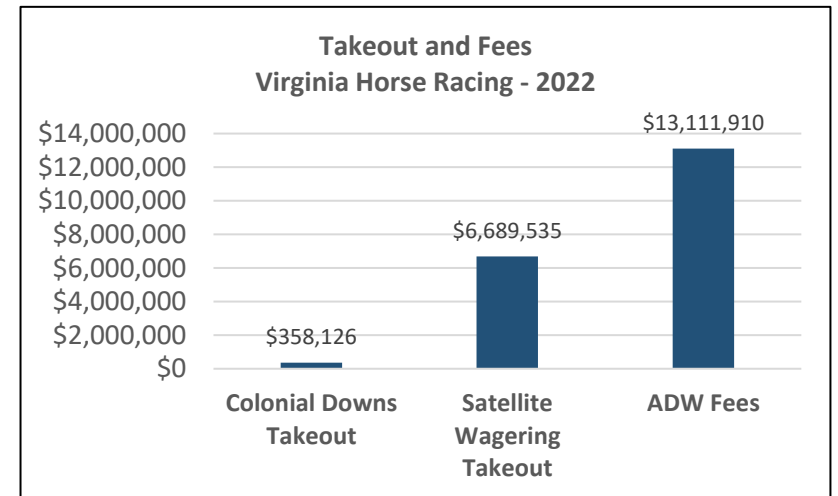
Virginia – Takeout and ADW Fees

The established takeout rates as a percentage of handle at Virginia's lone thoroughbred racetrack, Colonial Downs, range from 18.0% on straight wagers to 22.0% on exotic wagers with 3 or more horses, which are applicable to all on-track wagering. In 2022, the total blended takeout rate on wagering at Colonial Downs was 20.8%, which generated approximately \$400,000. Virginia also generates commissions through wagering at its many satellite wagering facilities (i.e., off-track betting) located throughout the State, for which the blended takeout rate was 21.3% in 2022, which generated approximately \$6.7 million, as illustrated in the adjacent charts.

In addition to the takeout from wagering on-track and at satellite facilities, revenues from wagering are generated through signal transmission and other fees associated with live export wagering; however, the details of which are unknown for Colonial Downs. Source market and other fees associated with ADW are generated in Virginia, but not reported/allocated at the track-level. Based on aggregated ADW reporting for Virginia, source market and other fees paid by ADW licensees totaled 11.1% of associated wagering, which generated approximately \$13.1 million, as illustrated in the adjacent charts.



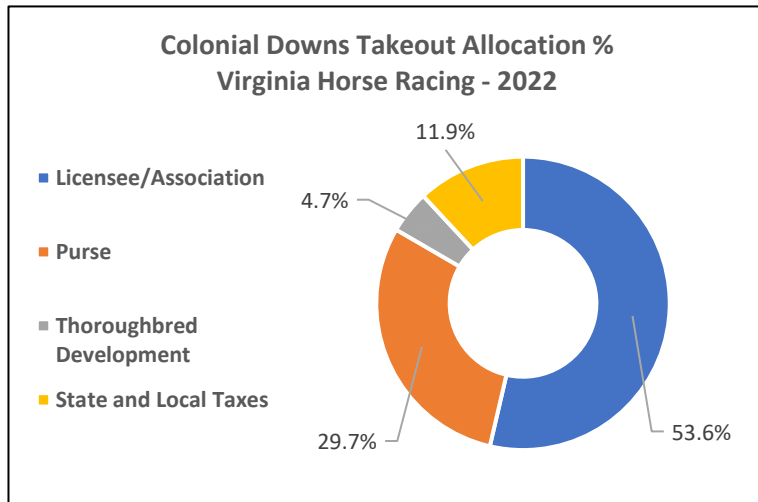
Source: Virginia Racing Commission.



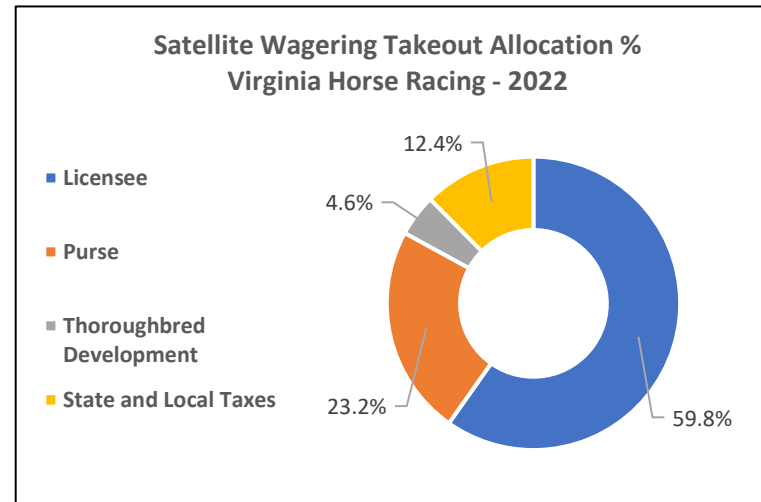
Source: Virginia Racing Commission.

Virginia – Takeout and ADW Fees Allocation

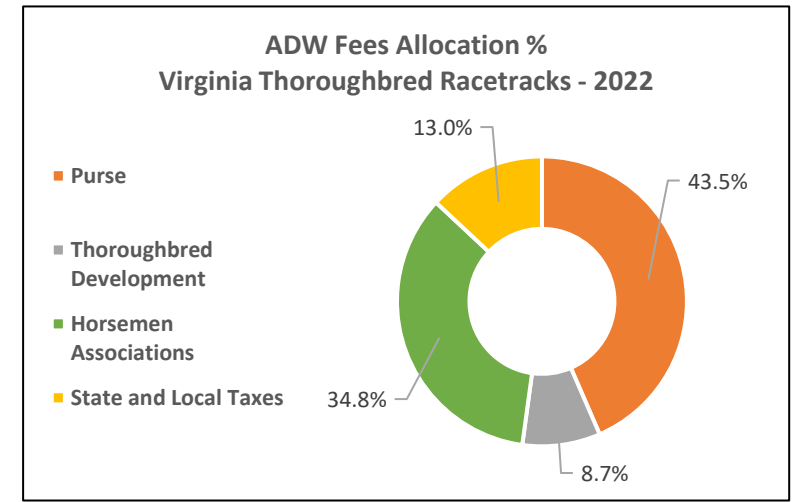
The allocation of the takeout at Colonial Downs and satellite wagering facilities are dedicated primarily to licensee and track operator payments and purses, with lesser amounts dedicated to thoroughbred development and taxes. ADW fees are dedicated primarily to purses and various horsemen associations in the State including, with lesser amounts going to thoroughbred development and taxes. The specific allocation amounts for these funding sources are detailed in the charts and tables below.



Source: Virginia Racing Commission.



Source: Virginia Racing Commission.



Source: Virginia Racing Commission.

Colonial Downs Takeout Allocation Virginia Horse Racing - 2022	
Use	Total
Track Operator	\$192,082
Purse	\$106,505
Thoroughbred Development	\$16,879
State and Local Taxes	\$42,660
Total	\$358,126

Source: Virginia Racing Commission.

Satellite Wagering Takeout Allocation Virginia Horse Racing - 2022	
Use	Total
Licensee	\$3,998,815
Purse	\$1,551,091
Thoroughbred Development	\$308,627
State and Local Taxes	\$831,002
Total	\$6,689,535

Source: Virginia Racing Commission.

ADW Fees Allocation Virginia Horse Racing - 2022	
Use	Total
Purse	\$5,700,830
Thoroughbred Development	\$1,140,166
Horsemen Associations	\$4,560,664
State and Local Taxes	\$1,710,249
Total	\$13,111,910

Source: Virginia Racing Commission.

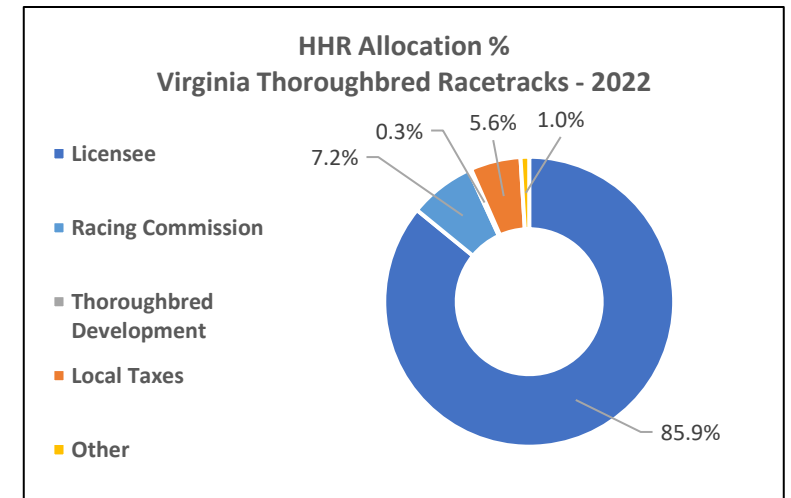
Virginia – Historical Horse Racing

As previously detailed, a portion of revenues generated through pari-mutuel wagering activities in Virginia are utilized to help fund purses and thoroughbred development programs. Additionally, Virginia tracks and horsemen benefit via significant funding contributions from Historical Horse Racing ("HHR") operations in the State.

HHR machines are very similar to slot machines in terms of play and other visual aspects, but unlike traditional slot machines, they use the outcomes of previously run races to determine payouts of any given wager instead of a random number generator. This method of determining payouts has allowed these games to be considered pari-mutuel wagering and offered in certain states where other casino gaming may have otherwise been illegal. HHR legislation was enacted in Virginia in 2018. The State's HHR industry has seen significant growth since that time both in terms of revenues generated as well as the number and size of locations offering HHR. It should be noted that the owner of Colonial Downs is the licensee of all HHR operations in Virginia, which include operations at the racetrack as well as six other satellite wagering facilities.

The State's HHR operations pay out various statutory commissions as a percentage of total handle. Collectively, these HHR commissions amounted to approximately \$353.9 million in 2022. The licensee (i.e., the establishments which operates the HHRs) received 85.9% of these commissions in 2022, while 7.2% was allocated to the VRC. Approximately \$1.0 million, or 0.3% was allocated to thoroughbred development and local taxes accounted for 5.6%. Other uses, which accounted for 1.0% of the total commissions in 2022, include distributions to the Virginia-Maryland College of Veterinary Medicine, the Virginia Horse Center Foundation, the Virginia Horse Industry Board, and problem gambling support. These details are illustrated in the adjacent chart and table.

It is likely contractual arrangements exist with the horsemen to further allocate a portion of the HHR licensee commissions to purses and perhaps other initiatives, however the details of which are unknown.



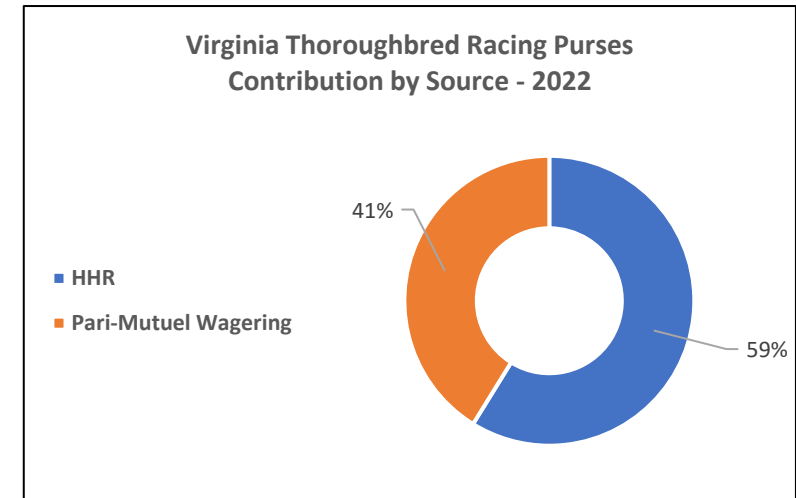
Source: Virginia Racing Commission.

HHR Commission Allocation Virginia Racing - 2022	
Use	Total
Licensee	\$303,949,091
Racing Commission	\$25,632,782
Thoroughbred Development	\$1,001,281
Local Taxes	\$19,869,707
Other	\$3,404,354
Total	\$353,857,215

Source: Virginia Racing Commission.

Virginia – Historical Horse Racing (cont'd)

It is likely contractual arrangements exist with the horsemen to further allocate a portion of the HHR licensee commissions to purses and perhaps other horsemen initiatives, however the exact details of which are unknown. Based on the previously detailed total purses and contributions from pari-mutuel wagering, it is estimated that approximately \$10 million, or roughly 3.0% of the total HHR commissions paid to licensees, is utilized to supplement purse funds at Colonial Downs. These HHR contributions represented an estimated 59% of the total funding for purses at Colonial Downs in 2022, as illustrated in the adjacent chart and table.



Source: Virginia Racing Commission.

Virginia Thoroughbred Racing Purses Sources and Estimated Funding Amounts - 2022	
Source	Amount
HHR	\$10 million
Pari-Mutuel Wagering	\$7 million
Total	\$17 million

Source: Virginia Racing Commission, Equibase, and Crossroads Consulting Analysis.

Virginia – Breeding Metrics

During 2022, Virginia's 8 reported stallions covered 16 mares, or only 0.1% of all the mares reported bred in North America. The number of mares bred to Virginia stallions decreased by 72.4% from 2013 through 2022. The average book size (number of mares bred per stallion) in Virginia decreased moderately from 2.9 in 2013 to 2.0 in 2022. By comparison, the average North America book size increased from 15.5 to 23.2 during that same timeframe.

Virginia-bred thoroughbred earnings by racing area show that in 2022, only 28.7% of earnings were garnered in-state, up significantly since 2018, but that was primarily due to the reopening of Colonial Downs in 2019. These and other breeding metrics are detailed in the adjacent tables.



Annual Thoroughbred Mares Bred to Virginia Stallions						
Year	Mares Bred	% of North America	Stallions	% of North America	Average Book Size	Average North America Book Size
2013	58	0.2%	20	0.8%	2.9	15.5
2014	45	0.1%	23	1.0%	2.0	16.5
2015	47	0.1%	17	0.8%	2.8	18.1
2016	52	0.1%	14	0.7%	3.7	18.4
2017	38	0.1%	16	0.8%	2.4	18.2
2018	29	0.1%	10	0.6%	2.9	18.7
2019	31	0.1%	14	0.8%	2.2	18.9
2020	23	0.1%	6	0.4%	3.8	19.3
2021	20	0.1%	8	0.6%	2.5	21.2
2022	16	0.1%	8	0.6%	2.0	23.2
10-Year Change	-72.4%	-50.0%	-60.0%	-25.0%	-31.0%	49.7%
CAGR 2013-2022	-13.3%	-7.4%	-9.7%	-3.1%	-4.0%	4.6%
CAGR 2018-2022	-13.8%	0.0%	-5.4%	0.0%	-8.9%	5.5%

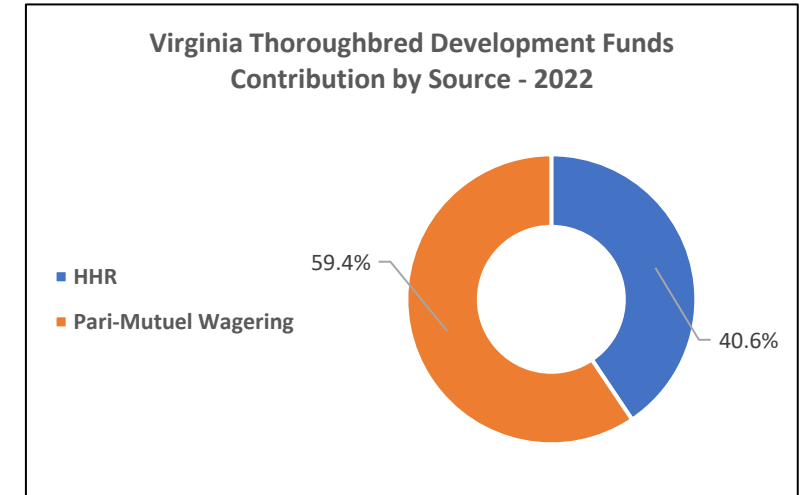
Source: The Jockey Club.

Virginia-Bred Thoroughbred Earnings by Racing Area						
Racing Area	2018	2019	2020	2021	2022	2018 to 2022 Change
Virginia	2.1%	21.2%	6.4%	17.7%	28.7%	1277.9%
Maryland	30.4%	13.0%	27.5%	18.6%	16.1%	-47.1%
Pennsylvania	7.6%	7.4%	8.9%	6.7%	8.4%	10.5%
New York	6.1%	7.9%	5.8%	11.5%	7.9%	29.8%
Other	53.8%	50.6%	51.3%	45.5%	38.9%	-27.6%

Source: The Jockey Club and Equibase Company.

Virginia – Thoroughbred Development Funds

The VRC, in conjunction with the Virginia Thoroughbred Association (“VTA”), is responsible for administering the Virginia Breeders Fund (“VBF”). The purpose of the fund is to award the State’s breeders, racehorse owners and sire owners to promote breeding and racing in the State. As previously detailed, the VBF receives funding contributions from pari-mutuel wagering, which totaled approximately \$1.5 million in 2022. Additionally, the VBF benefits from significant funding contributions by HHR operations in the State in accordance with the previously detailed statutory commissions. In 2022, HHR operations contributed approximately \$1.0 million, or 41% of the total VBF funding, as illustrated in the adjacent chart and table.



Source: Virginia Racing Commission.

Virginia Thoroughbred Development Funds Sources and Funding Amounts - 2022	
Source	Amount
HHR	\$1,001,281
Pari-Mutuel Wagering	\$1,465,673
Total	\$2,466,953

Source: Virginia Racing Commission.

Virginia – Breeding and Racing Incentives

Based on data from Trainer Magazine, the following outlines breeding and racing incentives in Virginia in 2023.

- Breeders Awards: Virginia breeders earn awards when their offspring win races anywhere in North America. Breeders' awards were over 30% of the winning purse in 2022.
- Owners Awards: Owners of Virginia-bred horses, 2020 and older, earn an up to 25% bonus for wins at Mid-Atlantic tracks including NSA sanctioned meets (NY, NJ, PA, DE, MD, WV). For Virginia bred foals of 2021 and after, the Developer will earn the up to 25% bonus for wins at the Mid-Atlantic tracks. Owners of the Virginia-bred horses earn a 50% bonus for 1st-4th in Open Races at Colonial Downs.
- Stallion Owners Awards: Stallion owners earn an award for any offspring's win in North America. In 2022, Stallion awards were 33% of the winning purse.
- Restricted Races for 2023: There are Virginia-bred and Virginia-restricted (includes VA bred/sired/certified) stakes and overnight races at Colonial Downs. Plans are to grow the Virginia-restricted program at the meet.
- Out of State Race Awards: Certified Developer bonuses will not be earned for out of state wins during the Colonial Downs meet.
- # registered foals in 2022: 93
- What you need to know: Developers of Virginia-Certified horses can earn up to a 25% bonus for Open Race wins at Mid-Atlantic tracks, including NSA sanctioned meets (NY, NJ, PA, DE, MD, WV). (Bonuses are projected to be about 20% in 2023). Developers of Virginia-certified horses earn a 10% bonus for state-bred-restricted wins at Mid-Atlantic tracks Virginia Restricted Races are excluded. Beginning with foals of 2023 certified awards will not be earned for wins in West Virginia.

Source: TrainerMagazine.com; vabred.org – Debbie Easter

Virginia – HISA Funding and Assessment

The total HISA assessment for Virginia in 2023 was approximately \$708,000, as shown in the table below. Specific information regarding how the assessment is being funded was not available.

Virginia HISA Assessment - 2023												
State	Purses Paid (1)	Starts (1)	Purses per Start	% of Starts	% of Purses	% Purses/ % Starts	Start Fee for Projected Starts	Start Fee for Projected Purse Starts	Total Start Fee	Initial State Total	10% Cap Adjustment	Revised State Total
Virginia	\$14,563,863	2,055	\$7,087	0.9%	1.2%	1.41	\$142.64	\$200.93	\$343.57	\$706,039	\$ 2,237	\$ 708,276
U.S. Total	\$1,172,603,109	233,067	\$5,031	100.0%	100.0%	1.00	\$142.64	\$142.64	\$285.28	\$66,490,436	\$0	\$66,490,436

(1) - The Purses Paid and Starts data is for the period Oct. 1, 2021 thru Sep. 30, 2022. This excludes Breeder's Cup World Championship races.

Source: HISA.

Virginia – Racing Commission

Established under Virginia Code §59.1-369, the Virginia Racing Commission (“VRC”) is a public corporation. The VRC consists of five members appointed by the governor. Each Commissioner shall have been a resident of the Commonwealth for a period of at least three years preceding his/her appointment and his continued residency shall be a condition of his/her tenure in office.

The VRC is tasked to promote, grow, and control a native horse racing industry with pari-mutuel wagering by prescribing regulations and conditions that command and promote excellence and complete honesty and integrity in racing and wagering.

Key activities of the VRC include:

- Vested with jurisdiction and supervision over all horse racing licensed under the provisions of this chapter including all persons conducting, participating in, or attending any race meeting.
- Visiting and investigating track, facilities, satellite facilities, or other places of business of any license or permit holder, and may compel the production of any of the books, documents, records, or memoranda of any license or permit holder for the purpose of satisfying itself that this chapter and its regulations are strictly complied with.
- Producing an annual balance sheet and operating statement prepared by a certified public accountant for the recognized majority horsemen group and nonprofit industry stakeholder.
- Promulgate regulations and conditions regulating and controlling advance deposit account wagering. Such regulations shall include, but not be limited to, standards, qualifications, and procedures for the issuance of a license to an entity for the operation of pari-mutuel wagering in the Commonwealth.



Source: Virginia Racing Commission

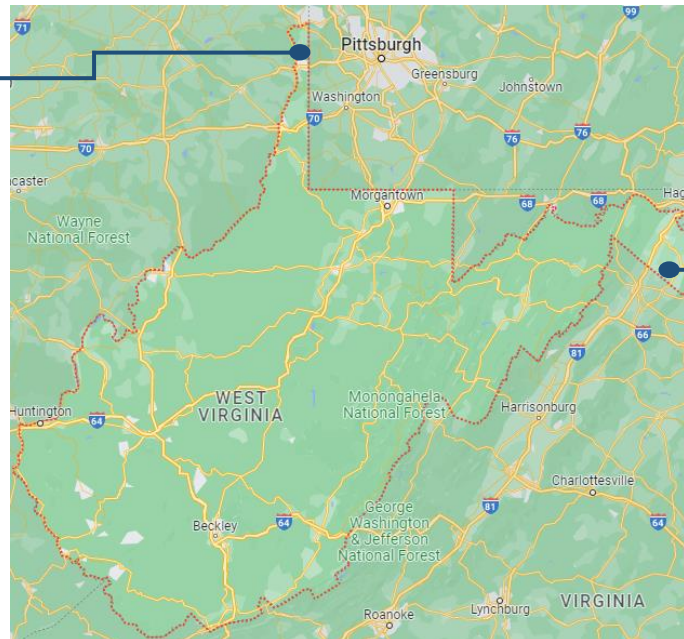
West Virginia – Thoroughbred Racetracks

There are two thoroughbred racetracks operating in West Virginia, both of which are privately owned. Both are also privately operated by gaming/entertainment companies. The following table provides track particulars, and the map that follows show location details.

West Virginia Thoroughbred Racetracks								
Track	Year Opened	Owner	Operator	Seating Capacity		Track Length		Stabling (stalls)
				Grandstand	Clubhouse	Dirt (miles)	Turf (furlongs)	
Charles Town Races	1933	Gaming and Leisure Properties, Inc.	Penn Entertainment, Inc.	3,500	2,500	3/4	N/A	1,350
Mountaineer Racetrack	1951	VICI Properties	Century Casinos, Inc.	5,800	1,600	1	7	1,110

Sources: TwinSpires, AmWager, and facility websites.

**Mountaineer Racetrack
New Cumberland, WV**



**Charles Town Races
Charles Town, WV**



Source: Google Maps, facility websites

West Virginia – Live Race Days and Attendance

The number of live race days at both Charles Town Races and Mountaineer Park decreased significantly from 2013 to 2022. Charles Town Races held 221 races in 2013 compared to 173 in 2022, representing a decrease of 21.7%, while the decrease (38.1%) at Mountaineer Park was even greater during that same timeframe. These trends are detailed in the table below. The West Virginia Racing Commission has not reported attendance data since 2000, nor do any of the tracks on any regular basis.

Annual Live Race Days West Virginia Thoroughbred Racetracks			
Year	Charles Town Races	Mountaineer Park	Total
2013	221	210	431
2014	192	195	387
2015	177	160	337
2016	170	160	330
2017	165	131	296
2018	160	114	274
2019	167	128	295
2020	114	103	217
2021	174	133	307
2022	173	130	303
10-Year Change	-21.7%	-38.1%	-29.7%
CAGR 2013-2022	-2.7%	-5.2%	-3.8%
CAGR 2018-2022	2.0%	3.3%	2.5%

Source: West Virginia Racing Commission.



West Virginia – Thoroughbred Racing Metrics

The West Virginia thoroughbred racing industry experienced a significant decrease in the number of races (38.2%) and race days (29.7%) over the 10-year period from 2013 through 2022. It also saw a decrease (16.2%) in the average field size per race from 8.1 in 2013 to 6.8 in 2022. Despite these trends and while total purses were lower in 2022 compared to 2013, the total purses have increased in recent years. Additionally, the average purse per race increased from approximately \$16,500 in 2013 to \$21,100 in 2022, representing an increase of 27.5%. These trends and other performance metrics are detailed in the table below.

West Virginia Thoroughbred Racing Metrics							
Year	Races	Purses	Avg Purse per Race	Starters	Starts	Race Days	Avg Field Size
2013	3,926	\$64,936,344	\$16,540	7,096	31,904	431	8.1
2014	3,358	\$56,328,184	\$16,774	6,096	26,361	387	7.9
2015	2,884	\$43,242,115	\$14,994	5,137	22,144	337	7.7
2016	2,814	\$39,999,785	\$14,215	4,720	21,077	330	7.5
2017	2,548	\$36,759,924	\$14,427	4,264	19,150	296	7.5
2018	2,324	\$34,134,322	\$14,688	3,875	17,210	274	7.4
2019	2,489	\$39,113,002	\$15,714	3,997	18,001	295	7.2
2020	2,101	\$32,590,875	\$15,512	4,002	15,896	246	7.6
2021	2,483	\$45,078,450	\$18,155	3,874	17,480	307	7.0
2022	2,427	\$51,183,040	\$21,089	3,596	16,532	303	6.8
10-Year Change	-38.2%	-21.2%	27.5%	-49.3%	-48.2%	-29.7%	-16.2%
CAGR 2013-2022	-5.2%	-2.6%	2.7%	-7.3%	-7.0%	-3.8%	-1.9%
CAGR 2018-2022	1.1%	10.7%	9.5%	-1.9%	-1.0%	2.5%	-2.1%



Note: Purses represent all available money, including monies not won and returned to state breeder or other funds.

Source: The Jockey Club and Equibase Company.

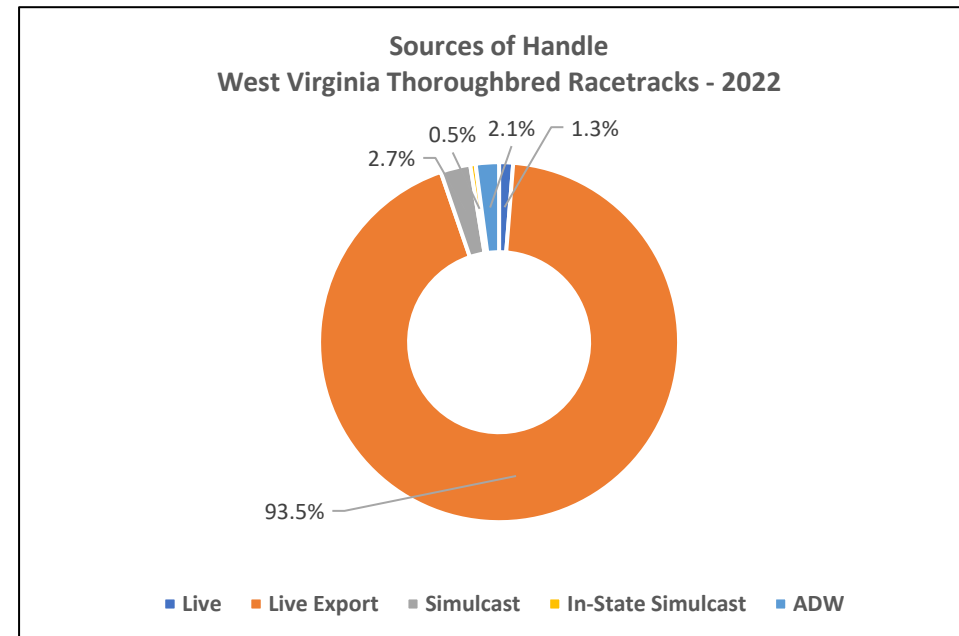
Notable races in West Virginia include the Charles Town Classic and the West Virginia Derby. The Charles Town Classic, a Grade II thoroughbred race for horses aged three years old and up, is held annually in April and carried a purse of \$1,000,000 in 2023. It is one of the more popular races for older horse in the country. The West Virginia Derby, a race for three-year-olds and also a Grade II race, is held annually in August and carried a purse of \$500,000 in 2023.

West Virginia – Thoroughbred Racing Handle

The annual total handle from all sources attributable to West Virginia thoroughbred racetracks was approximately \$460.8 million in 2022 compared to \$496.6 million in 2013, which reflected a decrease of 7.2% over that timeframe. Charles Town Races, however, experienced an increase in its annual total handle of 37.6% over that same period. The handle associated with live export wagering, which is generated from the broadcasting of races at the West Virginia tracks to other locations, accounted for nearly 94% of the total handle in 2022, while live on-track wagering accounted for just over 1%. Simulcast wagering at West Virginia thoroughbred tracks for races taking place outside the state accounted for 2.7% of the total handle in 2022 and in-state accounted for 0.5%. Advanced Deposit Wagering ("ADW"), which is done through online platforms and mobile apps, accounted for 2.1% of the total handle in 2022. These trends are illustrated in the table and chart below.

Annual Total Handle (All Sources) West Virginia Thoroughbred Racetracks			
Year	Charles Town Races	Mountaineer Park	Total
2013	\$240,094,021	\$256,517,723	\$496,611,744
2014	\$198,358,626	\$208,545,414	\$406,904,040
2015	\$182,157,406	\$165,052,004	\$347,209,410
2016	\$180,397,159	\$158,240,989	\$338,638,148
2017	\$208,550,221	\$138,016,936	\$346,567,157
2018	\$207,026,401	\$127,816,171	\$334,842,572
2019	\$174,478,459	\$151,379,654	\$325,858,113
2020	\$266,560,266	\$169,560,605	\$436,120,870
2021	\$339,383,812	\$145,450,376	\$484,834,188
2022	\$330,371,784	\$130,469,168	\$460,840,952
10-Year Change	37.6%	-49.1%	-7.2%
CAGR 2013-2022	3.6%	-7.2%	-0.8%
CAGR 2018-2022	12.4%	0.5%	8.3%

Source: West Virginia Racing Commission.



Source: West Virginia Racing Commission.

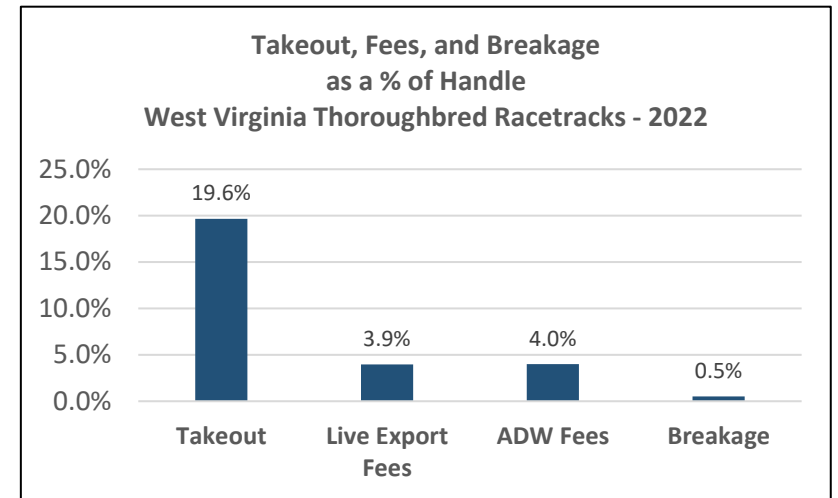
West Virginia legalized and began regulating ADW in July 2020. The West Virginia Racing Commission tracks ADW handle, but it is reported separately from other sources of handle. We have combined it for purposes of this analysis to facilitate comparisons with other states that report in this consolidated manner.

West Virginia – Takeout, Fees and Breakage

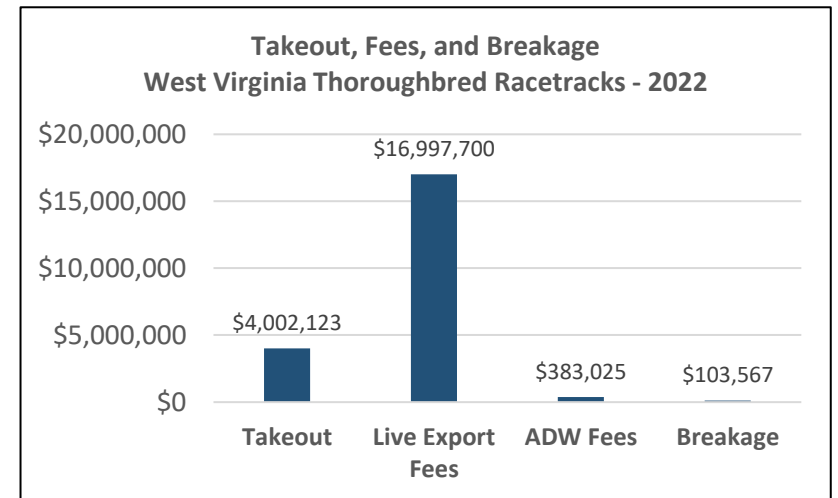
The takeout rates at West Virginia racetracks are applicable to live on-track betting as well as simulcast wagering (both for in-state and out-of-state tracks). The established takeout rates as a percentage of handle at West Virginia tracks ranges from 17.25% on straight wagers to 25.0% on exotic wagers with 3 or more horses. In 2022, the total blended takeout rate on wagering at West Virginia thoroughbred racetracks was 19.6% of live on-track betting and simulcast wagering, which generated approximately \$4.0 million, as illustrated in the adjacent charts.

In 2022, the total live export fees at West Virginia thoroughbred racetracks was 3.9% of live export handle, which generated nearly \$17.0 million, as illustrated in the adjacent charts.

Source market and other fees paid by each ADW licensee are currently set at a statutory rate of 4.0% of the associated wagering. Breakage reflects amounts associated with the rounding down of payouts to the nearest 10 cents. In 2022, ADW fees and breakage at West Virginia thoroughbred racetracks only accounted for approximately \$400,000 and \$100,000, respectively, as illustrated in the adjacent charts.



Source: West Virginia Racing Commission.



Source: West Virginia Racing Commission.

West Virginia – Takeout Allocation

The allocation of the takeout to different uses in West Virginia varies dependent upon the type of wagering taking place. In all cases, equal amounts are paid to purses and the track operators. In aggregate, the takeout allocated to purses and the track operators was 26.7% for each in 2022. The aggregate takeout allocated to the State wagering tax, which is used to fund the WVRC, was 17.0% in 2022 and 4.3% was allocated to the West Virginia Thoroughbred Development Fund (“WVTDF”) for the promotion of breeding and racing. For simulcast wagering at West Virginia racetracks, and dependent upon the agreements in place for each, transmission and host track payments are made (i.e., payments to the track for which a West Virginia track is accepting simulcast wagers), which in 2022 accounted for 23.7% of the total takeout. These allocations, details by type of wager, and the actual amounts allocated are detailed in the adjacent tables.



Takeout Allocation % West Virginia Thoroughbred Racetracks - 2022				
Use	Live	Simulcast	In-State Simulcast	Total
Track Operators	31.2%	23.3%	35.3%	26.7%
Purse	31.2%	23.3%	35.3%	26.7%
State Wagering Tax	28.4%	13.8%	7.9%	17.0%
Host Track/Transmission	0.0%	34.9%	18.3%	23.7%
Thoroughbred Development	8.7%	2.8%	2.1%	4.3%
Other	0.5%	1.9%	1.0%	1.5%
Total	100.0%	100.0%	100.0%	100.0%

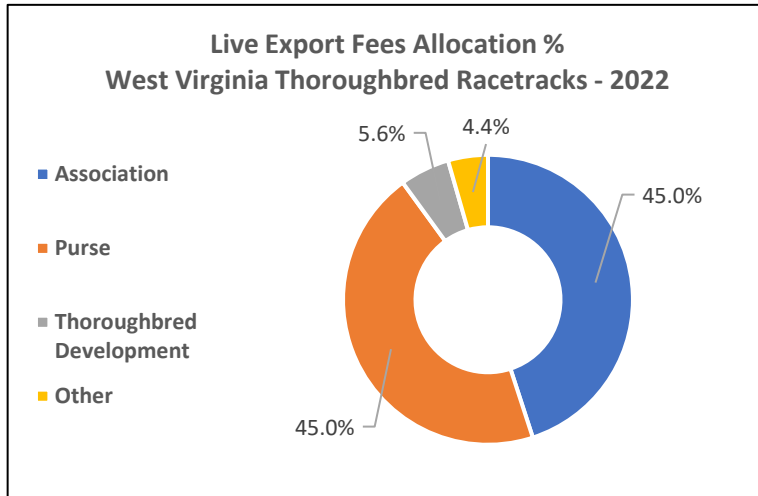
Source: West Virginia Racing Commission.

Takeout Allocation West Virginia Thoroughbred Racetracks - 2022				
Use	Live	Simulcast	In-State Simulcast	Total
Track Operators	\$332,840	\$579,537	\$157,082	\$1,069,459
Purse	\$332,839	\$579,766	\$157,071	\$1,069,676
State Wagering Tax	\$303,000	\$343,949	\$34,919	\$681,868
Host Track/Transmission	\$0	\$869,081	\$81,148	\$950,229
Thoroughbred Development	\$92,990	\$70,169	\$9,508	\$172,667
Other	\$5,785	\$47,778	\$4,661	\$58,224
Total	\$1,067,454	\$2,490,280	\$444,389	\$4,002,123

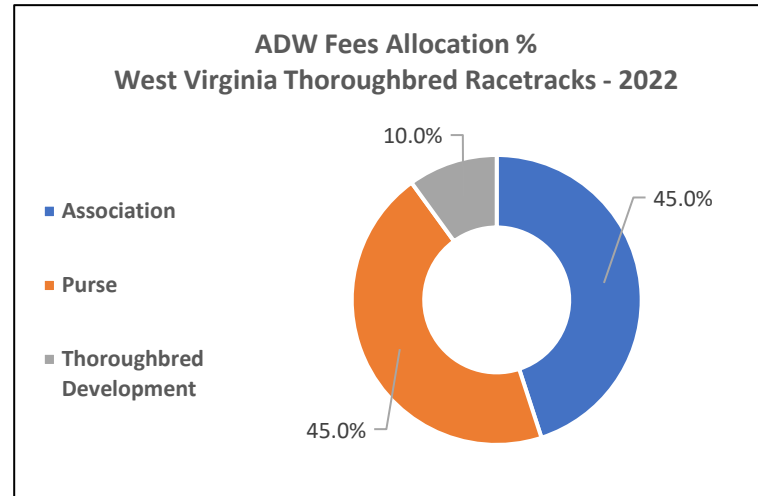
Source: West Virginia Racing Commission.

West Virginia – Other Fees and Breakage Allocation

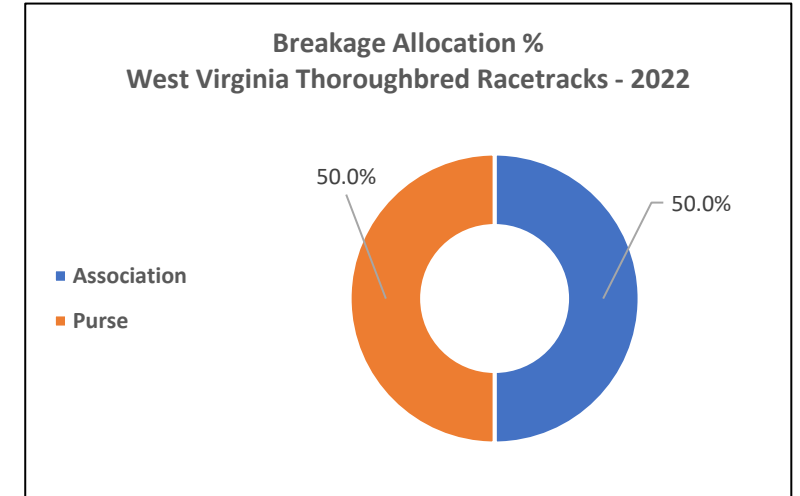
The allocation of live export fees received by the West Virginia racetracks, ADW fees, and breakage are dedicated primarily to purses and track operator payments, with lesser amounts helping to fund thoroughbred development and other uses. The specific allocation amounts for these funding sources are shown in the charts and tables below.



Source: West Virginia Racing Commission.



Source: West Virginia Racing Commission.



Source: West Virginia Racing Commission.

Live Export Fee Allocation West Virginia Thoroughbred Racetracks - 2022	
Use	Total
Track Operators	\$7,647,891
Purse	\$7,647,889
Thoroughbred Development	\$946,079
Other	\$755,841
Total	\$16,997,700

Source: West Virginia Racing Commission.

ADW Fee Allocation West Virginia Thoroughbred Racetracks - 2022	
Use	Total
Track Operators	\$172,361
Purse	\$172,361
Thoroughbred Development	\$38,302
Total	\$383,025

Source: West Virginia Racing Commission.

Breakage Allocation West Virginia Thoroughbred Racetracks - 2022	
Use	Total
Track Operators	\$51,784
Purse	\$51,784
Total	\$103,567

Source: West Virginia Racing Commission.

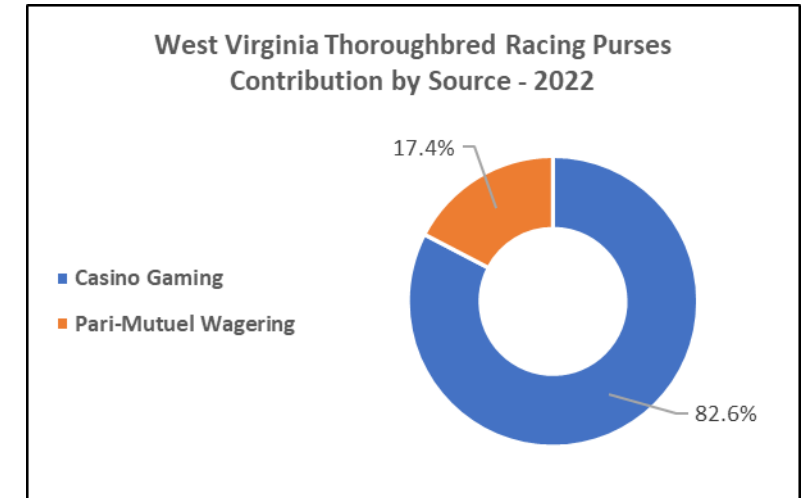
West Virginia – Purse Funds

As previously detailed, the purses for West Virginia thoroughbred racing receive funding contributions from pari-mutuel wagering, which totaled approximately \$8.9 million in 2022. Additionally, West Virginia purses benefit via significant funding contributions from racetrack casino gaming operations in the State. In 2022, casino gaming contributed approximately \$42.3 million, or 82.6% to the total purses, as illustrated and detailed in the adjacent chart and table.

In 1994, the State Legislature passed the Racetrack Video Lottery Act (“RVLA”), which authorized racetracks to operate VLTs, which are effectively slot machines, under the authority of the West Virginia Lottery. It was one of the first states in the country to legalize VLTs at tracks and was credited for invigorating and even perhaps saving the West Virginia thoroughbred racing industry. In 2007, the law was expanded to also allow for the casinos at tracks to offer table games.

Under the original provisions of the RVLA, 14% of net terminal income (VLT revenue less up to 4% for administrative costs) was allocated to track purses. The RVLA was revised in 2001 and designated any revenue above that collected in 2001 as “excess net terminal income.” The legislation maintained the original allocation percentages up to that collected at each track in 2001, which was then used as the future benchmark, but changed the allocation for the excess net terminal income with only 8% going to purses. In 2006, the allocation was further reduced with \$11 million per year of VLT purse funds being redirected to support other uses in the State, but legislation was passed in 2019 to restore these funds to purses going forward.

As it relates to table games revenue, the 2007 legislation provided that 2.5% of adjusted gross receipts (amount bet less amount won) be allocated to racing purses (divided equally among each licensee), and this same allocation rate is currently in place.



Source: West Virginia Racing Commission, West Virginia Lottery, and Equibase Company.

West Virginia Thoroughbred Racing Purses Sources and Funding Amounts - 2022	
Source	Amount
Casino Gaming	\$42,293,114
Pari-Mutuel Wagering	\$8,889,926
Total	\$51,183,040

Source: West Virginia Racing Commission, West Virginia Lottery, and Equibase Company.

West Virginia – Breeding Metrics

During 2022, West Virginia's 36 reported stallions covered 366 mares, or 1.3% of all the mares reported bred in North America. The number of mares bred to West Virginia stallions decreased by 51.7% from 2013 through 2022. The average book size (number of mares bred per stallion) in West Virginia decreased moderately from 11.6 in 2013 to 10.2 in 2022. By comparison, the average North America book size increased from 15.5 to 23.2 during that same timeframe.

West Virginia-bred thoroughbred earnings by racing area show that in 2022, nearly 98% of earnings were garnered in-state, up from approximately 88% in 2018. These and other breeding metrics are detailed in the adjacent tables.



Annual Thoroughbred Mares Bred to West Virginia Stallions						
Year	Mares Bred	% of North America	Stallions	% of North America	Average Book Size	Average North America Book Size
2013	757	2.0%	65	2.7%	11.6	15.5
2014	735	1.9%	58	2.5%	12.7	16.5
2015	716	1.9%	58	2.8%	12.3	18.1
2016	493	1.4%	46	2.3%	10.7	18.4
2017	524	1.5%	51	2.7%	10.3	18.2
2018	430	1.3%	40	2.3%	10.8	18.7
2019	411	1.3%	38	2.3%	10.8	18.9
2020	423	1.4%	36	2.3%	11.8	19.3
2021	388	1.3%	34	2.5%	11.4	21.2
2022	366	1.3%	36	2.9%	10.2	23.2
10-Year Change	-51.7%	-35.0%	-44.6%	7.4%	-12.7%	49.7%
CAGR 2013-2022	-7.8%	-4.7%	-6.4%	0.8%	-1.5%	4.6%
CAGR 2018-2022	-3.9%	0.0%	-2.6%	6.0%	-1.4%	5.5%

Source: The Jockey Club.

Percentage of West Virginia-Bred Thoroughbred Earnings by Racing Area						
Racing Area	2018	2019	2020	2021	2022	2018 to 2022 Change
West Virginia	88.2%	89.5%	94.1%	95.0%	97.5%	10.5%
Maryland	3.4%	4.6%	2.8%	1.6%	0.7%	-78.8%
Virginia	0.1%	0.4%	0.3%	0.8%	0.4%	700.0%
Ohio	0.6%	0.3%	0.3%	0.4%	0.3%	-40.0%
Other	7.8%	5.2%	2.5%	2.2%	1.1%	-86.2%

Source: The Jockey Club and Equibase Company.

West Virginia – Thoroughbred Development Funds

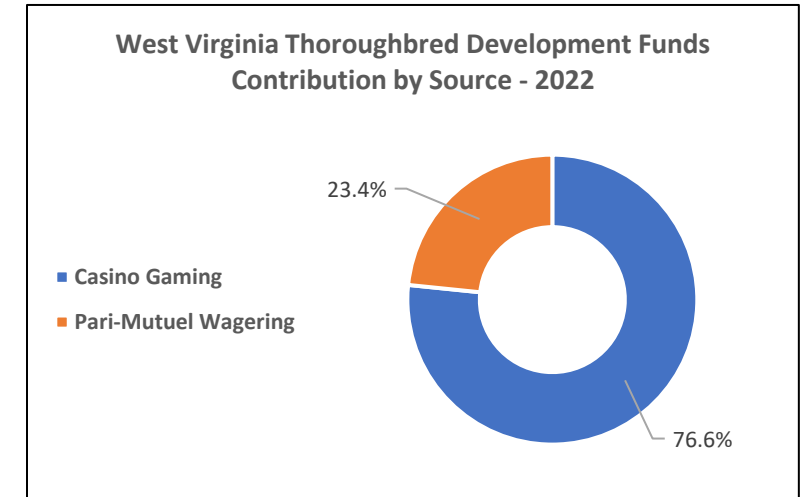
The WVRC is responsible for administering the WVTDF. The purpose of the funds is to award accredited breeders, thoroughbred racehorse owners and sire owners of West Virginia-bred and/or sired horses to promote breeding and racing in the State. As previously detailed the WVTDF receives funding contributions from pari-mutuel wagering, which totaled approximately \$1.0 million in 2022. Additionally, the WVTDF benefits from significant funding contributions by racetrack casino gaming operations in the State. In 2022, casino gaming contributed approximately \$3.9 million, or 76.6% of the total WVTDF funding, as illustrated in the adjacent chart and table.

Current legislation provides that 1.5% of net terminal income from VLTs and 1.8% from table games adjusted gross receipts is allocated to thoroughbred and greyhound development funds (divided on a pro rata basis). Additionally, State legislation provides that WVTDF awards are allocated as follows: 60% breeder, 25% owner, and 15% sire.

In 2022, there were 570 participants in the WVTDF program that received an average award of \$8,645. Based on data from the WVRC, 436 participants, or 76.5%, were attributable to Charles Town Races. The \$4.9 million distributed by the WVTDF in 2022 represented 9.0% of the total earnings for accredited breeders, thoroughbred racehorse owners and sire owners, as detailed in the following table.

West Virginia Thoroughbred Development Funds Earnings Percentage Calculation - 2022			
Recipient	Total Earnings	WVTDF Payout	Payout %
Breeder	\$20,839,638	\$2,956,498	14.2%
Owner	\$21,438,119	\$1,231,874	5.7%
Sire	\$12,397,992	\$739,125	6.0%
Total	\$54,675,749	\$4,927,497	9.0%

Source: West Virginia Racing Commission.



Source: West Virginia Racing Commission and West Virginia Lottery.

West Virginia Thoroughbred Development Funds Sources and Funding Amounts - 2022	
Source	Amount
Casino Gaming	\$3,947,731
Pari-Mutuel Wagering	\$979,765
Total	\$4,927,497

Source: West Virginia Racing Commission and West Virginia Lottery.

West Virginia – Breeding and Racing Incentives

Based on data from Trainer Magazine, the following outlines breeding and racing incentives in West Virginia in 2023.

- Breeders Awards: 14.49% of progeny earnings & supplemental awards.
- Owners Awards: 5.89% of earnings & supplemental awards.
- Stallion Owners Awards: 5.04% of progeny earnings & supplemental awards.
- Restricted Races for 2023: Yes
- What you need to know: Thoroughbred Development Fund distributions of \$4.7 million to breeders, owners, and sire owners of accredited WV-bred and/or sired horses based on the horses' annual earnings at Charles Town and Mountaineer Park racetracks. A minimum of 3 accredited races are written every day at Charles Town exclusively for registered WV-bred and/or sired horses. \$740,000 in purses for WV-bred and/or sired horses at the West Virginia Breeders Classics held annually on the 2nd Saturday in October. \$800,000 in purses are allocated for up to sixteen WV accredited Stake Races during the year. Supplemental Purse Awards of up to 10% of the winners share of the purse to the owner, breeder, and/or sire owner of the accredited WV-bred and/or sired winner.

Source: TrainerMagazine.com; wvtba.com – Dawn Cook

West Virginia – HISA Funding and Assessment

In July 2022, the states of West Virginia and Louisiana won an injunction in federal court to keep the Horseracing Integrity and Safety Authority's ("HISA") rules from being implemented in those two states, pending a final ruling on the constitutionality of HISA and other procedural challenges brought forth. HISA has appealed that ruling, but also announced in March 2023 that it would not enforce its jurisdiction in West Virginia until the legal challenges play out. In May 2023, a federal judge ruled revamped HISA statutes to be constitutional. However, as of September 2023, a final ruling on the lawsuit brought forth by West Virginia and Louisiana had not been issued and HISA rules are not being enforced in West Virginia. Additionally, the WVRC has not publicly announced any decisions on how HISA-related fees/funding would be collected and the corresponding sources of such funds should the State ultimately be compelled or choose to opt-in to the HISA program.

While not being funded at this time, the total HISA assessment for West Virginia thoroughbred racetracks in 2023 was approximately \$3.8 million, as detailed in the table below.

West Virginia HISA Assessment - 2023												
State	Purses Paid (1)	Starts (1)	Purses per Start	% of Starts	% of Purses	% Purses/ % Starts	Start Fee for Projected Starts	Start Fee for Projected Purse Starts	Total Start Fee	Initial State Total	10% Cap Adjustment	Revised State Total
West Virginia	\$49,687,633	16,779	\$2,961	7.2%	4.2%	0.59	\$142.64	\$83.96	\$226.60	\$3,802,121	\$ 12,048	\$ 3,814,169
U.S. Total	\$1,172,603,109	233,067	\$5,031	100.0%	100.0%	1.00	\$142.64	\$142.64	\$285.28	\$66,490,436	\$0	\$66,490,436

(1) - The Purses Paid and Starts data is for the period Oct. 1, 2021 thru Sep. 30, 2022. This excludes Breeder's Cup World Championship races.

Source: HISA.

West Virginia – Racing Commission

Established under West Virginia Code §19-23-1, the West Virginia Racing Commission (“WVRC”) is a public corporation. The WVRC consists of three commissioners appointed by the Governor with a term of four years and may serve any number of successive terms. Not more than two of the appointees at any point in time may be members of the same political party, and a majority constitutes a quorum for all voting and decision-making purposes.

The WVRC is tasked with the promotion of thoroughbred horse breeding in the State and full regulatory and supervisory oversight of thoroughbred racing in the State and all individuals involved in the holding or conducting of such races. The WVRC is also responsible for these same activities for the State’s greyhound breeding and racing industries.

Key activities of the WVRC include:

- On-site personnel at racetracks to enforce rules and regulations, illegal drug and substance collection/testing.
- Issuance of occupational permits, hearings for rules violations, and the collection of fees and fines.
- Administrative support and oversight over the West Virginia Thoroughbred Development fund to monitor and inspect breeding sites and activities to confirm program eligibility.

The WVRC receives 100% of the State Wagering Tax collected from thoroughbred wagering, as detailed in the following slides, with additional funding received from occupational license fees (\$20 to \$60, dependent upon role), license tax paid by thoroughbred track operators conducting the race (\$250 per race), and fines levied against owners, trainers, etc.



Source: West Virginia Racing Commission.

Appendix – Glossary of Terms



Appendix – Glossary of Terms

ADW (“Advance deposit wagering”) - a form of gambling in which the bettor must fund their account before being allowed to place bets. Usually used to bet on the outcome of horse or greyhound dog races, though it can also apply to casinos.

Book - The group of mares being bred to a stallion in a given year. If a stallion attracts the maximum number of mares allowed by the farm manager, he has a full book.

Bred- A horse is considered to have been bred in the state or country of its birth.

Breakage - In pari-mutuel payoffs, which are rounded down to a nickel or dime, the pennies that are left over. Breakage may be used for any of a number of purposes. Depending on a state’s rules of racing, the money goes to the state, the track, purses, or benevolence programs.

Developer – The owner of the horse in its first career start.

Furlong – An eighth of a mile.

Graded race – A non-restricted race with added money or guaranteed purse value of \$100,000 or more which has been run at least twice under similar conditions and on the same surface and has been assigned graded status for the year contested by the American Graded Stakes Committee.

Guest Track – The racetrack that is showing the simulcast of live races from other racetracks.

Handicap – This race type refers to a race where the weight each horse will carry is assigned by the track’s racing secretary or handicapper.

Handle - Amount of money wagered in the pari-mutuel system on a race, full day of races, or entire racing season at a track.

HISA (“Horse Racing Integrity and Safety Authority”) - Created to implement, for the first time, a national, uniform set of integrity and safety rules that are applied consistently to every Thoroughbred racing participant and racetrack facility.

HHR (“Historical Horse Racing”) – A form of gambling very similar to slot machines in terms of play and other visual aspects, but unlike traditional slot machines, HHR machines use the outcomes of previously run races to determine payouts of any given wager instead of a random number generator.

Appendix – Glossary of Terms (cont'd)

Length – A measurement approximating the length of a horse, used to denote distance between horses in a race.

Live Export Fee – The revenue received by the Horse Track from the Guest Track for the ability to wager on the Horse Track's live races.

Live Export Wagering – wagering generated from the broadcasting of races at a track to other locations.

Mare – Female horse five years or older. Also, any female that has been bred regardless of age.

Pari-mutuel – A form of wagering originated in 1865 by Frenchman Pierre Oller in which all money bet is divided up among those who have winning tickets after taxes, takeout, and other deductions are made.

Post Position – Position of stall in starting gate from which a horse begins a race.

Simulcast – A simultaneous live television transmission of a race to other tracks, offtrack betting facilities, or other outlets for the purpose of wagering.

Sire – Father of a foal.

Stakes – A race for which the owner usually must pay a fee to run a horse. The fees can be for nominating, maintaining eligibility, entering and starting, to which the track adds more money to make up the total purse. Some stakes races are by invitation and require no payment or fee.

Stallion – A male horse used for breeding.

Starter – A horse declared to start in a race, and which is not subsequently declared a non-starter or non-runner or otherwise withdrawn from a race pursuant to the Rules of Racing.

Takeout – Commission deducted from mutuel pools that is shared by the track, horsemen (in the form of purses), and local and state governing bodies in the form of tax. Also called take.

VLT ("Video lottery terminal") – a video-based version of a traditional slot machine. Winnings from a VLT are not dispensed from the terminal, but rather a voucher for the winnings printed by the terminal, which the player is required to claim.

Sources: Americasbestracing.net and Americahorsepubs.

Limiting Conditions & Assumptions



Limiting Conditions & Assumptions

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

- This analysis has been prepared for the Maryland Thoroughbred Racetrack Operating Authority ("Client") for their internal decision-making purposes and should not be used for any other purposes without the prior written consent of Crossroads Consulting Services, LLC.
- This report should only be used for its intended purpose by the entities to whom it is addressed. Reproduction or publication by other parties is strictly prohibited.
- The findings and assumptions contained in the report reflect analysis of primary and secondary sources. We have utilized sources that are deemed to be accurate but cannot guarantee their accuracy. No information provided to us by others was audited or verified and was assumed to be correct.
- Although the analysis includes findings and recommendations, all decisions relating to the implementation of such findings and recommendations shall be the Client's responsibility.
- Although this analysis utilizes various mathematical calculations, the final estimates are subjective and may be influenced by our experience and other factors not explicitly stated.
- We have no obligation, unless subsequently engaged, to update this report or revise this analysis as presented due to events or circumstances occurring after the date of this report.
- Multiple external factors influence current and anticipated market conditions. Although we have not knowingly withheld any pertinent facts, we do not guarantee that we have knowledge of all factors which might influence the operating potential of the proposed sports facilities. Due to quick changes in the external factors, actual results may vary significantly from estimates presented in this report.
- The analysis performed was limited in nature and, as such, Crossroads Consulting Services, LLC does not express an opinion or any other form of assurance on the information presented in this report.
- The analysis is intended to be read and used in its entirety. Separation of any portion from the main body of the report is prohibited and negates the analysis.
- In accordance with the terms of our engagement letter, the accompanying report is restricted to internal use by the Client and may not be relied upon by any party for any purpose including any matter pertaining to financing.



Maryland Thoroughbred Racetrack Operating Authority

RACING & TRAINING CENTER DEVELOPMENT REPORT - 01.05.2024

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Executive Summary

Executive Summary

Introduction

The Maryland Thoroughbred Racetrack Operating Authority has been tasked by the Senate Budget and Taxation Committee, the House Appropriations Committee and the House Ways and Means Committee to study the feasibility of establishing at least two alternative Thoroughbred training facilities in the State, and a review of best practices for Thoroughbred racing industry operating models and recommendations for operating models in the State.

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RK&K

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Rider Levett Bucknall (RLB)

Guiding Principles

At the outset of the study, the consulting team worked with the MTROA to establish a set of Guiding Principles which include the following:

1. Planning Parity

The planning options studied shall have programming parity to ensure that the cost models can be directly and fairly evaluated among the options.

2. Modern, Consistent and 'Synthetic-Ready' Tracks

The racing surfaces at Pimlico shall include at least a 1-mile dirt track and 7/8-mile turf track with modern transition turns and uniform width the distance of the tracks. The dirt track shall be engineered to be "synthetic-ready" allowing the quick and economical transition from dirt cushion to a synthetic cushion.

3. Identical Track Geometry at Both Sites

The training surfaces at a proposed training center shall include both dirt and turf tracks that are identical to the proposed Pimlico tracks.

4. 1,200 minimum total racing stalls

Total racing stables shall not be less than 1,200, not including receiving stabling, pony stabling and other required stabling. Ideally the horse population would be split equally between Pimlico and the training center.

5. Maximum 800 stalls for Two Tracks

If more than 800 racing stables are allocated at one site, the requirement for a third track at that site will be triggered to ensure that appropriate training capacity is equally available for all trainers and horses.

6. Veterinary Center

Both Pimlico and the training center shall include veterinary facilities capable of providing services for the day-to-day healthcare of all horses on the sites including lameness examinations, drug testing, radiology, standing procedures, and more, with the ability to expand to include rehabilitation and other services if desired.

7. 5,000 Pimlico Clubhouse Capacity (Indoor/Outdoor)

The target capacity for a new Pimlico clubhouse shall be 5,000 including both indoor and outdoor spaces.

8. 70,000 Preakness Stakes Capacity

The target capacity for the Preakness Stakes shall be 70,000 including both permanent facilities and event overlay.

Mitchell Farm Training Center Candidate

- 97 acre site
- Two training tracks
- **One Tunnel**
- 1-mile Dirt and 7/8-mile Turf
 - + Synthetic ready base and drainage infrastructure for the 1-mile dirt track
- 640 Stalls (Resident Racing & Training)

Additional considerations:

- Equine Wellness Research Center
- Dormitories (150 total rooms)

Shamrock Farm Training Center Candidate

- 155 acre site
- Two training tracks
- **No tunnels**
- 1-mile Dirt and 7/8-mile Turf
 - + Synthetic ready base and drainage infrastructure for the 1-mile dirt track
- 640 Stalls (Resident Racing & Training)

Additional considerations:

- Equine Wellness Research Center
- Dormitories (150 total rooms)

Bowie Option 01 Training Center Candidate

- 131 acre site
- Two training tracks
- Tunnel
 - + Pedestrian and Emergency Vehicles for private infield access
- 1-mile Dirt and 7/8-mile Turf
 - + Synthetic ready base and drainage infrastructure for the 1-mile dirt track
- **600 Stalls** (Resident Racing & Training)
 - + **This results in less than 1,200 total stalls**

Additional considerations:

- Equine Wellness Research Center
- Dormitories (150 total rooms)
- **Infield Recreational Fields**

Bowie Option 02 Training Center Candidate

- 97 acre site
- Two training tracks
- **Two Tunnels**
 - + Vehicular and Equestrian
- 1-mile Dirt and 7/8-mile Turf
 - + Synthetic ready base and drainage infrastructure for the 1-mile dirt track
- 640 Stalls (Resident Racing & Training)

Additional considerations:

- Equine Wellness Research Center
- Dormitories (150 total rooms)

Pimlico Option 01

- Two new tracks in existing orientation
 - + 1-mile Dirt and 7/8-mile Turf
 - + Consistent 70' width for entire length
 - + Synthetic ready base and drainage infrastructure for the 1-mile dirt track
- 560 Stalls (Resident Racing & Training)
 - + **320 stalls in Renovated Existing Barns**
 - + 676 Total Stalls including Preakness Compound, Receiving and Pony Barns
- New 5,200 capacity Clubhouse & Paddock
 - + Indoor venues: 2,450 people
 - + Outdoor venues: 2,750 people
- **15.25 acres of Development Parcels**
 - + 2.5 dedicated for hotel on homestretch
 - + Does not include area dedicated for parking garage

Additional considerations:

- Parking Garage
- **Public Park Parcel (0.75 acres)**
- Worker housing off site
- Equine Wellness Research Center
- Hotel w/ below ground parking

Pimlico Option 02

- Two new tracks in rotated orientation
 - + 1-mile Dirt and 7/8-mile Turf
 - + Consistent 70' width for entire length
 - + Synthetic ready base and drainage infrastructure for the 1-mile dirt track
- 560 Stalls (Resident Racing & Training)
 - + **All New Barns**
 - + 676 Total Stalls including Preakness Compound, Receiving and Pony Barns
- 5,200 capacity Clubhouse & Paddock
 - + Indoor venues: 2,450 people
 - + Outdoor venues: 2,750 people
- **16.25 acres of Development Parcels**
 - + 2.5 dedicated for hotel on homestretch
 - + Does not include area dedicated for parking garage

Additional considerations:

- Parking Garage
- Worker housing off site
- Equine Wellness Research Center
- Hotel w/ below ground parking

Preakness Stakes

- 71,000 capacity, including both permanent and overlay facilities





02/

Process Summary

Process Summary

The Maryland Thoroughbred Racetrack Operating Authority has been tasked by the Senate Budget and Taxation Committee, the House Appropriations Committee and the House Ways and Means Committee to study the feasibility of establishing at least two alternative Thoroughbred training facilities in the State, and a review of best practices for Thoroughbred racing industry operating models and recommendations for operating models in the State.

The proposed scope of services to be provided by the Consultant below shall result in information and analysis which will be used by the MTROA in its preparation of their report which is due on or before December 1, 2023 as a condition of Senate Bill 720.

Populous, RKK, Crossroads Consulting and RLB have been involved in various studies, analysis and programming since 2016. These efforts have involved collaboration and engagement with the Maryland Stadium Authority, the Maryland Jockey Club, The Stronach Group, the Maryland Thoroughbred Horsemen's Association, the Maryland Department of Agriculture as well as local and state government officials.

2. Training Center Site Identification and Evaluation

Working with the Authority, eight candidate sites for the off-site training center were identified for consideration. These sites including the following:

- Rosecroft Raceway
- Bowie Training Center
- Timonium Race Track at the Maryland State Fairgrounds
- Laurel Race Track
- Naval Dairy Farm in Gambrills
- Fair Hill Natural Resources Area and the Fair Hill Training Center
- Mitchell Farm a greenfield site near the Aberdeen Proving Ground
- Shamrock Farm a greenfield site near Sykesville, Maryland

- The consultant team acquired and prepared necessary site information for objective evaluation and facility test fits.
- In collaboration with the Authority, the team determined objective criteria on which to evaluate and score the candidate sites. These criteria included location, natural resources, topography, transportation & access, utility infrastructure, jurisdiction approvals, size, acquisition cost, and relative cost of development.
- Evaluation and analysis of candidate sites in order to identify the 2-3 most qualified candidate sites to proceed with facility test fits and costing analysis. The site evaluations are presented in Section 4 of this document.

3. Training Center Site Plan Test Fits

Utilizing site information gathered in Task 2 and information from a programming workshop with the Authority, the consultant team developed site plan test fits for the training facilities on the three top scoring candidate sites. The test fits are presented in Section 5 of this document.

4. Pimlico Master Plan Update Concepts

The consultant developed updated site plan concepts for the Pimlico site to include the year around racing program requirements as determined in the programming workshop. The Pimlico site concepts analysis included both track rotation and non-rotation scenarios and the concepts are presented in Section 6.

5. Pimlico Clubhouse Programming Update

During the programming workshop, the Authority and consultant team determined that the previously proposed Pimlico Clubhouse design did not meet the needs of year around live racing, taking into consideration both the proposed permanent facility and temporary Preakness Stakes overlay. As a result, the consultant team developed an updated program and blocking/stacking diagrams for the proposed clubhouse based on the revised program requirements. The updated programming and concept is also presented in Section 6.

6. Project Cost Estimates


RLB utilized the site data, programming, and site test fits to generate opinions of probable cost for the off-site race training center options and the Pimlico concepts. Separate estimates were developed for each site and utilize data from previous Pimlico project estimates to ensure parity among the options.

7. Thoroughbred Racing Industry Best Practices Analysis

The review of best practices for Thoroughbred racing industry operating models and recommendations for operating models in the State was conducted by Crossroads Consulting as follows.

- Crossroads met with the Authority to develop an understanding of the key issues related to the project; confirm the study scope and objectives; understand the role and operating objectives of MTROA related to other entities involved in thoroughbred racing; and review existing documentation related to the project including the current live racing agreement that is in place, and any other relevant studies and analyses that have been collected by MTROA.
- Crossroads consulted with representatives of key stakeholders such as the Maryland Racing Commission, Maryland Thoroughbred Horsemen's Association, Maryland Horse Breeders Association, Horseracing Integrity and Safety Act ("HISA") Authority, etc. to obtain their perspective on potential operating models.
- Crossroads profiled a select number of operating models used in the thoroughbred industry in the U.S. which are presented in the form of case studies. Crossroads and MTROA jointly agreed on which entities were profiled. Crossroads then compiled information on different racing entities based on direct conversations with management and other available data from industry resources and other secondary sources which included the following: legal structure, track oversight role, number of operating racetracks, race dates, attendance, purses, subsidized/gaming revenue streams, racing and breeding tax incentive structures, high-level financial operating data, and unique approaches to horse health.
- Based on this information, Crossroads outlined lessons learned and best practices and provided comment on how these may or may not be applicable to thoroughbred racing in Maryland.





03/

Alternative Training Facility Programming

Training Center Program Summary

The following program are minimum facilities required to operate a Thoroughbred Racing Training Center for 640 horses.

SITE DEVELOPMENT		
Main Track	1 mile Dirt	Synthetic Ready
Inner Track	7/8 mile Turf	
Camera Towers	4	
Clockers / Viewing Platform Outrider Shelter	1	Include restrooms. Outrider shelter is covered space below
Outrider Shelters	1	
Pony Barn	16 stalls	
Vendors / Track Contractors	2 acres	Bedding, tack, feed
Trailer Parking	27 trailers	1 trailer : 24 stalls minimum
Car Parking - Barn Area	180 cars	1 car : 3.75 stalls min. 9.5'x18.5'
Car Parking - Dorm Area	100 cars	1 car : 1.5 rooms
Car Parking - Office & Clubhouse	120 cars	
Dorms	offsite	150 rooms

TRAINING BARNES		
Total Stalls	640	12'x12'
Large Barn Module	80 stalls	Divided into tow(2) 40 stall air spaces under one roof
Small Barn Module	40 stalls	
Wash Stalls	1:10 stalls	11'x12'
Offices / Tack Rooms	1:5 stalls	
Feed / Hay Storage	1:10 stalls	
Restrooms	2	Individual Men & Women
Laundry / Utility	2	Water Heater, Fly Spray, Fire Riser/Pump
Fire Riser / Pump	1	
Rolling Boxes	1:40 stalls minimum	40' diameter

VETERINARY CENTER		
Veterinary Building	4,500sf	
Vet Exam Room	1	
Stalls	4	
Office	1	
Lab	1	
Storage / Support	1	
MEP	1	
Horse Walkers	2	60' diameter
Isolation / Quarantine Barn	12 stalls	

TRAINING CENTER ADMINISTRATION		
Offices	1	3 offices, Reception, Storage, Conference Room, Restroom
Kitchen & Dining	1	
OTB Simulcast / Lounge / Multipurpose	1	
Viewing Tower / Observation	1	
Restrooms	2	Men & Women

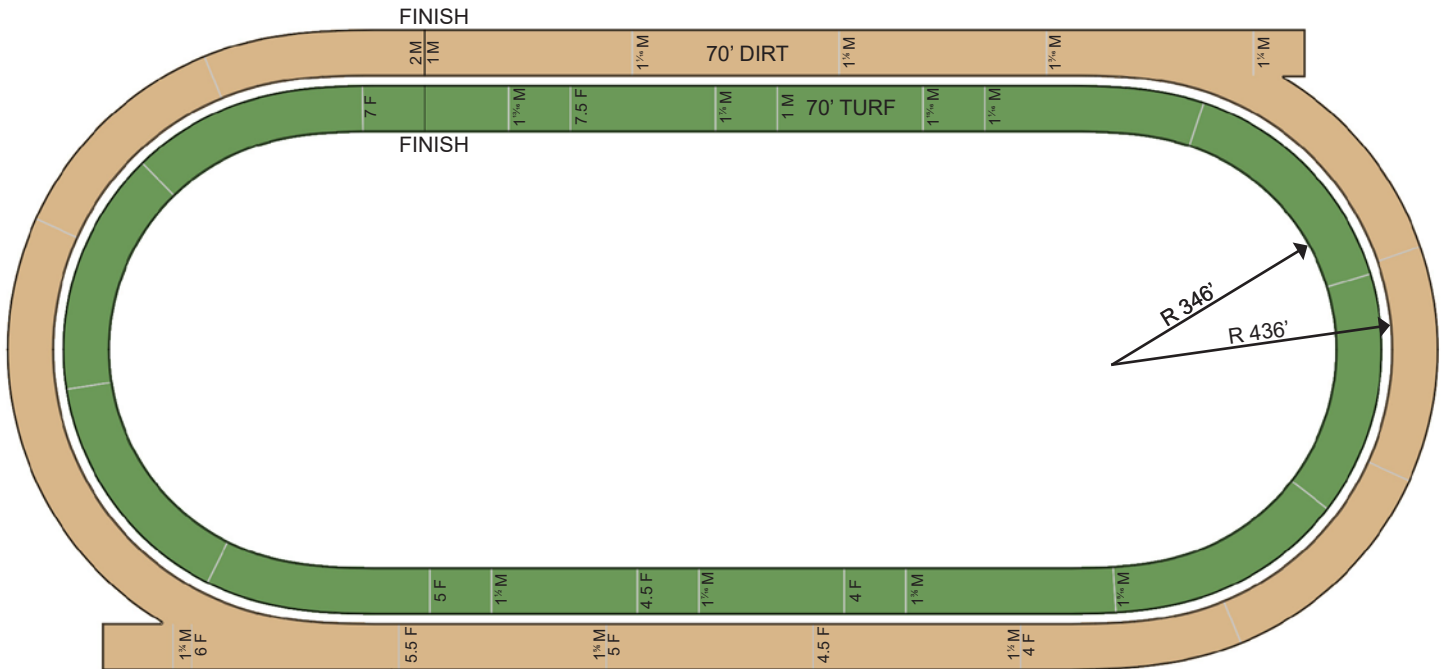
MAINTENANCE		
Track Maintenance Building	13,500sf	
Harrow Yard	1.5 acres	
Site Maintenance	13,500sf	
Synthetic Cushion Storage	7,200sf	
Fuel Station	1	
Water Station	1	
Manure Management / Transfer	6,400sf	

Tracks

The geometry of the proposed tracks include spiral (or transition) curves going into and out of the turns. This is a development in race track geometry that has been used on most new tracks built in the last 20 years. This allows for a smoother transition from the straight stretch to the full curve/turn and coming out of the curves/turns. The new tracks will incorporate a minimal cross slope in the straights and transition to a steeper super elevated banking in the turns. The combination of the spiral and super elevated turns helps to maintain speed through turns and makes it easier for the horses to maintain balance. It is ideal that the tracks at both the Training Center and Pimlico have the same geometry and surfaces so that there is consistency between racing and training, maximizing preparation and safety.

The existing Pimlico Race Course consists of a 1-mile dirt track and a 7/8th-mile turf course. Each of the existing tracks are approximately 70 feet wide in the straights and reduce to approximately 55 feet in the turns. The proposed geometries for the tracks is based off of collaboration with and approval from the MJC, the MTHA and 1/ST Racing(The Stronach Group), creating consistent widths throughout the length of the tracks and more gradual turns.

Currently each site is proposed to have two tracks, consisting of a 1-mile dirt surface and a 7/8-mile turf surface. As we are not exceeding 800 horses for future training center expansion, we do not anticipate the need for a third surface. However the base and infrastructure for the dirt track will be built 'synthetic ready', as shown in the pictures below from Belmont Park in New York.



PROPOSED 1 MILE DIRT TRACK		
DISTANCE	RUNUP (FT)	GRADED & MARYLAND MILLION STAKES
4F	35	
4.5F	35	
5F	35	
5.5F	35	
6F (C)	30	Miss Preakness / MS Sprint / Chick Lang / Maryland Million Sprint / Maryland Million Nursery / Maryland Million Lassie
1M	35	
1-1/16M	35	
1-1/8M	35	Black-Eyed Susan / DuPont Distaff / Maryland Million Classic
1-3/16M	35	Preakness
1-1/4M (C)	30	Pimlico Special
1-1/2M	35	
1-9/16M	35	
1-5/8M	35	
1-11/16M	35	
1-3/4M	35	
2M	35	

PROPOSED 7 FURLONG TURF TRACK		
DISTANCE	RUNUP (FT)	GRADED & MARYLAND MILLION STAKES
4F	35	
4.5F	35	
5F	35	
7F	35	
7.5F	35	
1M	35	
1-1/16M	35	Gallopette / Dinner Party
1-1/8M	35	Maryland Million Ladies / Maryland Million Turf
1-5/16	35	
1-3/8M	35	
1-7/16M	35	
1-1/2M	35	
1-9/16M	35	
1-13/16M	35	
1-7/8M	35	
1-15/16M	35	
2M	35	

Notes:

(C) Indicates start in chute.

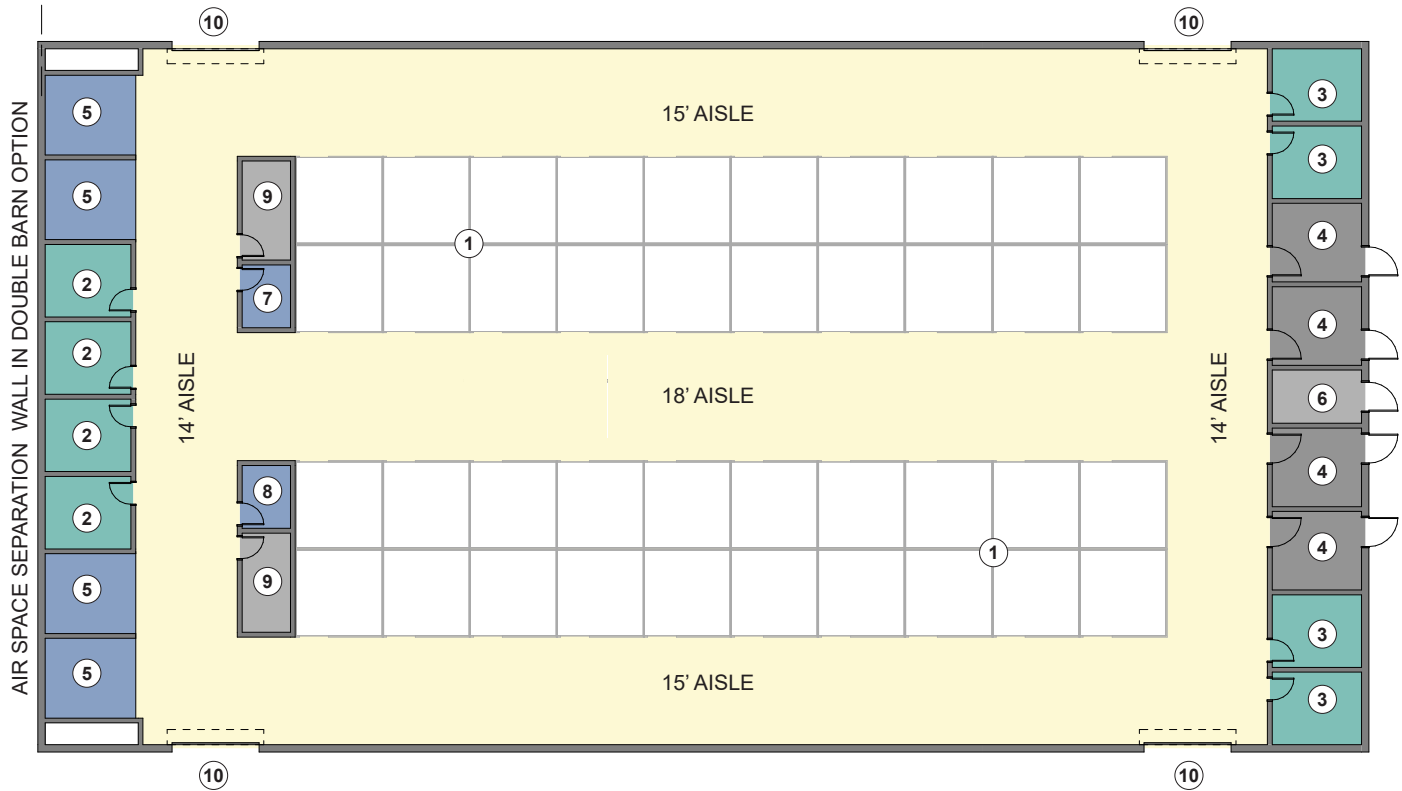
Runup is approximate distance from gate location
to actual start

M = Mile

F = Furlong

Conceptual Barn Module - 40 stalls

FOR REFERENCE ONLY. THE CONTENT PROVIDED IS FOR CONCEPTUAL DEVELOPMENT AND DO NOT REFLECT FINAL ARCHITECTURAL SOLUTIONS



Key

- ① Stalls (12'-0"x12'-0")
- ② Office / Tack Room (10'-0" x 11'-8")
- ③ Office / Tack Room (10'-0"x12'-4")
- ④ Feed / Hay Storage (10'-0"x12'-4")
- ⑤ Wash Stalls (11'-0"x12'-0")
- ⑥ Fire Riser / Pump Room
- ⑦ Men's Restroom
- ⑧ Women's Restroom
- ⑨ Laundry / Utility / Fly Spray
- ⑩ Overhead Door (12'-0"x12'-0")

The proposed 40-stall barns are identical to the 2021 concept developed in collaboration with the Maryland horsemen and women. The plan is careful not to house too many horses under one roof, and has addressed bio-security concerns in several ways. Including, but not limited to the following:

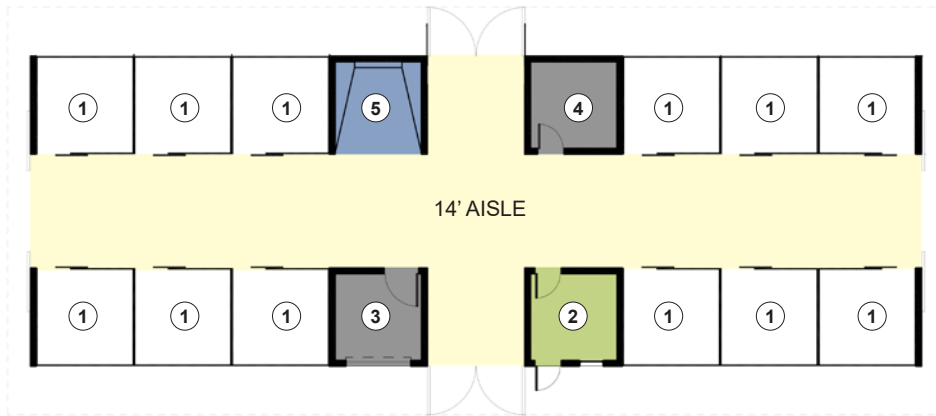
- The new stables will be equipped with automatic insect control systems to help create fly-free zones and greatly diminish vector control concerns.
- If combined to create larger 80-stall barns, they will have a center bulkhead wall creating separate air, washing and circulation spaces.
- Wider than normal center shedrow aisle limiting physical contact among horses

The materials of the building are a hybrid between high tensile strength, PVC membrane and steel building. The PVC roof is considered to reduce cost, but will be equipped with proper exhaust to reduce the condensation in the winter time. Additionally the roof will have ice break/snow guards to prevent shedding of snow in large sheets. With a focus on longevity and ease of maintenance, there will be more durable materials at the base and around the perimeter of the barns. An HDPE/plastic lumber base will be applied to 4'-0", with metal wall panel above. The natural daylighting that is brought in from the fabric roof will also be enhanced by sectional operable doors on the sides with transparent plastic infill panels. These doors can be opened to facilitate ventilation, that will be complimented by high-volume low speed fans.

Trainers will have private offices, tack and feed storage rooms inside the barns vs. the free-standing storage sheds frequently used at Pimlico and Laurel. Additionally the barns will be fully fire-protected as required by code.

Conceptual Isolation Barn - 12 stalls

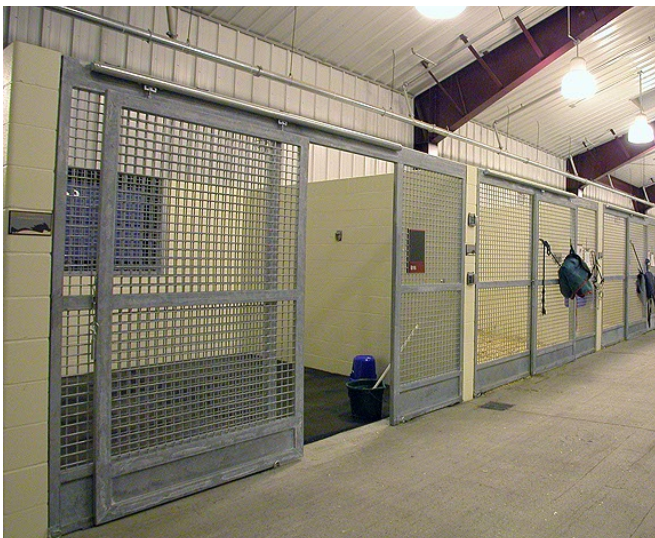
FOR REFERENCE ONLY. THE CONTENT PROVIDED IS FOR CONCEPTUAL DEVELOPMENT AND DO NOT REFLECT FINAL ARCHITECTURAL SOLUTIONS



Key

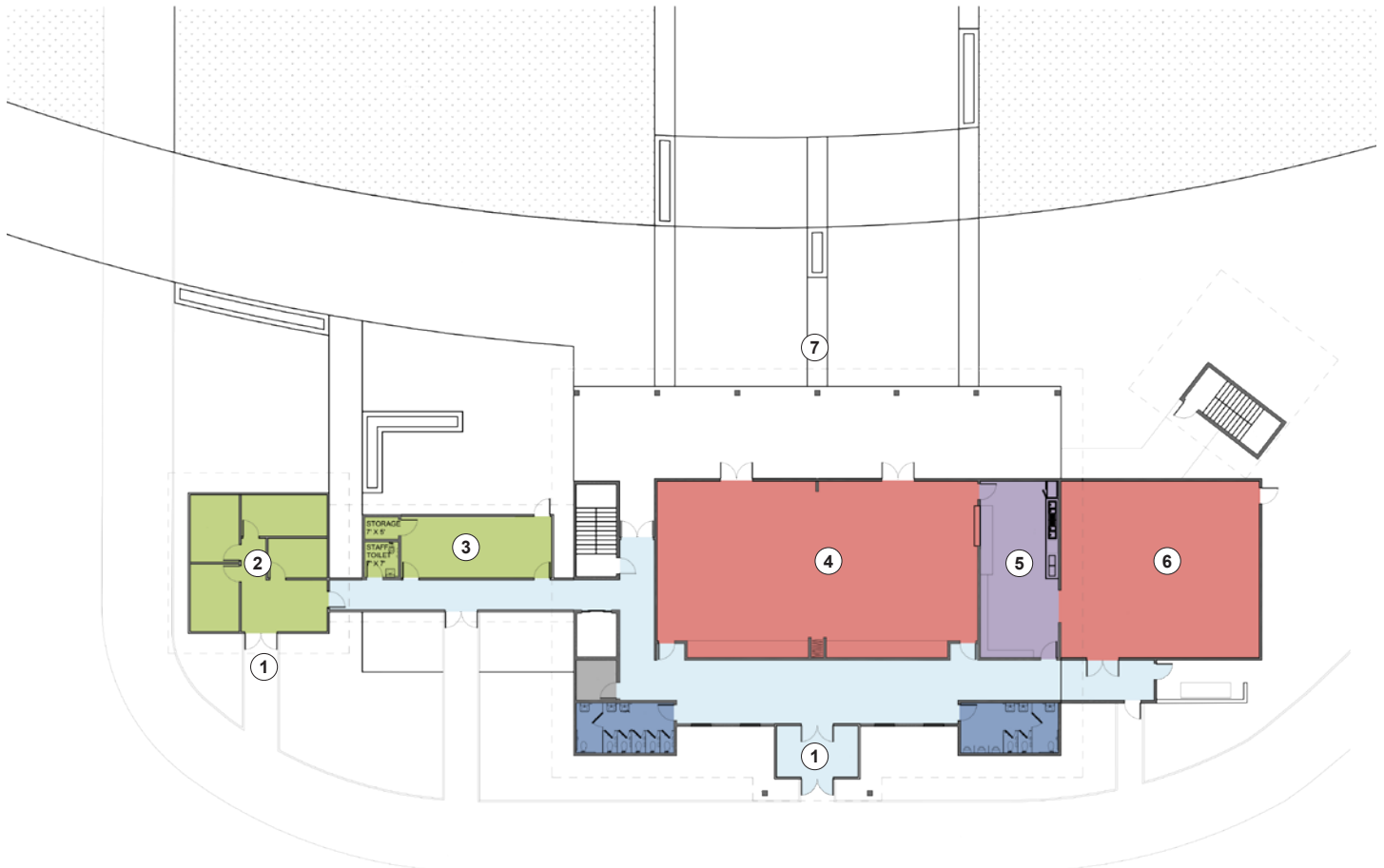
- ① Stalls (12'-0" x 12'-0")
- ② Office (12'-0" x 12'-0")
- ③ Feed (12'-0" x 12'-0")
- ④ Storage (12'-0" x 12'-0")
- ⑤ Wash Stalls (12'-0" x 12'-0")

The 12-stall Isolation Barn can also serve as a receiving barn when not occupied in an isolation capacity. The barn will be located at least 200 meters from the resident horse population for vector control. The barn features 12'x12' stalls with masonry walls, galvanized stall fronts and permanent rubber flooring with floor drains in order that the barn can be completely sterilized as required. Other spaces include a wash area, small office, feed room and storage in order that the barn can be fully self-sufficient.



Conceptual Training Center Administration Level One

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Key

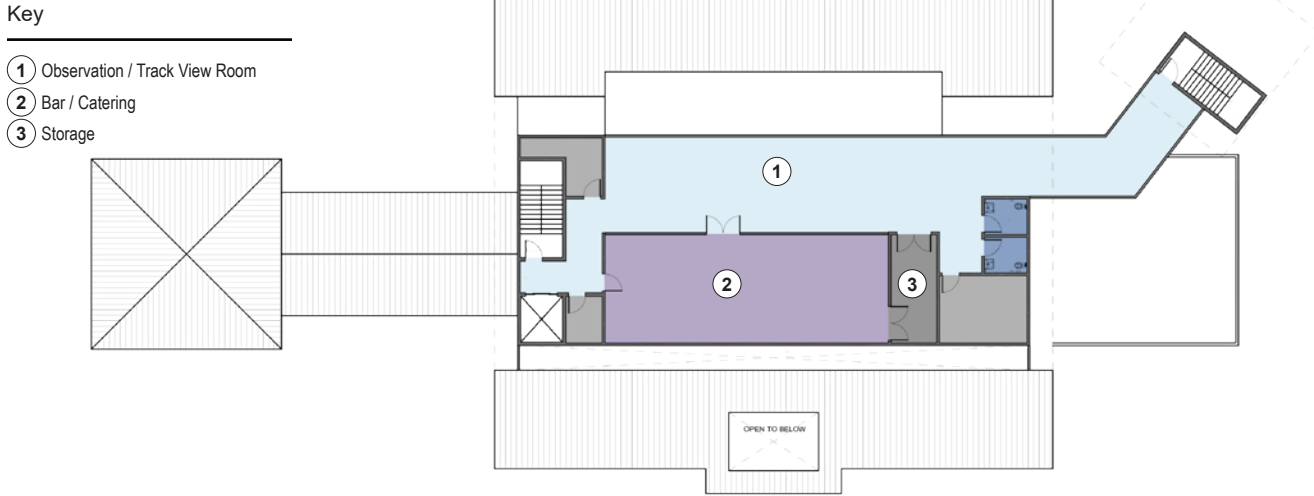
- ① Entry
- ② Racing Office
- ③ Conference Room
- ④ Lounge / OTB / Simulcast / Flex
- ⑤ Kitchen
- ⑥ Staff Dining
- ⑦ Viewing Plaza

The Training Center Administration Offices and Clubhouse building is programmed to house the facility management offices, conference room, on-track dining for employees and visitors as well as multi-use event spaces and elevated track observation platforms. A centralized kitchen supports both the day-to-day track dining area seating approximately 50 and the multi-use space which can seat approximately 100 in a dining configuration and 200 in a classroom/meeting configuration, making it an ideal location for industry meetings, education events and possibly private events. Additionally, the multi-use room is divisible and features a large covered outdoor terrace overlooking the tracks.

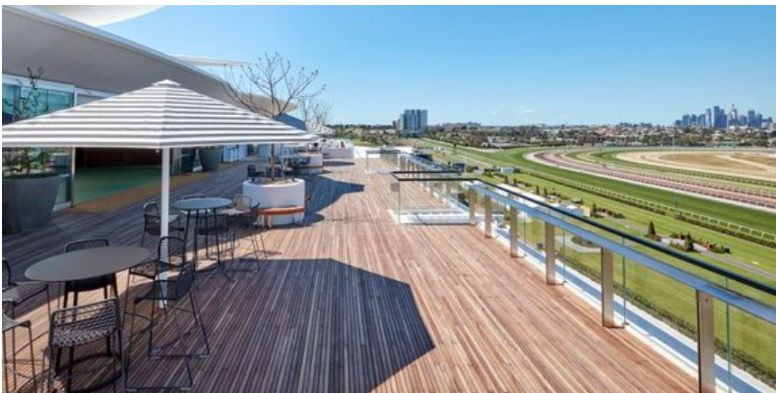
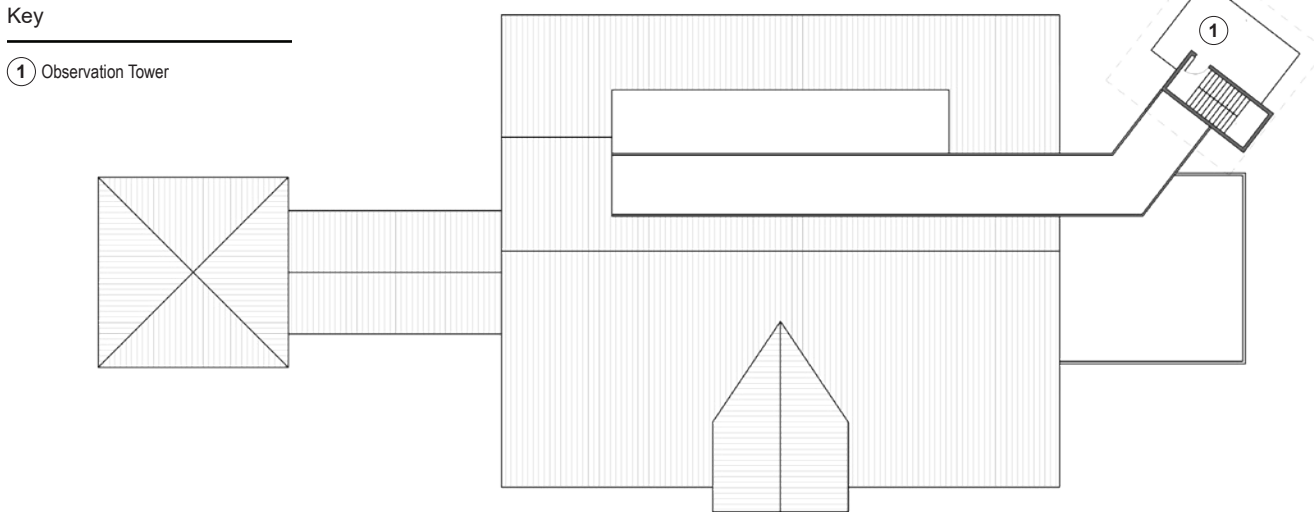
The second level includes approximately 2,400 square feet of meeting and function space and outdoor terrace with commanding views of the training tracks. A third-level observation platform provides standing space for 12-15 people and provides 360-degree views of the entire training center.

Conceptual Training Center Administration Level Two

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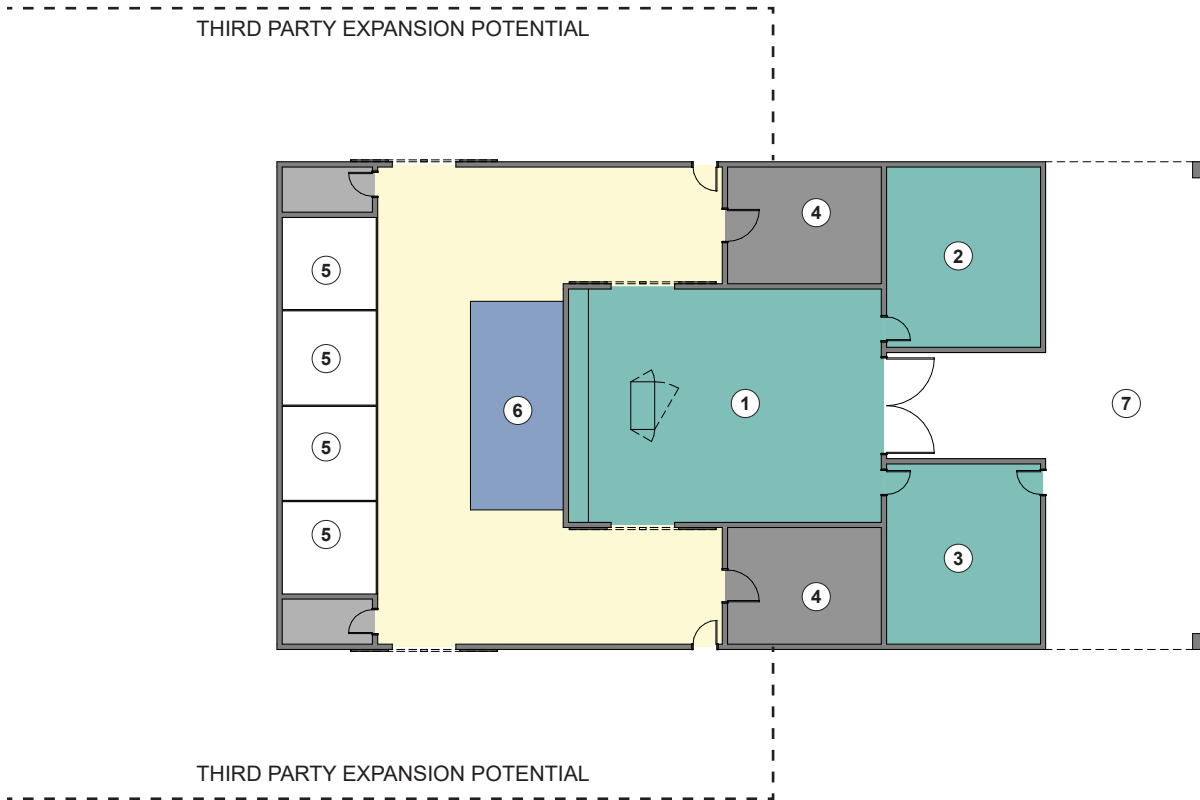


Level Three



Conceptual Veterinary Center

FOR REFERENCE ONLY. THE CONTENT PROVIDED IS FOR CONCEPTUAL DEVELOPMENT AND DO NOT REFLECT FINAL ARCHITECTURAL SOLUTIONS



Key

- ① Veterinary / Exam Room
- ② Laboratory
- ③ Office
- ④ Storage
- ⑤ Holding Stalls (12'-0"x12'-0")
- ⑥ Wash Rack
- ⑦ Covered Driveway

The proposed Veterinary Center is programmed and intended to provide day-to-day services for the resident horses. The veterinary center is approximately 4,500 square and includes a large exam room with stocks for standing procedures, lab, office, four holding stalls, wash area, storage and other support spaces. It will provide diagnostic capability and data collection in collaboration with the Horseracing Integrity and Safety Authority (HISA).

The veterinary facility will serve as a triage facility for major injuries and other equine health issues that require transportation to full equine surgical centers such as those at Fair Hill or the Marion DuPont-Scott Equine Medical Center. The veterinary center may be expanded in the future to include surgery, rehabilitation, submerged treadmills or other amenities.



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04/

Training Center Candidate Site Evaluations

Training Center Candidate Site Evaluations

Working with the Authority, eight candidate sites for the off-site training center were identified for consideration.

- The consultant team acquired and prepared necessary site information for objective evaluation and facility test fits.
- In collaboration with the Authority, the team determined objective criteria on which to evaluate and score the candidate sites. These criteria included location, natural resources, topography, transportation & access, utility infrastructure, jurisdiction approvals, size, acquisition cost, and relative cost of development.
- Evaluation and analysis of candidate sites in order to identify the 2-3 most qualified candidate sites to proceed with facility test fits and costing analysis. The site evaluations are presented in Section 4 of this document.

Utilizing site information gathered in the above tasks and information from a programming workshop with the Authority, the consultant team developed site plan test fits for the training facilities on the three top scoring candidate sites. The evaluation criteria scoring categories are:

- Location
- Natural Resources
- Topography
- Transportation & Access
- Utility Infrastructure
- Jurisdiction Approvals
- Size
- Acquisition Cost
- Relative Cost of Development

List and location of Training Center Candidate sites:

Mitchell Farm Training Center

1642 MD-159
Aberdeen, Maryland 21001

Shamrock Farm Training Center

4926 Woodbine Road
Woodbine, Maryland 21797

Bowie Race Track Training Center

8311 Race Track Road
Bowie Maryland 20715

Laurel Park Training Center

8311 Race Track Road
Bowie Maryland 20715

US Naval Academy Dairy Farm

100 Dairy Lane
Gambrills, Maryland 21054

Fair Hill Training Center

719 Training Center Drive
Elkton, Maryland 21921

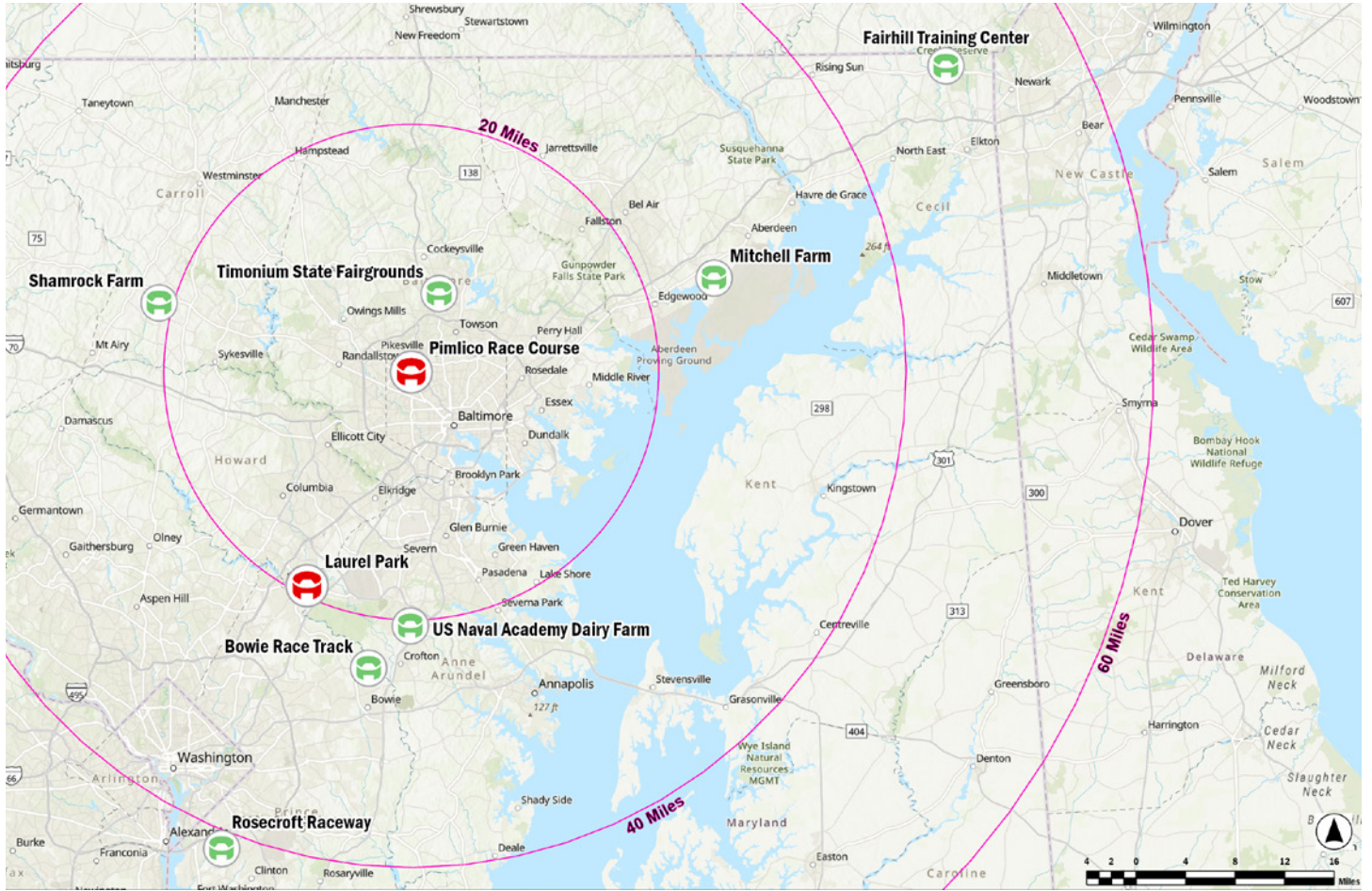
Rosecroft Raceway

6336 Rosecroft Drive
Fort Washington, Maryland 20744

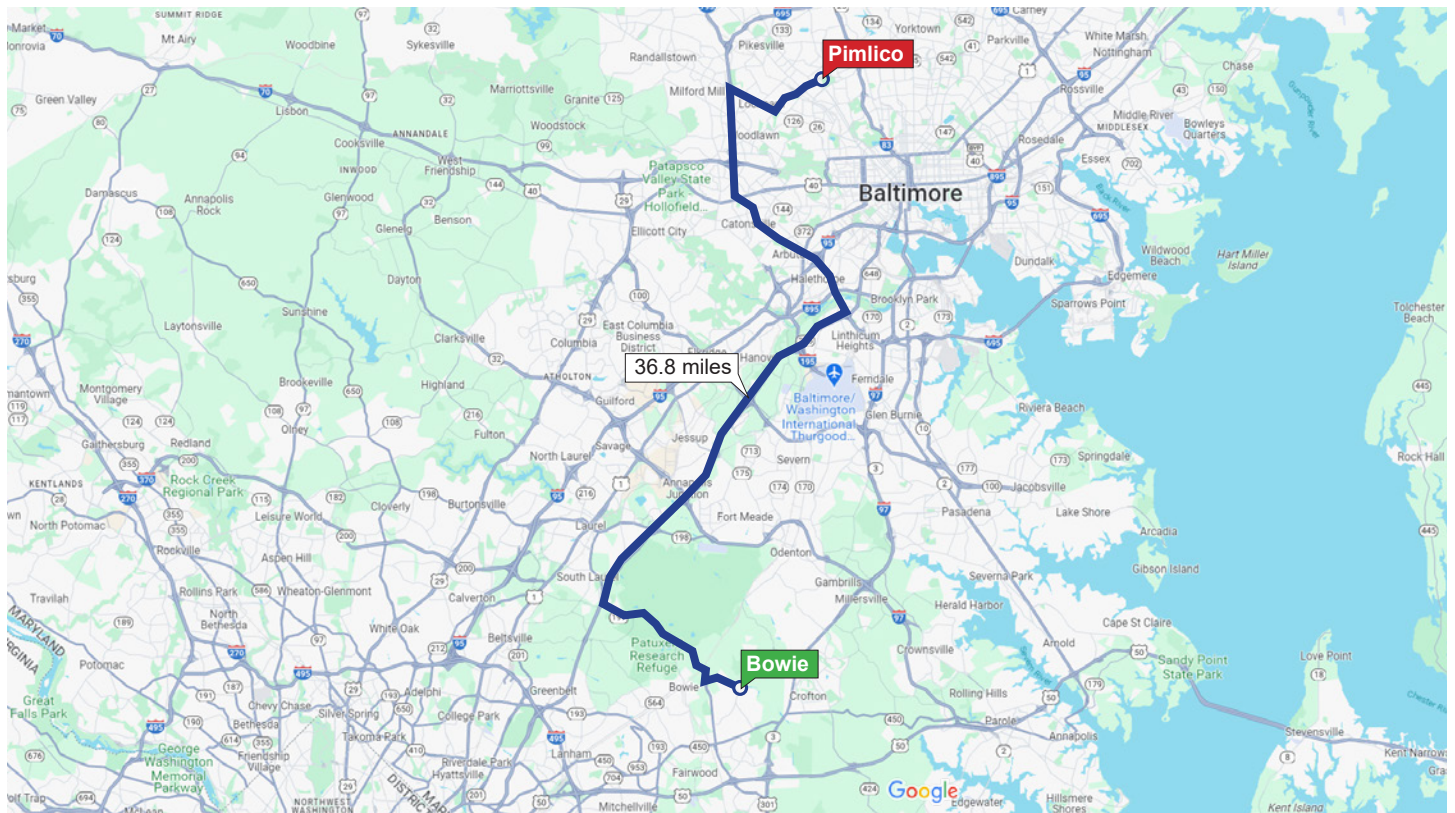
Timonium Maryland State Fairgrounds

2200 York Rd
Timonium, Maryland 21093

Vicinity Map



Bowie Race Track



Journey Map

Transportation Considerations/Challenges

- Further from Pimlico than Laurel
- For hauling horses back and forth for live racing, the transport will have to travel on two different highways to get to Pimlico.
- Depending on time of day there could be traffic delays on 695
- County road borders project area
- Existing ingress/egress points but may require improvement
- Internal road network exists but likely fully reconstructed due to limited site area

Natural Resource Conditions/Challenges

- Patuxent River & Horse Pen Branch floodplain/wetlands/buffers along the northern boundary of site
- May require site layout revisions to avoid buffers subject to Authority Having Jurisdiction feedback
- Minimal existing forest cover but tree clearing anticipated
- Approximately 1/3 site flagged as potential "Habitat Protection Area" abutting stream/forested areas

Topographic Considerations/Challenges

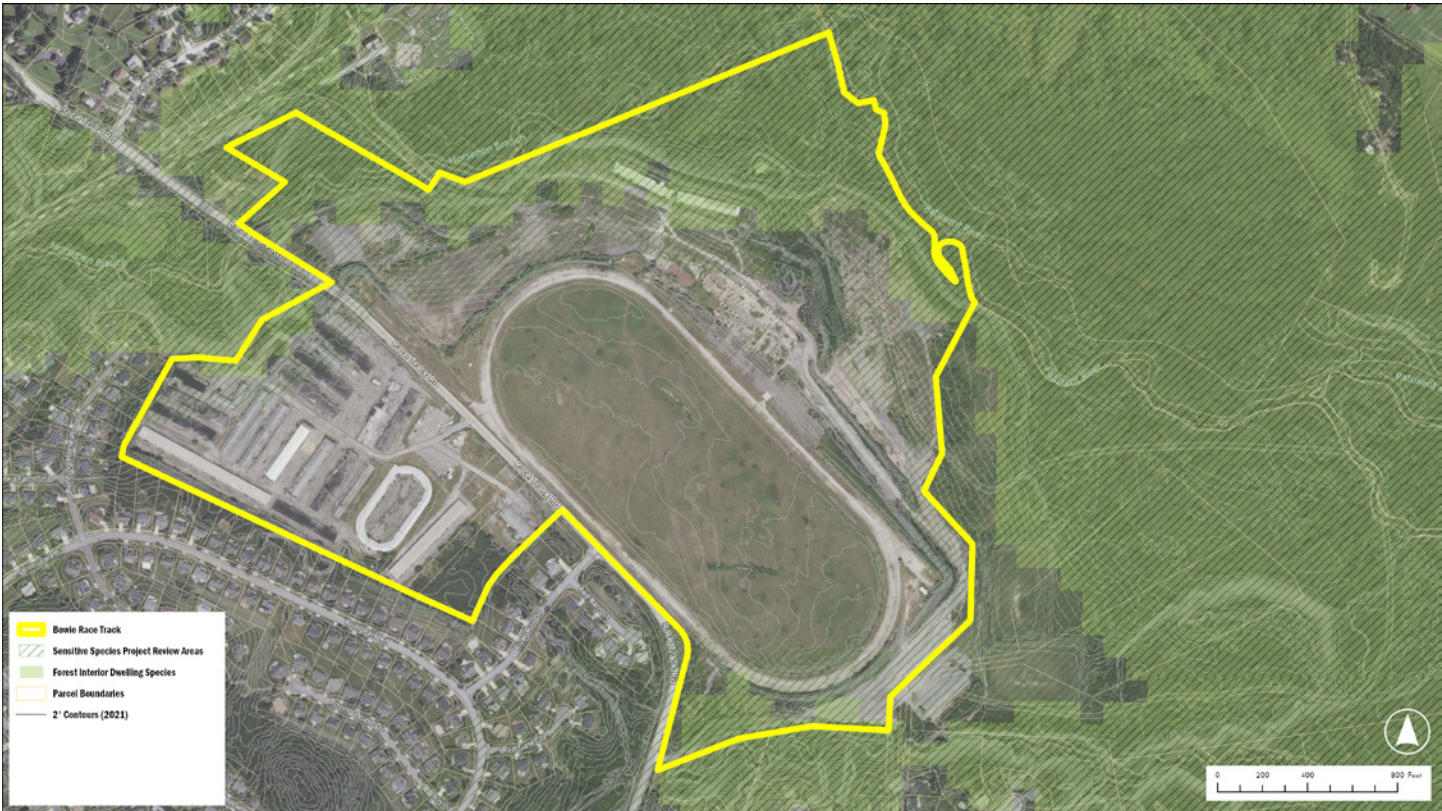
- Developed site but in poor condition so anticipating full redevelopment required
- Portion of site adjacent to waterways with significant sloping terrain

Regulatory Considerations/Challenges

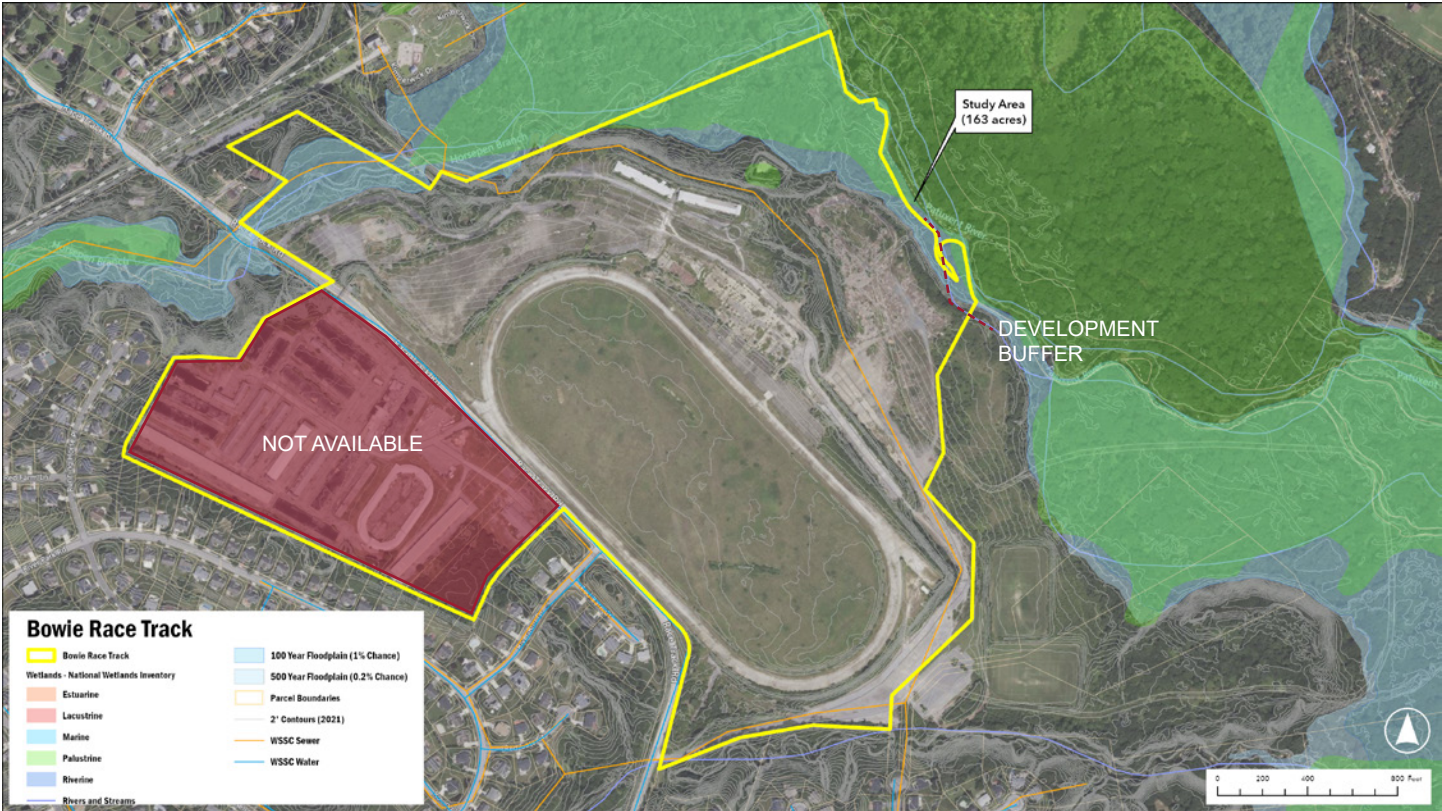
- Forest Conservation requirements with some potential for on-site mitigation
- Higher potential for MDE/USACE JPA approvals due to proximity to waterways
- Significant MDE Stormwater Management requirements anticipated (quantity and quality control)
- Coordination with local stakeholders (Bowie State University and adjacent communities) for potential future shared use elements (i.e. recreational, educational, etc)

Utility Infrastructure

- Potential for off-site utilities (power, telecom, water and sanitary); however, available capacity undetermined

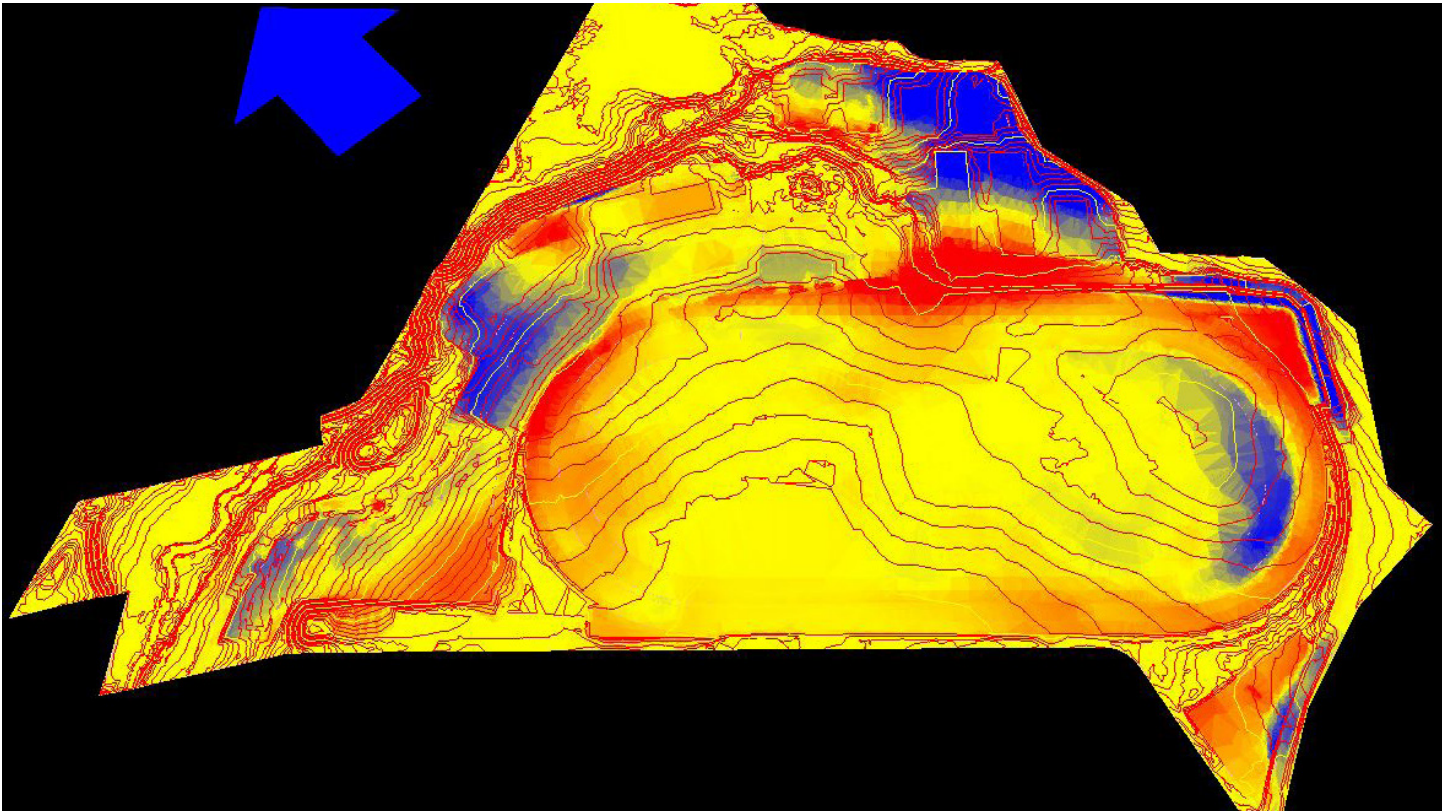


Living Resources



Topography, Wetland Inventory, and Utilities

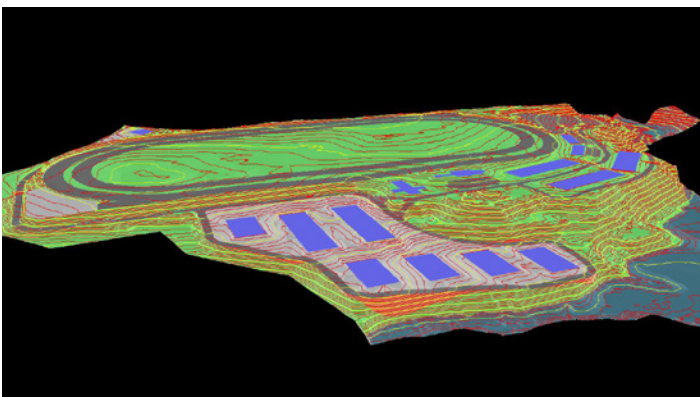
Bowie Race Track OPTION 01



Cut & Fill Heat Map

Rough Grading Analysis (cubic yards)	
Earth Cut	167,292.30 cy
Fill	167,449.00 cy
Import	156.70 cy
Export	0.00 cy

Rough Site Development Costs	
Clearing & Topsoil	\$1,031,859.20
Cut & Fill	\$588,030.90
Retaining Wall	\$159,422.50
Paving	\$2,308,021.70
Curb	\$124,303.70
TOTAL	\$4,513,496.30



3D Analytical Model

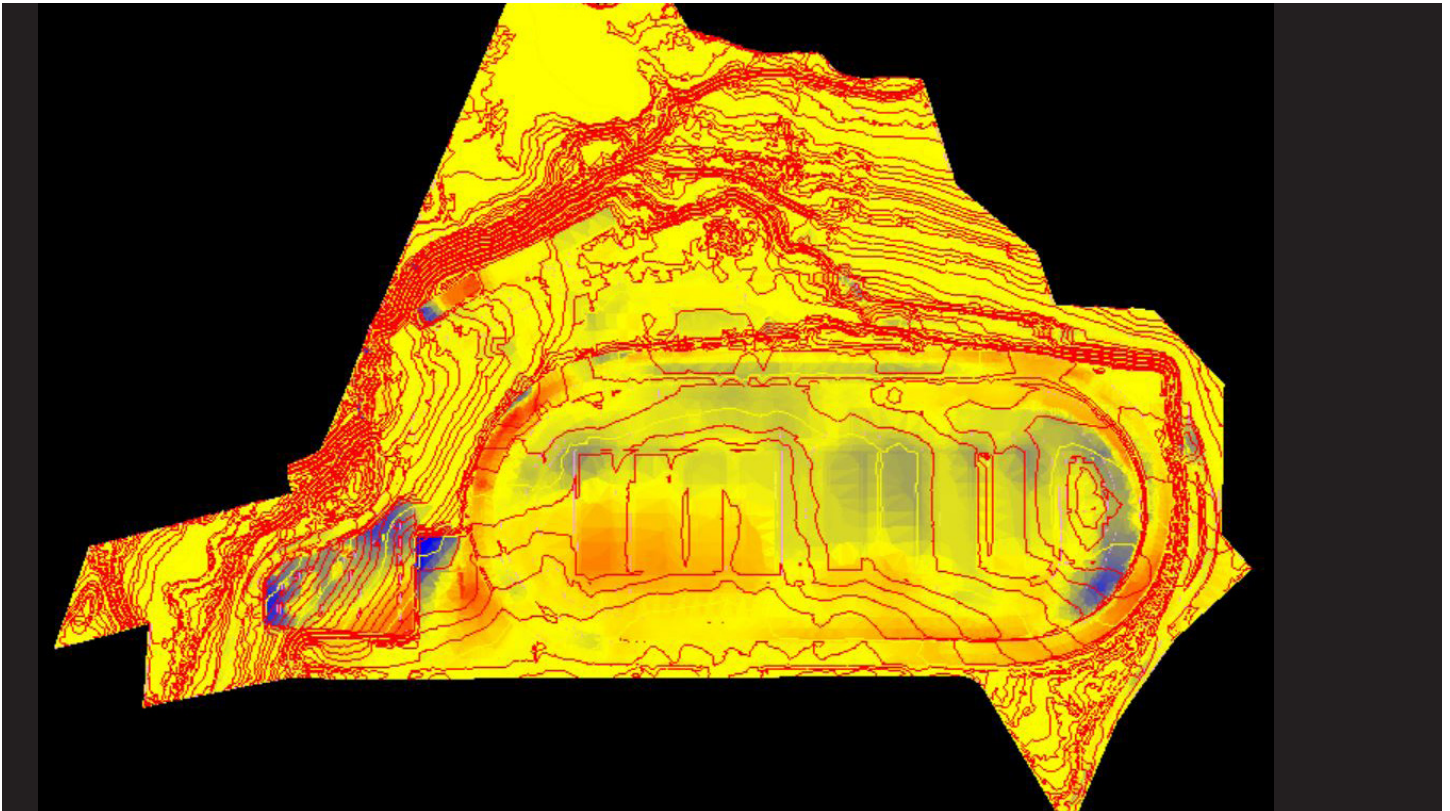
Pros

- Anticipate more community support by providing shared use facilities
- Potential for suitable access to public utilities/ transportation facilities more likely given prior-use and urban environment

Cons

- Significant earthmoving needed to work layout into slope along northern limits of site
- Potential impacts to natural resources and buffers may require site layout revisions to tighten up overall footprint

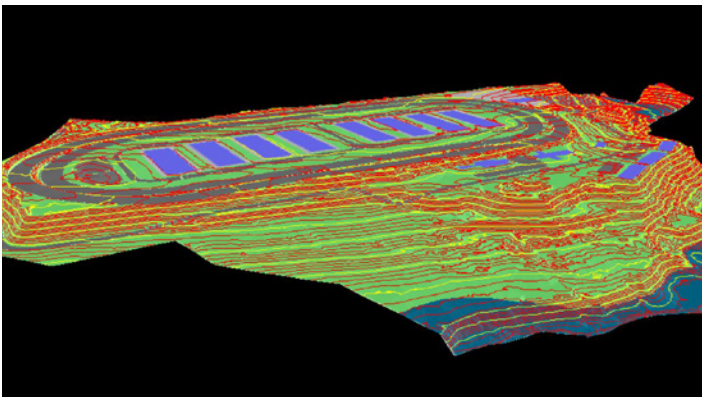
Bowie Race Track OPTION 02



Cut & Fill Heat Map

Rough Grading Analysis (cubic yards)	
Earth Cut	67,159.20 cy
Fill	67,140.50 cy
Import	0.00 cy
Export	18.70 cy

Rough Site Development Costs	
Clearing & Topsoil	\$934,121.80
Cut & Fill	\$235,174.10
Retaining Wall	\$3,397.60
Paving	\$2,193,550.50
Curb	\$85,188.70
TOTAL	\$3,731,028.20



3D Analytical Model

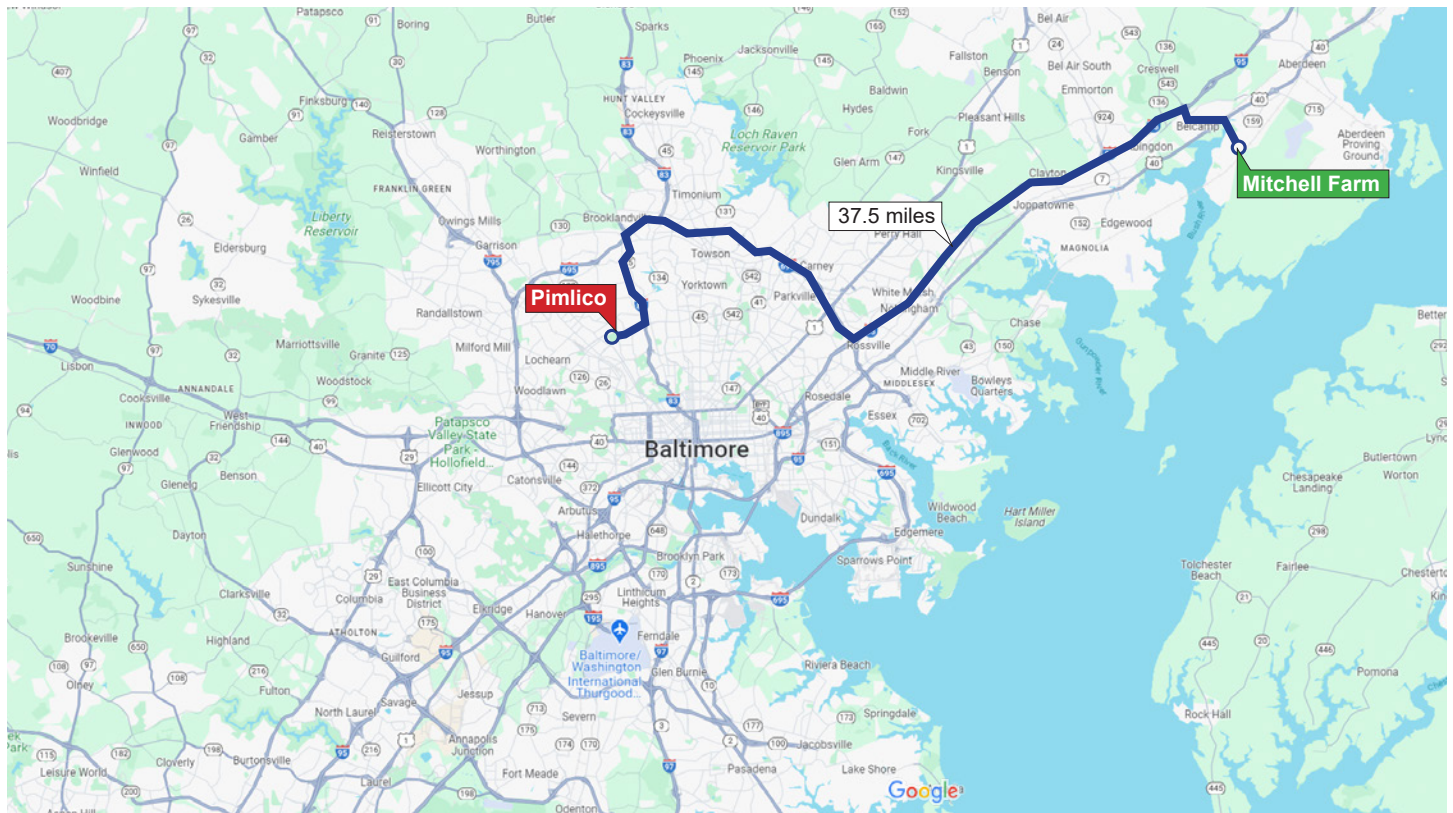
Pros

- Reduced (compared to Bowie Option 1) natural resource and buffer impact potential with more opportunities for on-site mitigation
- Reduced earthmoving given minimized work along slopes on northern limits of site
- Potential for suitable access to public utilities/ transportation facilities more likely given prior-use and urban environment

Cons

- Potential for more community opposition with reduced shared-use facilities (i.e rec fields)

Mitchell Farm



Journey Map

Transportation Considerations/Challenges

- Furthest from Pimlico of the final three candidate sites
- Transporting to Pimlico requires traversing I-95, I-695 and I-83.
- Proximity to I-95 & Rt 40 with smaller rural roads providing direct access to Training Site
- New ingress/egress points required. Coordinate pending industrial development.
- If construction is parallel with or after industrial development, the warehouse project and capital budget will pay for road improvements
- New on-site roadway network required

Natural Resource Conditions/Challenges

- Existing waterways/wetlands identified on mapping obtained with likely impacts (wetlands)
- Forest cover exists within proximity of site with tree clearing potential
- "Habitat Protection Area" within vicinity of site area

Topographic Considerations/Challenges

- Existing agricultural site with minimally sloping terrain
- Coordination with proposed light industrial complex developer

Regulatory Considerations/Challenges

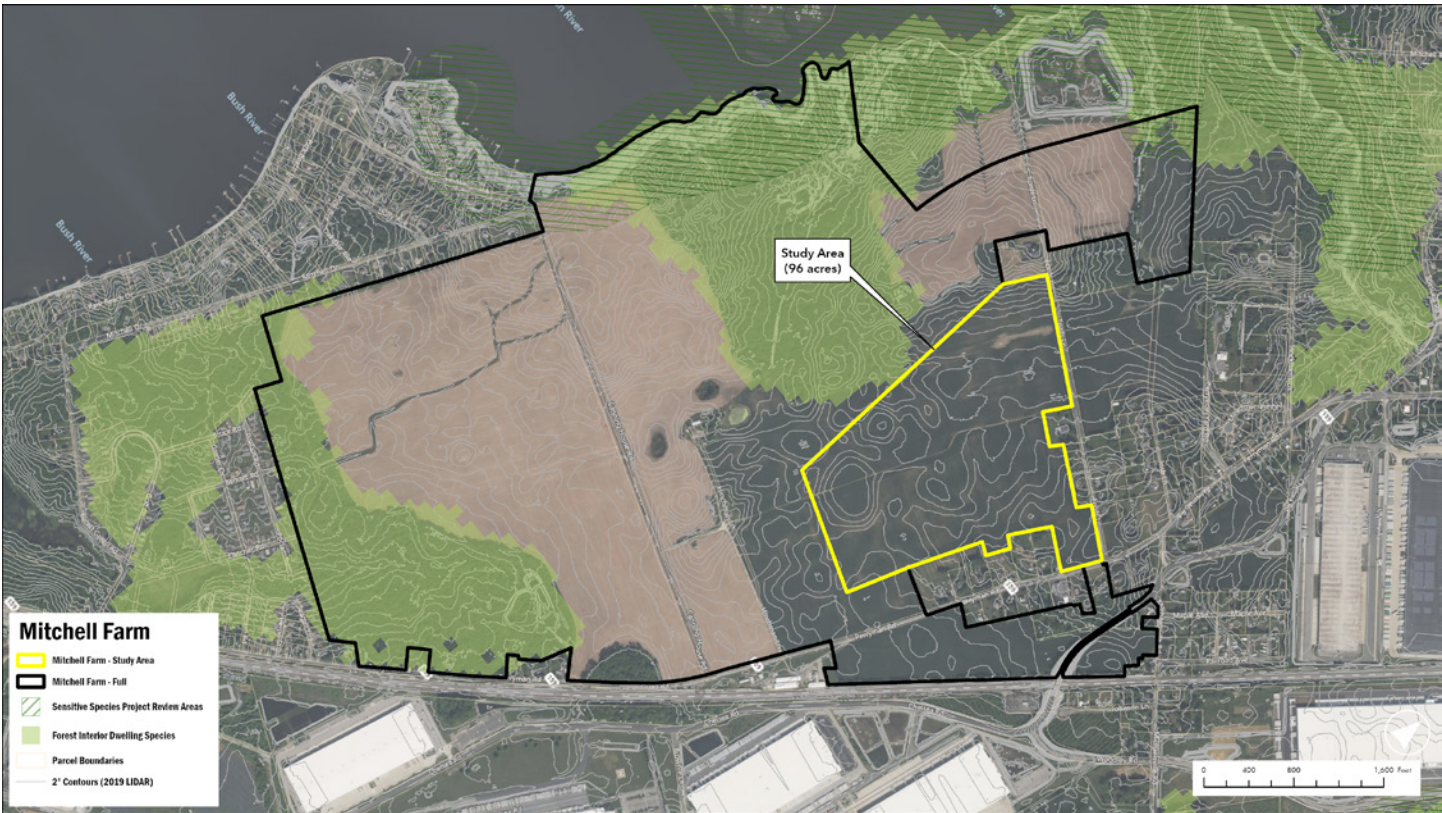
- Forest Conservation requirements with some potential for on-site mitigation
- MDE/USACE JPA approvals anticipated due to likely wetland impacts
- Significant MDE Stormwater Management requirements anticipated (quantity and quality control)
- MDE Water Appropriation Permit process may be required for hydrogeologic demands

Utility Infrastructure

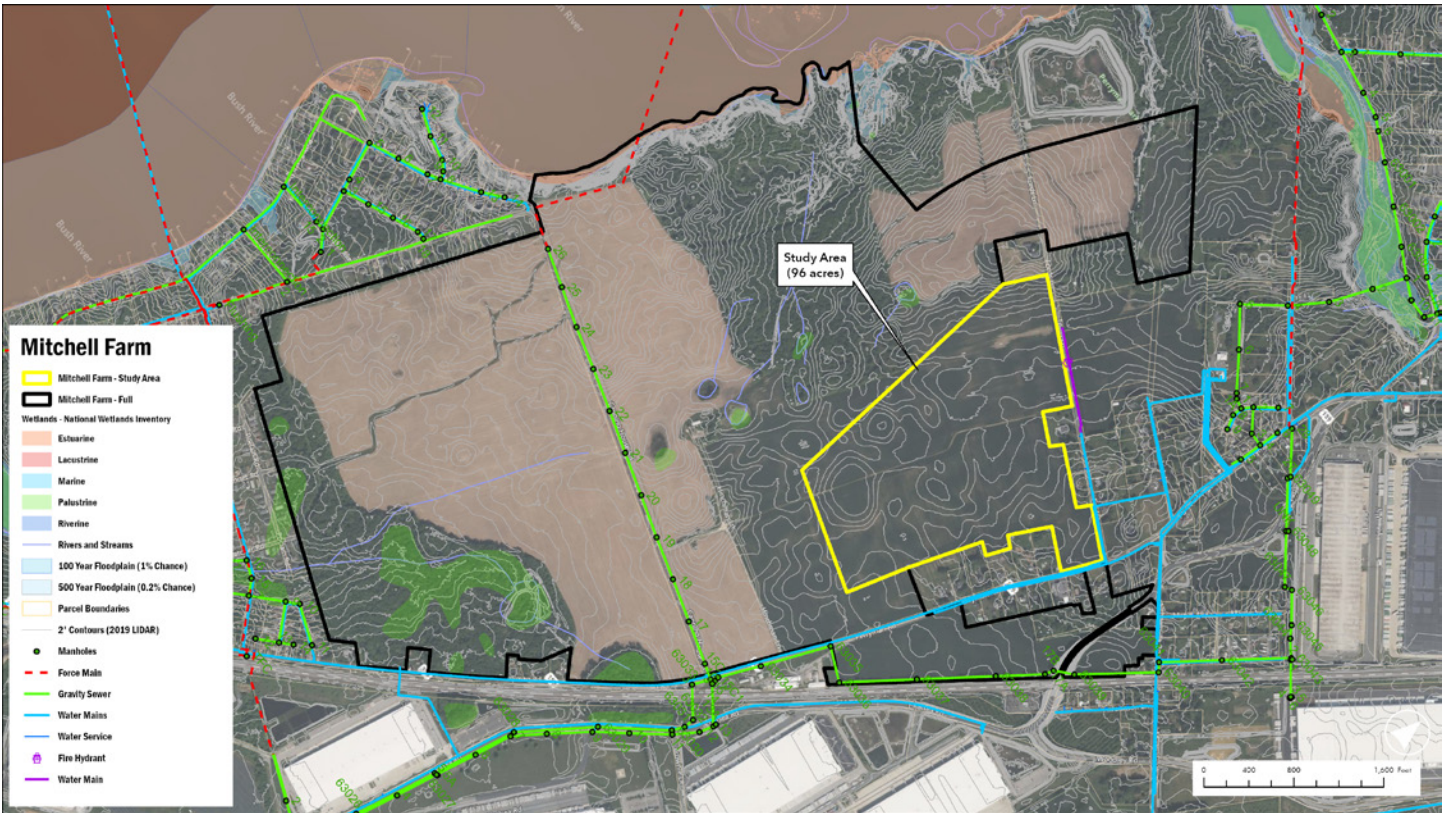
- Good water access / supply
- Adjacent industrial development may provide potential for shared use of utility upgrades

Other Considerations

- Artillery and explosives set off at nearby Aberdeen Proving Ground could be a distraction to training horses. Although it is understood that some of the artillery sites are closing.
- The design team was originally challenged with only 60 available acres, but political and neighborhood issues has increased the amount of developable area. While the team analyzed two options, one of which was the minimum size to support the program, we only refined the larger site option.

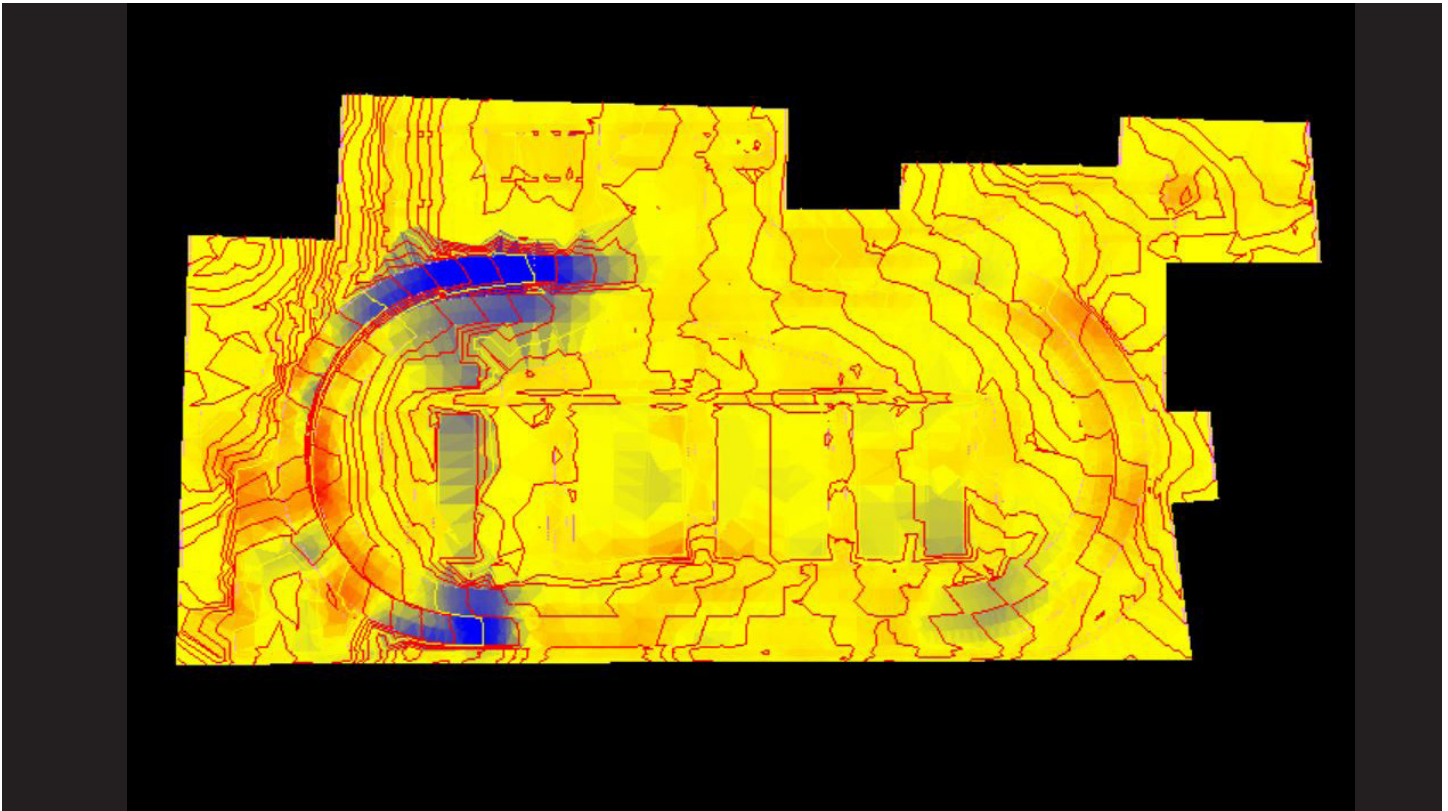


Living Resources



Topography, Wetland Inventory, and Utilities

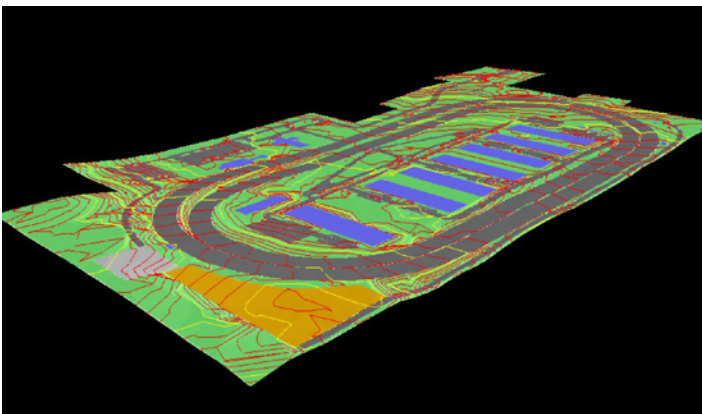
Mitchell Farm Option 01 (Analyzed for initial concept but not refined because of more land availability)



Cut & Fill Heat Map

Rough Grading Analysis (cubic yards)	
Earth Cut	46,020.60 cy
Fill	46,141.80 cy
Import	121.20 cy
Export	0.00 cy

Rough Site Development Costs	
Clearing & Topsoil	\$796,844.60
Cut & Fill	\$163,011.30
Retaining Wall	\$3,663.40
Paving	\$2,078,312.50
Curb	\$66,212.90
TOTAL	\$3,350,729.20



3D Analytical Model

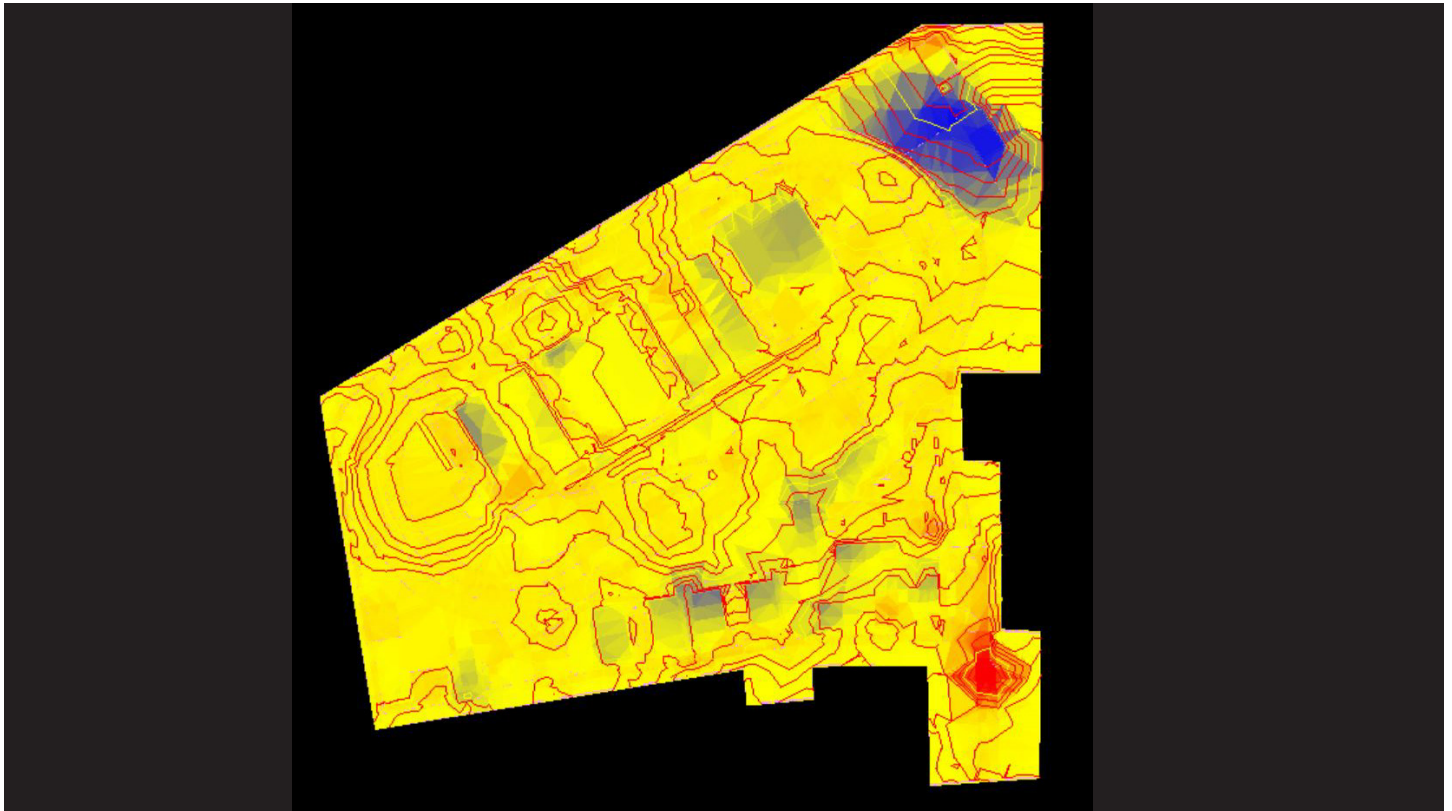
Pros

- Minimal habitat protection zones with potential impacts
- Less earthmoving compared to Bowie options
- Industrial development may provide potential infrastructure upgrade synergies

Cons

- Potential wetland impact mitigation required
- Potential need for off-site transportation infrastructure improvements
- All new site infrastructure required and potential need for off-site extensions
- Forest impacts – planting requirements likely more significant than Bowie options (afforestation vs reforestation)

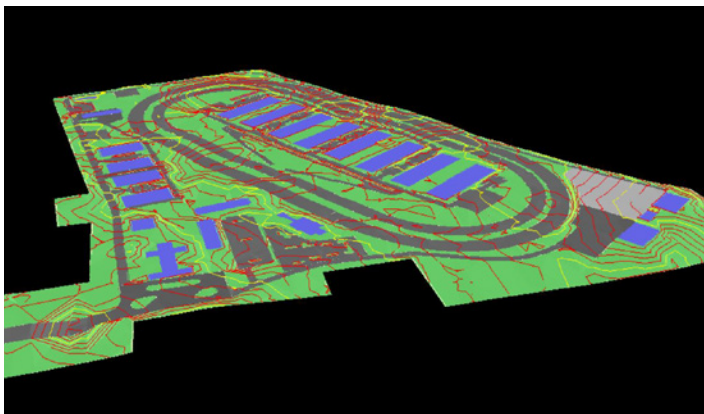
Mitchell Farm Option 02



Cut & Fill Heat Map

Rough Grading Analysis (cubic yards)	
Earth Cut	46,712.70 cy
Fill	46,628.80 cy
Import	0.00 cy
Export	83.90 cy

Rough Site Development Costs	
Clearing & Topsoil	\$957,153.50
Cut & Fill	\$164,019.00
Retaining Wall	\$664.90
Paving	\$2,321,458.20
Curb	\$51.40
TOTAL	\$3,784,614.80



3D Analytical Model

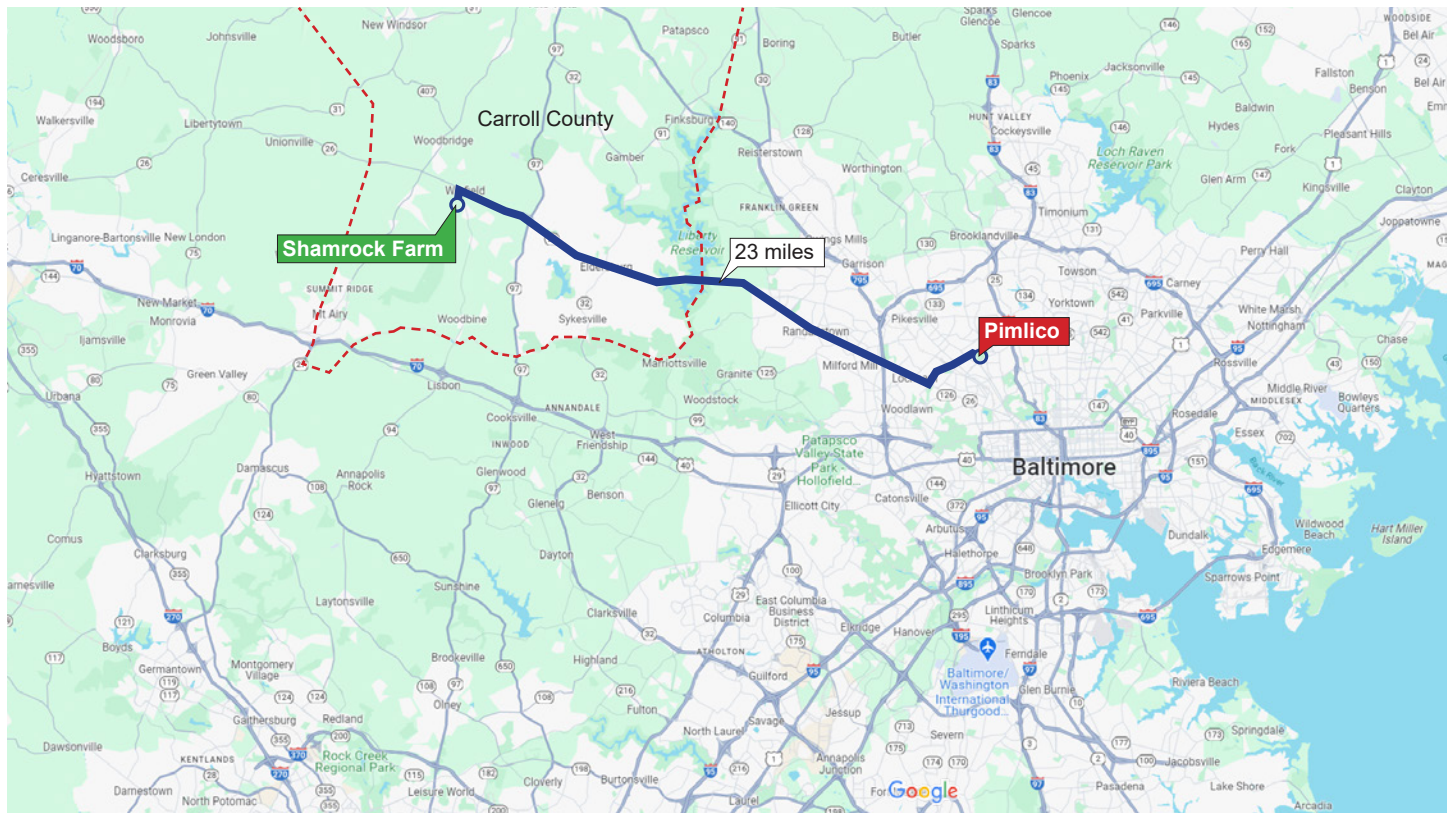
Pros

- Minimal habitat protection zones with potential impacts
- Less earthmoving compared to Bowie options
- Industrial development may provide potential infrastructure upgrade synergies
- No wetland impact mitigation required

Cons

- Potential need for off-site transportation infrastructure improvements
- All new site infrastructure required and potential need for off-site extensions
- Forest impacts – planting requirements likely more significant than Bowie option, but less than Mitchell Farm Option 01.

Shamrock Farm



Journey Map

Transportation Considerations/Challenges

- Proximity to Rt 26 with smaller rural roads providing direct access
- Rt 26 connects directly to Northern Parkway, and then a right turn onto Winner Ave for straight access into the planned backstretch and receiving zones for both Pimlico options.
- Transport to Pimlico can avoid the interstate highways
- New on-site roadway network required

Natural Resource Conditions/Challenges

- Existing waterways identified (Gillis Falls) on mapping adjacent to proposed training site
- Forest cover exists within proximity of site along waterway. Tree clearing not likely.

Topographic Considerations/Challenges

- Existing agricultural site with sloping terrain and some steep grades

Regulatory Considerations/Challenges

- Significant MDE Stormwater Management requirements anticipated (quantity and quality control)
- Forest Conservation requirements with potential for on-site mitigation
- Forest Conservation requirements with some potential for on-site mitigation

Utility Infrastructure

- Outside planned water and sewer public service areas. Well and Septic required.
- Electric and telecom available via overhead power poles
- Outside Gas service area

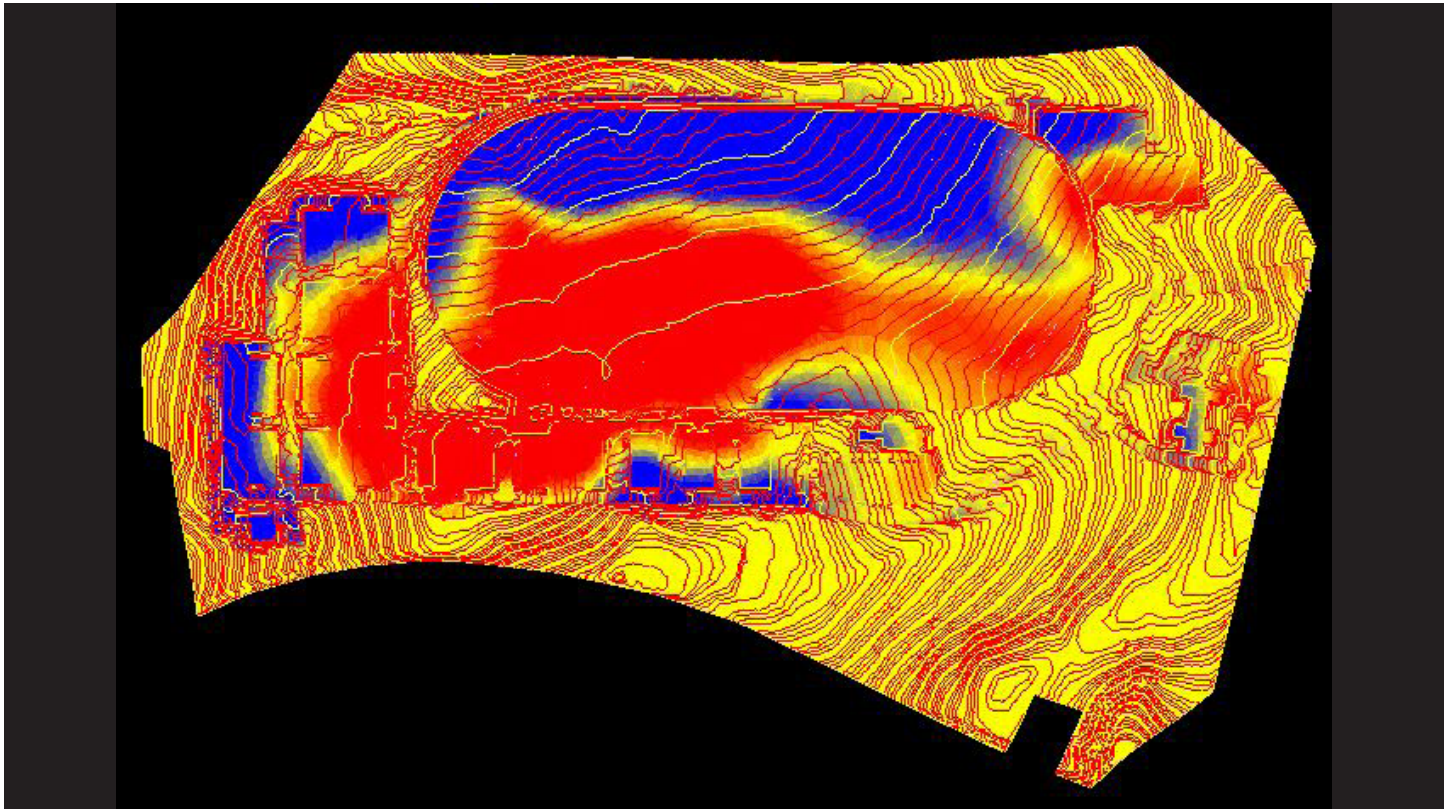


Living Resources



Topography, Wetland Inventory, and Utilities

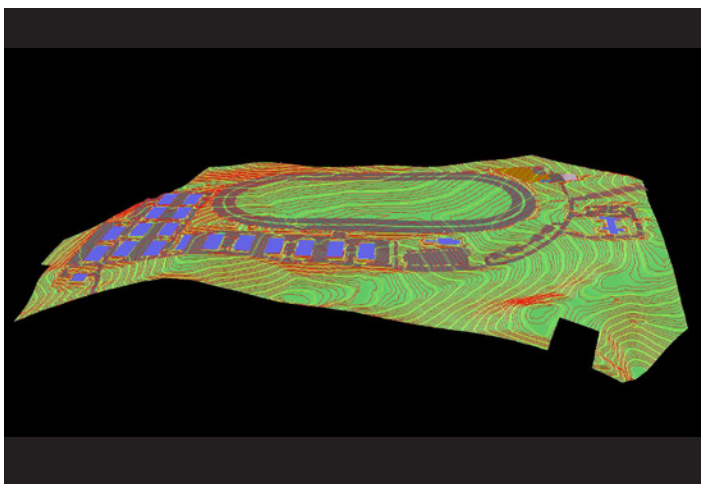
Shamrock Farm



Cut & Fill Heat Map

Rough Grading Analysis (cubic yards)	
Earth Cut	510,619.80 cy
Fill	510,121.80 cy
Import	0.00 cy
Export	497.90 cy

Rough Site Development Costs	
Clearing & Topsoil	\$1,060,348.10
Cut & Fill	\$1,790,281.20
Retaining Wall	\$39,430.00
Paving	\$2,545,949.20
Curb	\$39,729.20
TOTAL	\$5,785,219.30



3D Analytical Model

Pros

- Minimal habitat protection zones identified
- Current use is already tied to the thoroughbred industry, and located in an agriculture and farming county.
- Proximity to both Maryland trainers in adjacent counties, and ease of shipping to live racing at Pimlico

Cons

- Earthwork costs are more significant than Bowie or Mitchell sites
- Forest impacts – planting requirements likely more significant than Bowie options (15% afforestation)
- All new site infrastructure required and potential need for off-site extensions
- Potential need for off-site transportation infrastructure improvements

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Laurel Park

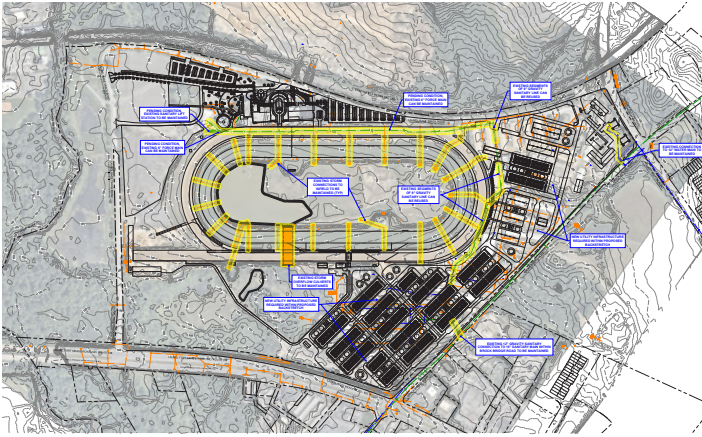
As previously determined in the Maryland Stadium Authority's 2021 Facility Assessment, a majority of existing barns and backstretch facilities have exceeded their service lives and need to be replaced. Additionally the Clubhouse and site has a number of outstanding life safety and accessibility violations as well as significant deferred maintenance. During the MSA's 2021 Programming and Due Diligence efforts, it was also determined that any redevelopment of facilities will require significant stormwater and wetland mitigation. Development is also limited by portions of the site being in the flood plain.

The Laurel Park site as well as adjoining Brock Bridge property has been studied multiple times by various parties in the last decade, and more intensely since 2019 with the 2020 Racing and Community Development Act envisioning relocating the Pimlico horses to Laurel. Scenarios have explored accommodating as many as 1,600 horses on both Race Track and Brock Bridge sites, and up to four racing surfaces. Throughout the 2021 MSA Programming, Due Diligence and Concept Planning it was determined that redevelopment of the Race Track site alone could support just over 1,000 horses.

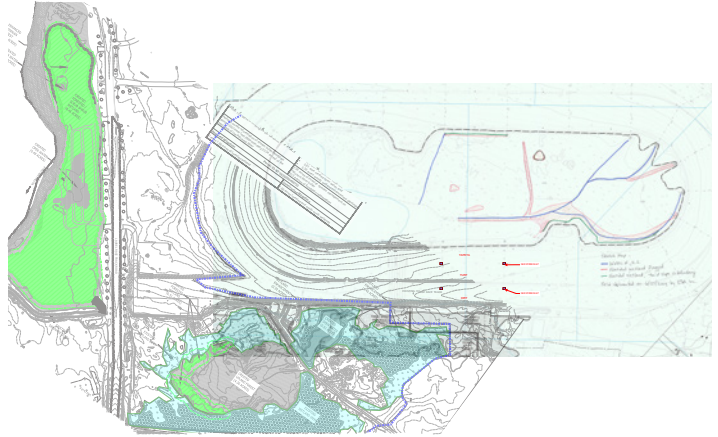
Existing Conditions



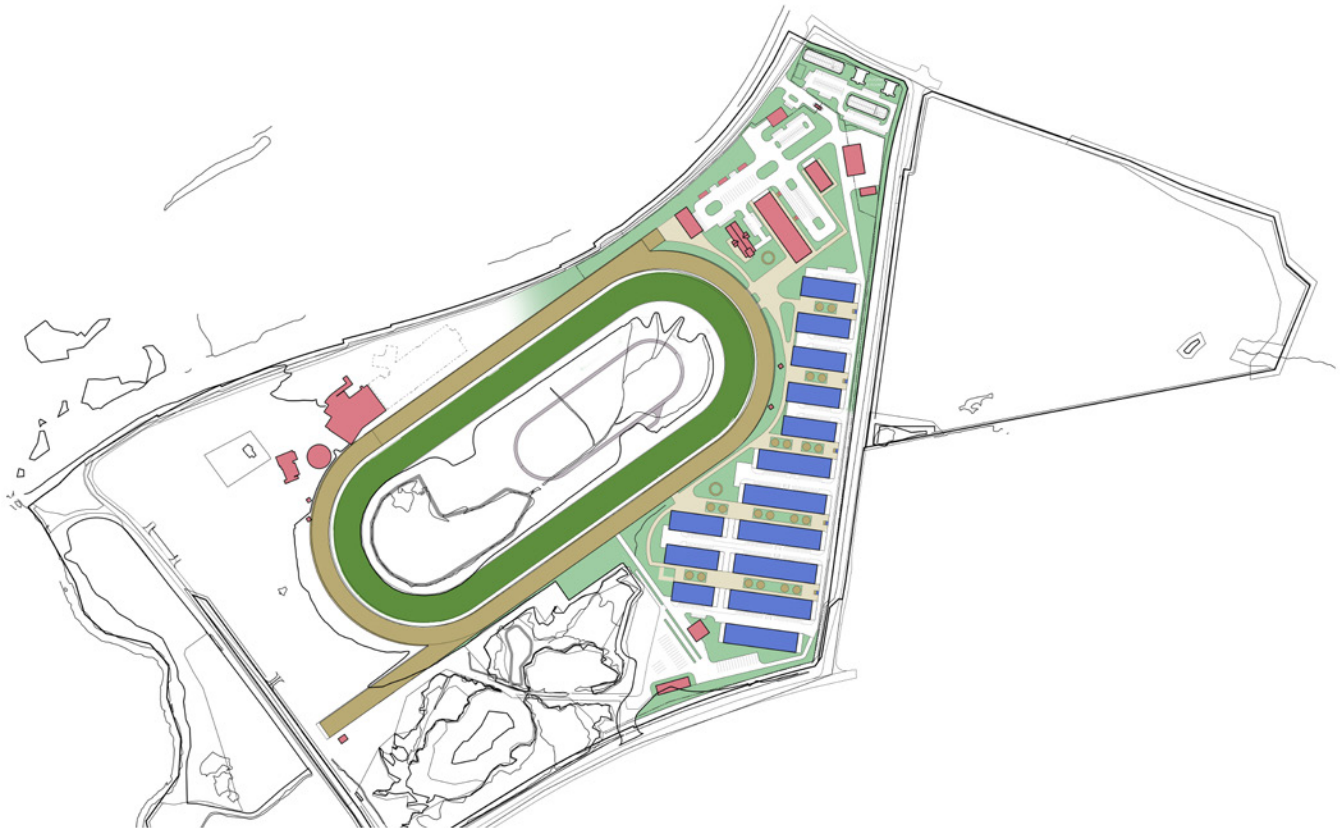
Utility Exhibit



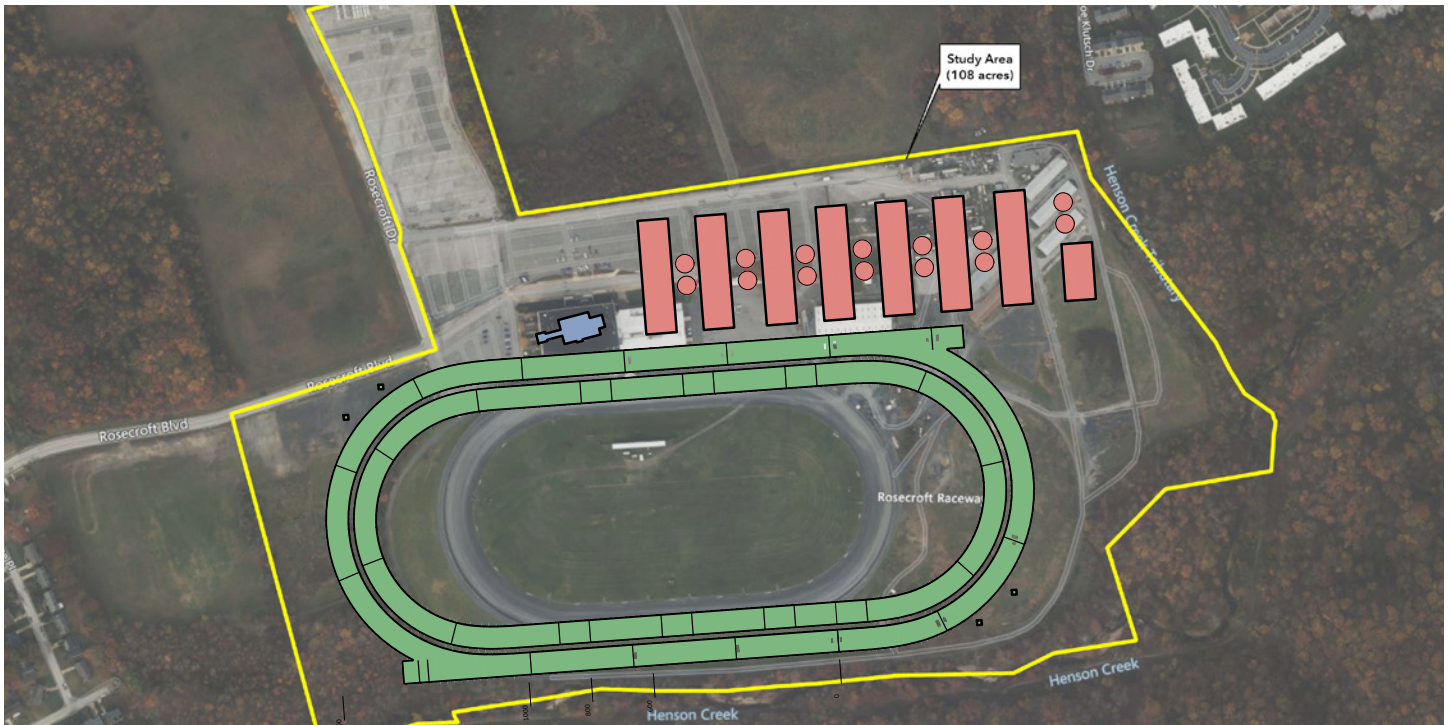
Wetlands & Floodplain Exhibit



2022 Racetrack Site Concept Plan - 1,040 RACING & TRAINING STALLS

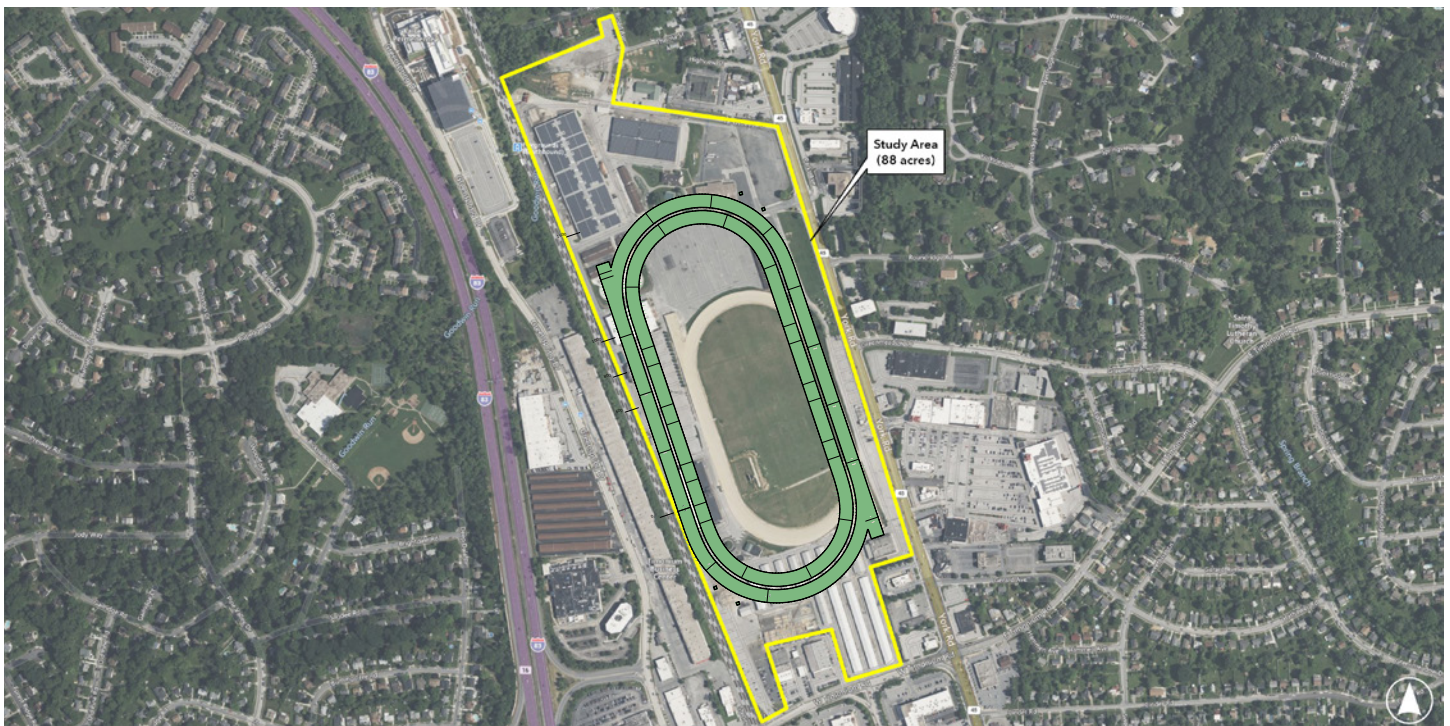


Rosecroft Raceway Test Fit



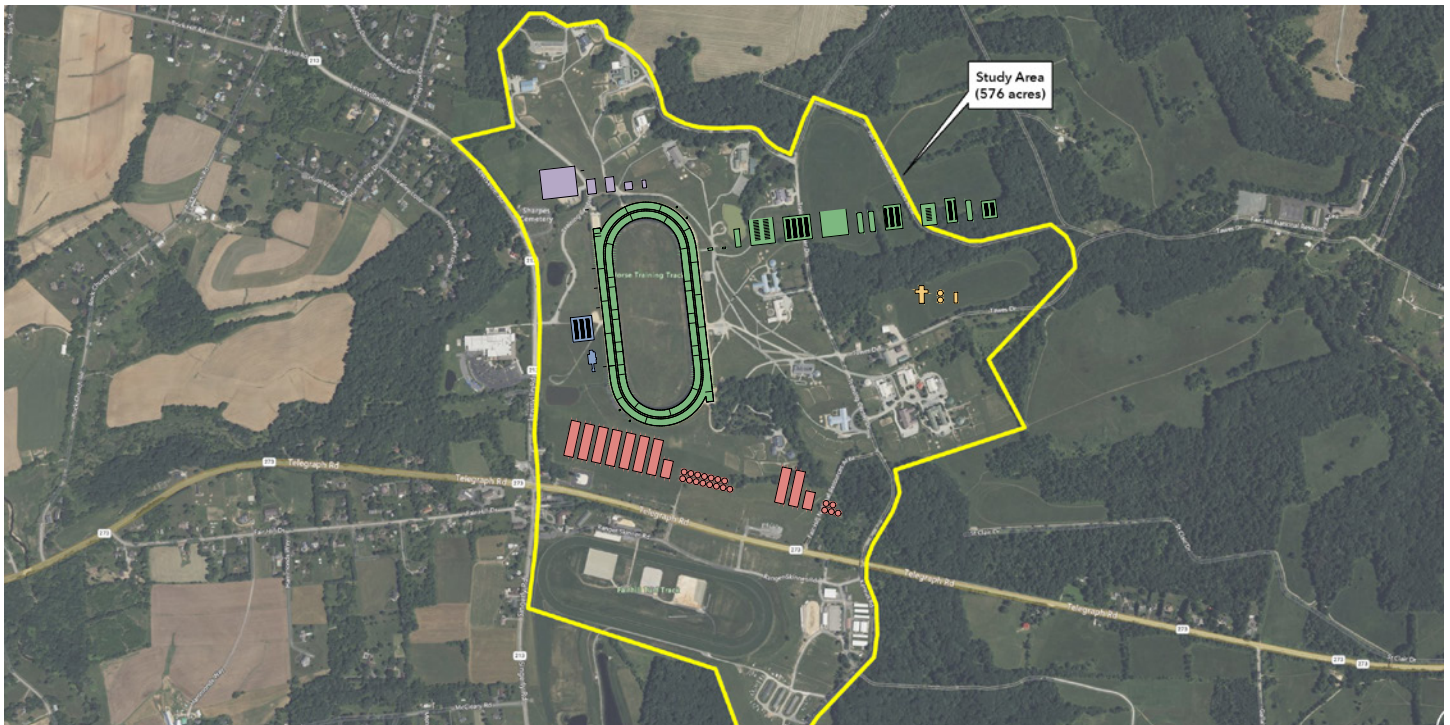
Rosecroft was studied and determined that it could fit the minimum required Training Center program; however, because of the high cost of acquisition and the long distance from Pimlico, no further concept refinement or site development analysis was pursued. Travel time of over an hour for ship-in to live racing is not acceptable.

Timonium State Fairgrounds Test Fit



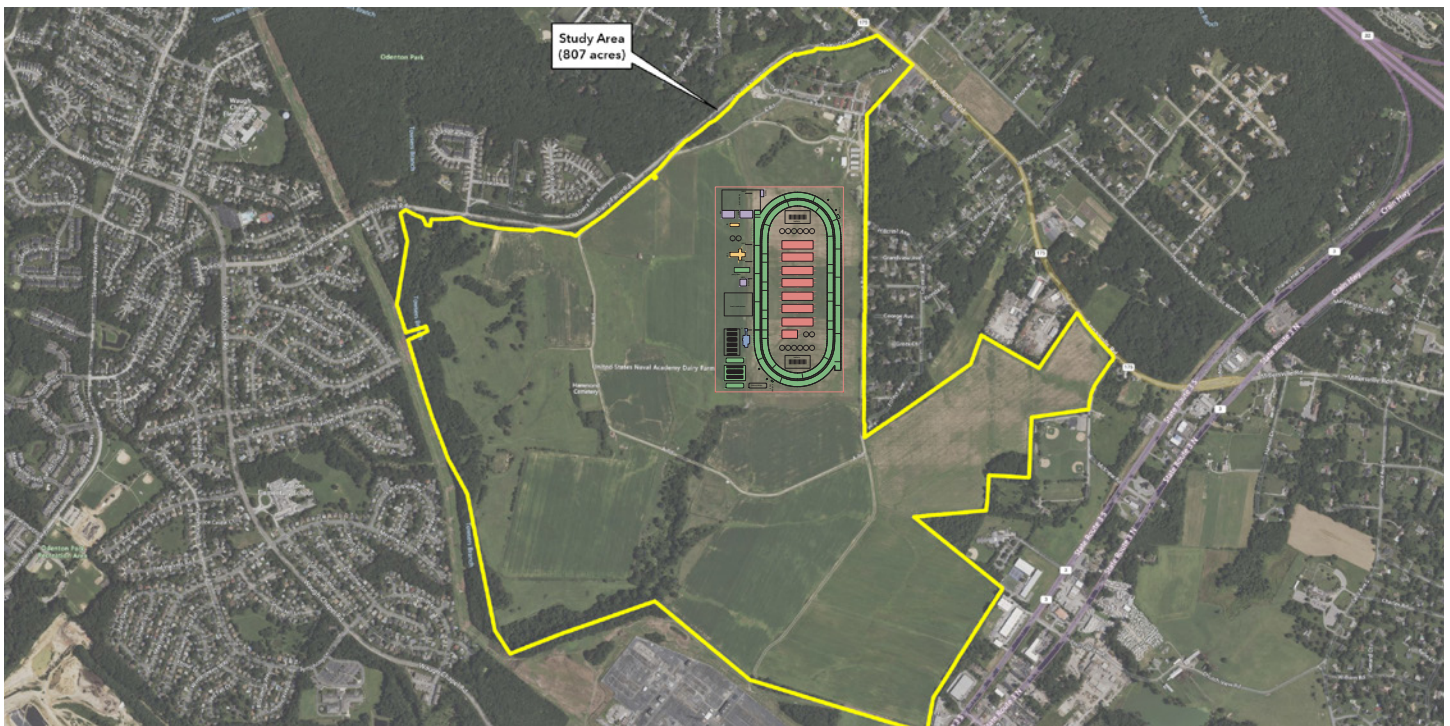
While the proposed 1-mile and 7 furlong racetracks will fit on the site, it would require the elimination and relocation of State Fairgrounds facilities, which is cost prohibitive. There is little room for other required program and the congested urban site would be difficult for circulation of trailers and operational vehicles.

Fair Hill Training Center Test Fit



Fair Hill Training Center already has 600 horses on site. Doubling the horse population would require rebuilding of the main tracks to incorporate wider lanes. The site is the furthest from Pimlico, and also inconvenient location for the majority of horsemen in the state. DNR permitting requirements are extensive and would extend construction schedule.

US Naval Academy Dairy Farm Test Fit



While the US Naval Academy Dairy Farm is in an ideal location, is under an hour travel distance from Pimlico, and physically could accommodate the training program with minimal site development costs, the site has a limit of 50 acres for any development on the site. The development restriction of 50 acres disqualifies this site from further study.

Site Evaluation Summary

Working with the Authority, eight candidate sites for the off-site training center were identified for consideration.

Planning Parity

- only differences being the size of the property and the Bowie option that considered community development in the infield. That Bowie option results in a net horse population of 1,160, which is 40 less than the desired minimum.

Evaluation criteria and key findings:

1. Location

There are three main considerations in the evaluation and scoring of location:

- i. Distance from Pimlico. For ship in and ship out of the live racing venue, it is recommended that the transit time from the Training Center to the Live Racing site is no longer than one hour.
- ii. Proximity to trainers, staff, grooms, and horsemen that currently train at Laurel Park. There is a current routine and familiarity of the population commuting to and from Laurel Park. Additionally there is another population of horsemen that reside near the Fair Hill Training Center, which houses over 600 horses. It is recommended to not consolidate too much of training resources in one part of the state.
- iii. Compatibility with surrounding land use. The training center would ideally be located on agricultural land in an agricultural community where there would be convenient access to feed, tack and other supplies. Urban and overdeveloped areas may create more congestion and limit conveniences of a pastoral and agrarian site.

2. Natural Resources

There are a variety of sensitive natural resources in the State of Maryland that are protected, including watersheds, wetlands, forests and habitats. Where these protected resources are present requires careful attention during the permitting process, which can add time to the construction schedule. If any of the resources are disturbed the project will need to mitigate the disturbance with costly site development.

3. Topography

The racing and training tracks take up a large footprint that wants to be relatively flat. If a site has steep slopes and variation of grades, then there will be more cost in earth movement to develop the site to required specifications.

4. Transportation & Access

This looks at how convenient the site is to get to, proximity to major roadways, condition and size of adjacent roads as well as how convenient it is to haul horses to Pimlico.

5. Utility Infrastructure

The condition, capacity and existence of items such as sewer, power, gas, and water. While Bowie was previously operated as a training center, the development of the adjacent neighborhoods may have tapped out the utilities.

6. Jurisdictional Approvals

These include any entity that has influence over how and what can get built in a certain location including community groups, neighbors and homeowners associations, government and civic officials, building officials, competing developments and politics. If there are entities that have a different vision for their community than incorporating a thoroughbred training center, then this could extend the approval and construction schedule, costing the project more money than an area with a favorable view and quicker timeline. A worst case scenario is that the moving forward in an unfavorable area could stall the development of the training center and adversely affect the entire project and industry.

7. Size

The minimum target of stalls between the Pimlico and Training Center sites is 1,200 stalls. The design team studied the Training Center program and determined that 85 acres is the minimum area to fit all of the components of the program. With more facilities needed at Pimlico to host live racing, there is most likely more constraints on achieving an evenly balanced 600 stalls at Pimlico and 600 stalls at the Training Center.

8. Acquisition Cost

With limited funding resources, and a responsibility to provide the best thoroughbred racing facilities possible, it is preferred to spend as much money on the development of the racing and training resources and facilities. The more money spent on acquiring a site means less money invested in the future of thoroughbred racing.

Rosecroft, Laurel and Timonium have the highest cost of acquisition, leaving the least amount to dedicate to facilities out of all the options.

	Bowie Race Track	Fair Hill Training Center	Laurel Park	Mitchell Farm	U.S. Naval Academy Dairy Farm	Rosecroft Raceway	Timonium <i>Maryland State Fairgrounds</i>	Shamrock Farm
Location	5	0	5	4	4	0	2	5
Natural Resources <i>Permitting / Mitigation</i>	4	3	3	4	3	4	4	4
Topography	4	3	4	5	3	5	5	3
Transportation & Access	4	2	4	3	4	2	3	4
Utility Infrastructure	3	1	4	3	2	3	4	3
Jurisdiction Approvals	2	3	3	5	3	4	2	5
Size	5	5	5	4	0	3	0	5
Acquisition Cost	3	5	0	5	0	0	0	5
Relative Cost of Development	4	1	2	4	3	3	1	3
TOTAL	34	23	30	37	22	24	21	37





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Training Center Illustrative Site Plans

Mitchell Farm - 97 acres



Key

- | | |
|--|-----------------------------------|
| ① Primary Entry | ⑬ Track Maintenance |
| ② Tracks (1 mile Dirt + 7 furlong Turf) | ⑭ Site Maintenance |
| ③ Service / Emergency Entry | ⑮ Harrow Yard |
| ④ Training Center Administration | ⑯ Manure Transfer Building |
| ⑤ Paved Parking | ⑰ Vendors / Track Contractors |
| ⑥ Stall Barn (40 stalls Each)
+640 Stalls Total | ⑱ Trailer Parking |
| ⑦ Pony Barn (16 stalls) | ⑲ Tunnel - Vehicular & Equestrian |
| ⑧ Dormitory (75 rooms) | ⑳ Future Barn Sites |
| ⑨ Isolation Barn (12 stalls) | |
| ⑩ Veterinary Center | |
| ⑪ Clocker's Building / Outrider Shed | |
| ⑫ Outrider Shed | |

The Mitchell Farm site consists of 97-acres south of Perryman in Hartford County. This site is adjacent to a larger property development focused on logistics and warehousing. This site is ideal for the proposed training center as it is relatively flat and has no natural resource challenges.

To limit the amount of acreage required, the 640 training stables are located at the infield in double 40-stall barns with bulkheads providing for separate air spaces. The stable area is organized with separate vehicle circulation/parking and horse circulation zones between every other pair of barns for safety. Vehicle and horse tunnels provide access to both tracks and the exterior.

This site is unique in that it offers adequate area to add up to 160 training stables adjacent to the training tracks and access tunnel.

Shamrock Farm - 155 acres



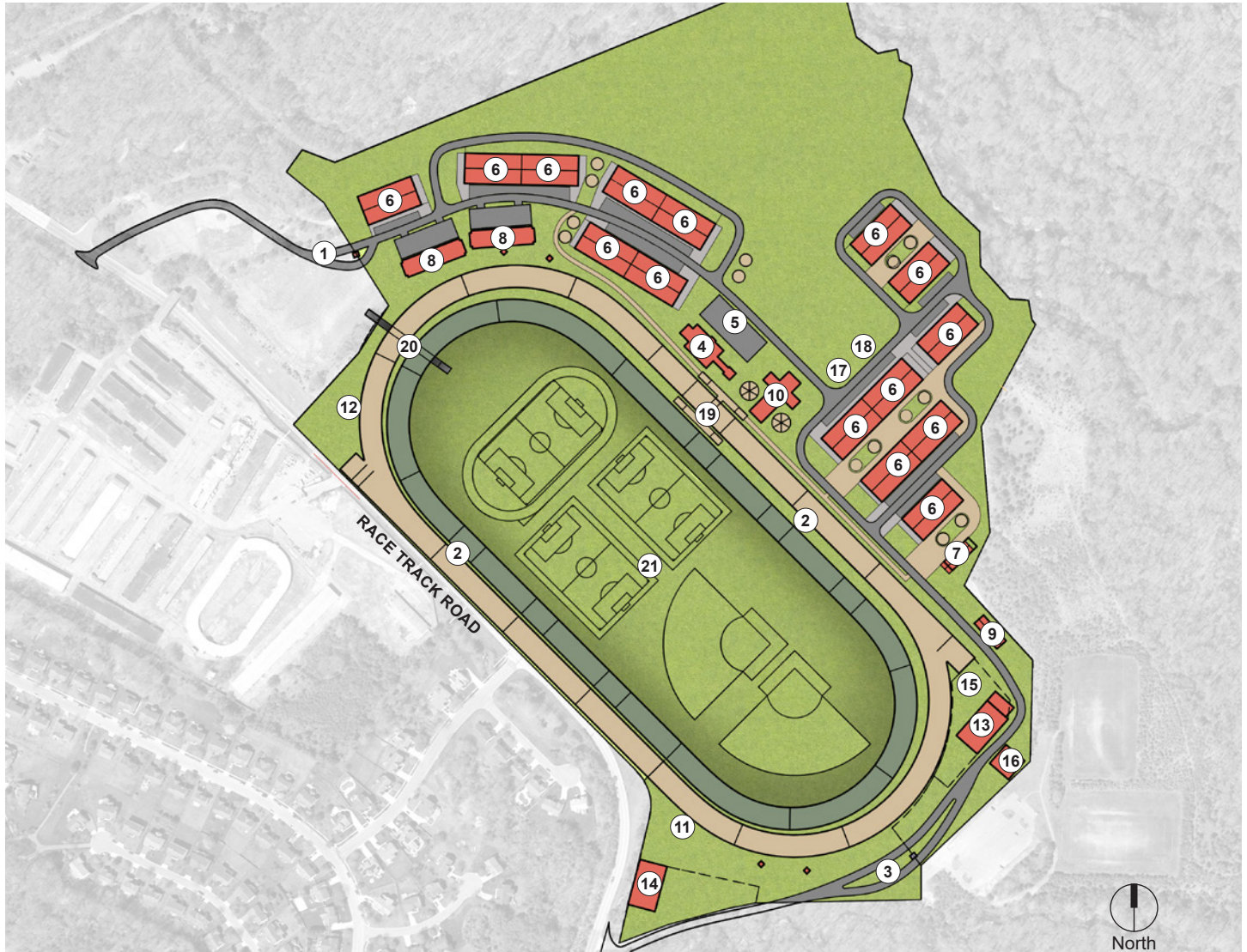
Key

- | | |
|--|-------------------------------|
| ① Primary Entry | ⑬ Track Maintenance |
| ② Tracks (1 mile Dirt + 7 furlong Turf) | ⑭ Site Maintenance |
| ③ Service / Emergency Entry | ⑮ Harrow Yard |
| ④ Training Center Administration | ⑯ Manure Transfer Building |
| ⑤ Paved Parking | ⑰ Vendors / Track Contractors |
| ⑥ Stall Barn (40 stalls Each)
+640 Stalls Total | ⑱ Trailer Parking |
| ⑦ Pony Barn (16 stalls) | |
| ⑧ Dormitory (75 rooms) | |
| ⑨ Isolation Barn (12 stalls) | |
| ⑩ Veterinary Center | |
| ⑪ Clocker's Building / Outrider Shed | |
| ⑫ Outrider Shed | |

Shamrock Farm is an existing thoroughbred breeding farm located amongst the pastoral agriculture and farming communities of Carroll County. The selected area of study, which is a portion of the roughly 600 acre farm, has relatively no natural resource challenges. It is in convenient proximity to both where the majority of Maryland trainers live, south of the site, and to live racing at Pimlico. Liberty Road/ Route 26 connects the directly to Northern Parkway and Pimlico less than 40 miles east.

While rolling topography will require more earthwork to grade the flat tracks than other sites, it can be balanced through a more generous spacing of the training barns. Located on the outside of the track, there is no requirement to build tunnels for operational access to the barns or for the horses to circulate to train. This organic spacing will create an experience more consistent with smaller private horse farms, with more space to add up to 160 more stalls. Out of all the sites, Shamrock offers an idyllic setting where horses can live like horses.

Bowie Option 01



Key

- | | |
|--|---|
| ① Primary Entry | ⑬ Track Maintenance |
| ② Tracks (1 mile Dirt + 7 furlong Turf) | ⑭ Site Maintenance |
| ③ Service / Emergency Entry | ⑮ Harrow Yard |
| ④ Training Center Administration | ⑯ Manure Transfer Building |
| ⑤ Paved Parking | ⑰ Vendors / Track Contractors |
| ⑥ Stall Barn (40 stalls Each)
+600 Stalls Total | ⑱ Trailer Parking |
| ⑦ Pony Barn (16 stalls) | ⑲ Tunnel #1 Equestrian |
| ⑧ Dormitory (75 rooms) | ⑳ Tunnel #2 Pedestrian |
| ⑨ Isolation Barn (12 stalls) | ㉑ Recreation & Sporting Fields
(By others) |
| ⑩ Veterinary Center | |
| ⑪ Clocker's Building / Outrider Shed | |
| ⑫ Outrider Shed | |

Bowie Option 1 takes into consideration potential partnership with Bowie State University to utilize the infield property for sports fields. **This option presents several challenges including the timing of the infield activities to not interfere with training operations, security of the training surfaces to ensure no hazards have incidentally accessed the surfaces (pets, children, balls, etc.), ongoing operations of both facilities with potential disturbance to the horses, and the cost to develop the infield venues, public access tunnel and parking.**

Additionally, the racing stables and support facilities are required to be located outside the track on the backstretch area which has significant grading requirements and some natural resource challenges. **This will limit the stabling to 600 with no expansion capability and also requires the distribution of maintenance facilities which would otherwise be grouped for efficiency.**

Bowie Option 02



Key

- | | |
|--|-----------------------------------|
| ① Primary Entry | ⑬ Track Maintenance |
| ② Tracks (1 mile Dirt + 7 furlong Turf) | ⑭ Site Maintenance |
| ③ Service / Emergency Entry | ⑮ Harrow Yard |
| ④ Training Center Administration | ⑯ Manure Transfer Building |
| ⑤ Paved Parking | ⑰ Vendors / Track Contractors |
| ⑥ Stall Barn (40 stalls Each)
+640 Stalls Total | ⑱ Trailer Parking |
| ⑦ Pony Barn (16 stalls) | ⑲ Tunnel - Vehicular & Equestrian |
| ⑧ Dormitory (50 rooms) | ⑳ Future Barns |
| ⑨ Isolation Barn (12 stalls) | |
| ⑩ Veterinary Center | |
| ⑪ Clocker's Building / Outrider Shed | |
| ⑫ Outrider Shed | |

Bowie Option 2 utilizes the infield for the training stables with each block featuring horse circulation, rolling boxes and landscape, with all vehicle circulation outside the stable blocks for safety. The barns are arranged in pairs of 40-stall units with bulkheads between to separate the air spaces. A 2-lane vehicle and 2-lane grade-separated horse tunnel provides access to the infield as well as the outside rail of the two training tracks. The back stretch area outside the track can support training stable expansion of 160 stalls.

Access is provided at both ends of the tracks and all the way through the site, with the north entrance being the primary secured entry point. This concept eliminates the challenges of Option 1 by eliminating the infield sports venues and limiting the development on the northeastern edge of the site where grading and natural resource permitting may create time and cost challenges.





06/

Pimlico

Programming, Clubhouse and
Illustrative Site Plans

Pimlico Program Summary

SITE DEVELOPMENT		
Main Track	1 mile Dirt	Synthetic Ready
Inner Track	7/8 mile Turf	
Camera Towers	4	
Dorms	Off-site, in the community	DHCD partnership
Preakness Winner's Circle		Historic cupola
Tote / Video Board	1	

CLUBHOUSE / GRANDSTAND		
Clubhouse	137,085sf	INDOOR TOTAL
Assembly & Spectators	107,650sf	5,200 spectators. Includes indoor and outdoor spaces. Public Restrooms
Circulation	28,915sf	Lobbies, Stairs, Elevators, Escalators
Food Service	11,650sf	Main Kitchen, Distributed F&B, Offices
Administration	4,600sf	
Operations & Support	29,820sf	Docks, Security, Storage, Parimutuel/Money, MEPT
Racing Operations	4,700sf	Officials, Stewards, Trainers, Media
Jockey's Quarters	12,000sf	
Paddock	16 stalls	
Walking Ring	1	
Winner's Circle	1	
Preakness Winner's Circle	1	Contains Historic Cupola
Horsemen's Offices & Lounge		

MAINTENANCE		
Track Maintenance Building	13,500sf	
Harrow Yard	1.5 acres	
Fuel Station	1	
Water Station	1	
Site Maintenance	13,500sf	

RACING OPERATIONS		
Total Racing/Training Stalls	560	12'x12'
Large Barn Module	80 stalls	Divided into tow(2) 40 stall air spaces under one roof
Small Barn Module	40 stalls	
Wash Stalls	1:10 stalls	11'x12'
Offices / Tack Rooms	1:5 stalls	
Feed / Hay Storage	1:10 stalls	
Restrooms	2	Individual Men & Women
Laundry / Utility	2	Water Heater, Fly Spray, Fire Riser/Pump
Fire Riser / Pump		
Preakness Stable Compound	20 horse stalls	20 Tack, Feed, and Storage Wash Stalls. Walking Ring
Receiving Barn	80 stalls	
Holding Barn	14 stalls	
Pony Barn	16 stalls	
Testing	4 stalls	
Isolation / Quarantine	12 stalls	
Clockers / Viewing Platform	1	Include restrooms. Outrider shelter is covered space below
Outrider Shelter		
Outrider Shelter(s)	1	
Vendors / Track Contractors	2 acres	Bedding, tack, feed
Trailer Parking	24 spaces	1:24 stalls
Racing Office	1	
Kitchen and Dining	1	

Pimlico Clubhouse, Paddock & Customer Experience

The originally proposed Pimlico clubhouse program was developed to service a limited number of live racing days around the annual Preakness Stakes. As such, it did not include some support and patron spaces required for day-to-day racing operations. The consultant team revisited the original programming and that created for the 2021 Laurel master plan concept to create the updated program and diagrammatic plans presented here. Some of the key operational spaces that are now incorporated include jockey's facilities, broadcasting, mutuels/money room, racing administration, media facilities, spaces to accommodate daily live racing patrons, and other spaces.

With all of that said, the diagrams and photos that follow are intended for pricing and utilization. They do not represent architectural plans of what will be built in any way.

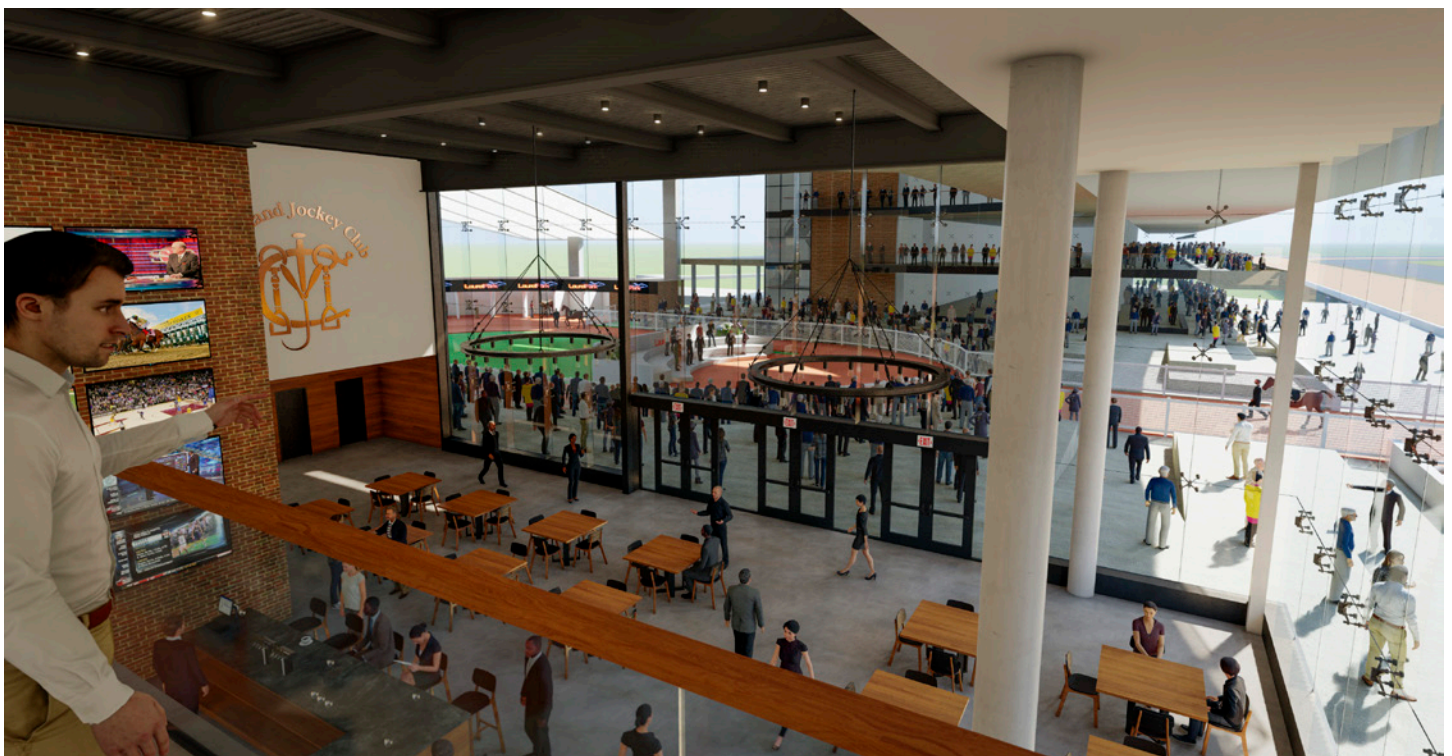
People want to be as close as possible to the scenes and the action in an event, whether it is the finish line, starting gate, the winner's circle, the paddock and walking ring, or the track. They desire to feel like they have experienced the whole package; as if they participated in the event, in the win or loss.

For the design concept, we have made the Paddock and the Winner's Circle a focal point, creating a theater connecting people and horses. The venue straddles the paddock offering two programmed venues at once. The venue offers the capacity to host large and small events including but not limited to large racing events, off track betting, full-service food and beverage, and community and private events. This provides the opportunity to maximize flexibility and revenue streams.

For a large racing event, both sides of the new clubhouse will operate simultaneously as one venue, offering a distinct experience blending the spaces together. For day-to-day operations, only the smaller south side will be activated to minimize staffing and operations costs and providing space availability in the north side to host other revenue-generating events.

The programmed capacity of the new clubhouse is 2,450 indoor and 2,750 outdoor including elevated terraces, terraces around the walking ring and the track apron.

The Clubhouse and Paddock experience will look to curate and incorporate the historical elements from the existing facilities such as the bas relief of 'The Great Race', timbers from the Old Grandstand, as well as other sculptures, artwork and murals, and other unique artifacts.



Clubhouse & Paddock Program

A. Clubhouse

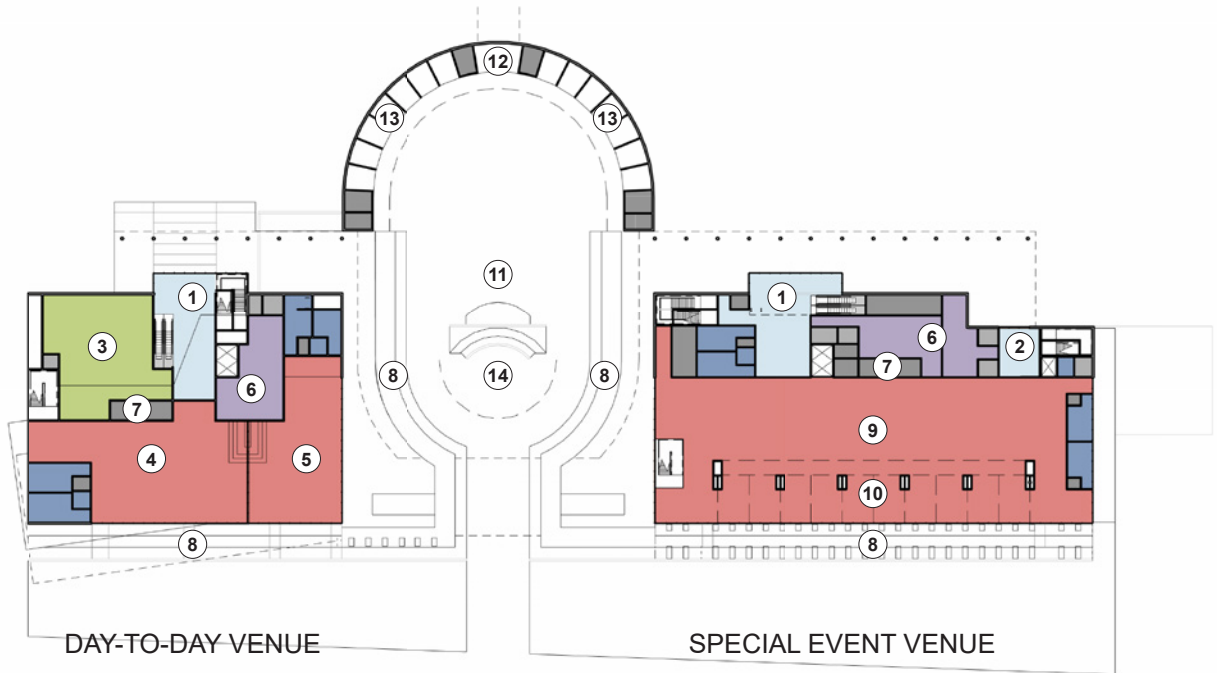
Room / Functional Space	amount	sf	Occupants
Indoor Space			
Assembly Facilities	-	47,600	-
01 - OTB Simulcast	-	-	300
01 - Bar	-	-	200
01 - Flex Assembly / Hall	-	-	500
01 - Boxes	10	-	250
02 - Flex Hall	-	-	230
02 - Boxes	10	-	180
02 - Sports Bar Dining & Sports Book	-	-	250
03 - Sports Bar Dining	-	-	150
03 - Flex Assembly / VIP	-	-	390
Public Restrooms	-	9,800	
Food Service	-	11,650	-
Circulation - Customer Facing	-	28,915	-
Administration & Guest Services	-	4,600	-
Racing Support	-	4,700	-
Operations & Support / MEPT	-	29,820	-
Sub-Total		137,085	2,450
Outdoor Space			
Level 01 - Outdoor Terraced Seating	-	14,500	800
Level 02 - Outdoor Terraced Seating	-	7,450	330
Level 03 - Outdoor Terraced Seating	-	4,300	470
Level 03 - Open Terrace	-	5,000	250
Rooftop	-	19,000	900
Sub-Total		50,250	2,750
TOTAL GSF		187,335	5,200

B. Paddock & Racing Operations

Room / Functional Space	amount	sf	Occupants
Facilities			
Jockey's Quarters	-	12,000	-
Saddling Stalls (Racing & Outriders)	16	2,500	-
Owners / Trainers / MTHA	-	2,400	-
TOTAL GSF		16,900	-

Conceptual Diagram Level One

FOR REFERENCE ONLY. THE CONTENT PROVIDED IS FOR CONCEPTUAL DEVELOPMENT AND DO NOT REFLECT FINAL ARCHITECTURAL SOLUTIONS



Programming

- Public Circulation
- Restrooms
- Spectator Facilities
- Food Service
- Retail
- Assembly & Hospitality
- Media Facilities
- Team and Event Facilities
- Administration
- Operations and Support
- M/E/P/T
- Support Circulation

Key

- 1 Main Entry & Gallery
- 2 Secondary Entry
- 3 Administration
- 4 OTB Simulcast
- 5 Bar
- 6 Kitchen
- 7 Mutuels
- 8 Outdoor Terraced Seating
- 9 Flexible Assembly / Event Hall
- 10 Flexible and Divisible Boxes
- 11 Paddock and Walking Ring
- 12 Saddling Stalls (14 total)
- 13 Outriders
- 14 Winner's Circle

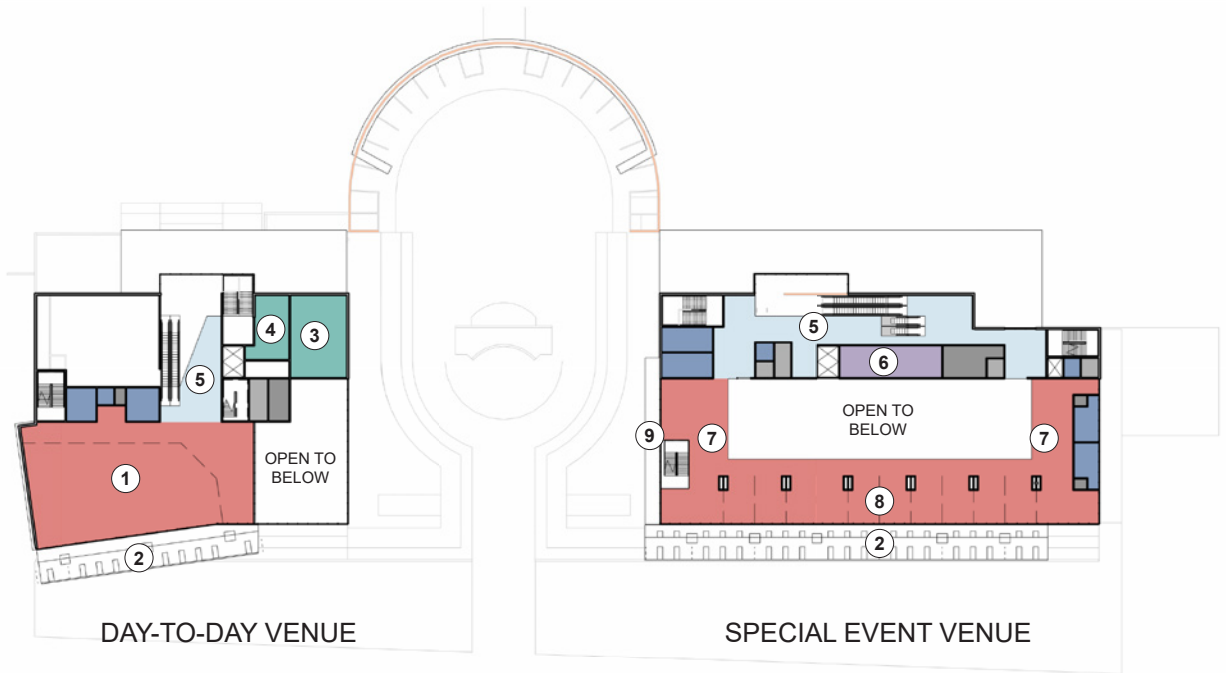
The Main Level is designed to allow sports betting, tiered open aired paddock space and a multi-use flex space that can accommodate boxes through operable partition walls. This allows the venue to scale appropriately for race day and non-race day. There can be as many as 10 private boxes, or a combination of boxes create group party rooms, or when the walls are recessed, the space transforms into a large event hall accommodating 750 people. For a 500 person event, the flexible boxes can be used as breakout meeting rooms.

While the winner's circle is located within the Paddock & Walking Ring area, creating a dynamic space for pre and post race, the railings and tiers are envisioned to be portable to be able to more efficiently host non-racing community events.



Conceptual Diagram Level Two

FOR REFERENCE ONLY. THE CONTENT PROVIDED IS FOR CONCEPTUAL DEVELOPMENT AND DO NOT REFLECT FINAL ARCHITECTURAL SOLUTIONS



Programming

- Public Circulation
- Restrooms
- Spectator Facilities
- Food Service
- Retail
- Assembly & Hospitality
- Media Facilities
- Team and Event Facilities
- Administration
- Operations and Support
- M/E/P/T
- Support Circulation

Key

- 1 Sports Bar Dining & Sports Book
- 2 Outdoor Terraced Dining & Seating
- 3 Broadcast Studio
- 4 Broadcast Control
- 5 Lobby & Gallery Space
- 6 Kitchen
- 7 Flex Hall
- 8 Flexible & Divisible Boxes
- 9 Balcony

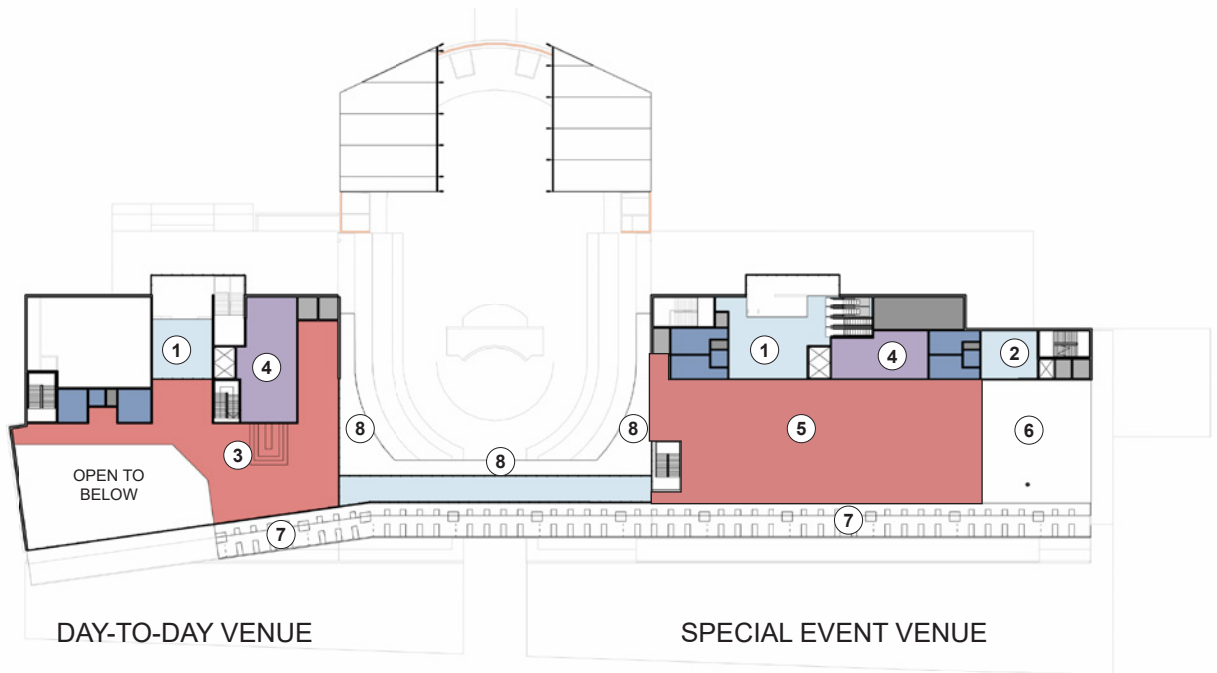
On the day to day side, a Sports Bar & Sports Book has convenient access up the escalators from the main entry, with overlooks into the bar below as well as out into the paddock venue. With views to both the track and paddock, the guests are immersed in the horse experience.

More boxes created with operable partitions are located on the Special Events side to accommodate owners, trainers and horsemen, with access to outdoor tiered seating terraces. When the operable partitions are removed, the venue transforms into a 410 person event space. With the large opening in the floor to below, there is potential to create a combined experience for over 1,000 people in a theater style setting.



Conceptual Diagram Level Three

FOR REFERENCE ONLY. THE CONTENT PROVIDED IS FOR CONCEPTUAL DEVELOPMENT AND DO NOT REFLECT FINAL ARCHITECTURAL SOLUTIONS



Programming

- Concourse / Prefunction
- Restrooms
- Spectator Facilities
- Food Service
- Retail
- Assembly & Hospitality
- Media Facilities
- Team and Event Facilities
- Administration
- Operations and Support
- M/E/P/T
- Support Circulation

Key

- 1 Lobby & Gallery Space
- 2 Secondary Entry
- 3 Sports Bar Dining
- 4 Kitchen
- 5 Upscale Dining & Flex Event Hall
- 6 Outdoor Event Deck
- 7 Outdoor Tiered Dining Terraces
- 8 Balcony

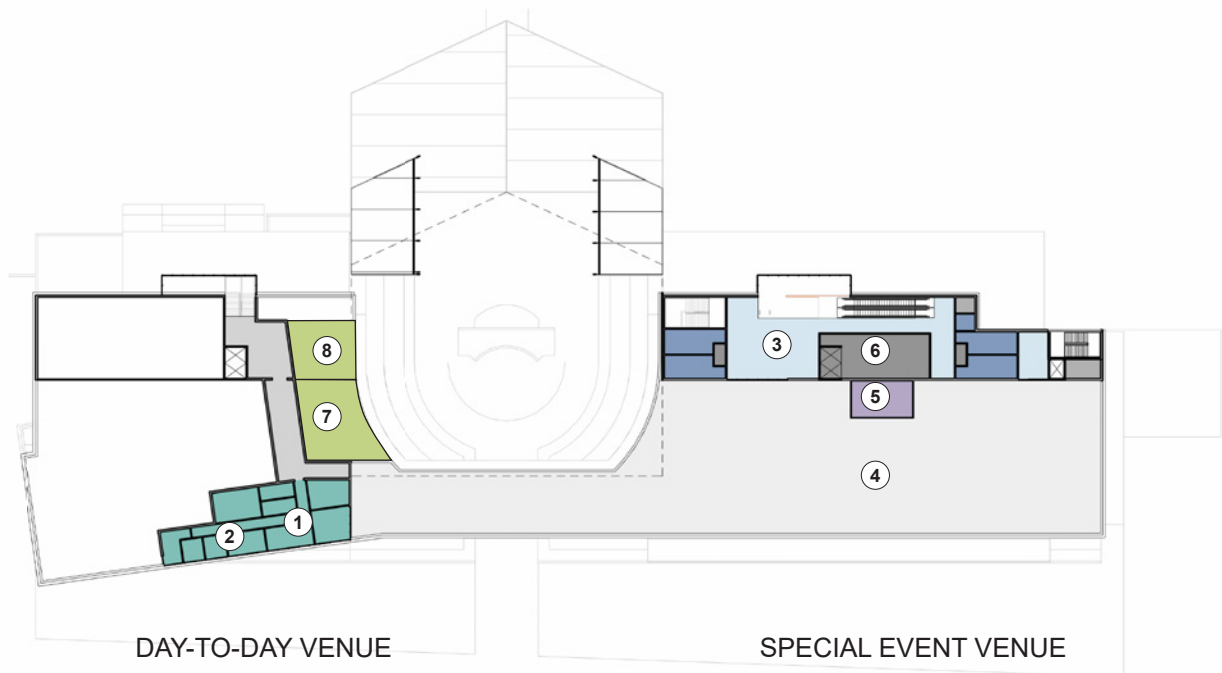
The third level provides more premium dining experiences on both sides of the venue. The Sports Bar Dining provides a more intimate setting, while still maintaining views to the track, the paddock, the sports book. Balconies on the paddock side and tiered seating on the track side allow for a full experience of the pageantry and excitement of a day at the races.

On the Special Events side a more exclusive and upscale venue is provided to accommodate up to 390 guests. An outdoor deck provides dramatic views of horses coming down the homestretch, and both venues have access to outdoor tiered dining terraces.



Conceptual Diagram Rooftop Level

FOR REFERENCE ONLY. THE CONTENT PROVIDED IS FOR CONCEPTUAL DEVELOPMENT AND DO NOT REFLECT FINAL ARCHITECTURAL SOLUTIONS



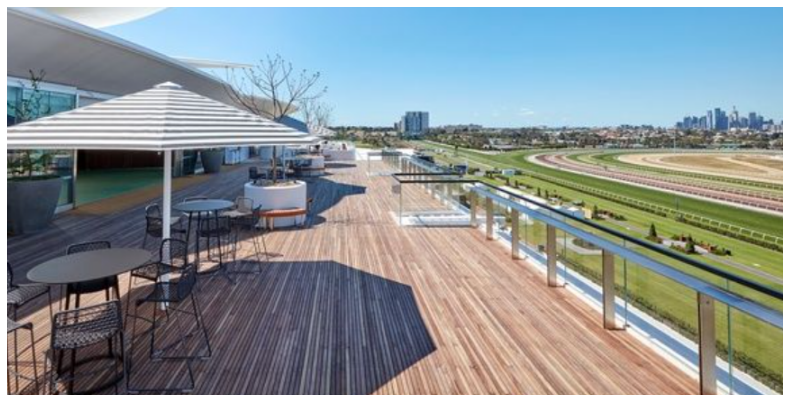
Programming

- Concourse / Prefunction
- Restrooms
- Spectator Facilities
- Food Service
- Retail
- Assembly & Hospitality
- Media Facilities
- Team and Event Facilities
- Administration
- Operations and Support
- M/E/P/T
- Support Circulation

Key

- ① Stewards / Officials / Judges
- ② Announcer / Timer / Camera / Press
- ③ Lobby & Gallery
- ④ Rooftop Event Space
- ⑤ Bar
- ⑥ Storage
- ⑦ MTROA Office
- ⑧ MTHA/MEDSTAR Office

The racing operations, judges, timer, stewards and officials are situated over the day to day building and centered on the finish line. The rooftop can accommodate over 900 guests and also provides both track and paddock views. Permanent amenities are limited to code minimums, but to provide a strong backbone for other food and beverage hospitality with temporary overlay during the Preakness and other large, but infrequent events.

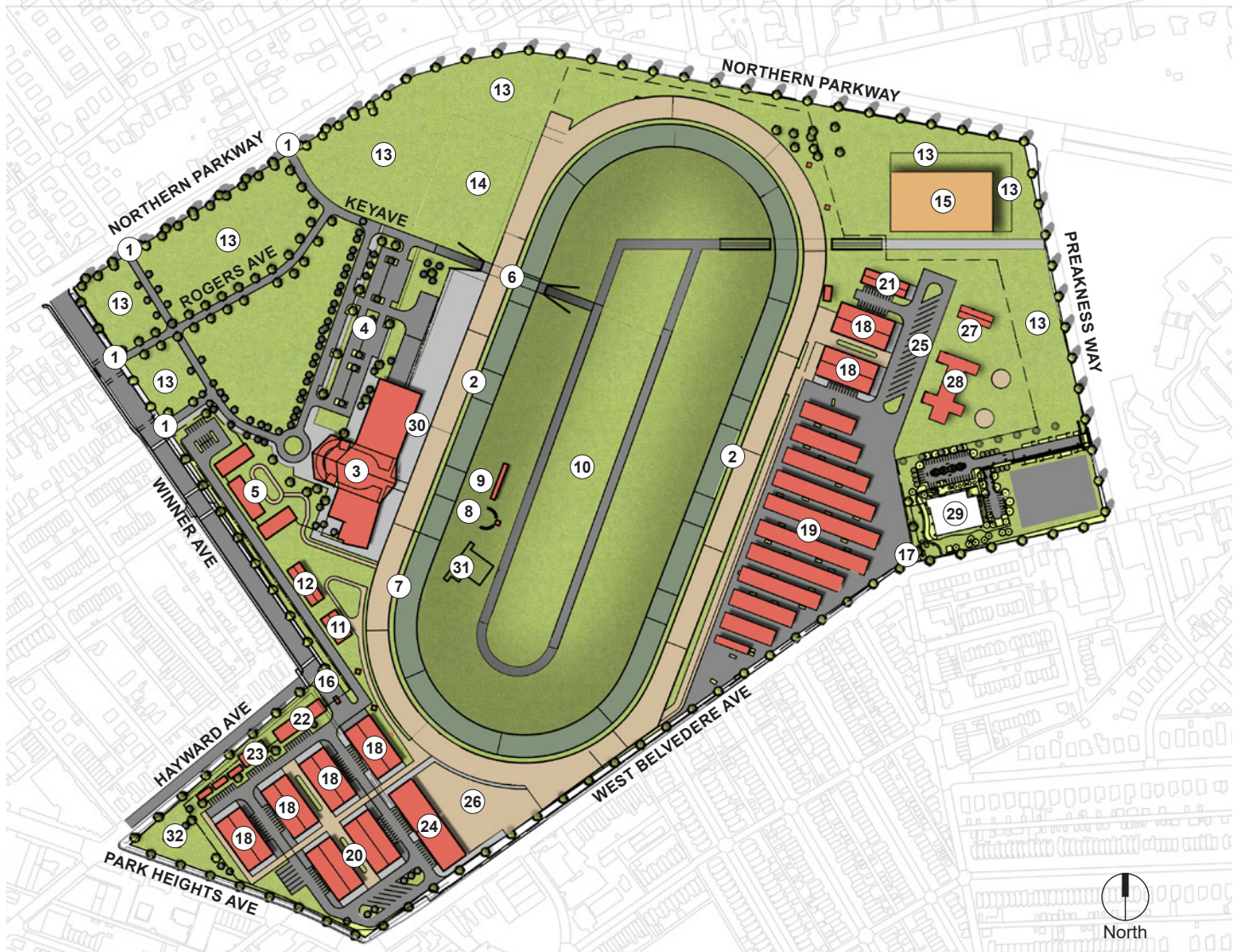


Preakness Program

The original target for Preakness capacity in multiple previous studies was 70,000 people.

TOTAL SITE/ FESTIVAL CAPACITY		71,000
CLUBHOUSE		TOTAL CAPACITY: 16,200
INDOOR ASSEMBLY		
Level 01 - OTB Simulcast	4,400	300
Level 01 - Bar	3,100	200
Level 01 - Flex Assembly / Bet Hall	9,300	500
Level 01 - Boxes	4,500	250
Level 02 - Flex Hall	4,600	230
Level 02 - Boxes	3,400	180
Level 02 - Sports Bar Dining & Sports Book	5,900	250
Level 03 - Sports Bar Dining	5,400	150
Level 03 - Upscale Dining / VIP	7,000	390
SUB-TOTAL	47,600	2,450
OUTDOOR ASSEMBLY		
Level 01 - Outdoor Terraced Seating	14,500	800
Level 02 - Outdoor Terraced Seating	7,450	330
Level 03 - Outdoor Terraced Seating	4,300	470
Level 03 - Open Terrace / VIP	5,000	250
Rooftop	19,000	900
Apron	47,700	6,500
Hotel Apron	40,200	4,500
SUB-TOTAL	138,150	13,750
INFIELD OVERLAY		
VIP HOMESTRETCH		4,800
INFIELD TURN 1		5,000
INFIELD TURN 3		5,000
INFIELD FESTIVAL		40,000
SUB-TOTAL		54,800

Pimlico Option 01



Key

- | | | |
|---|--|--|
| ① Primary Entry | ⑪ Test Barn (4 Stalls) | ⑳ Renovated Stall Barns
+320 Stalls Total |
| ② Tracks (1 mile Dirt + 7 furlong Turf) | ⑫ Holding / Assembly Barn (14 stalls) | ㉑ Stall Barn (40 stalls Each)
+240 Stalls Total |
| ③ Clubhouse & Paddock | ⑬ Future Development Parcels
+12.75 total acres | ㉒ Receiving Barns (80 stalls) |
| ④ Paved Parking | ⑭ Future Hotel Parcel (2.5 acres) | ㉓ Pony Barn (16 stalls) |
| ⑤ Preakness Compound (20 stalls) | ⑮ Future Parking Garage
+200 cars/floor | ㉔ Racing Office |
| ⑥ Tunnel #1 Vehicular | ⑯ Backstretch Entry | ㉕ Track Kitchen |
| ⑦ Tunnel #2 Pedestrian | ⑰ Service / Emergency Entry | ㉖ Track & Site Maintenance |
| ⑧ Preakness Winner's Circle | ⑱ Stall Barn (40 stalls Each)
+240 Stalls Total | ㉗ Trailer Parking |
| ⑨ Tote / Video Board | ㉒ Renovated Stall Barns
+320 Stalls Total | ㉘ Harrow Yard |
| ⑩ Infield | ㉓ Receiving Barns (80 stalls) | ㉙ Isolation Barn (12 stalls) |
| | | ㉚ Veterinary Center |
| | | ㉛ Lifebridge Center for Hope |
| | | ㉜ Apron |
| | | ㉝ Existing Chalet |
| | | ㉞ Future Public Park Parcel
+0.75 total acres |

The 110-acre Pimlico Race Course site is located primarily within residential neighborhoods, and is bordered by Sinai Hospital on the east. In 2016, LifeBridge Health purchased 20 acres from Maryland Jockey Club(MJC) on the east side of Pimlico Road. In 2022, LifeBridge completed construction of the Center for Hope at the corner of Pimlico Road and West Belvedere, utilizing approximately 4-acres of the 20-acres purchased. As a stakeholder in this planning process, LifeBridge favors connectivity to and through a redeveloped Pimlico. LifeBridge has further expressed willingness to exchange real estate and adapt their plan to enable the redevelopment of the Pimlico site as proposed, which could include the remaining 16-acres purchased from the MJC.

Given the changes in the proposed redevelopment program for Pimlico, specifically the desire to be a year around racing and training venue and the desire to house at least half of the required racing program's horses at Pimlico, the consultant team decided to take a step back from previous studies and reconsider changes to the existing track orientation. Although the **pinch points created between the track and Northern Parkway and Belvedere Avenue continue to restrict public circulation around the site and to the LifeBridge Health campus**, the team felt that re-examining the existing site layout could yield new opportunities or potentially significant development cost savings.

As previously determined in the Maryland Stadium Authority's Phase One and Phase Two studies of Pimlico, **all existing facilities, with the exception of the racing barns on the corner of Belvedere and Pimlico Road, have exceeded their service lives and need to be replaced.** This plan does contemplate the **renovation of approximately 320 existing stalls on the backstretch**, with all other facilities being newly constructed.

The tracks would remain in their existing location, orientation and length, however the tracks would be fully reconstructed to correct irregularities in the current geometry and incorporate modern transition turns, in an effort to create the safest possible racing conditions. Additionally, **it is recommended that the outer dirt track be engineered and constructed to be "synthetic-ready" in order to be quickly and economically converted to a synthetic cushion in the future.** The track infield would remain largely as it is today with minor improvements related to supporting the Preakness Stakes event overlay and the addition of a pedestrian tunnel at turn three connecting the infield to the proposed parking structure.

The new clubhouse will be positioned on the finish line roughly in the same location as the existing clubhouse, with an integrated paddock and walking ring as previously described.

Two points of public entry from Northern Parkway take visitors to the main clubhouse entry on the south and to the infield tunnel on the north on Key Avenue. Rogers Avenue would remain in its existing location to support parking and possible future development on the western edge of the site along Northern Parkway. Surface parking sufficient for day-to-day racing and event attendance will be developed adjacent to the new clubhouse. Further down the stretch near the exit of turn four is reserved for the future development of a track-side hotel. Outside of turn three at the intersection of Northern Parkway and Preakness Way is a proposed 1,000 space parking structure, serving both the needs of LifeBridge Health and Pimlico. The parking structure site is sufficient to include commercial/retail wrapping the garage. **Other potential development acreage totals 15.25 acres, which is less than Option 2.**

The remainder of the Pimlico site is required for the racing operations programming, including the 560 racing stables, 80 receiving stalls, 20-stall stakes compound, and other support facilities. **The racing stables include 320 renovated stables and 240 new stables split between the backstretch and the south end of the track at the corner of Hayward and Park Heights. The track pinch point at West Belvedere bifurcates the stable area which is not ideal and the distance from the renovated and new backstretch stables to the holding/test barn and paddock is in excess of one-half mile from the north end, with much of that distance required to be covered on the dirt track which is not ideal.**

This master plan scenario presents several operational, experiential and land-use challenges that cannot be overcome through design:

- 1. The new clubhouse faces a residential neighborhood vs. Northern Parkway making the creation of a grand public entrance difficult.**
- 2. The track orientation creates pinch points at Northern Parkway and Belvedere, making on-site circulation difficult. If presented with this program and site as a greenfield, the consultant team would not orient the tracks as they are in this concept (the existing orientation).**
- 3. The pinch points bifurcate the racing stables, replicating racing operations challenges currently faced at Pimlico, requiring long walking distances to the holding/test barn, paddock, and other facilities.**
- 4. Keeping the tracks in their current location/ orientation does not save redevelopment cost since the tracks must be fully rebuilt in any scenario.**
- 5. The maximum stabling capacity is 560 with 320 being the existing racing stables renovated to maintain the existing layout and capacity. These stalls may be of lower quality than the new racing stables.**

Pimlico Option 02



Key

- | | | |
|---|--|-------------------------------|
| ① Primary Entry | ⑪ Test Barn (4 Stalls) | ⑳ Receiving Barns (80 stalls) |
| ② Tracks (1 mile Dirt + 7 furlong Turf) | ⑫ Holding / Assembly Barn (14 stalls) | ㉑ Pony Barn (16 stalls) |
| ③ Clubhouse & Paddock | ⑬ Future Development Parcels
+13.75 total acres | ㉒ Racing Office |
| ④ Paved Parking | ⑭ Future Hotel Parcel (2.5 acres) | ㉓ Track Kitchen |
| ⑤ Preakness Compound (20 stalls) | ⑮ Future Parking Garage
+200 cars/floor | ㉔ Track & Site Maintenance |
| ⑥ Tunnel #1 Vehicular | ⑯ Backstretch Entry | ㉕ Trailer Parking |
| ⑦ Tunnel #2 Pedestrian | ⑰ Service / Emergency Entry | ㉖ Harrow Yard |
| ⑧ Preakness Winner's Circle | ⑱ Stall Barn (40 stalls Each)
+560 Stalls Total | ㉗ Isolation Barn (12 stalls) |
| ⑨ Tote / Video Board | ㉙ Clocker's Tower | ㉘ Veterinary Center |
| ⑩ Infield | | ㉚ Lifebridge Center for Hope |
| | | ㉛ Apron |

The Pimlico Option Two concept revisits the 2021 master plan developed for the Maryland Stadium Authority. In this original planning concept, the racing operations were focused on the requirements to host the Preakness Stakes and a short racing festival utilizing a haul-in operations scenario for all horses other than those in the Preakness Stakes. The significant change in this Option Two concept is the addition of all the facilities required to support day-to-day training and year around racing operations,

The tracks are rotated to be parallel with Northern Parkway and West Belvedere, eliminating the current pinch points that inhibit on-site and off-site circulation. **The tracks would be fully reconstructed to correct irregularities in the current geometry and also incorporate modern transition turns, all in an effort to create the safest possible racing conditions.** Additionally, it is recommended that the outer dirt track be engineered and constructed to be “synthetic-ready” in order to be quickly and economically converted to a synthetic cushion in the future. The track infield would remain largely as it is today, open ground with infrastructure to supporting the Preakness Stakes event overlay and the addition of a pedestrian tunnel at turn three connecting the infield with the proposed parking structure.

The new clubhouse will be positioned on the finish line with a grand entry road bringing visitors from Northern Parkway directly to the main entry of the clubhouse. A second point of entry from Northern Parkway will take service vehicles and visitors directly to the infield tunnel at the north end of the homestretch. Surface parking sufficient for day-to-day racing and event attendance will be developed adjacent to the new clubhouse and have an alternate entry from Winner Avenue. Further down the stretch near the exit of turn four is reserved for the future development of a track-side hotel. Outside of turn three along Preakness Way is a proposed 1,000 space parking structure which would serve both the needs of LifeBridge Health and Pimlico. The parking structure site is sufficient to include some commercial/retail wrapping the garage if desired. **Other potential development acreage totals 16.25 acres, which is more than Option 1.**

The remainder of the Pimlico site is required for the racing operations programming, including 560 racing stables, 80 receiving stalls, pony barn, holding/test barn, Pimlico Stakes compound, offices, veterinary center, maintenance, harrow yard and other support facilities. **The racing stables area features all new stables in a contiguous zone between the backstretch and West Belvedere.** Walking distance for all horses to the holding/test barn is less than one-half mile on horse paths outside the racing surfaces.

The receiving barns are located near the holding/test barn and paddock for the convenience of the haul-in horses and trainers and separation from the resident horse population. **All of the key support areas including the offices, veterinary center, holding/test and receiving barn are conveniently located between the racing stables and the clubhouse/paddock.**

This master plan scenario is the most efficient use of the available land while also resolving some of the key challenges of the Option 1 concept:

1. **The rotation of the tracks parallel with Northern Parkway and West Belvedere eliminate the pinch points both inside the site and in the public right of way.**
2. **The rotation of the tracks allows the new clubhouse entry to face Northern Parkway and the development of a grand entry experience.**
3. **The stable area features all new facilities within a contiguous zone with the farthest stable within one-half mile from the paddock.**
4. **The receiving barns can be better situated for easy day-of-racing access and separation from the resident horse population.**
5. **The veterinary center, stable offices, holding/test and other racing ops support spaces are better centralized and accessible in the Option 2 plan.**
6. **The potential development parcels along Northern Parkway are more uniform and the available acreage is at least one acre greater than the Option 1 concept.**





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Cost Estimates

Cost Estimates

The level of pricing of this cost estimate is representative of current day costs of construction for each of the proposed sites located in the Maryland area. It assumes a fair and reasonable rate of return for overhead and profit for the general contractor and subcontractors.

This cost estimate has been developed for comparative purposes and measurements are based on approximate quantity surveys as detailed as possible, relative to the level of design and available documentation. Where quantities are not available, assumptions have been made on historical references to similar projects recently estimated by RLB.

This cost estimate is an opinion of probable costs based on fair market value and is not a prediction of the anticipated low bid. RLB has no control over the costs of labor, material, the GC's or any subcontractor's method of determining price or competitive bidding and market conditions.

Assumptions: It is assumed construction will take place during normal hours.
Project will be bid by two separate contractors.
Procurement will be CM at risk.

Contingency: We include 10% for design contingency. This percentage will decrease as the design progresses.

Escalation: We include escalation to the start of construction. Escalation will be calculated using 6.5% per annum for 2023, 4.5% per annum for 2024 and 3.5% per annum for 2025. With an anticipated construction start date of 6/2025 for Pimlico, escalation is calculated at 7.32%. With an anticipated construction start date of 7/2024 for the training sites, escalation is calculated at 3.7%.

Exclusions: We do not include the following items in this estimate:

- Architectural Design Fees or other consultant fees.
- Site Acquisition Costs
- Impact or other Government costs.
- Costs resulting from owner requested changes or design changes.
- Utility company charges.
- Rock excavation.
- Any special testing requirements or inspection costs.
- Owner's commissioning/testing agent/third party services
- Swing space.
- Office/Dining/Bar furniture and equipment.
- Audio/visual devices, wiring, equipment. (rough-ins are included)
- Incoming fiber optics to site
- BGE transformers or primary circuits
- Sports betting equipment/system.
- Broadcasting/video/Scoreboard system & equipment.
- Timing System.
- Parking/event payment systems.
- After hours work.
- Historic preservation.
- Traffic light work.
- Starter equipment.
- Horse equipment (scales, etc.)
- Site Furnishings (benches, trash receptacles, bus shelter)
- Chalet relocation
- Artwork.

Additional

Considerations: The following items are not included in the cost estimates but have been priced for reference:

- Parking Garage (MEDCO Partnership) = \$29,205,000
- Workforce Housing (DCHD Partnership) = \$25,000,000 for 150 rooms

Pimlico Option 01		
Item	Cost	Comments
Demolition	\$11,219,967	
Clubhouse & Paddock	\$87,054,862	
New Racing & Training Barns	\$9,146,340	240 Stalls
Renovated Racing & Training Barns	\$7,090,000	320 Stalls in existing barns
Other Fixed Structures	\$18,982,520	Backstretch buildings, tunnels, Preakness compound, etc
Earthwork & Erosion Control	\$4,846,083	
Racetracks (Existing Orientation)	\$12,546,919	Includes tote/video board. Costs for irrigation, drainage & synthetic ready base are included in Site Development
Site Development	\$47,956,472	Utilities, lighting, irrigation, landscaping, paving, etc
Sub-Total	\$198,843,163	
General Requirements	\$2,584,961	
General Conditions	\$10,071,406	
Escalation	\$15,481,766	
Design Contingency	\$22,698,130	
Bonds & Insurance	\$4,494,230	
Construction Manager Fee	\$7,625,210	
Construction Contingency	\$13,089,943	
Sub-Total	\$76,045,646	
TOTAL	\$274,888,809	

Pimlico Option 02		
Item	Cost	Comments
Demolition	\$11,336,985	Includes demolition of all buildings
Clubhouse & Paddock	\$87,054,862	
Racing & Training Barns	\$21,341,460	560 New Stalls in New Stall Barns
Other Fixed Structures	\$19,875,581	Backstretch buildings, tunnels, Preakness compound, etc
Earthwork & Erosion Control	\$4,796,970	
Racetracks (Rotated)	\$12,591,999	Includes tote/video board. Costs for irrigation, drainage & synthetic ready base are included in Site Development
Site Development	\$47,826,771	Utilities, lighting, irrigation, landscaping, paving, etc
Sub-Total	\$204,824,628	
General Requirements	\$2,662,720	
General Conditions	\$10,374,367	
Escalation	\$15,947,478	
Design Contingency	\$23,380,919	
Bonds & Insurance	\$4,629,422	
Construction Manager Fee	\$7,854,586	
Construction Contingency	\$13,483,706	
Sub-Total	\$78,333,199	
TOTAL	\$283,157,826	

Training Center Sites

Mitchell Farm		
Item	Cost	Comments
Demolition	\$210,737	
Clubhouse	\$6,739,850	
Racing & Training Barns	\$24,390,240	640 Stalls
Other Fixed Structures	\$11,353,260	Includes Vehicular and Equine Tunnels
Earthwork & Erosion Control	\$3,325,729	
Racetracks	\$10,951,488	Costs for irrigation, drainage & synthetic ready base are included in Site Development
Site Development	\$29,364,037	
Sub-Total	\$84,671,085	
General Requirements	\$1,100,724	
General Conditions	\$4,288,590	
Escalation	\$3,332,235	
Design Contingency	\$9,339,263	
Bonds & Insurance	\$1,849,174	
Construction Manager Fee	\$3,137,432	
Construction Contingency	\$5,385,925	
Sub-Total	\$28,433,343	
TOTAL	\$113,104,428	

Shamrock Farm		
Item	Cost	Comments
Demolition	\$462,839	
Clubhouse	\$6,739,850	
Racing & Training Barns	\$24,390,240	640 Stalls
Other Fixed Structures	\$7,066,260	No tunnels
Earthwork & Erosion Control	\$8,501,876	
Racetracks	\$10,776,888	Costs for irrigation, drainage & synthetic ready base are included in Site Development
Site Development	\$28,986,913	
Sub-Total	\$86,924,866	
General Requirements	\$1,130,023	
General Conditions	\$4,402,744	
Escalation	\$3,420,932	
Design Contingency	\$9,587,857	
Bonds & Insurance	\$1,898,396	
Construction Manager Fee	\$3,220,945	
Construction Contingency	\$5,529,288	
Sub-Total	\$29,190,185	
TOTAL	\$116,115,051	

Bowie Option 01		
Item	Cost	Comments
Demolition	\$574,619	
Clubhouse	\$6,739,850	
Racing & Training Barns	\$22,865,850	<i>600 Stalls (40 less than the other training center options)</i>
Other Fixed Structures	\$12,636,070	<i>Includes Vehicular, Equine & Public Tunnels</i>
Earthwork & Erosion Control	\$5,528,259	
Racetracks	\$10,956,288	<i>Costs for irrigation, drainage & synthetic ready base are included in Site Development</i>
Site Development	\$25,743,368	
Sub-Total	\$85,044,304	
General Requirements	\$1,105,576	
General Conditions	\$4,307,494	
Escalation	\$3,346,932	
Design Contingency	\$9,380,430	
Bonds & Insurance	\$1,857,325	
Construction Manager Fee	\$3,151,262	
Construction Contingency	\$5,409,666	
Sub-Total	\$28,560,685	
TOTAL	\$113,602,978	

Bowie Option 02		
Item	Cost	Comments
Demolition	\$574,619	
Clubhouse	\$6,739,850	
Racing & Training Barns	\$24,390,240	<i>640 Stalls</i>
Other Fixed Structures	\$11,689,260	<i>Includes Vehicular and Equine Tunnels</i>
Earthwork & Erosion Control	\$3,509,295	
Racetracks	\$10,956,288	<i>Costs for irrigation, drainage & synthetic ready base are included in Site Development</i>
Site Development	\$26,801,102	
Sub-Total	\$84,660,654	
General Requirements	\$1,100,589	
General Conditions	\$4,288,062	
Escalation	\$3,331,824	
Design Contingency	\$9,338,113	
Bonds & Insurance	\$1,848,946	
Construction Manager Fee	\$3,137,046	
Construction Contingency	\$5,385,262	
Sub-Total	\$28,429,842	
TOTAL	\$113,090,496	





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Appendix & Resources

Training Center Site Analysis Data Sources

Bowie

GIS Document Research

- Collected
 - + State of Maryland GIS (Natural Resource Data)
 - + Prince George's County GIS (WSSC Utilities)
- Unavailable
 - + Utilities - Storm Drain, Gas & Dry Utilities
 - + Hazmat
- Other information sources
 - + Site Visit/Survey/Geotech Reports
 - + Previous Facility Managers
 - + Prince George's County (Infrastructure)
 - + MD State Highway Administration
 - + WSSC/Private Utility Companies
 - + Maryland Historic Trust

Mitchell Farm

GIS Document Research

- Collected
 - + State of Maryland GIS (Natural Resource Data)
 - + Harford County GIS (water, sewer)
- Unavailable
 - + Utilities - Storm Drain, Gas & Dry Utilities
 - + Hazmat
- Other information sources
 - + Property Owner
 - + Site Visit/Survey/Geotech Reports
 - + Pending Site Development Plans
 - + Harford County (Infrastructure)
 - + MD State Highway Administration
 - + Private Utility Companies
 - + Maryland Historic Trust

U.S. Naval Academy Dairy Farm

GIS Document Research

- Collected
 - + State of Maryland GIS (Natural Resource Data)
 - + Anne Arundel County GIS (water, sewer, storm)
 - + Maryland Horsepark Study (circa 2005)
- Unavailable
 - + Utilities - Dry Utilities
 - + Hazmat
- Other information sources
 - + Site Visit/Survey/Geotech Reports
 - + USNA/DOD Site Managers
 - + AnnCounty (Infrastructure)
 - + MD State Highway Administration
 - + Private Utility Companies
 - + Maryland Historic Trust

Fair Hill

GIS Document Research

- Collected
 - + State of Maryland GIS (Natural Resource Data)
 - + Cecil County GIS (WSSC Utilities)
 - + MD DNR Special Event Zone Construction Documents
- Unavailable
 - + Utilities - Dry Utilities
 - + Hazmat
- Other information sources
 - + Site Visit/Survey/Geotech Reports
 - + MD DNR Site Managers
 - + Existing Training Facility Managers
 - + Cecil County (Infrastructure)
 - + MD State Highway Administration
 - + MES (Fire Suppression System)
 - + MDE (Water Appropriations)
 - + Private Utility Companies
 - + Maryland Historic Trust

Shamrock Farm

GIS Document Research

- Collected
 - + State of Maryland GIS (Natural Resource Data)
 - + Carroll County GIS (Utilities)
- Unavailable
 - + Utilities - Storm Drain, Gas & Dry Utilities
 - + Hazmat
- Other information sources
 - + Site Visit/Survey/Geotech Reports
 - + Property Owner
 - + Carroll County (Infrastructure)
 - + MD State Highway Administration
 - + Maryland Historic Trust

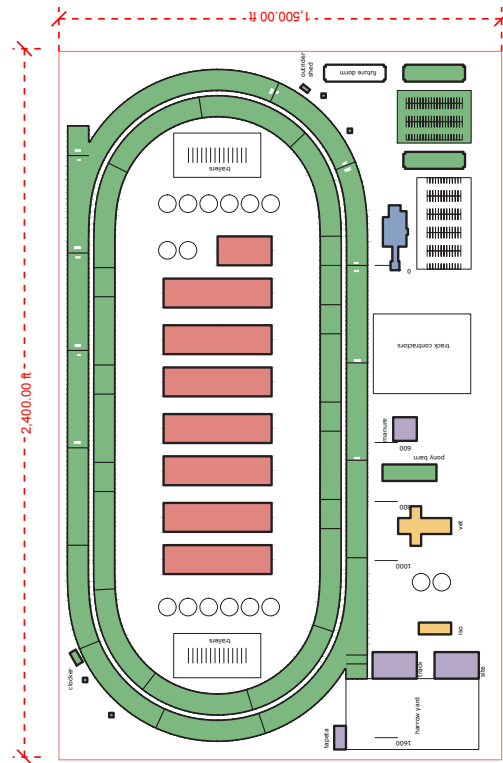
Minimum Training Center Site - 85 acres

When the Mitchell Farm property was proposed to be a candidate site for further study, there was only around 64 acres that was initially available. The design team studied what the minimum acreage would be to accommodate a 1 mile track, stables for 600 racing and training horses and the other recommended training center program to accommodate those horses and horsemen. It was determined that approximately 85 acres was the bare minimum.

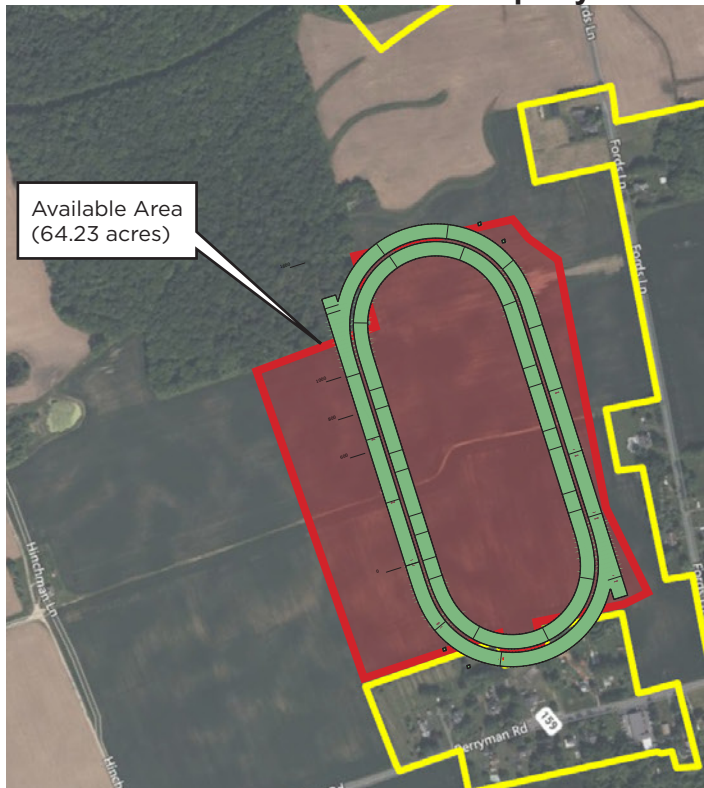
Through discussions with the owner the team learned that the originally proposed mega-warehouse district was not well received by the community and that the owner was revising his plan to accommodate light industrial. At the time of the report the development is under a moratorium and can't move forward without approval from the community, which would like to see preservation of green space and non-industrial projects. These factors has loosened the owner's restriction of the development site so while we studied the 85-acre option, it was not ideal due to wetland and natural resource mitigation requirements.

A larger site boundary gives the property more flexibility in laying out the track and program components. With around 100 acres of available land, there's potential for growth. The design team and other sources feel there may be more acreage to add to this candidate site to help the landowner sell/lease the remainder of the property.

Toolkit Test Fit



Mitchell Farm Initial Available Property



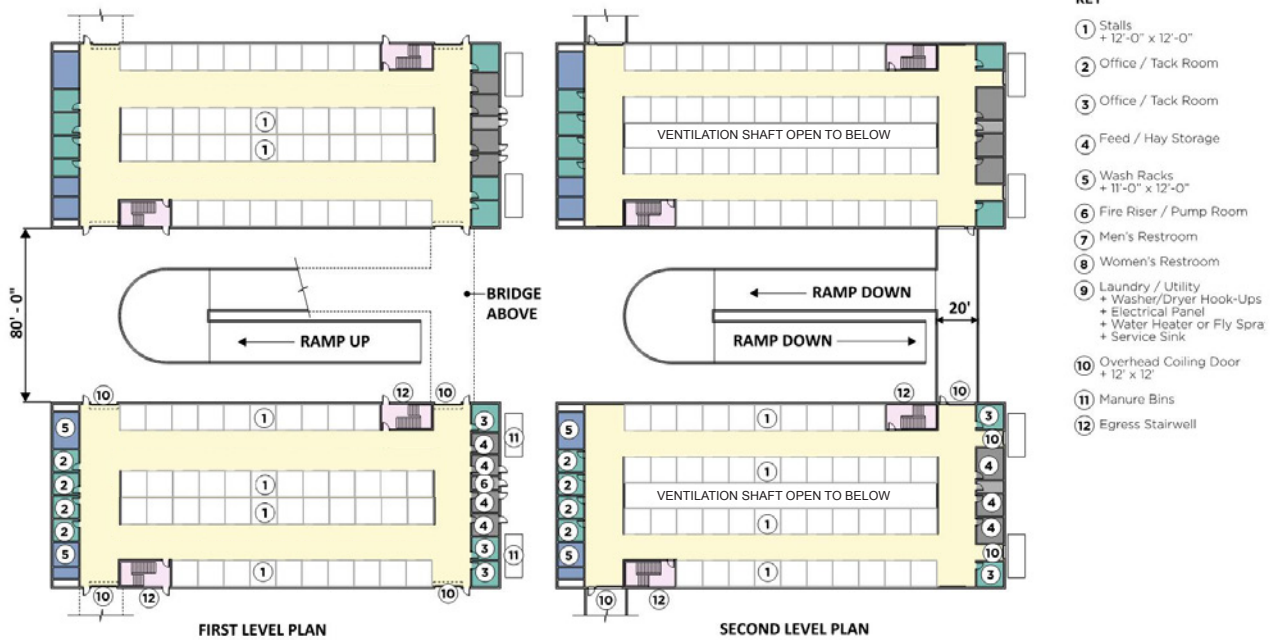
Mitchell Farm 85 acre option



Two-Story Barn Study

88 Stall 2-Level Racing/Training Barn Plan

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Maryland Thoroughbred Racetrack Operating Authority Consultant Team Update 09.08.23

POPULOUS

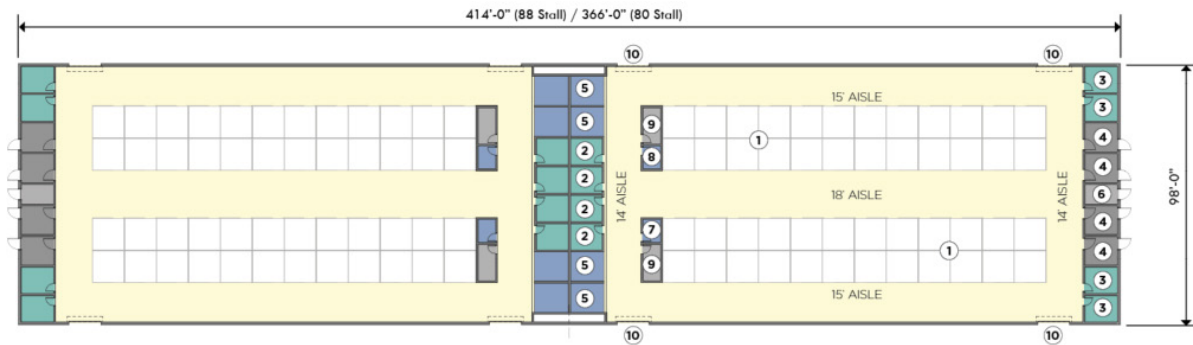
88 Stall 2-Level Racing/Training Barn



Maryland Thoroughbred Racetrack Operating Authority Consultant Team Update 09.08.23

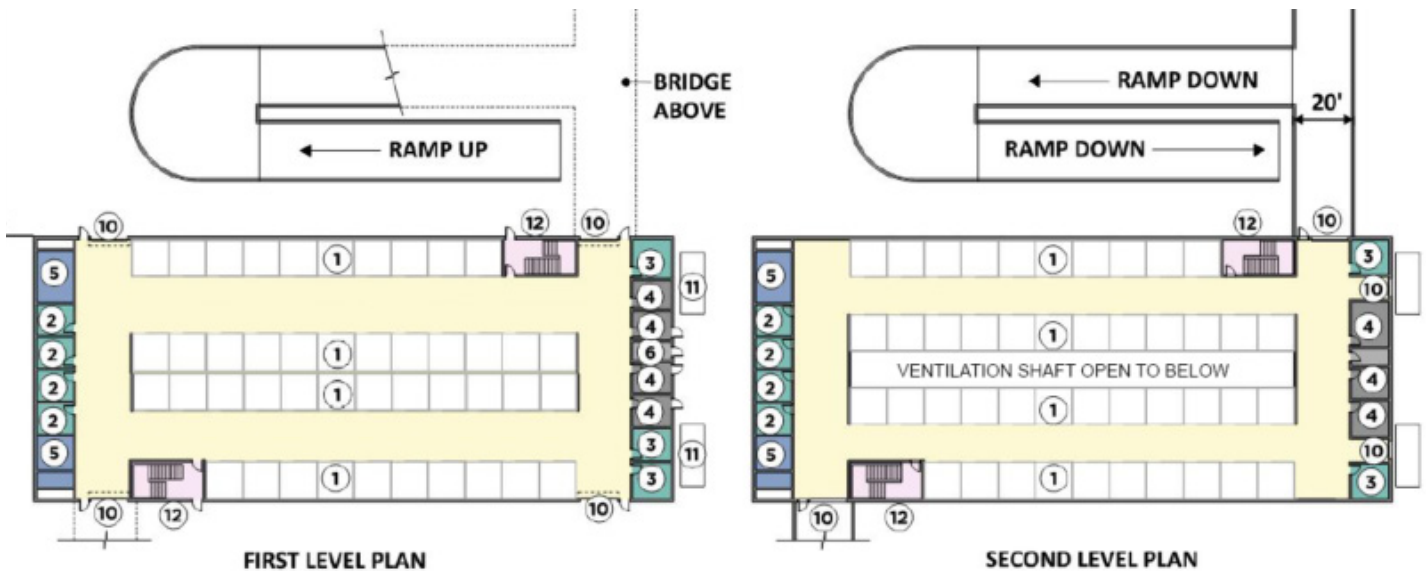
POPULOUS

Two-Story vs. One-Story Barn Cost Comparison



Single Level Pre-Engineered Structure / Fabric Roof

\$39,032/stall
1,000 Stalls = \$39,032,000

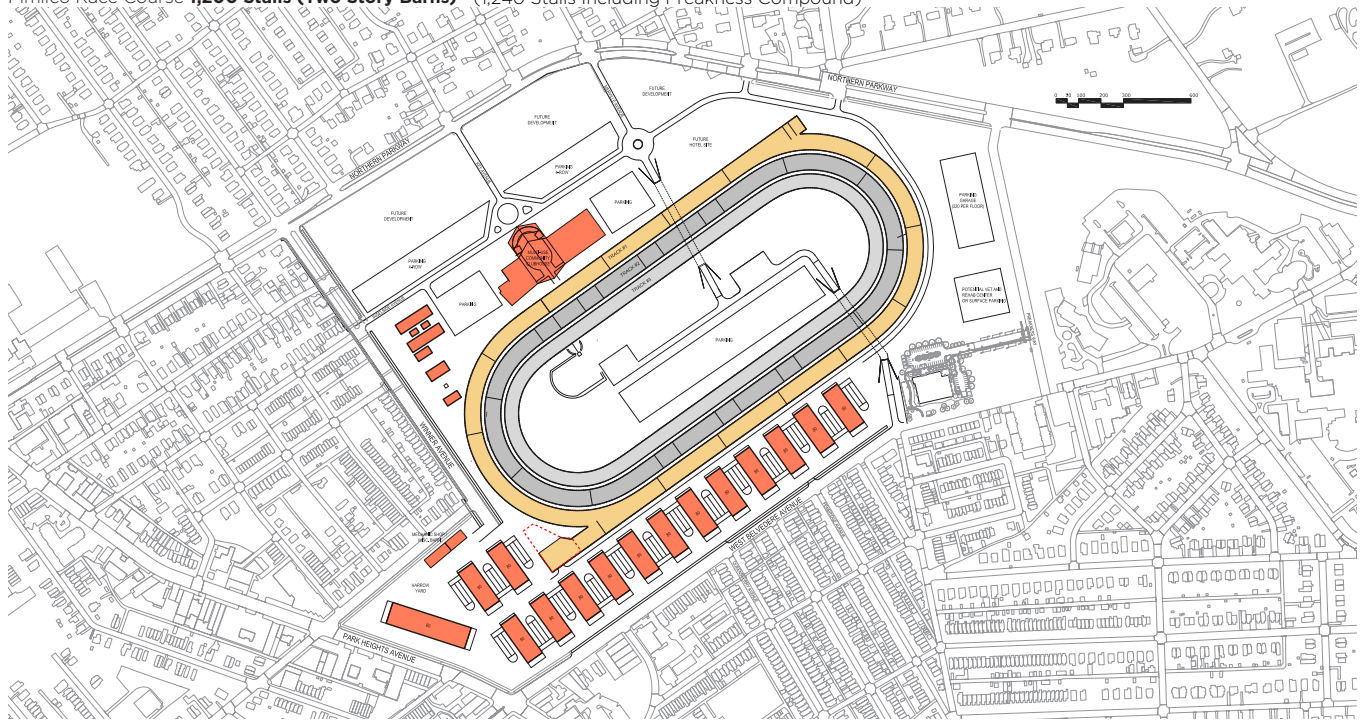


Two Level Concrete Structure / Pre-Engineered Roof

\$65,873/stall
1,000 Stalls = \$65,873,000
Delta = \$26,841,000

Pimlico Studies

Pimlico Race Course **1,200 Stalls (Two Story Barns)** (1,240 Stalls Including Preakness Compound)

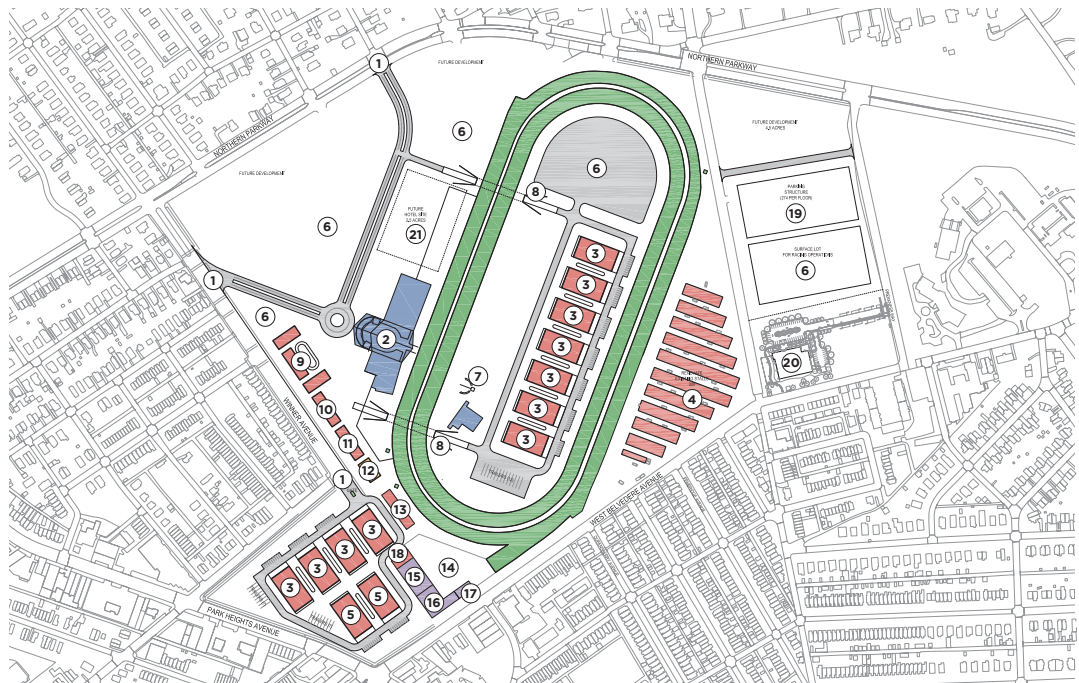


Maryland Thoroughbred Racetrack Operating Authority Consultant Team Update 09.08.23

POPULOUS

Pimlico Race Course **Non-Rotated Track - 894 Stalls**

- KEY**
- 1 Primary Points of Entry
 - 2 Clubhouse
 - 3 Stall Barn (40 Stalls Each)
+440 Stalls Total
 - 4 Renovated Stall Barns
+320 Stalls Total
 - 5 Receiving Barn (80 Stalls)
 - 6 Paved Parking Lot
 - 7 Preakness Winner's Circle
 - 8 Infield Tunnel
 - 9 Preakness Compound (20 Stalls)
 - 10 Pony Barn (16 Stalls)
 - 11 Holding Barn (14 Stalls)
 - 12 Test Barn/ Vet Building (4 Stalls)
 - 13 Racing Office
 - 14 Harrow Yard (1.4 acres)
 - 15 Track Maintenance
 - 16 Site Maintenance
 - 17 Tapeta
 - 18 Kitchen
 - 19 Parking Structure (288 per floor)
 - 20 Lifebridge Center for Hope
 - 21 Future Hotel Site (2.5 acres)



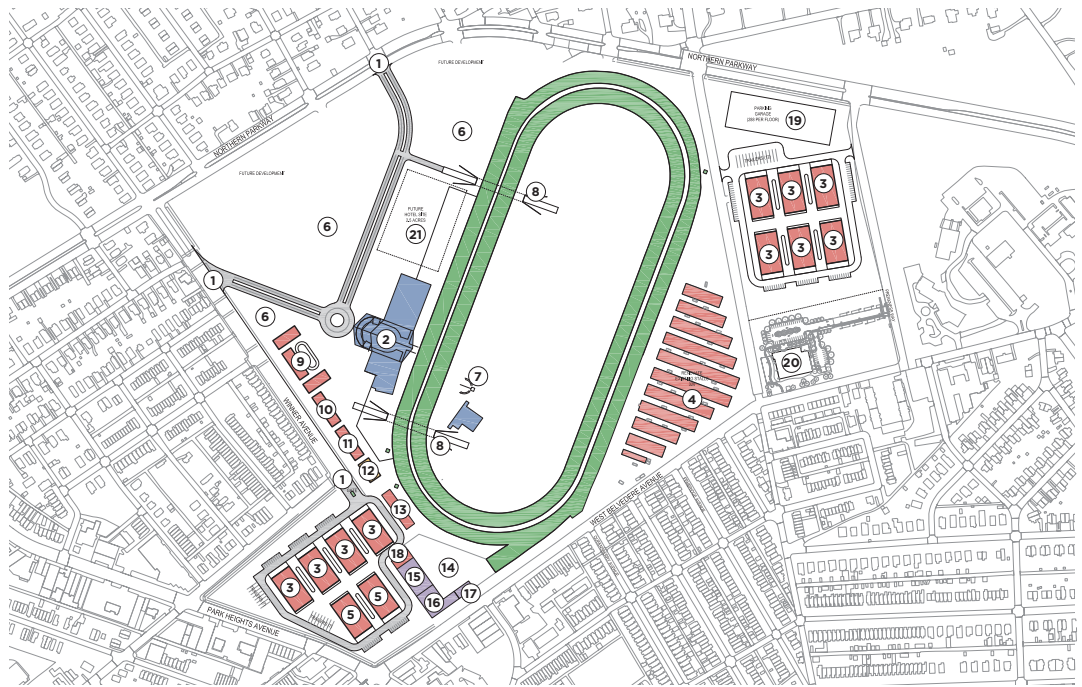
Maryland Thoroughbred Racetrack Operating Authority Site Plan 10.5.23

POPULOUS

Pimlico Race Course **Non-Rotated Track - 854 Stalls**

KEY

- 1 Primary Points of Entry
- 2 Clubhouse
- 3 Stall Barn (40 Stalls Each)
+400 Stalls Total
- 4 Renovated Stall Barns
+320 Stalls Total
- 5 Receiving Barn (80 Stalls)
- 6 Paved Parking Lot
- 7 Preakness Winner's Circle
- 8 Infield Tunnel
- 9 Preakness Compound (20 Stalls)
- 10 Pony Barn (16 Stalls)
- 11 Holding Barn (14 Stalls)
- 12 Test Barn/ Vet Building (4 Stalls)
- 13 Racing Office
- 14 Harrow Yard (1.4 acres)
- 15 Track Maintenance
- 16 Site Maintenance
- 17 Tapeta
- 18 Kitchen
- 19 Parking Structure (288 per floor)
- 20 Lifebridge Center for Hope
- 21 Future Hotel Site (2.5 acres)



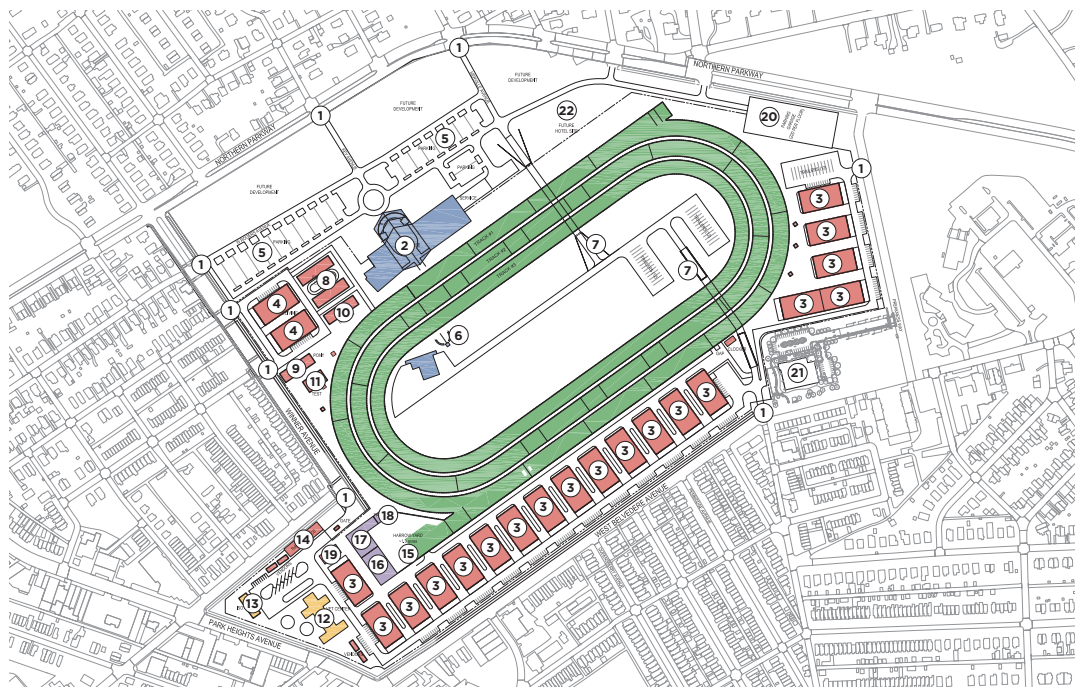
Maryland Thoroughbred Racetrack Operating Authority Site Plan 10.5.23

POPULOUS

Pimlico Race Course **902 Stalls**

KEY

- 1 Primary Points of Entry
- 2 Clubhouse
- 3 Stall Barn (40 Stalls Each)
+760 Stalls Total
- 4 Receiving Barn (80 Stalls)
- 5 Paved Parking Lot
- 6 Preakness Winner's Circle
- 7 Infield Tunnel
- 8 Preakness Compound (20 Stalls)
- 9 Pony Barn (16 Stalls)
- 10 Holding Barn (14 Stalls)
- 11 Test Barn (4 Stalls)
- 12 Vet Center
- 13 Isolation Barn (8 Stalls)
- 14 Racing Office
- 15 Harrow Yard (1.3 acres)
- 16 Track Maintenance
- 17 Site Maintenance
- 18 Tapeta
- 19 Kitchen
- 20 Parking Structure (220 per floor)
- 21 Lifebridge Center for Hope
- 22 Future Hotel Site



Maryland Thoroughbred Racetrack Operating Authority Site Plan 10.5.23

POPULOUS

ATTACHMENT D

MBE INSTRUCTIONS AND FORMS

Attachment D. Minority Business Enterprise (MBE) Forms

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

PART 1 - INSTRUCTIONS

PLEASE READ BEFORE COMPLETING THIS DOCUMENT

This form includes Instructions and the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule which must be submitted with the bid/proposal. If the bidder/offeror fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award unless the inaccuracy is determined to be the result of a minor irregularity that is waived or cured in accordance with COMAR 21.06.02.04.

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

MBE participation goal, including up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the Contract.

- ✓ In order to receive credit for self-performance, an MBE prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE prime is self-performing and include information regarding the work it will self-perform.
 - ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.
 - ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime's ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
 - ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the contract has subgoals, regardless of MBE Prime's ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to use other MBEs for each of any remaining subgoals or request a waiver. As set forth in Attachment 1-B Waiver Guidance, the MBE Prime's ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
 - ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to the Governor's Office of Small Minority & Women Business Affairs' website for the MBE Prime Regulations Q&A for illustrative examples.
http://www.goMDsmallbiz.maryland.gov/Documents/MBE_Toolkit/MBEPrimeRegulation_QA.pdf
6. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the Contract that the certified MBE performs with its own forces toward fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.
7. The work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.
8. **Materials and Supplies: New Guidelines Regarding MBE Participation.**
- ✓ Regular Dealer (generally identified as a wholesaler or supplier in the MDOT Directory): Up to 60% of the costs of materials and supplies provided by a certified MBE may be counted towards the MBE participation goal(s) if such MBE is a Regular Dealer of such materials and supplies. Regular Dealer is defined as a firm that owns, operates, or maintains a store, a warehouse, or any other establishment in which the materials, supplies, articles, or equipment are of the general character described by the specifications required under the contract and are bought, kept in stock, or regularly sold or leased to the

public in the usual course of business; and does not include a packager, a broker, a manufacturer's representative, or any other person that arranges or expedites transactions.

Example for illustrative purposes of applying the 60% rule:

Overall contract value: \$2,000,000

Total value of supplies: \$100,000

Calculate Percentage of Supplies to overall contract value: \$100,000 divided by \$2,000,000 = 5%

Apply 60% Rule - Total percentage of Supplies/Products 5% 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.

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

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

10. CAUTION: The percentage of MBE participation, computed using the percentage amounts determined for all of the MBE firms listed in PART 3, MUST meet or exceed the MBE participation goal and subgoals (if applicable) as set forth in PART 2- for this solicitation. If a bidder/offeror is unable to meet the MBE participation goal or any subgoals (if applicable), then the bidder/offeror must request a waiver in PART 2 or the bid will be deemed not responsive, or the proposal not reasonably susceptible of being selected for award. You may wish to use the attached Goal/Subgoal Worksheet to assist in calculating the percentages and confirming that your commitment meets or exceeds the applicable MBE participation goal and subgoals (if any).

11. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT's Office of Minority Business Enterprise at 1-

800-544-6056 or via email to mbe@mdot.state.md.us sufficiently prior to the submission due date.

Subgoals (if applicable)

Total African American MBE Participation:	_____	%
Total Asian American MBE Participation:	_____	%
Total Hispanic American MBE Participation:	_____	%
Total Women-Owned MBE Participation:	_____	%

Overall Goal

Total MBE Participation (include all categories):	_____	%
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**PART 2 - MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT &
MBE PARTICIPATION SCHEDULE**

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

In connection with the bid/proposal submitted in response to Construction Management Services- Redevelopment of Pimlico Racing Facility, I affirm the following:

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

I acknowledge and intend to meet IN FULL both the overall certified Minority Business Enterprise (MBE) participation goal of 32 percent and all of the following subgoals:

- 8 percent for African American-owned MBE firms
- percent for Hispanic American-owned MBE firms
- percent for Asian American-owned MBE firms
- 11 percent for Women-owned MBE firms

Therefore, I am not seeking a waiver pursuant to COMAR 21.11.03.11. I acknowledge that by checking the above box and agreeing to meet the stated goal and subgoal(s), if any, I **must** complete PART 3 - MBE Participation Schedule and Part 4 Signature Page in order to be considered for award.

OR

After making good faith outreach efforts prior to making this submission, I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals I acknowledge that by checking this box and requesting a partial waiver of the stated goal and/or one or more of the stated subgoal(s) if any, I **must** complete Part 3, the MBE Participation Schedule and Part 4 Signature Page for the portion of the goal and/or subgoal(s) if any, for which I am not seeking a waiver, in order to be considered for award. I acknowledge that by checking this box and requesting a full waiver of the stated goal and the stated subgoal(s) if any, I **must** complete Part 4 Signature Page in order to be considered for award.

Additional MBE Documentation

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

- (a) Good Faith Efforts Documentation to Support Waiver Request (Attachment D-1C)
- (b) Outreach Efforts Compliance Statement (Attachment D-2);
- (c) MBE Subcontractor/MBE Prime Project Participation Statement (Attachments D-3A and 3B);
- (d) Any other documentation, including additional waiver documentation if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal and subgoals, if any.

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

Information Provided to MBE firms

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

PART 3 - MBE PARTICIPATION SCHEDULE

SET FORTH BELOW ARE THE (I) CERTIFIED MBEs I INTEND TO USE, (II) THE PERCENTAGE OF THE TOTAL CONTRACT VALUE ALLOCATED TO EACH MBE FOR THIS PROJECT AND, (III) THE ITEMS OF WORK EACH MBE WILL PROVIDE UNDER THE CONTRACT. I HAVE CONFIRMED WITH THE MDOT DATABASE THAT THE MBE FIRMS IDENTIFIED BELOW (INCLUDING ANY SELF-PERFORMING MBE PRIME FIRMS) ARE PERFORMING WORK ACTIVITIES FOR WHICH THEY ARE MDOT-CERTIFIED.

Prime Contractor	Project Description	Project/Contract Number
	CM Srvcs- Redevelopment of Pimlico Racing Facility	

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

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

<p>MBE Prime Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____% Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p>Percentage of total Contract Value to be performed with own forces and counted towards the subgoal, if any, for my MBE classification (up to 100% of not more than one subgoal): _____%</p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%) <input type="checkbox"/> Manufacturer (count 100%) <input type="checkbox"/> Broker (count reasonable fee/commission only) <input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work your firm is self-performing to calculate amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</p> <p>A. Percentage amount of subcontract where the MBE Prime firm is being used for manufacturer, furnish and install, and/or services (excluding products / services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p>B. Percentage amount for items of work where the MBE Prime firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule). Total percentage of Supplies/Products ___% x 60% = ___%</p> <p>C. Percentage amount of fee where the MBE Prime firm is being used as broker (count reasonable fee/commission only) ___%</p> <p>Description of the work to be performed with MBE prime's own forces: _____ _____</p>
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SECTION B: For all Contractors (including MBE Primes and MBE Primes in a Joint Venture)

<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</p> <p>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p>B. Percentage of total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule). Total percentage of Supplies/Products ___% X 60% = ___%</p> <p>C. Percentage amount of fee where the MBE firm is being used as broker (count reasonable fee/commission only) ___%</p> <p>Description of the work to be performed: _____ _____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE Firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</p> <p>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p>B. Percentage of total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule). Total percentage of Supplies/Products ___% X 60% = ___%</p> <p>C. Percentage amount of fee where the MBE firm is being used as broker (count reasonable fee/commission only) ___%</p> <p>Description of the work to be performed: _____ _____</p>

<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that for the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</p> <p>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p>B. Percentage of the total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule). Total percentage of Supplies/Products ___% X 60% = ___%</p> <p>C. Percentage amount of fee where the MBE firm is being used as broker (count reasonable fee/commission only) ___%</p> <p>Description of the work to be performed: _____ _____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</p> <p>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p>B. Percentage of total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule)). Total percentage of Supplies/Products ___% X 60% = ___%</p> <p>C. Percentage amount of fee where the MBE firm is being used as broker ___%</p> <p>Description of the work to be performed: _____ _____</p>

CONTINUE ON SEPARATE PAGE IF NEEDED

PART 4 – SIGNATURE PAGE

**To complete Affidavit committing to MBE(s) or requesting waiver,
Bidder/Offeror must sign below:**

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

Bidder/Offeror Name
(PLEASE PRINT OR TYPE)

Signature of Authorized Representative

Address

Printed Name and Title

City, State and Zip Code

Date

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

D-1B WAIVER GUIDANCE

GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET MBE PARTICIPATION GOALS

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

I. Definitions

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

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

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

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

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

II. Types of Actions Agency will Consider

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

A. Identify Proposal Items as Work for MBE Firms

1. Identified Items of Work in Procurements

- (a) Certain procurements will include a list of Proposal items identified during the goal setting process as possible work for performance by MBE Firms. If the procurement provides a list of Identified Items of Work, the Offeror shall make all reasonable efforts to solicit quotes from MBE Firms to perform that work.
- (b) Offerors may, and are encouraged to, select additional items of work to be performed by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved.

2. Identified Items of Work by Offerors

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

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

B. Identify MBE Firms to Solicit

1. MBE Firms Identified in Procurements

- (a) Certain procurements will include a list of the MBE Firms identified during the goal setting process as available to perform the items of work. If the procurement provides a list of Identified MBE Firms, the Offeror shall make all reasonable efforts to solicit those MBE firms.
- (b) Offerors may, and are encouraged to, search the MBE Directory to identify additional MBEs who may be available to perform the items of work, such as MBEs certified or granted an expansion of services after the solicitation was issued.

2. MBE Firms Identified by Offerors

- (a) When the procurement does not include a list of Identified MBE Firms, Offerors should reasonably identify the MBE Firms that are available to perform the Identified Items of Work.
- (b) Any MBE Firms identified as available by the Offeror should be certified to perform the Identified Items of Work.

C. Solicit MBEs

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

- (a) provide the written solicitation at least 10 days prior to Proposal opening to allow sufficient time for the MBE Firms to respond;
- (b) send the written solicitation by first-class mail, facsimile, or e-mail using contact information in the MBE Directory, unless the Offeror has a valid basis for using different contact information; and
- (c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE, and other requirements of the contract to assist MBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)

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

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

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

- (a) by telephone using the contact information in the MBE Directory, unless the Offeror has a valid basis for using different contact information; or
- (b) in writing *via* a method that differs from the method used for the initial written solicitation.

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

- (a) attending any pre-Proposal meetings at which MBE Firms could be informed of contracting and subcontracting opportunities; and
- (b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors' groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website.

D. Negotiate with Interested MBE Firms

Offerors must negotiate in good faith with interested MBE Firms.

1. Evidence of negotiation includes, without limitation, the following:
 - (a) the names, addresses, and telephone numbers of MBE Firms that were considered;
 - (b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and
 - (c) evidence as to why additional agreements could not be reached for MBE Firms to perform the work.
2. The Offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.
3. The fact that there may be some additional costs involved in finding and using MBE Firms is not in itself sufficient reason for the Offeror's failure to meet the contract MBE goal(s), as long as such costs are reasonable. Factors to take into consideration when determining whether an MBE Firm's quote is excessive or unreasonable include, without limitation, the following:
 - (a) dollar difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Offeror;
 - (b) percentage difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Offeror;
 - (c) percentage that the MBE subcontractor's quote represents of the overall contract amount;
 - (d) number of MBE firms that the Offeror solicited for that portion of the work;
 - (e) whether the work described in the MBE and Non-MBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and
 - (f) number of quotes received by the Offeror for that portion of the work.
4. The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.
5. The Offeror may not use its price for self-performing work as a basis for rejecting an MBE Firm's quote as excessive or unreasonable.
6. The "average of the other subcontractors' quotes received" by the Offeror refers to the average of the quotes received from all subcontractors. Offeror should attempt to receive quotes from at least three subcontractors, including one quote from an MBE and one quote from a Non-MBE.
7. The Offeror shall not reject an MBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified MBE that is rejected as unqualified or that placed a subcontract quotation or offer that the Offeror concludes is not acceptable, the Offeror must provide a written detailed statement listing the reasons for this conclusion. The Offeror also must document the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
 - (a) The factors to take into consideration when assessing the capabilities of an MBE Firm, include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.
 - (b) The MBE Firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of Proposals in the efforts to meet the project goal.

E. Assisting Interested MBE Firms

When appropriate under the circumstances, the decision-maker will consider whether the Offeror made reasonable efforts to assist interested MBE Firms in obtaining:

1. The bonding, lines of credit, or insurance required by the procuring agency or the Offeror; and
2. Necessary equipment, supplies, materials, or related assistance or services.

III. Other Considerations

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

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

IV. Documenting Good Faith Efforts

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

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

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

B. Outreach/Solicitation/Negotiation

1. The record of the Offeror's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a). **(Complete Outreach Efforts Compliance Statement - D-2).**
2. A detailed statement of the efforts made to contact and negotiate with MBE Firms including:
 - (a) the names, addresses, and telephone numbers of the MBE Firms who were contacted, with the dates and manner of contacts (letter, fax, e-mail, telephone, etc.) **(Complete Good Faith Efforts Attachment D-1C- Part 2, and submit letters, fax cover sheets, e-mails, etc. documenting solicitations);** and
 - (b) a description of the information provided to MBE Firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed and the means used to provide that information.

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

1. For each MBE Firm that the Offeror concludes is not acceptable or qualified, a detailed statement of the reasons for the Offeror's conclusion, including the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
2. For each certified MBE Firm that the Offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the Offeror's conclusion, including the quotes received from all MBE and Non-MBE firms proposing on the same or comparable work. **(Include copies of all quotes received.)**
3. A list of MBE Firms contacted but found to be unavailable. This list should be accompanied by an MBE Unavailability Certificate (see **D-1B - Exhibit A** to this Part 1) signed by the MBE contractor or a statement from the Offeror that the MBE contractor refused to sign the MBE Unavailability Certificate.

D. Other Documentation

1. Submit any other documentation requested by the Procurement Officer to ascertain the Offeror's Good Faith Efforts.
2. Submit any other documentation the Offeror believes will help the Procurement Officer ascertain its Good Faith Efforts.

D-1B - Exhibit A
MBE Subcontractor Unavailability Certificate

1. It is hereby certified that the firm of _____
(Name of Minority firm)

located at _____
(Number) (Street)

(City) (State) (Zip)

was offered an opportunity to bid on Solicitation No. _____

in _____ County by _____
(Name of Prime Contractor's Firm)

2. _____ (Minority Firm), is either unavailable for the work/service or unable to prepare a Proposal for this project for the following reason(s):

(Signature of Minority Firm's MBE Representative) (Title) (Date)

(MDOT Certification #) (Telephone #)

3. To be completed by the prime contractor if Section 2 of this form is not completed by the minority firm.

To the best of my knowledge and belief, said Certified Minority Business Enterprise is either unavailable for the work/service for this project, is unable to prepare a Proposal, or did not respond to a request for a price Proposal and has not completed the above portion of this submittal.

(Signature of Prime Contractor) (Title) (Date)

D-1C
GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

PAGE __ OF __

Prime Contractor:	Project Description:	PROJECT/CONTRACT
Offeror Company Name, Street Address, Phone		Solicitation #:

Parts 1, 2, and 3 must be included with this certificate along with all documents supporting your waiver request.

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

Company:

Company Name (please print or type)

By:

Signature of Authorized Representative

Printed Name:

Printed Name

Title:

Title

Date:

Date

Address:

Company Address

GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST
PART 1 – IDENTIFIED ITEMS OF WORK OFFEROR MADE AVAILABLE TO MBE FIRMS

PAGE __ OF __

Prime Contractor:	Project Description:	PROJECT/CONTRACT
Offeror Company Name, Street Address, Phone		Solicitation #:

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

Identified Items of Work	Was this work listed in the procurement?	Does Offeror normally self-perform this work?	Was this work made available to MBE Firms? If no, explain why not.
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Please check if Additional Sheets are attached.

GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

PART 2 – IDENTIFIED MBE FIRMS AND RECORD OF SOLICITATIONS

PAGE __ OF __

Prime Contractor:	Project Description:	PROJECT/CONTRACT
<i>Offeror Company Name, Street Address, Phone</i>		Solicitation #:

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

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

Please check if Additional Sheets are attached.

GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST
PART 3 – ADDITIONAL INFORMATION REGARDING REJECTED MBE QUOTES

PAGE __ OF __

Prime Contractor:	Project Description:	PROJECT/CONTRACT NUMBER:
<i>Offeror Company Name, Street Address, Phone</i>		Solicitation #:

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

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

Please check if Additional Sheets are attached.

D- 2
OUTREACH EFFORTS COMPLIANCE STATEMENT

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

In conjunction with the Proposal submitted in response to Solicitation No. _____, I state the following:

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

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

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

4. **Please Check One:**

- This project does not involve bonding requirements.
- Offeror assisted MDOT-certified MBE firms to fulfill or seek waiver of bonding requirements. (DESCRIBE EFFORTS):

5. **Please Check One:**

- Offeror did attend the pre-Proposal conference.
- No pre -Proposal meeting/conference was held.
- Offeror did not attend the pre-Proposal conference.

PLEASE PRINT OR TYPE

Company:

Company Name (please print or type)

By:

Signature of Authorized Representative

Printed Name:

Printed Name

Title:

Title

Date:

Date

Address:

Company Address

D-3A
CERTIFIED MBE SUBCONTRACTOR PARTICIPATION CERTIFICATION

INSTRUCTIONS:

PRIME CONTRACTOR: After completing SECTIONS A, B, and D, provide this form to *each* certified Minority Business Enterprise subcontractor (MBE) listed on the MBE Participation Schedule (Attachment D-1A) allowing sufficient time for the MBE to respond within the required timeframe.

CERTIFIED MBE SUBCONTRACTOR: Complete SECTION C to acknowledge and certify the information in SECTION A. Return the completed form directly to the Procurement Officer identified in SECTION D within 10 days after notice from the Prime Contractor of the State’s intent to award the Contract. Provide a copy to the Prime Contractor.

IF THIS FORM IS NOT RETURNED WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE PRIME CONTRACTOR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.

SECTION A

Provided that (Prime Contractor) _____ is awarded the State contract in conjunction with Solicitation Number _____, (Prime Contractor) _____ intends to enter into a subcontract with (Certified MBE Subcontractor) _____ with MDOT Certification Number _____ committing to participation by (Certified MBE Subcontractor) _____ of at least \$ _____ which equals _____% of the Total Contract Value for the following products/services:

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

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

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

SECTION B – Prime Contractor

Signature of Representative:

Printed Name and Title:

Prime Firm's Name: _____

Federal Identification Number: _____

Street Address, City, State, Zip Code:

Phone: _____

Date: _____

SECTION C – Certified MBE Subcontractor

Signature of Representative:

Printed Name and Title:

MBE Firm's Name: _____

Federal Identification Number: _____

Street Address, City, State, Zip Code:

Phone: _____

Date: _____

SECTION D

This completed form is due to the Procurement Officer on or before: _____

Solicitation #: _____ Solicitation Title: _____

Agency/Dept.: _____ Procurement Officer: _____

Phone: _____ Email: _____

Street Address, City, State, Zip Code:

D-3B
MBE PRIME PROJECT PARTICIPATION CERTIFICATION

Please complete and submit this form to attest to each specific item of work that your MBE firm has listed on the MBE Participation Schedule (Attachment D-1A) for purposes of meeting the MBE participation goals. This form must be submitted within 10 Business Days of notification of apparent award. If the Offeror fails to return this affidavit within the required time, the Procurement Officer may determine that Proposal is not susceptible of being selected for Contract award.

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

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE) For Construction Projects, General Conditions must be listed separately	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES	VALUE OF THE WORK

MBE Prime Contractor

Company: _____

Company Name (please print or type)

FEIN: _____

Federal Identification Number

Company Address: _____

Phone: _____

Printed Name: _____

Title: _____

By: _____

Signature of Authorized Representative

Date: _____

D-4A
Minority Business Enterprise Participation
Prime Contractor Paid/Unpaid Invoice Report

Report #:	Contract #:
Reporting Period (Month/Year):	Contracting Unit:
Prime Contractor: Report is due to the MBE Liaison by the 10th of the month following the month the services were provided. Note: Please number reports in sequence	Contract Amount:
	MBE Subcontract Amt:
	Project Begin Date:
	Project End Date:
	Services Provided:

Prime Contractor:		Contact Person:	
Address:			
City:		State:	ZIP:
Phone:	FAX:	E-mail:	
MBE Subcontractor Name:		Contact Person:	
Phone:	FAX:	E-mail:	
Subcontractor Services Provided:			
List all payments made to MBE subcontractor named above during this reporting period:		List dates and amounts of any outstanding invoices:	
	Invoice #	Amount	
	Invoice #	Amount	
1.			1.
2.			2.
3.			3.
4.			4.
Total Dollars Paid: \$		Total Dollars Unpaid: \$	

- If more than one MBE subcontractor is used for this contract, you must use separate **Attachment D-4A** forms. Information regarding payments that the MBE prime will use for purposes of meeting the MBE participation goals must be reported separately in **Attachment D-4B**.
- **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Contract Monitor Name

Address

Email

Signature (Required)

Contracting Unit

City, State Zip

Phone Number

Date

D-4B
Minority Business Enterprise Participation
MBE Prime Contractor Report

MBE Prime Contractor:	Contract #:
Certification Number:	Contracting Unit:
Report #:	Contract Amount:
Reporting Period (Month/Year):	Total Value of the Work to the Self-Performed for purposes of Meeting the MBE participation goal/subgoals:
MBE Prime Contractor: Report is due to the MBE Liaison by the 10th of the month following the month the services were provided. Note: Please number reports in sequence	Project Begin Date:
	Project End Date:

Contact Person:			
Address:			
City:		State:	
Phone:		FAX:	E-mail:

Invoice Number	Value of the Work	NAICS Code	Description of Specific Products and/or Services

Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):

Contract Monitor Name	Contracting Unit
Address	City, State Zip
Email	Phone Number
Signature (Required)	Date

D-5
Minority Business Enterprise Participation
MBE Subcontractor Paid/Unpaid Invoice Report

Report #:	Contract #:
Reporting Period (Month/Year):	Contracting Unit:
Report is due by the 10th of the month following the month the services were performed.	MBE Subcontract Amt:
	Project Begin Date:
	Project End Date:
	Services Provided:

MBE Subcontractor Name:					
MDOT Certification #:					
Contact Person:					
Address:					
City:			State:		ZIP:
Phone:		FAX:		E-mail:	
Subcontractor Services Provided:					
List all payments received from Prime Contractor during reporting period indicated above.			List dates and amounts of any unpaid invoices over 30 days old.		
	Invoice Amount	Date		Invoice Amount	Date
1.			1.		
2.			2.		
3.			3.		
4.			4.		
Total Dollars Paid: \$			Total Dollars Unpaid: \$		
Prime Contractor:			Contract Person:		

Return one copy of this form to the following addresses (electronic copy with signature and date is preferred):

_____	_____
Contract Monitor Name	Contracting Unit
_____	_____
Address	City, State Zip
_____	_____
Email	Phone Number
_____	_____
Signature (Required)	Date

D-1B WAIVER GUIDANCE

GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET MBE PARTICIPATION GOALS

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

I. Definitions

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

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

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

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

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

II. Types of Actions Agency will Consider

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

A. Identify Proposal Items as Work for MBE Firms

1. Identified Items of Work in Procurements

- (a) Certain procurements will include a list of Proposal items identified during the goal setting process as possible work for performance by MBE Firms. If the procurement provides a list of Identified Items of Work, the Offeror shall make all reasonable efforts to solicit quotes from MBE Firms to perform that work.
- (b) Offerors may, and are encouraged to, select additional items of work to be performed by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved.

2. Identified Items of Work by Offerors

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

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

B. Identify MBE Firms to Solicit

1. MBE Firms Identified in Procurements

- (a) Certain procurements will include a list of the MBE Firms identified during the goal setting process as available to perform the items of work. If the procurement provides a list of Identified MBE Firms, the Offeror shall make all reasonable efforts to solicit those MBE firms.
- (b) Offerors may, and are encouraged to, search the MBE Directory to identify additional MBEs who may be available to perform the items of work, such as MBEs certified or granted an expansion of services after the solicitation was issued.

2. MBE Firms Identified by Offerors

- (a) When the procurement does not include a list of Identified MBE Firms, Offerors should reasonably identify the MBE Firms that are available to perform the Identified Items of Work.
- (b) Any MBE Firms identified as available by the Offeror should be certified to perform the Identified Items of Work.

C. Solicit MBEs

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

- (a) provide the written solicitation at least 10 days prior to Proposal opening to allow sufficient time for the MBE Firms to respond;
- (b) send the written solicitation by first-class mail, facsimile, or e-mail using contact information in the MBE Directory, unless the Offeror has a valid basis for using different contact information; and
- (c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE, and other requirements of the contract to assist MBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)

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

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

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

- (a) by telephone using the contact information in the MBE Directory, unless the Offeror has a valid basis for using different contact information; or
- (b) in writing *via* a method that differs from the method used for the initial written solicitation.

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

- (a) attending any pre-Proposal meetings at which MBE Firms could be informed of contracting and subcontracting opportunities; and
- (b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors' groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website.

D. Negotiate with Interested MBE Firms

Offerors must negotiate in good faith with interested MBE Firms.

1. Evidence of negotiation includes, without limitation, the following:
 - (a) the names, addresses, and telephone numbers of MBE Firms that were considered;
 - (b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and
 - (c) evidence as to why additional agreements could not be reached for MBE Firms to perform the work.
2. The Offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.
3. The fact that there may be some additional costs involved in finding and using MBE Firms is not in itself sufficient reason for the Offeror's failure to meet the contract MBE goal(s), as long as such costs are reasonable. Factors to take into consideration when determining whether an MBE Firm's quote is excessive or unreasonable include, without limitation, the following:
 - (a) dollar difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Offeror;
 - (b) percentage difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Offeror;
 - (c) percentage that the MBE subcontractor's quote represents of the overall contract amount;
 - (d) number of MBE firms that the Offeror solicited for that portion of the work;
 - (e) whether the work described in the MBE and Non-MBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and
 - (f) number of quotes received by the Offeror for that portion of the work.
4. The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.
5. The Offeror may not use its price for self-performing work as a basis for rejecting an MBE Firm's quote as excessive or unreasonable.
6. The "average of the other subcontractors' quotes received" by the Offeror refers to the average of the quotes received from all subcontractors. Offeror should attempt to receive quotes from at least three subcontractors, including one quote from an MBE and one quote from a Non-MBE.
7. The Offeror shall not reject an MBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified MBE that is rejected as unqualified or that placed a subcontract quotation or offer that the Offeror concludes is not acceptable, the Offeror must provide a written detailed statement listing the reasons for this conclusion. The Offeror also must document the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
 - (a) The factors to take into consideration when assessing the capabilities of an MBE Firm, include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.
 - (b) The MBE Firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of Proposals in the efforts to meet the project goal.

E. Assisting Interested MBE Firms

When appropriate under the circumstances, the decision-maker will consider whether the Offeror made reasonable efforts to assist interested MBE Firms in obtaining:

1. The bonding, lines of credit, or insurance required by the procuring agency or the Offeror; and
2. Necessary equipment, supplies, materials, or related assistance or services.

III. Other Considerations

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

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

IV. Documenting Good Faith Efforts

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

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

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

B. Outreach/Solicitation/Negotiation

1. The record of the Offeror's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a). **(Complete Outreach Efforts Compliance Statement - D-2).**
2. A detailed statement of the efforts made to contact and negotiate with MBE Firms including:
 - (a) the names, addresses, and telephone numbers of the MBE Firms who were contacted, with the dates and manner of contacts (letter, fax, e-mail, telephone, etc.) **(Complete Good Faith Efforts Attachment D-1C- Part 2, and submit letters, fax cover sheets, e-mails, etc. documenting solicitations);** and
 - (b) a description of the information provided to MBE Firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed and the means used to provide that information.

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

1. For each MBE Firm that the Offeror concludes is not acceptable or qualified, a detailed statement of the reasons for the Offeror's conclusion, including the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
2. For each certified MBE Firm that the Offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the Offeror's conclusion, including the quotes received from all MBE and Non-MBE firms proposing on the same or comparable work. **(Include copies of all quotes received.)**
3. A list of MBE Firms contacted but found to be unavailable. This list should be accompanied by an MBE Unavailability Certificate (see **D-1B - Exhibit A** to this Part 1) signed by the MBE contractor or a statement from the Offeror that the MBE contractor refused to sign the MBE Unavailability Certificate.

D. Other Documentation

1. Submit any other documentation requested by the Procurement Officer to ascertain the Offeror's Good Faith Efforts.
2. Submit any other documentation the Offeror believes will help the Procurement Officer ascertain its Good Faith Efforts.

D-1B - Exhibit A
MBE Subcontractor Unavailability Certificate

1. It is hereby certified that the firm of _____
(Name of Minority firm)

located at _____
(Number) (Street)

(City) (State) (Zip)

was offered an opportunity to bid on Solicitation No. _____

in _____ County by _____
(Name of Prime Contractor's Firm)

2. _____ (Minority Firm), is either unavailable for the work/service or unable to prepare a Proposal for this project for the following reason(s):

(Signature of Minority Firm's MBE Representative) (Title) (Date)

(MDOT Certification #) (Telephone #)

3. To be completed by the prime contractor if Section 2 of this form is not completed by the minority firm.

To the best of my knowledge and belief, said Certified Minority Business Enterprise is either unavailable for the work/service for this project, is unable to prepare a Proposal, or did not respond to a request for a price Proposal and has not completed the above portion of this submittal.

(Signature of Prime Contractor) (Title) (Date)

D-1C
GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

PAGE __ OF __

Prime Contractor:	Project Description:	PROJECT/CONTRACT
Offeror Company Name, Street Address, Phone		Solicitation #:

Parts 1, 2, and 3 must be included with this certificate along with all documents supporting your waiver request.

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

Company:

Company Name (please print or type)

By:

Signature of Authorized Representative

Printed Name:

Printed Name

Title:

Title

Date:

Date

Address:

Company Address

GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST
PART 1 – IDENTIFIED ITEMS OF WORK OFFEROR MADE AVAILABLE TO MBE FIRMS

PAGE __ OF __

Prime Contractor:	Project Description:	PROJECT/CONTRACT
Offeror Company Name, Street Address, Phone		Solicitation #:

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

Identified Items of Work	Was this work listed in the procurement?	Does Offeror normally self-perform this work?	Was this work made available to MBE Firms? If no, explain why not.
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Please check if Additional Sheets are attached.

GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

PART 2 – IDENTIFIED MBE FIRMS AND RECORD OF SOLICITATIONS

PAGE __ OF __

Prime Contractor:	Project Description:	PROJECT/CONTRACT
<i>Offeror Company Name, Street Address, Phone</i>		Solicitation #:

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

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

Please check if Additional Sheets are attached.

GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST
PART 3 – ADDITIONAL INFORMATION REGARDING REJECTED MBE QUOTES

PAGE __ OF __

Prime Contractor:	Project Description:	PROJECT/CONTRACT NUMBER:
<i>Offeror Company Name, Street Address, Phone</i>		Solicitation #:

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

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

Please check if Additional Sheets are attached.

D- 2
OUTREACH EFFORTS COMPLIANCE STATEMENT

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

In conjunction with the Proposal submitted in response to Solicitation No. _____, I state the following:

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

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

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

4. **Please Check One:**

- This project does not involve bonding requirements.
- Offeror assisted MDOT-certified MBE firms to fulfill or seek waiver of bonding requirements. (DESCRIBE EFFORTS):

5. **Please Check One:**

- Offeror did attend the pre-Proposal conference.
- No pre -Proposal meeting/conference was held.
- Offeror did not attend the pre-Proposal conference.

PLEASE PRINT OR TYPE

Company:

Company Name (please print or type)

By:

Signature of Authorized Representative

Printed Name:

Printed Name

Title:

Title

Date:

Date

Address:

Company Address

D-3A
CERTIFIED MBE SUBCONTRACTOR PARTICIPATION CERTIFICATION

INSTRUCTIONS:

PRIME CONTRACTOR: After completing SECTIONS A, B, and D, provide this form to *each* certified Minority Business Enterprise subcontractor (MBE) listed on the MBE Participation Schedule (Attachment D-1A) allowing sufficient time for the MBE to respond within the required timeframe.

CERTIFIED MBE SUBCONTRACTOR: Complete SECTION C to acknowledge and certify the information in SECTION A. Return the completed form directly to the Procurement Officer identified in SECTION D within 10 days after notice from the Prime Contractor of the State’s intent to award the Contract. Provide a copy to the Prime Contractor.

IF THIS FORM IS NOT RETURNED WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE PRIME CONTRACTOR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.

SECTION A

Provided that (Prime Contractor) _____ is awarded the State contract in conjunction with Solicitation Number _____, (Prime Contractor) _____ intends to enter into a subcontract with (Certified MBE Subcontractor) _____ with MDOT Certification Number _____ committing to participation by (Certified MBE Subcontractor) _____ of at least \$ _____ which equals _____% of the Total Contract Value for the following products/services:

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

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

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

SECTION B – Prime Contractor

Signature of Representative:

Printed Name and Title:

Prime Firm's Name: _____

Federal Identification Number: _____

Street Address, City, State, Zip Code:

Phone: _____

Date: _____

SECTION C – Certified MBE Subcontractor

Signature of Representative:

Printed Name and Title:

MBE Firm's Name: _____

Federal Identification Number: _____

Street Address, City, State, Zip Code:

Phone: _____

Date: _____

SECTION D

This completed form is due to the Procurement Officer on or before: _____

Solicitation #: _____ Solicitation Title: _____

Agency/Dept.: _____ Procurement Officer: _____

Phone: _____ Email: _____

Street Address, City, State, Zip Code:

D-3B
MBE PRIME PROJECT PARTICIPATION CERTIFICATION

Please complete and submit this form to attest to each specific item of work that your MBE firm has listed on the MBE Participation Schedule (Attachment D-1A) for purposes of meeting the MBE participation goals. This form must be submitted within 10 Business Days of notification of apparent award. If the Offeror fails to return this affidavit within the required time, the Procurement Officer may determine that Proposal is not susceptible of being selected for Contract award.

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

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE) For Construction Projects, General Conditions must be listed separately	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES	VALUE OF THE WORK

MBE Prime Contractor

Company:

Company Name (please print or type)

FEIN:

Federal Identification Number

Company Address: _____

 Phone:

 Printed Name:

 Title:

 By:

Signature of Authorized Representative

 Date:

D-4A
Minority Business Enterprise Participation
Prime Contractor Paid/Unpaid Invoice Report

Report #:	Contract #:
Reporting Period (Month/Year):	Contracting Unit:
Prime Contractor: Report is due to the MBE Liaison by the 10th of the month following the month the services were provided. Note: Please number reports in sequence	Contract Amount:
	MBE Subcontract Amt:
	Project Begin Date:
	Project End Date:
	Services Provided:

Prime Contractor:		Contact Person:	
Address:			
City:		State:	ZIP:
Phone:	FAX:	E-mail:	
MBE Subcontractor Name:		Contact Person:	
Phone:	FAX:	E-mail:	
Subcontractor Services Provided:			
List all payments made to MBE subcontractor named above during this reporting period:		List dates and amounts of any outstanding invoices:	
	Invoice #	Amount	
	Invoice #	Amount	
1.			1.
2.			2.
3.			3.
4.			4.
Total Dollars Paid: \$		Total Dollars Unpaid: \$	

- If more than one MBE subcontractor is used for this contract, you must use separate **Attachment D-4A** forms. Information regarding payments that the MBE prime will use for purposes of meeting the MBE participation goals must be reported separately in **Attachment D-4B**.
- **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Contract Monitor Name

Address

Email

Signature (Required)

Contracting Unit

City, State Zip

Phone Number

Date

D-4B
Minority Business Enterprise Participation
MBE Prime Contractor Report

MBE Prime Contractor:	Contract #:
Certification Number:	Contracting Unit:
Report #:	Contract Amount:
Reporting Period (Month/Year):	Total Value of the Work to the Self-Performed for purposes of Meeting the MBE participation goal/subgoals:
MBE Prime Contractor: Report is due to the MBE Liaison by the 10th of the month following the month the services were provided. Note: Please number reports in sequence	Project Begin Date:
	Project End Date:

Contact Person:			
Address:			
City:		State:	
Phone:		FAX:	E-mail:

Invoice Number	Value of the Work	NAICS Code	Description of Specific Products and/or Services

Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):

Contract Monitor Name	Contracting Unit
Address	City, State Zip
Email	Phone Number
Signature (Required)	Date

D-5
Minority Business Enterprise Participation
MBE Subcontractor Paid/Unpaid Invoice Report

Report #:	Contract #:
Reporting Period (Month/Year):	Contracting Unit:
Report is due by the 10th of the month following the month the services were performed.	MBE Subcontract Amt:
	Project Begin Date:
	Project End Date:
	Services Provided:

MBE Subcontractor Name:					
MDOT Certification #:					
Contact Person:					
Address:					
City:			State:		ZIP:
Phone:		FAX:		E-mail:	
Subcontractor Services Provided:					
List all payments received from Prime Contractor during reporting period indicated above.			List dates and amounts of any unpaid invoices over 30 days old.		
	Invoice Amount	Date		Invoice Amount	Date
1.			1.		
2.			2.		
3.			3.		
4.			4.		
Total Dollars Paid: \$			Total Dollars Unpaid: \$		
Prime Contractor:			Contract Person:		

Return one copy of this form to the following addresses (electronic copy with signature and date is preferred):

_____	_____
Contract Monitor Name	Contracting Unit
_____	_____
Address	City, State Zip
_____	_____
Email	Phone Number
_____	_____
Signature (Required)	Date

ATTACHMENT E
CORPORATE PROFILE

Corporate Profile

Firm Contact Information

Firm Name: _____

Federal ID Number: _____

D&B Number: _____

Point of Contact: _____ Phone Number: _____

Regional Office Address: _____

Firm Background Information

Year Firm Founded: _____

Contractor's License #: _____ State: _____ Expiration Date: _____

Bonding Capacity: _____ Available Bond Capacity: _____

Is the firm MDOT MBE and/or SBR Certified? Yes No If certified, provide the certification # and minority status.

Primary Business / Service Provided: _____

Number of Years Performing Construction Management Services: _____

Number Full Time Employees (Corporate / Regional Office): _____ / _____

Provide a brief narrative outlining the firm's history. Elaborate on the firms experience and expertise performing Construction Management at Risk services. Specifically, elaborate on the firms experience completing renovations/additions and/or replacements of large public assembly venues.

Provide sales volume, project completion data and safety data for the most recently completed three-year period. Note that information provided is to be for the regional / local office that would be responsible for completing work under this solicitation.

	Annual Sales Volume	# of Completed Projects	Largest Project	EMR Rating
2021	_____	_____	_____	_____
2022	_____	_____	_____	_____
2023	_____	_____	_____	_____
Current EMR Rating				_____

Firm References

Provide three (3) references. Note that references are to be from different projects; that is, only one reference per project is allowed.

Firm Reference Number 1

Name: _____
 Title: _____
 Company Name: _____
 Phone Number: _____
 Project Relationship: _____

Firm Reference Number 2

Name: _____
 Title: _____
 Company Name: _____
 Phone Number: _____
 Project Relationship: _____

Firm Reference Number 3

Name: _____
Title: _____
Company Name: _____
Phone Number: _____
Project Relationship: _____

Corporate Profile Prepared By:

Name: _____ Title: _____

Signature: _____ Date: _____

ATTACHMENT F
PROJECT EXPERIENCE
FORM

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

Project Experience Form

	PROJECT #1	PROJECT #2	PROJECT #3	PROJECT #4	PROJECT #5
Project Name and Location					
Owner Name, Contact Person, Email & Phone Number					
Offeror's Role in the Project					
Project Type (New, Renovation, etc.)					
Gross Square Footage of Project					
Project Delivery Method (CMR, CM Agency, DB, Negotiated GMP, GC, etc.)					
Similarities/Relevance to this Project					
Original Completion Date					
Actual Completion Date					
Reason(s) for Variance (if applicable)					
Original Construction Cost					
Final Construction Cost					
Reason(s) for Cost Difference (if applicable)					
Offeror's Original Contract Amount					
Offeror's Final Contract Amount					
Reason(s) for Cost Difference (if applicable)					
Preconstruction Services Provided (Yes / No. If Yes, detail the level of services provided.)					
Construction Services Provided (Yes / No. If yes detail the level of services provided.)					
Project Executive					
Project Manager					
Field Superintendent					
Project Scheduler					

ATTACHMENT G

STAFFING PLAN

ATTACHMENT H
KEY PERSONNEL PROJECT
EXPERIENCE MATRIX

ATTACHMENT I
SAMPLE REQUEST FOR
FINANCIAL PROPOSALS

**REQUEST FOR FINANCIAL PROPOSAL
CM SERVICES
REDEVELOPMENT OF PIMLICO RACING FACILITY
ATTACHMENT A
FINANCIAL PROPOSAL FORM**

1.0 Preconstruction Services (Lump Sum):	\$	-
Allowance For Travel and Reimbursables:	\$	-
Subtotal:	\$	-
Owner Contingency (equal to 15% of Subtotal):	\$	-
Owner's Allowance (Software, Licenses, etc.):	\$	5,000.00
Total Preconstruction Services Fee:	\$	5,000.00

2.0 Percentage multiplier if the subtotal Cost of Work (Cell E12 on Attachment B) is between:	\$250,000,000 and \$275,000,000	\$275,000,001 and \$300,000,000	\$300,000,001 and \$305,000,000	\$305,000,001 and \$310,000,000
Trade Contractor P& P Bonds/Default Insurance (Cell B13 on Attachment B):	0.00%	0.00%	0.00%	0.00%
CM Contingency based on 95% CDs (Cell B15 on Attachment B):	0.00%	0.00%	0.00%	0.00%
CM Builder's Risk Insurance (Cell B19 on Attachment B):	0.00%	0.00%	0.00%	0.00%
CM Payment and Performance Bonds (Cell B21 on Attachment B):	0.00%	0.00%	0.00%	0.00%
CM Insurances (i.e GLI, Auto, etc.) (Cell B23 on Attachment B):	0.00%	0.00%	0.00%	0.00%
CM Fee (Cell B25 on Attachment B):	0.00%	0.00%	0.00%	0.00%

3.0 Estimated General Conditions Fee (Attachment C): \$ -

**REQUEST FOR FINANCIAL PROPOSAL
CM SERVICES
REDEVELOPMENT OF PIMLICO RACING FACILITY
ATTACHMENT B
GMP CALCULATION FORM**

	A	B	C	D	E
1	GUARANTEED MAXIMUM PRICE SUMMARY				
2	Cost of Work Item #1	1	LS	\$ -	\$ -
3	Cost of Work Item #2	1	LS	\$ -	\$ -
4	Cost of Work Item #3	1	LS	\$ -	\$ -
5	Cost of Work Item #4	1	LS	\$ -	\$ -
6	Cost of Work Item #5	1	LS	\$ -	\$ -
7	Cost of Work Item #6	1	LS	\$ -	\$ -
8	Cost of Work Item #7	1	LS	\$ -	\$ -
9	Cost of Work Item #8	1	LS	\$ -	\$ -
10	Cost of Work Item #9	1	LS	\$ -	\$ -
11	Cost of Work Item #10	1	LS	\$ -	\$ -
12	Subtotal Cost of Work			\$ -	\$ -
13	Trade Contractor P&P Bonds / Default Insurance	0.00%	of	\$ -	\$ -
14	Subtotal			\$ -	\$ -
15	CM Contingency (Based on 95% CDs)	0.00%	of	\$ -	\$ -
16	Subtotal			\$ -	\$ -
17	General Conditions Fee	1	LS	\$ -	\$ -
18	Subtotal			\$ -	\$ -
19	CM Builder's Risk Insurance	0.00%	of	\$ -	\$ -
20	Subtotal			\$ -	\$ -
21	CM Payment and Performance Bonds	0.00%	of	\$ -	\$ -
22	Subtotal			\$ -	\$ -
23	CM Insurances (i.e GLI, Auto, etc.)	0.00%	of	\$ -	\$ -
24	Subtotal			\$ -	\$ -
25	CM Fee	0.00%	of	\$ -	\$ -
26	Subtotal			\$ -	\$ -
27	CM Project Allowances & Holds (Attached):	1	LS	\$ -	<i>TBD</i>
28	Owner Contingency, Allowances & Holds	1	LS	\$ -	<i>TBD</i>
29	TOTAL GUARANTEED MAXIMUM PRICE			\$ -	\$ -

**REQUEST FOR FINANCIAL PROPOSAL
CM SERVICES
REDEVELOPMENT OF PIMLICO RACING FACILITY
ATTACHMENT B1
CM ALLOWANCES AND HOLDS**

ALLOWANCES & HOLDS SUMMARY						
Allowance/Hold Item #1	1	LS	\$	-	\$	-
Allowance/Hold Item #2	1	LS	\$	-	\$	-
Allowance/Hold Item #3	1	LS	\$	-	\$	-
Allowance/Hold Item #4	1	LS	\$	-	\$	-
Allowance/Hold Item #5	1	LS	\$	-	\$	-
Allowance/Hold Item #6	1	LS	\$	-	\$	-
Allowance/Hold Item #7	1	LS	\$	-	\$	-
Allowance/Hold Item #8	1	LS	\$	-	\$	-
Allowance/Hold Item #9	1	LS	\$	-	\$	-
Allowance/Hold Item #10	1	LS	\$	-	\$	-
Subtotal					\$	-
Subcontractor P&P Bonds / Subcontractor Default Insurance*	0.00%		of \$	-	\$	-
Subtotal of Direct Work					\$	-
CM Contingency	1	LS	Included with GMP		Included with GMP	-
Subtotal Cost of Construction					\$	-
General Conditions Fee	1	LS	Included with GMP		Included with GMP	-
Subtotal					\$	-
CM Builder's Risk Insurance*	0.00%		of \$	-	\$	-
Subtotal					\$	-
CM Payment and Performance Bonds*	0.00%		of \$	-	\$	-
Subtotal					\$	-
CM General Liability Insurance*	0.00%		of \$	-	\$	-
Subtotal					\$	-
CM Fee*	0.00%		of \$	-	\$	-
TOTAL ALLOWANCES & HOLDS					\$	-

* Amounts from GMP Calculation Form

**REQUEST FOR FINANCIAL PROPOSAL
CM SERVICES
REDEVELOPMENT OF PIMLICO RACING FACILITY
ATTACHMENT C
ESTIMATED GENERAL CONDITIONS**

*Rate is **Fully Loaded** to include all costs associated with the individual's assignment to the Project. This includes, but is not limited to, payroll burden expenses; vehicle costs, including lease, insurance, maintenance, repair and fuel; out-of-town travel expenses including per diem and overnight stay expenses.

Category	Name	MONTHS	TOTAL HOURS	RATE*	TOTAL COST (Total Hours x Rate)
Project Executive		0.00	-	\$ -	\$ -
Project Manager		0.00	-	\$ -	\$ -
Project Superintendent		0.00	-	\$ -	\$ -
Cost Estimator		0.00	-	\$ -	\$ -
Lead Scheduler		0.00	-	\$ -	\$ -
BIM Manager		0.00	-	\$ -	\$ -
Project Manager #2		0.00	-	\$ -	\$ -
Assistant Project Manager		0.00	-	\$ -	\$ -
Assistant Superintendent		0.00	-	\$ -	\$ -
Project Engineer		0.00	-	\$ -	\$ -
Field Engineer		0.00	-	\$ -	\$ -
Accounting		0.00	-	\$ -	\$ -
QA/QC		0.00	-	\$ -	\$ -
MBE		0.00	-	\$ -	\$ -
Other:		0.00	-	\$ -	\$ -
Other:		0.00	-	\$ -	\$ -
Other:		0.00	-	\$ -	\$ -
Other:		0.00	-	\$ -	\$ -
Other:		0.00	-	\$ -	\$ -
Other:		0.00	-	\$ -	\$ -
Other:		0.00	-	\$ -	\$ -
SUBTOTAL LABOR COST:					\$ -

**REQUEST FOR FINANCIAL PROPOSAL
CM SERVICES
REDEVELOPMENT OF PIMLICO RACING FACILITY
ATTACHMENT C
ESTIMATED GENERAL CONDITIONS**

Safety and Site Security	First aid supplies; hardhats and goggles; safety signage; security locks.	0.00		\$ -	\$ -
Temporary Field Facilities and Services	Rent, set-up, and removal of trailers for the CM and for MSA site representative; field offices' utilities, security, communication services, and cleaning; temporary sanitary facilities; Project signs.	0.00		\$ -	\$ -
Field Offices' Equipment and Software	Field office equipment, maintenance and repair; field office furniture; field office computer equipment, software, maintenance, repair, and support; equivalent requirements for the MSA on-site field representative (with the exception of computer equipment and software).	0.00		\$ -	\$ -
Field Offices' Supplies and Postage/Shipping	Office supplies for CM and MSA; postage/ shipping.	0.00		\$ -	\$ -
Professional Services	Cost of Services Not Included in the CM's Construction Services Fee or Trade Contracts	0.00		\$ -	\$ -
Other:		0.00		\$ -	\$ -
Other:		0.00		\$ -	\$ -
Other:		0.00		\$ -	\$ -
Other:		0.00		\$ -	\$ -
Other:		0.00		\$ -	\$ -
Project Documentation and Reproduction	Per Requirements of Contract Documents		With General Requirements in Cost of Work		
Temporary Utilities	Consumption for Temporary Project Utilities		With General Requirements in Cost of Work		
Waste Management and Daily Cleaning	Cost of Services for Dumpsters, Street Sweeping, Etc.		With General Requirements in Cost of Work		
Weather and Other Protection	Temporary weather and dust protection not in Trade Contracts; site snow removal; materials for maintenance of erosion control not in Site Trade Contract.		With General Requirements in Cost of Work		
Material Handling	Chutes, Rental Equipment, etc.		With General Requirements in Cost of Work		
Elevator Operator(s)	If Applicable		With General Requirements in Cost of Work		
Miscellaneous Materials and Small Tools	Miscellaneous materials; small tools; surveying equipment.		With General Requirements in Cost of Work		
Protection of Finished Work	If Not Included In Trade Contracts		With General Requirements in Cost of Work		
Permit Fees	Cost of the Building Permit is by Owner. Costs associated with construction related permits are to be included in the GMP and/or the Trade Contracts.		Construction related permits included in Trade Contracts		
SUBTOTAL NON-LABOR COST:					\$ -
TOTAL ESTIMATED GENERAL CONDITIONS (Labor plus Non-Labor Cost):					\$ -

ATTACHMENT J

BID PROPOSAL BOND FORM

BID / PROPOSAL BOND
REDEVELOPMENT OF PIMLICO RACING 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)

REDEVELOPMENT OF PIMLICO RACING 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: _____

ATTACHMENT K
PERFORMANCE BOND FORM

BID / PROPOSAL BOND
REDEVELOPMENT OF PIMLICO RACING 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)

REDEVELOPMENT OF PIMLICO RACING 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: _____

ATTACHMENT L

LABOR & MATERIAL PAYMENT BOND FORM

LABOR AND MATERIAL PAYMENT BOND
Redevelopment of the Pimlico Racing Facility

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:

_____, 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:

SIGN: _____

SURETY:

SIGN: _____ (SEAL)

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

AGENT (COMPANY): _____ (SEAL)

AUTHORIZED BY: _____

NAME: _____

TITLE: _____

ATTACHMENT M

SAMPLE CM PRECONSTRUCTION AGREEMENT

This Preconstruction Services Agreement (this “**Agreement**”) is made as of this ___ day of _____, 20___, by and between the Maryland Stadium Authority (“**MSA**”), a body politic and instrumentality of the State of Maryland located the Warehouse at Camden Yards, 333 West Camden Street, Suite 500, Baltimore, MD 21201, and _____ (the “**Construction Manager**”) whose address is _____.

RECITALS

WHEREAS, MSA issued a Request for Proposals (“**RFP**”) dated as ___ of for the purpose of procuring Construction Management Preconstruction Services (“**CM Services**”) for the Redevelopment of Pimlico Racing Facility (the “**Project**”), which RFP is attached hereto as Exhibit B and made a part hereof; and

WHEREAS, the Construction Manager submitted its Proposal (the “**Proposal**”) dated ___, and its Best and Final Offer (“**BAFO**”) which are attached hereto as Exhibit C and made a part hereof. The Proposal and the BAFO are herein referred to together as the “**Proposal**”; and

WHEREAS, the Construction Manager represents that it obtained clarification of its questions with respect to the proposed scope of work (the “**Work**”) set forth in the RFP prior to submission of its Proposal; and

WHEREAS, the Construction Manager represents that is has the knowledge and experience necessary to perform the CM Services set forth in this Agreement; and

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

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, MSA and the Construction Manager hereby agree as follows:

ARTICLE 1 GENERAL PROVISIONS

Section 1.0 Relationship

Construction Manager recognizes and accepts that MSA is entering into this Agreement in reliance on Construction Manager’s expertise, skills and abilities with respect to performing its obligations hereunder. Construction Manager accepts the relationship of trust and confidence established between it and MSA and shall furnish its best skill and judgment and cooperate with MSA and its contractors and consultants in furthering the interests of MSA. Construction Manager shall furnish efficient business administration and management of its services in an expeditious and economical manner consistent with the interests of MSA. Construction Manager shall be an agent of MSA to the extent and only to the extent required to properly perform the services requested of it by MSA

under this Agreement; and Construction Manager shall not represent or hold itself out to have any authority to act on behalf of or bind MSA other than as specifically provided herein.

Section 1.02 Compliance with laws

The Construction Manager 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) Construction Manager 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 this Agreement.

Section 1.03 Quality of Work and Standard of Care

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

1.03.2 The Work shall be performed and executed in a professional and workmanlike manner in conformance with this Agreement.

Section 1.04 Order of Document Precedence

If there is any conflict among the Agreement 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 Construction Manager's Proposal.

Section 1.05 Entire Agreement

This Agreement (including all Exhibits) represents the entire and integrated agreement between MSA and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral.

Section 1.06 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.

ARTICLE 2 PRECONSTRUCTION SERVICES

Section 2.01 Basic Services

The Basic Services required from the Construction Manager are set forth in the RFP. The Construction Manager shall provide these services in accordance with the terms and conditions of this Agreement and any Exhibits attached hereto or amendments issued hereunder. MSA shall have the unilateral right to require changes in the scope of services in this Agreement, provided such changes are within the general scope of the work to be performed. In addition, the Construction Manager shall perform and be bound by any and all obligations set forth in the RFP and the Proposal.

2.01.1 The Construction Manager shall be an *active* participant in the overall planning and design of the Project; and

(a) The Construction Manager shall communicate and coordinate with MSA and the Client to ascertain the requirements of the Project.

(b) The Construction Manager shall provide a preliminary evaluation of the Project, Project schedule, and Project construction budget.

(c) Review and comment on design documents at each design phase (i.e. schematic design documents, design development documents, and construction documents), particularly material selections, constructability issues, building systems and equipment, value engineering evaluation and related quality assurance / quality control consulting, life cycle analysis, scheduling and methods of Project delivery.

(d) Advise and provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to construction costs and scheduling including but not limited to, costs of alternative designs or materials and preliminary budgets, and risk mitigation of circumstances including but not limited to those described in Section 1.8 of the GMP Agreement attached as Exhibit F.

(e) Prepare/update a construction cost estimates.

(f) Prepare/update construction schedules in accordance with Exhibit D attached hereto.

(g) Prepare and submit a Guaranteed Maximum Price proposal(s) for the construction of the Project.

Section 2.02 Additional Services

Additional Services requested of, or by Construction Manager shall be provided with MSA's and Construction Manager's mutual written agreement executed by both parties. Unless otherwise specified, the Construction Manager's compensation for additional services shall be paid for in accordance with Article 3 and based upon actual time spent at the hourly rate(s) agreed to in advance in writing by MSA.

Section 2.03 Merger of Agreements

2.03.1 GMP Agreement. MSA in MSA's sole discretion may offer the Construction Manager the opportunity to enter into a "Guaranteed Maximum Price" agreement (a "**GMP Agreement**") with MSA following the conclusion of the preconstruction services under this Agreement. If Construction Manager and MSA execute a GMP Agreement, Construction Manager shall be bound by all of the terms and conditions set forth in this Agreement as if those terms and conditions are restated in their entirety in the GMP Agreement. Construction Manager's actual knowledge of the Project, the required scope of work, and the facts and circumstances learned during preconstruction will be an important consideration in MSA's selection of a Construction Manager for the GMP Agreement.

2.03.2 A *sample* of the GMP Agreement is attached as Exhibit F. The sample agreement may not contain all of the same provisions as the final GMP Agreement for the Project.

Section 2.04 MSA'S Responsibilities

In consultation with the Construction Manager, MSA shall provide Construction Manager information regarding its requirements for the Project. MSA at MSA's expense, shall furnish or cause others to furnish design and engineering services, surveys, soil borings, and other such reports as may be necessary for the Project.

ARTICLE 3 COMPENSATION AND PAYMENT PROVISIONS

Section 3.01 Construction Manager's Compensation

Construction Manager's total fees for CM Services shall not exceed \$____, as set forth on the BAFO ("**Construction Manager Compensation**").

Section 3.02 State Payment Provisions

(a) In addition to any other information required by the Procurement Officer, the Construction Manager's invoices shall include a tax payer identification number and contract identification number.

(b) Payments to the Construction Manager 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 Construction Manager.

(c) 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 public utilities as applicable, are prohibited.

Section 3.03 Reimbursable Expenses

3.03.1 The Construction Manager shall be reimbursed for all reasonable, allowable and allocable direct costs and expenses incurred by the Construction Manager (its employees or consultants) 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:

3.03.2 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.

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

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

3.03.5 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.

3.03.6 The Construction Manager's projected itemized schedule of reimbursable expenses is attached hereto as Exhibit E.

Section 3.04 Non-Reimbursable Expenses

3.04.1 The Construction Manager 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 the Construction Manager and MSA or between employees or consultants of the Construction Manager; and (vi) cost to reproduce and deliver documents between the Construction Manager's (or its consultants') offices.

3.04.2 All photocopying charges shall be at cost.

ARTICLE 4 INTELLECTUAL PROPERTY

Construction Manager agrees to indemnify and save harmless MSA, its officers, agents and employees with respect to any claim, action, costs, or judgment for patent infringement, or trademark or copyright violation arising out of purchase or use of materials, supplies, equipment or services covered by this Agreement.

**ARTICLE 5
OWNERSHIP OF DOCUMENTS AND MATERIALS**

Construction Manager agrees that all documents and materials including, but not limited to, reports, drawings, schedules, plans, maps, studies, specifications, estimates, maps, photographs, designs, graphics, mechanical, artwork, and computations prepared by or for it under the terms of the contract shall at any time during the performance of the services be made available to MSA upon request by MSA and shall become and remain the exclusive property of MSA upon termination or completion of the services. MSA shall have the right to use same without restriction or limitation and without compensation to the Construction Manager other than that provided by the contract. MSA shall be the owner for purposes of copyright, patent or trademark registration.

**ARTICLE 6
INDEMNIFICATION
AND
RESPONSIBILITY FOR CLAIMS AND LIABILITY**

Section 6.01 Indemnification

(a) Construction Manager 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 Construction Manager's negligence or willful misconduct.

(b) Construction Manager shall not be responsible for the acts or omissions of MSA, or any Construction Manager, subcontractor, subsubcontractor, or Design Consultant used by MSA with respect to the Project.

(c) Neither Construction Manager 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. However, in the event of any such delays, the Period of Performance under Article 6 shall be extended by a period of time corresponding with the period of which the work was delayed and Construction Manager shall be entitled to an equitable adjustment in its Compensation.

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

Section 6.02 Responsibility for Claims and Liability

The Construction Manager 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 contract. Further, it is expressly understood that the Construction Manager shall indemnify and save harmless the University, 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 Construction Manager under the contract.

ARTICLE 7 RETENTION OF RECORDS

The Construction Manager shall retain and maintain all records and documents relating to this Agreement for *three* years after final payment by 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.

ARTICLE 8 CONFIDENTIAL INFORMATION

Section 8.01 Confidential Information

In order for Construction Manager to fulfill this Agreement effectively, it may be necessary or desirable for MSA to disclose to Construction Manager information which MSA deems confidential or proprietary or information categorized as trade secrets (collectively "**Confidential Information**") and that pertain to MSA's past, present or future activities. Any information which MSA designates as Confidential, Construction Manager shall take all necessary steps to maintain in a secure and confidential manner, and to limit access to only those persons under Construction Manager's direct supervision who are required to access the information in order to accomplish the Work under this Agreement. Construction Manager further agrees that it will not disclose any such Confidential Information without the prior written consent of MSA.

Upon termination of this Agreement, Construction Manager shall upon written request from MSA return to MSA all documents and records provided by MSA, and any information or materials derived therefrom, which are in Construction Manager's possession or control. However, Construction Manager shall be allowed to make copies of such documents, records, information and material.

ARTICLE 9 INSURANCE REQUIREMENTS

Section 9.01 Insurance

(a) Construction Manager shall maintain Workmen's Compensation Insurance, as required by law, by coverage with an insurance company acceptable to MSA for damages which may arise from operations under this Agreement.

(b) Construction Manager shall insure itself, name the State, MSA (and others directed by MSA) as an additional insured, and shall hold MSA harmless from any claim for bodily injury, liability and property damage liability arising from Construction Manager's work.

(c) The limits for bodily injury liability shall not be less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate. The minimum limit for property damage liability shall be \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

(d) Construction Manager shall provide, at its own expense, during the term of the Agreement, automobile liability insurance covering all owned and non-owned and hired vehicles used in connection with the work under this Agreement, with the following limits: personal injury including death: \$500,000 per person, \$1,000,000 per accident; and property damage \$50,000 per accident. Said insurance shall provide coverage of both on-site and off-site work under this Agreement.

(e) Certificates of Construction Manager's insurance shall be provided to MSA and shall be subject to MSA's approval. No work shall be started until appropriate certificates have been provided to and approved by MSA.

9.01.1 The insurance requirements under the GMP Agreement, if applicable, may be different than those required under this Agreement.

ARTICLE 10 STATE TERMS

Section 10.01 General State Terms

10.01.1 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.

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

10.01.3 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 Construction Manager 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 Construction Manager

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

10.01.5 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 Construction Manager or any entity that is a subcontractor on this Contract.

10.01.6 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.

10.01.7 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 10.02 Non-Discrimination Provisions

10.02.1 Nondiscrimination in Employment. Construction Manager 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.

Section 10.03 Disclosures and Ethics

10.03.1 Financial Disclosure. Construction Manager 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.

10.03.2 Statement of Political Contributions. Construction Manager 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-

10.03.3. 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.

10.03.4 Anti-Bribery. Construction Manager 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.

10.03.5 Contingent Fees. Construction Manager warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Construction Manager, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Agreement.

10.03.6 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 the Construction Manager and MSA from future performance of this Agreement, but not from their rights and obligations existing at the time of termination. The Construction Manager shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of this Agreement. MSA shall notify the Construction Manager as soon as it has knowledge that funds may not be available for the continuation of this Agreement for each succeeding fiscal period beyond the first. Construction Manager may not recover anticipatory profits or costs incurred after termination.

Section 10.04 Drug and Alcohol Free Workplace

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

Section 10.05 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 Construction Manager is required to furnish and install material in the construction or improvement of real property in performance of a contract, the Construction Manager shall pay the Maryland Sales Tax and the exemption does not apply.

Section 10.06 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 10.07 Tort Claims Acts

Construction Manager agrees for itself and for its insurers, that neither Construction Manager 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 10.08 Independent Construction Manager Status

The Construction Manager is an independent Construction Manager and neither the Construction Manager 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 Construction Manager.

Section 10.09 No Arbitration

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

Section 10.10 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 Construction Manager that such approvals have been obtained.

Section 10.11 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 Construction Manager. There are no intended third party beneficiaries of this Agreement.

Section 10.12 Time of the Essence

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

Section 10.13 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 10.14 Termination

TERMINATION. At any time during the effectiveness of the Agreement, MSA shall have the right, with or without cause, upon ten (10) days written notice to Construction Manager, to terminate this Agreement in whole or in part. In the event of a termination, Construction Manager shall deliver to MSA all materials within Construction Manager's custody or control pertaining to the Project, and MSA shall pay to Construction Manager all amounts due and earned to the time of the termination, in accordance with the provisions of this Agreement. Except as specially set forth above, such termination shall not give rise to any cause of action or claim against MSA for damages, loss of profits, expenses or other remuneration of any kind. Notwithstanding any other provisions of this Agreement, if in the judgment of MSA, such termination is made necessary or

desirable because of Construction Manager's failure to fulfill its obligations under this Agreement or any other fault of Construction Manager, MSA may withhold payment of all or any part of any monies which otherwise may be payable to Construction Manager under this Agreement. Such monies may be applied toward any damages or expenses sustained by MSA as a result of such failure including, without limitation, any excess costs incurred by MSA in completing the Project. Notwithstanding the foregoing, Construction Manager shall remain liable to MSA for all such damages and expenses without limitation to any such monies withheld by MSA. The failure of MSA to withhold monies from Construction Manager shall not be construed as an acknowledgment by MSA that no such damages or expenses exist and shall not prevent MSA from thereafter making any claim against Construction Manager therefore.

Section 10.15 Taxes; Withholding

MSA shall not withhold federal, State, and local taxes and FICA taxes, if any, from payments made pursuant to this Agreement.

Section 10.16 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.

10.16.1 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 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.

10.16.2 A claim shall be made in writing and submitted to the Project Executive identified in Section 10.18 for decision within thirty days of when the basis of the claim was known or should have been known, whichever is earlier.

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

10.16.4 The Construction Manager shall be afforded an opportunity to be heard and to offer evidence in support of his claim.

10.16.5 The Project Executive shall render a written decision on all claims within 90 days of receipt of the Construction Manager'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 Construction Manager of the time within which a decision shall be rendered and the reasons for such time extension. The decision shall be furnished to the Construction Manager, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The Project Executive's decision shall be deemed the final action of the MSA.

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

10.16.7 Pending resolution of a claim, the Construction Manager shall proceed diligently with the performance of the contract in accordance with the Project Executive's decision.

Section 10.17 Contract Affidavit

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

Section 10.18 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 Project Manager:

MSA Project Executive:

Contract Project Manager:

Section 10.19 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
Attention: Al Tyler, Vice President

With copy to:

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

If to the Construction Manager:

Company Name:
City, State, Zip:
Attn:

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.

Signatures on following page

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

ATTEST:

MARYLAND STADIUM AUTHORITY

By: _____

By: _____

Michael J. Frenz, Executive Director

Approved for legal form and sufficiency on
behalf of the Maryland Stadium Authority

Amy K. Mataban
Assistant Attorney General

ATTEST:

CONSTRUCTION MANAGER

By: _____

By: _____ (SEAL)

Authorized Officer

Exhibit A - Contract Affidavit

Exhibit B – Request for Proposal

Exhibit C – Proposal and Best and Final Offer

Exhibit D – CPM Schedule Requirements

Exhibit E – Reimbursables

Exhibit F – Sample GMP Agreement

ATTACHMENT N
SAMPLE CM GMP AGREEMENT



PROJECT NAME
GUARANTEED MAXIMUM PRICE AGREEMENT

BETWEEN
MARYLAND STADIUM AUTHORITY
&
TBD

MSA CONTRACT No. _____

GUARANTEED MAXIMUM PRICE AGREEMENT

Project Name

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Exhibit B	Project Manual
Exhibit C	Project Description
Exhibit D	MBE Goals & Reporting Forms (A-H)
Exhibit E	Prevailing Wage Scale
Exhibit E-1	Prevailing Wage Instructions to Construction Manager
Exhibit F	Project Progress Report
Exhibit G	Final Project Report
Exhibit H	Certificates of Substantial & Final Completion
Exhibit I	Staffing Plan
Exhibit J	Schedules, Reports and Schedule of Values
Exhibit K	Release of Lien and Waiver Claim Forms; Consent of Surety Forms
Exhibit L	Description of CM Invoice
Exhibit M	Preconstruction Agreement

[PROJECT NAME] GMP

GUARANTEED MAXIMUM PRICE AGREEMENT

Project Name

This Guaranteed Maximum Price Agreement (this “Agreement”) is made as of this _____th day of _____ 20__.

between the Owner:

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

and the Construction Manager:

Name
Address
City, State, Zip Code (the “Construction Manager” or “CM”)

The Project is:

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

The Architect is:

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

The Client is:

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

RECITALS

WHEREAS the Owner and the Construction Manager are parties to a Pre-Construction Agreement (the “**Preconstruction Agreement**”) dated [REDACTED] whereby the Construction Manager provided preconstruction services for the development of the Project identified herein; and

WHEREAS, pursuant to the Preconstruction Agreement, the Owner offered the Construction Manager the opportunity, upon completion of its preconstruction services to continue as the Construction Manager subject to the terms and conditions of this Agreement and the Construction Manager has accepted; and

WHEREAS the Owner hereby designates and appoints the Construction Manager as a Construction Manager *at risk* and authorizes the Construction Manager to so act in connection with the scope of work and services set forth and described in this Agreement.

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

ARTICLE 1 GENERAL PROVISIONS

Section 1.1 Definitions

Capitalized terms not otherwise defined herein shall have the meaning given such terms in the Project Manual or as generally recognized within the industry.

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

“**Change Orders**” means a change order submitted and approved as provided in Section 15.2.2 limited to changes that impact the GMP.

“**COMAR**” means the Code of Maryland Regulations.

“**Commencement Date**” means the Project commencement date identified in the Notice to Proceed.

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

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

“**Contract Documents**” means this Agreement, the GMP documentation, documents listed in this Agreement, all amendments, modifications, addenda, and exhibits to the foregoing.

“**Contract Price**” means the total 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 Construction Manager or any person having a direct contractual relationship with MSA for the execution of the Work.

“**Construction Manager**” or “**CM**” means the party under contract with MSA herein.

“**Construction Team**” means the Construction Manager, the Client, the Owner (or any of its designees), and the Architect. The Construction Team shall work together throughout the term of this Agreement. The Construction Manager shall provide leadership to the Construction Team on all matters relating to construction.

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

“**Day**” means calendar day unless otherwise designated.

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

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

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

“**Final Completion**” means the Owner and the Architect have certified that the Project has achieved final completion in strict compliance with the terms of the Contract Documents including all of the items on the Punch List (*see* section 10.1.6) have been fully completed and the Construction Manager 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**” mean the Guaranteed Maximum Price Proposal setting forth the guaranteed maximum price for the services to be provided and the Work to be performed by the Construction Manager that has been agreed to by the Construction Manager and the Owner attached hereto as **Exhibit A**.

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

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

“**MBE**” means the Minority Business Enterprise Program.

“**MBE Liquidated Damages**” has the meaning set forth in Article 25.

“**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 Construction Manager 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.

“**Preconstruction Agreement**” means the agreement between MSA and the Construction Manager whereby the Construction Manager provided preconstruction services in connection with the Project attached hereto as **Exhibit M**.

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

“**Project Manual**” is the set of general conditions and other contract documents attached hereto as **Exhibit B**.

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

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

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

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

“**State**” means the State of Maryland.

“**Subcontractor**” except as otherwise provided herein, “subcontractor” means an entity having a direct contract with the Contractor or sub-contractor to furnish a part of the Work. It includes

one who furnishes material worked to a design according to the Contract Documents for the Work. As used herein, unless specifically stated otherwise, Subcontractor includes Trade Contractor.

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

(a) the Work has been fully and finally completed in strict compliance with the Contract Documents (*except* for any outstanding items on the Punch List (*see* Article 10); and the Project or property can be fully and freely occupied and/or utilized for the purpose intended without hardship.

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

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

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

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

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

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

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

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

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

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

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

Section 1.2 Contract Documents

1.2.1 Relationship Construction Manager recognizes and accepts that Owner is entering into this Agreement in reliance on Construction Manager’s expertise, skills and abilities with respect to performing its obligations hereunder – including specifically, the Construction Manager’s expertise, skills, and abilities with respect to construction management. Additionally, the Construction Manager acknowledges that the Owner is relying upon the Construction Manager’s

knowledge of, and experience with the Project obtained in connection with its role as the Contractor under the Preconstruction Agreement. The Construction Manager accepts the relationship of trust and confidence established between it and the Owner by this Agreement, and covenants to furnish its best efforts, skill and judgment and to cooperate with the Architect and any other consultants engaged by the Owner. Construction Manager shall furnish construction administration and management services and shall be responsible for the completion of the Project in an expeditious and economical manner consistent with the interests of the Owner.

1.2.2 GMP: Attached hereto as **Exhibit A** is the GMP that has been agreed to by the Construction Manager and the Owner. Unless specifically provided for in the GMP or expressly authorized pursuant to Article 19 (Changes in the Project), changes to the scope of Work shall not entitle the Construction Manager to an increase in the GMP.

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

First: Modifications and Addenda subsequent to this Agreement (by latest date)

Second: This Agreement

Third: Exhibits to this Agreement

Fourth: Supplementary Conditions

Fifth: General Conditions

Sixth: Specifications

Seventh: Detail Drawings (priority over Drawings and Plans)

Eighth: Drawings

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

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

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

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

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

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

Section 1.3 Conformity with Contract Documents

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

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

1.3.3 In the event the Owner finds the materials or the finished project in which the materials are used are not in complete conformity with the Contract Documents, but have resulted in a satisfactory product, it shall then determine *if* the Work shall be accepted. If the Work is determined to be acceptable, the Project Manager will document the basis of acceptance by a Change Order which will provide for an appropriate adjustment, if any. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Construction Manager.

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

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

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

1.3.7 **Public Officials Not Personally Liable.** In carrying out any of the provisions of this Agreement, or in exercising any power or authority granted to them by or within the scope of this Agreement, there shall be no personal liability upon the members of the Owner or any employees or representatives of the Owner, either personally or as official of the State, it being understood that in all such matters they act solely as agents and representatives of the Owners.

Section 1.4 Clarification Prior to Bidding or Submittal of Proposed GMP

1.4.1 The Construction Manager 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.

1.4.2 Construction Manager's failure to obtain any such clarification(s) shall give the Owner the absolute right - in its discretion, to direct that the Work proceed by any method indicated, specified, or required by the Contract documents.

1.4.3 Owner's exercise of its right under (b) above shall not be grounds for the Construction Manager to claim additional costs or expenses.

1.4.4 The terms of this Section 1.4 notwithstanding, the Construction Manager 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 at the conclusion of the preconstruction phase.

Section 1.5 Plans and Specifications

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

Section 1.6 Ownership

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

Section 1.7 Dimensions

The Construction Manager 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 Construction Manager. Whenever a stock size manufactured item or piece of equipment is specified or is proposed by the Construction Manager to be furnished, it is the responsibility of the Construction Manager to determine the actual space requirements for setting or entrance to the setting space. Whenever inaccuracies or discrepancies are found, the Construction Manager shall notify the Owner and the Architect prior to any construction or demolition. Should any dimensions be missing, the Construction Manager, Owner and the Architect shall work together to determine the missing information prior to execution of the Work. No additional cost will be allowed by reason of work requiring adjustments in order to accommodate the particular item or equipment furnished by the Construction Manager.

Section 1.8 Conditions Affecting the Work

1.8.1 The Construction Manager 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 Construction Manager to do so will not relieve it from responsibility for successfully performing the Work without additional expense to Owner. Owner is not responsible for any representation or purported agreement concerning conditions or contract requirements made by any State employee or representative prior to the execution of this contract, unless such understanding or representation is expressly stated in the contract.

1.8.2 Site Conditions. The Construction Manager acknowledges that it has investigated and satisfied itself as to the conditions affecting the Work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides 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 Construction Manager further acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by or on behalf of Owner, as well as from information presented by the drawings and specifications made a part of this Agreement. Any failure by the Construction Manager to acquaint itself with the available information may not relieve it from responsibility for estimating properly the difficulty or cost of successfully performing the work. Owner assumes no responsibility for any conclusions or interpretations made by the Construction Manager on the basis of the information made available by Owner.

1.8.3 Differing Site Conditions.

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

- (i) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or
- (ii) unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

(b) The Owner shall promptly investigate the conditions, and if the Project Manager finds that such conditions do materially so differ and cause an increase or decrease in the Construction Manager's cost of, or the time required for, performance of any part of the work under this Agreement, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Agreement modified in writing accordingly.

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

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

1.8.4 The terms of this Section 1.8 notwithstanding, the Construction Manager shall be deemed to have ascertained the nature and location of the Work and the general and local conditions which

can affect the Work or the cost thereof before or during its execution of preconstruction services pursuant to the Preconstruction Agreement.

Section 1.9 Compliance with laws

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

ARTICLE 2 CONSTRUCTION MANAGER SERVICES

Section 2.1 Construction Phase

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

2.1.2 Generally, the Construction Manager shall:

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

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

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

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

Section 2.2 Materials

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 2.3 Patents, Copyrights, Trade Secrets and Protected Matters

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

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

Section 2.4 Substitutions

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

2.4.2 Any materials which the Construction Manager proposes be substituted, and the materials it proposes to use as substitutions, require Owner's written approval. The Construction Manager shall provide its proposal (including the amount of any credit or extra costs associated with the substitution) in writing which clearly states that it is a proposed substitution and provides evidence that the substitution is of at least equal quality for the substituted material. Any approval (regardless of form or method) of a substitute material by the Architect, will not be binding on Owner if the Construction Manager has not clearly specified and designated such material as a "substitute" and the Construction Manager shall not be released from any of its contractual obligations.

Section 2.5 Non-Conformance of Work

2.5.1 If the Construction Manager observes or otherwise becomes aware of any fault or defect in the Project, or nonconformance with the Contract Documents, prompt written notice thereof shall be given by the Construction Manager to the responsible party (i.e. Trade Contractors or Subcontractors) with a copy to the Owner and the Architect.

Section 2.6 Quality of Work and Standard of Care

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

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

Section 2.7 Coordination of the Work

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

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

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

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

Section 2.8 Coordination with Utilities

2.8.1 The Construction Manager 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 Construction Manager's operations shall be the responsibility of the Construction Manager.

2.8.2 It is understood and agreed that the Construction Manager'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.

2.8.3 At any point where the Construction Manager'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 Construction Manager.

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

2.8.5 The Construction Manager shall:

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

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

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

Section 2.9 Submittals

2.9.1 The Construction Manager shall:

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

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

(c) Within 30 days of issuance of the NTP, prepare in a format and with a level of detail acceptable to the Owner, a submittal log which incorporates the activities of 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.

ARTICLE 3 SAFETY, SECURITY & PERMITS

Section 3.1 General Provisions

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

Section 3.2 Safety Precautions, Barricades & Warning Signs

3.2.1 The Construction Manager 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 Owner or its designee by the Construction Manager.

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

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

3.2.2 The Construction Manager 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.

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

Section 3.3 Permits, Licenses, Certificates and Fees

3.3.1 The Construction Manager 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 Owner.

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

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

ARTICLE 4 TRADE CONTRACTS AND SUBCONTRACTORS

Section 4.1 In General

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

4.1.2 Nothing contained in the Contact Documents shall create any contractual relation between any Trade Contractor, subcontractor or supplier at any tier and Owner or the State, and nothing in the Contract Documents is intended to make any such entity a beneficiary of the contract between Owner and the Construction Manager. 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.

4.1.3 Trade Contractors shall be selected by competitive bidding as provided in Section 4.3 below

4.1.4 Except as provided in Section 4.2 below, the Construction Manager shall not bid any Trade Contracts or perform any material part of the permanent construction work with workmen employed by the Construction Manager.

Section 4.2 Exceptions

Under certain circumstances (i.e. a Trade Contractor's breach or the lack of available qualified contractors), the Construction Manager may recommend to Owner that Construction Manager employ its own work force to perform certain Trade Contractor work.

4.2.1 If the Construction Manager recommends and Owner approves Construction Manager employing its own work force *during* the bid process, Construction Manager shall submit a bid for the subject work in the same format as required of other bidders.

4.2.2 If the Construction Manager makes a recommendation after an award to a Trade Contractor and during the course of the Project Work, (i.e. the Trade Contractor is in breach of contract), the Construction Manager shall establish to Owner's satisfaction that Construction Manager's price for substitution with its own work force is competitive for the type of work at issue.

4.2.3 In no event shall work be started by the Construction Manager or its employees, agents, contractors or other substitute for the Trade Contractor without prior written approval of the Owner. Owner's approval shall include the method of determining the payment to the Construction Manager for such work, however it shall not entitle the Construction Manager to an increase in the Cost of the Work.

4.2.4 All such work shall be performed in accordance with the Contract Documents.

Section 4.3 Procurement & Contracts

4.3.1 Construction Manager shall receive no fewer than three (3) bids for any Trade Contract.

4.3.2 Construction Manager shall not award any Trade Contract, including for materials, without the prior written approval of the Owner.

4.3.3 Owner shall have the right to review the form of all Trade Contracts which shall incorporate the terms and conditions of the Contract Documents.

4.3.4. Construction Manager shall not make any changes to any of its Trade Contractors without prior written approval by the Owner, which may be given or withheld at the sole discretion of Owner.

4.3.5 Before Construction Manager enters into any Trade Contract, including for materials, in excess of \$10,000, it shall submit to the Owner:

(a) A tabulation of qualified and financially responsible bidders or suppliers with their bids. The bids shall be sufficiently detailed for Owner to compare them.

(b) Construction Manager's recommendation for contract award.

4.3.6. Construction Manager shall award the Trade Contracts after the Owner and the Construction Manager review the bids or proposals.

4.3.7. Construction Manager shall deliver to Owner a copy of each executed Trade Contract, and any changes, modifications, additions or amendments with the Project Progress Report (*see Exhibit F*) in accordance with Section 6.1.1. The Owner shall not be a party to any Trade Contract.

Section 4.4 Trade Contractor As-Built Drawings

4.4.1 As-built drawings are to be prepared by all Trade Contractors. The Construction Manager 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 Construction Manager shall forward as-built drawings to the Architect upon completion of the Project for the Architect's preparation of record drawings.

Section 4.5 Prompt Payment of Subcontractors

4.5.1 This Agreement and all subcontracts issued under this Agreement are subject to the provisions of State Finance and Procurement Article, §15-226, Annotated Code of Maryland, and COMAR 21.10.08. In this Section 4.5, the terms "undisputed amount" "prime contractor" "contractor" and "subcontractor" have the meanings stated in COMAR 21.10.08.01.

4.5.2 A contractor shall promptly pay its subcontractors any undisputed amount to which a subcontractor is entitled for work performed under this contract within 10 days after the contractor receives a progress payment or final payment for work under this contract.

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

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

Section 4.6 Retainage in Payments to Subcontractors.

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

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

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

4.6.4 The Construction Manager and each subcontractor at any tier shall include, in all of their subcontracts for work called for by this Agreement, wording that incorporates the provisions of this Section 4.6.

Section 4.7 Trade Contract – Contract Provisions

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

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

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

4.7.4 The provisions required by Sections 4.5 and 4.6; and if applicable, the prevailing wage provisions on **Exhibits E and E-1** attached hereto.

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

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

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

Section 4.8 Prevailing Wage Requirements

4.8.1 If this Contract is subject to Prevailing Wage pursuant to State Finance & Procurement Article, Maryland Code Ann. Title 17 subtitle 2 and COMAR 21.11.11.01 et seq., the Construction Manager shall comply with all Prevailing Wage requirements set forth in **Exhibits E and E-1** attached hereto titled “Prevailing Wage Instructions for Construction Manager.”

ARTICLE 5 SPECIAL CONSULTANTS; INSPECTIONS

Section 5.1 Special Consultants and Testing Laboratories

(a) If special consultants or testing laboratories are included in the Work or, should have been reasonably anticipated by the Construction Manager as being necessary for successful prosecution of the Work, then Construction Manager shall in consultation with the Owner and the Architect, provide appropriately licensed and qualified surveyors, special consultants and testing laboratories, and shall coordinate their services consistent with the provisions of the Contract Documents. The Construction Manager shall maintain a log documenting all deficiencies revealed by such surveyors, consultants and laboratories, and shall monitor and document the corrective measured taken. This information shall be included in the Progress Report. The Construction Manager shall coordinate any inspections which may be required by any government agencies or the Owner.

(b) If special consultants or testing laboratories were unanticipated and not reasonably anticipated by the Construction Manager, the Construction Manager shall notify the Owner and the Architect and in consultation with the Owner and the Architect, provide appropriately licensed and qualified surveyors, special consultants and testing laboratories, and shall coordinate their services consistent with the provisions of the Contract Documents. The Construction Manager 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 Construction Manager shall coordinate any inspections which may be required by any government agencies or the Owner, subject to Owner Changes (Section 19.5).

Section 5.2 Inspections

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

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

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

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

5.2.5 If the Contract, or any applicable laws, ordinances, regulations, or order of any public authority or agency having jurisdiction require any work to be specially inspected, tested or approved, the Construction Manager shall give the Owner, the Architect, and any other public authority or agency which must be present or which otherwise should be notified, timely notice (at least 14 calendar days) of readiness for inspection and, if the inspection is by an authority or agency other than the Owner the date of the inspection.

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

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

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

5.2.9 If the Owner determines that any Work requires special inspection not required by the Contract, it may direct the Construction Manager to obtain such inspection and the Construction Manager shall do so. If the inspection reveals a failure of the Work to comply with Contract requirements, the Construction Manager shall bear all costs of the inspection, including any additional compensation paid or payable to the Architect and any other costs incurred by the

Owner. In all other cases, the Owner shall bear such costs and an equitable adjustment may be made to the GMP as an Owner Change (*see* Section 19.5).

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

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

ARTICLE 6 PROGRESS REPORTS; MEETINGS; COSTS

Section 6.1 Progress Reports

6.1.1 Progress Reports. The Construction Manager shall record the progress of the Project and shall submit a monthly report containing the information shown on **Exhibit F** to the Owner and the Architect.

Section 6.2 Progress Meetings

6.2.1 Progress Meetings. The Construction Manager shall:

(a) Schedule and conduct construction progress meetings (and any other meetings deemed necessary relative to the Project) as either agreed upon by Construction Manager and Owner, or as otherwise required by Owner.

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

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

Section 6.3 Project Cost; Budget

6.3.1 The Construction Manager shall:

(a) Develop and monitor an effective system of Project cost controls acceptable to Owner. The system should include cash flow projections updated not less than monthly.

(b) Provide monthly reports to Owner 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 Architect and the Owner promptly whenever any line item of projected cost exceeds either the budget for, or the estimated cost of such item.

**ARTICLE 7
RECORDS; DOCUMENTS; AS-BUILT DRAWINGS**

Section 7.1 Maintenance of On-Site Documents

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

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

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

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

**ARTICLE 8
PERSONNEL**

Section 8.1 In General

8.1.1 The Construction Manager shall staff the Project in strict accordance with the project staffing plan (the “**Staffing Plan**”) attached hereto as **Exhibit I**.

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

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

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

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

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

8.2 Key People. “**Key People**” are principals and employees of the Construction Manager who the Owner desires assigned to the Project for the duration of the contract.

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

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

8.2.3 Construction Manager’s employees shall be supervised by one or more Key People.

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

ARTICLE 9 SCHEDULE

Section 9.1 Notices to Proceed & Critical Path

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

9.1.2 If Construction Manager fails to proceed with the Work within ten (10) business days after the issuance of the NTP for the entire Project it shall be an Event of Default under Section 23.2.

9.1.3 Substantial Completion. The Construction Manager shall achieve Substantial Completion of the entire Work not later than the date identified in the NTP.

9.1.4 Final Completion. The Construction Manager shall achieve Final Completion not later than the date identified in the NTP or otherwise required by this Agreement.

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

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

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

Section 9.2 Hazardous Materials

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

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

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

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

ARTICLE 10 SUBSTANTIAL AND FINAL COMPLETION

10.1.1 Time is of the Essence

The Construction Manager acknowledges that time is of the essence for the Work under this Agreement and that Owner, 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.

10.1.2 Substantial Completion

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

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

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

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

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

10.1.5 Completion List and Punch List.

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

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

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

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

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

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

10.1.11 Final Completion.

Upon satisfactory receipt and acceptance by the Owner and Architect of all requirements in accordance with this Agreement and the Contract Documents, including full and final completion of all Punch List items, a Certificate of Final Completion in the form attached hereto as **Exhibit H** will be issued by the Owner and Architect. If the Owner has reasonable cause to believe that the Construction Manager will not achieve Final Completion by the Final Completion Date, the Owner may withhold all or a portion of the Construction Manager’s fee remaining to be paid until Final Completion is achieved. (*see* also Section 21.6 Additional Withholding) Any withheld amounts shall be paid in accordance with Article 21 once Final Completion is achieved.

10.1.12 In addition to the requirements of Section 21.9 final payment shall not be made until Final Completion.

10.1.13 Correction of Work before Final Payment.

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

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

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

**ARTICLE 11
DELAYS & TIME EXTENSIONS**

Section 11.1 Delays Generally

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

11.1.2 Time is an essential element of the Contract and it is important that the Work be vigorously prosecuted, with a full work force until completion. Construction Manager must take all reasonable action to avoid or to mitigate the effects of delays, recognizing that a delay in any one phase of the Project or in any work sequence or other aspect of the Work does not necessarily result in any delay in, or a delay of equal duration in completion of all the Work. *See also **Exhibit J**.*

Section 11.2 Critical Path Delay – Contractor Not At Fault

11.2.1 If Construction Manager is delayed in the critical path shown by the CPM schedule by one or more of the following (force majeure):

(a) fault of the Owner, Architect, or other contractor or consultant separately hired by the Owner (but only to the extent such fault is not caused by Construction Manager or by its failure to coordinate the Work under the Contract);

(b) bomb threats;

(c) embargoes;

(d) fire;

(e) unavoidable casualties;

(f) national emergencies or states of emergency declared by the federal government, the State, or local government – including but not limited to epidemics and pandemics;

(g) unusually severe weather conditions in accordance with Section 11.5.2; or

(h) acts of terrorism.

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

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

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

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

(b) its anticipated duration; and

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

11.2.3 If Construction Manager 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 Construction Manager.

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

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

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

11.2.7 There shall be no extensions of time for Inside GMP Changes (*see* Article 19).

Section 11.3 Critical Path Delay – Contractor At Fault

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

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

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

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

Section 11.4 Compensable Delay Costs

11.4.1 Equitable Adjustments for Delay.

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

11.4.2 Recoverable Costs.

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

(a) Direct costs consisting of:

(i) Actual additional salaried and non-salaried on-site labor expenses;

(ii) Actual additional costs of materials;

(iii) Actual additional equipment costs, based solely on actual ownership costs of owned equipment or actual reasonable costs of rented or leased equipment;

(b) Actual additional costs, proven by clear and convincing evidence, subject to the review and approval of the Owner as to eligibility as a recoverable expense.

(c) Costs are not recoverable for Inside GMP Changes.

11.4.3 Subtraction of Recovered/Recoverable Expenses.

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

Section 11.5 Non-Compensable Delay Costs

11.5.1 No other compensation or damages are recoverable by the Construction Manager for compensable delays or extensions of the completion time except as expressly stated in Section 11.4 or as provided in Section 19.5 (Owner Changes). In particular, Owner will not be liable for the following (by way of example and not limitation) whether claimed by the Construction Manager 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.

11.5.2 Weather.

(a) The schedule shall include normal weather conditions such as rain, snow, and freezing temperatures. An extension of time will not be allowed for normal inclement weather as recorded by the National Weather Services. *See* also **Exhibit J** Section 1.13.

(b) Claims for time extensions due to weather must be supported by climatological data covering the period for the five (5) preceding years. When the weather in question exceeds the intensity or frequency for the worst three (3) year average, the excess experienced shall be considered “unusually severe.” Comparison shall be made on a monthly basis.

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

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

11.5.4 Delays for reasons described in Section 19.2.1 (Inside GMP Changes) shall be non-compensable even if an extension of time is granted.

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

11.5.6 Delays caused by Owner, its agents or consultants, even if Construction Manager asserts such are the result of a material breach of this Agreement or willful interference by Owner, its agents or consultants with performance of the Work - shall not be grounds for an extension of time, 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 Owner, its agents or consultants are not responsible.

ARTICLE 12 CHECKLISTS; TESTING AND TRAINING

12.1.1 Close In Checklists. The Construction Manager shall prepare and observe appropriate checklists for any Project Work that will be buried, encased in concrete or other material, or enclosed in walls to ensure that all such work has been fully and properly performed prior to being buried, encased or enclosed. The requirements of this Section 12.1.1 are in addition to all applicable requirements set forth in Article 2 of this Agreement.

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

12.1.3 Checkout, Initial Start-Up & Testing.

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

12.1.4 The Construction Manager shall perform or observe the Trade Contractors' performance of the final checkout of utilities, operational systems and equipment for readiness.

12.1.5 The Construction Manager 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.

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

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

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

ARTICLE 13 PROJECT AND CONTRACT CLOSE OUT; WARRANTIES

13.1.1 Project Close-Out.

The Construction Manager shall secure and provide to the Owner (with copies to the Architect as appropriate) all items described in and set forth in **Exhibit G** "Final Project Report."

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

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

13.1.4 Warranty.

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

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

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

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

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

13.1.5 The Construction Manager 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 Construction Manager's liability for latent defects or for any substantial failure to perform the work in accordance with the contract, even if such defects or failure are discovered after the expiration of the warranty period provided by this section.

ARTICLE 14 OWNER'S RESPONSIBILITIES

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

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

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

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

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

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

14.1.7 If the Owner becomes aware of any fault or defect in the Project or nonconformance with the Drawings and Specifications, it shall give prompt written notice thereof to the Construction Manager.

**ARTICLE 15
CONSTRUCTION MANAGER'S COMPENSATION**

15.1.1 The Owner and the Construction Manager have agreed to the GMP delineated in **Exhibit A**. The Owner agrees to pay all sums owing to the Construction Manager pursuant to the GMP subject to the terms and conditions of this Agreement including:

- (a) the Cost of the Work per Article 16
- (b) the General Conditions per Article 17
- (c) the Construction Manager Fee per Article 18

Section 15.2 Breakdown of (estimated) Costs

15.2.1 The GMP (*see **Exhibit A** attached hereto*) 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, Construction Manager’s Fee, Construction Manager Allowances and Holds (*see Section 19.4*), and Owner’s Contingency and Allowances, all of which shall be separately accounted for. The aggregate of these costs are the total sum of the GMP.

15.2.2 Changes or adjustments to increase a line item amount shall be permitted only if the Construction Manager demonstrates to Owner’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 Owner, which approval will not be unreasonably withheld.

15.2.3 . The Construction Manager has provided the GMP based upon % Construction, Program and Design Documents provided at the time of its submission of the GMP. The Construction Manager represents that the GMP adequately covers the reasonably inferable intent of the Contract Documents.

15.2.4 The Construction Manager shall exert its best efforts to promptly identify potential areas and items that may result in Change Orders (“**Anticipated Changes**”) and shall assist the Owner in preparing a list of such items so the that the Construction Manager and Owner can avoid the risk of increases to the Cost of the Work.

15.2.5 Throughout the Contract Term, the Construction Manager shall promptly notify the Architect and the Owner of any area or details in the Plans and Specifications and other Contract Documents which are either vague, incomplete, erroneous or confusing and shall assist the Architect in clarifying, resolving and correcting such items so as to maintain the Cost of the Work.

15.2.6 If at any time during the execution of the Work, the probable costs will exceed the Cost of the Work, the Owner shall have the right to direct the Architect and the Construction Manager to redesign the Project as necessary to maintain the program and meet the Cost of the Work.

15.2.7 The Construction Manager shall not be entitled to make a claim for additional cost or time if the Construction Manager fails to notify the Architect and the Owner within five (5) business days of any Anticipated Change of which the Construction Manager becomes aware and which would possibly cause an increase in the Cost of the Work.

**ARTICLE 16
COST OF THE WORK**

Section 16.1 Included in Cost of the Work

16.1.1 The term “**Cost of the Work**” shall mean costs expressly authorized under Section 16.1.2 which costs are:

- (a) Necessarily incurred on the Project during the Construction Phase;
- (b) Paid by the Construction Manager, and
- (c) Not included in the General Conditions or the Construction Manager’s Fee.

16.1.2 The following items shall be included in the Cost of the Work:

(a) Wages paid for trade labor in the direct employ of the Construction Manager under applicable collective bargaining agreements, or, under a salary or wage schedule agreed upon by the Owner and Construction Manager and including such welfare or other benefits, if any, as may be payable with respect thereto.

(b) Payments made by the Construction Manager to Trade Contractors for work performed pursuant to contracts under this Agreement, including the cost of Trade Contractors’ 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 Construction Manager is liable.

(d) Permit fees, (excluding the building permit), permits, licenses, certificates, tests and inspections pursuant to Sections 2.8, 3.3, 5.1 and 5.2.

(e) *Subject to Section 2.3*, 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 Construction Manager 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, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction of the Project.

(h) 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 Owner’s property at the completion of the Work or, at the Owner’s option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

(i) 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 Construction Manager at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

(j) Rental charges for power operated equipment required for the Work supplied by Construction Manager or rented from others at rates approved by the Owner. All equipment shall be delivered in good condition and hereafter all charges for operating and maintaining equipment shall be charged at cost. Normal wear and tear, repair costs of a capital nature and depreciation charges on equipment shall not be charged but shall be covered by the rental fee charged. The rental fee charged shall be at the lowest prevailing local rates. A schedule of the rental rates and equipment valuations shall be submitted to the Owner for approval. Rental charges for each item Construction Manager owned equipment or tools furnished by Construction Manager shall be charged to the Cost of the Work until such time as the aggregate of such rentals for any items equals eighty-five percent (85%) of the agreed value of that item, 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 Construction Manager shall maintain and furnish to the Owner an Equipment Log to track all equipment valued in excess of Five Hundred Dollars (\$500.00) for which rental is charged to the Project. The Equipment Log shall be submitted each month with Construction Manager's progress pay application as part of the documentation for the equipment charges. All power tools, equipment, or other devices, for which rent is charged to the Project, shall be removed from the site in order to terminate the rental charges as soon as possible.

(k) Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner. The Trade Contractors and the Construction Manager shall not bill 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 Construction Manager will provide security for same. The Construction Manager shall cause insurance coverage to be provided for stored materials and equipment consistent with the requirements of the Owner and the Contract Documents.

(l) Cost of Performance and Payment Bonds and/or sub-contractor default insurance.

(m) Cost of the premiums for all insurance which the Construction Manager is required by this Agreement to procure. Any additional or separate insurance which the Construction Manager deems necessary for the prosecution of the Work shall require the prior written consent of the Owner to be included with General Condition's expenditures.

(n) Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

(o) Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Trade Contractor or their subcontractors and suppliers, provided that such damaged or nonconforming Work was not cause by negligence or material failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, sureties, Trade Contractors, or their subcontractors or suppliers.

(p) Cost incurred due to an emergency affecting the safety of persons and property, unless such emergency is caused by the Construction Manager's gross negligence, fault, or breach of contract.

(q) The cost of corrective or warranty work provided such work results from causes other than the Construction Manager's negligence or breach of contract. The cost of corrective or warranty work made necessary due to Trade Contractor shall be reimbursable only after Construction Manager has exhausted all good faith efforts to secure replacement of the defective work or compensation from such Trade Contractor.

(r) Cost of overtime work required in the reasonable judgment of the Construction Manager to maintain the Project Schedule provided that:

(i) the cost of such overtime work results from causes *other than* the Construction Manager's negligence, breach of contract or delay for which it was responsible regardless of negligence, and;

(ii) the Construction Manager has given prior written notice to the Owner of the overtime or extension of schedule.

(s) Construction Manager Contingency as defined in Section 19.3.

ARTICLE 17 GENERAL CONDITIONS

Section 17.1 Included in General Conditions

17.1.1 The "**General Conditions**" include all expenditures required to be made by the Construction Manager to fulfill its obligations under this Agreement and that are not included in the Construction Manager's Fee or the Cost of the Work. The General Conditions are fixed. The Construction Manager may not use Construction Manager Contingency (defined in Section 19.3) without Owner approval, for overages in the General Conditions. General Conditions include, but are not limited to the following:

(a) Costs, including setup and maintenance of temporary facilities.

(b) 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.

(c) All normal and customary costs related to the supervision, operation and management of the Project, such as removal of all debris, provision of trailers and portable rest rooms, propane or other temporary heat.

(d) Subject to the approval of the Owner, 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, fascimile costs and travel between the offices of MSA, the Project site, and the Contractor.

(e) Cost of job site computer, hardware, software, supplies, and communications.

(f) Direct Personnel Expense of Construction Manager's Key People and other staff working on the Project in accordance with the Staffing Plan 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 Construction Manager'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 Construction Manager's standard personnel policy, and (ii) taxes for such items as unemployment compensation and social security.

Except as provided in this Section 17.1.1(f) Direct Personnel Expense of those employed directly in the construction of the project shall be included with the Cost of the Work.

ARTICLE 18 CONSTRUCTION MANAGER FEE

Section 18.1 Included in Construction Manager Fee

18.1.1 The "**Construction Manager Fee**" includes the Construction Manager's profit and all expenditures required to be made by the Construction Manager 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 Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, - except as expressly provided in Sections 16.1 and 17.1; as specifically provided in the Contract Documents or as approved by the Owner.

(b) Expenses of the Construction Manager's principal office and offices other than the Project Site office.

(c) Overhead and general expenses.

(d) The Construction Manager's capital expenses, including interest on the Construction Manager's capital used to perform the Work and the Construction Manager's obligations under the Contract Documents.

(e) Rental costs of machinery and equipment, except as specifically provided in Section 16.1(j).

(f) Except as provided in Sections 16.1(o) and (q), costs due to the negligence or failure to fulfill a specific responsibility of the Construction Manager, Trade Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

(g) Any cost not specifically and expressly described in Sections 16.1 and 17.1 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 Construction Manager or anyone directly employed by him, including, but not limited to, the correction of defective or non-

conforming Work, disposal of materials and equipment wrongly supplied, or making good any damage to property or performing any warranty work.

- (i) Automobile repairs for Construction Manager's vehicles.
- (j) Costs of any education or training of Construction Manager's employees.
- (k) Any Gross Receipts taxes resultant from the Construction Manager's performance of the Work.

ARTICLE 19 CHANGES IN THE PROJECT

Section 19.1 Generally

19.1.1 The Construction Manager acknowledges that the GMP and Substantial Completion Date are based upon the Contract Documents including the GMP Submission attached hereto as **Exhibit A**. Subject to Article 15 herein, 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 Construction Manager will administer changes in the Trade Contracts in accordance with this Agreement.

19.1.2 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 27.

Section 19.2 "Inside" GMP Changes

19.2.1 "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 Construction Manager at the time of the Owner'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 Construction Manager 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 Owner'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 CM Contingency defined in Section 19.3 below.

(d) The GMP has been calculated to account for mark-ups for insurance, bonds and CM Fee on the entire amount of the CM Contingency. As such, Inside GMP Changes are not to include costs associated with these items.

Section 19.3 Construction Manager Contingency

19.3.1 Construction Manager Contingency.

The GMP includes a Construction Manager controlled contingency (the “**CM Contingency**”) for Inside GMP Changes.

The CM Contingency is *not* allocated to any particular item and is established for the Construction Manager’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 Owner approved the GMP.

19.3.2 It is understood that the amount of the CM Contingency is the maximum sum available to the Construction Manager to cover costs incurred as a result of Inside GMP Changes, and that Inside GMP Changes in excess of the CM Contingency will be borne by the Construction Manager.

19.3.3 The Construction Manager may not use the CM Contingency without prior written notice to the Owner for amounts in excess of Ten Thousand Dollars (\$10,000).

(a) The Owner shall have five (5) business days from receipt of said notice (the “**Notice Period**”) to, in writing, object to the proposed use of CM Contingency and/or request additional information. The Construction Manager shall not use the CM Contingency over an Owner objection and shall provide the Owner with all requested information.

(b) At the expiration of the Notice Period, if the Owner has not objected to the proposed use of the CM Contingency nor requested additional information, the Construction Manager may proceed and no further notice to or from the Owner is required.

Section 19.4. Construction Manager Allowances and Holds

19.4.1 The GMP may include a CM 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 Owner.

19.4.2 CM Allowances and Holds shall be used strictly for the purposes for which they are established.

19.4.3 Overruns to CM Allowances and Holds shall be covered by the CM Contingency.

19.4.4 The CM may not self-perform work on CM Allowance and Hold items without obtaining advanced approval from Owner.

Section 19.5. Owner Changes

19.5.1 Owner Changes are limited to changes that are made necessary as a result of an action or the inaction of the Owner. The Construction Manager's entitlement to an extension of the Contract Time or an adjustment in the GMP in accordance with Sections 11.2 and 11.4 shall also be considered an Owner Change. (*See* also Section 19.6 Owner Change Orders). For purposes of this Section, "**inaction**" shall be limited to the failure of the Owner to either grant or deny a requested approval within 20 days after the Construction Manager's written request therefore.

19.5.2 Notwithstanding the 20 day time period above, in an emergency, the Owner shall make the necessary decision as quickly as the circumstances require, which decision may or may not be given in writing.

19.5.3 If Owner action or inaction increases the cost of performing the Work after Owner acceptance of the GMP, the Construction Manager may be entitled to an equitable adjustment or amendment to the Substantial Completion Date.

19.5.4 The Construction Manager may be entitled to an equitable adjustment for "Differing Site Conditions" subject to the provisions of Section 1.8.3 herein, in which case it will be treated as an Owner Change for the purpose of this Section.

19.5.5 An extension of the Contract Term shall be subject to Article 11.

Section 19.6 Owner Change Orders

19.6.1 This Section applies to Owner changes which may affect the amount of, or time for performance under the GMP.

19.6.2 In accordance with SFP § 15-112:

If Owner determines that a change in Work is required:

(a) Owner 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 Construction Manager is not required to begin change order work, and the Construction Manager may not require any Trade Contractor or Subcontractor to begin work.

(c) If the Owner and the Construction Manager do not agree that work is included within the original scope and terms of the Contract, nothing in this Section:

- (i) Prohibits the Owner from issuing an order to the Construction Manager to perform work or furnish labor or materials determined by the Owner 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 Construction Manager to perform or to furnish which the Project Manager has determined are required by the Contract;

(iii) Prejudices or impairs the right of the Construction Manager to submit a claim or dispute to the Owner, 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 Owner 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, Owner 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 Owner. All other requirements for submission of invoices and payment provisions apply to payments under change orders.

(f) Construction Manager 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 Construction Manager's receipt of the written Change Order from Owner.

Section 19.7 Owner Contingency

19.7.1 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 19.8 Owner Allowance

19.8.1 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 19.9 Change Cost Dispute

19.9.1 In the event the Owner and the Construction Manager are unable to reach agreement on the Cost of an Owner Change Order, the Construction Manager shall promptly proceed with the subject work, upon receipt of written direction from Owner.

19.9.2 The cost of such work shall be determined in accordance with the "Disputes" provisions of this Agreement.

19.9.3 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 Owner (which shall not be unreasonably withheld), be included in the Construction Manager Invoice (as defined in Section 21.1.2). In all instances, Change Orders must be complete, inclusive of all impacts to the Construction Manager and the Trade Contractors, prior to their submission to the Owner for approval.

19.9.4 In addition to the requirements in this Section 19.9, applicable Change Orders are subject to and shall comply with the provisions set forth in Section 15.2.2.

Section 19.10 Emergencies

19.10.1 In an emergency affecting the safety of persons or property, the Construction Manager 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 11.4.

19.10.2 If the Owner determines that an emergency exists that threatens the safety of persons or property, and the Construction Manager or responsible Trade Contractor does not immediately take corrective action, the Owner 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 Owner deems necessary under the circumstances. All costs incurred in so doing shall be charged to the Construction Manager and shall not increase the Cost of the Work.

Section 19.11 Value Engineering (During Construction)

19.11.1 Value engineering ideas provided by the Owner 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 Owner as determined by the Owner. Any value engineering proposed by the Construction Manager and accepted by the Owner will serve to increase the CM Contingency subject to the provisions of Section 19.3.

ARTICLE 20 STATE PROPERTY NOT SUBJECT TO LIEN.

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

ARTICLE 21 PROGRESS PAYMENTS

Section 21.1 Invoices

21.1.1 The Construction Manager shall require all Trade Contractors 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.

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

21.1.3 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 Construction Manager agrees to cooperate with the Owner in any such action. If in the course of any such verification any amount shown payable under this Agreement or any 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 Construction Manager.

Section 21.2 Submissions – Documents, Certifications

21.2.1 The Construction Manager shall

(a) Provide MSA with a copy of the CM Invoice.

(b) Comply with such requirements with respect to any work self-performed by the Construction Manager (*see **Exhibit F***).

(c) Lien Wavers.

Before the Construction Manager receives a progress payment or a final payment which includes payments due a Trade Contractor or major supplier (a “Supplier”) it shall provide the Owner with lien waivers from all Trade Contractors 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 and Suppliers are not expected to execute lien waivers for work for which they have not been paid. *However*, the Construction Manager shall certify in writing that, in accordance with contractual arrangements or agreements Trade Contractors and Suppliers have been paid from the proceeds of previous progress payments; and will be paid in a timely manner from the proceeds of the progress or payment currently due.

(iii) The Owner reserves the right to withhold from any progress payment those amounts payable to a Trade Contractor 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 Owner in the prior month have been disbursed in accordance with the applicable invoices.

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

21.2.2 The Construction Manager shall submit to the Owner a monthly statement as described on the attached **Exhibit F** (certified as to its accuracy), showing all moneys paid out, costs accumulated, or costs incurred on account of the Cost of the Work and General Conditions during the previous month.

21.2.3 The Owner and the Construction Manager intend that at all times the estimated cost of performing the uncompleted and unpaid portion of the Work, including the Contractor’s Management Fee and General Conditions shall not exceed the unpaid balance of the Construction Manager’s Compensation (less retainage on Work previously completed). Therefore, if at any time the Owner determines in its sole discretion that the aggregate amount shown on the Cost Breakdown (as defined in Section 15.2.1), exceeds or may exceed the Cost of the Work, the amount payable by the Owner with respect to the subject CM Invoice shall be reduced by the amount of estimated excess.

21.2.4 The Construction 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 CM Invoice. If the Owner and the Architect are unable to verify any portion of the Work performed or payment amount(s) requested, the Owner shall be entitled to withhold payment for that portion of unverified or unconfirmed Work until such time as verification is obtained. Owner shall work with the Construction Manager to resolve any such issues as quickly as possible.

21.2.5 The Construction Manager shall maintain detailed statements, including without limitation, payroll records, receipted invoices, check vouchers, and any other evidence demonstrating costs incurred by the Construction Manager on account of the Cost of the Work, which records shall be available for the Owner's examination during regular business hours.

Section 21.3 Progress Payment Calculation

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

21.3.2 Nothing contained in this Article 21 shall require the Owner to pay the Construction Manager an aggregate amount exceeding the amount owing to the Construction Manager pursuant to Article 15 or to make a payment if the Owner reasonably believes that the cost to complete the Work (plus the balance of General Conditions and Construction Manager's Fee) would exceed the balance of the funds available for the same.

Section 21.4 Payment and Interest

21.4.1 Subject to Section 28.4, progress payments to the Construction Manager shall be made no later than 30 days after Owner's receipt of Certification of Payment from the Architect.

21.4.2 Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1 of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated utilities as applicable, are prohibited.

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

Section 21.5 Retainage

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

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

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

21.5.4 Final retainage shall be released to the Construction Manager at the time of Final Payment.

Section 21.6 Additional Withholding

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

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

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

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

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

(e) Damage to another contractor.

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

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

Section 21.7 MBE Liquidated Damages Withholding

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

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

Section 21.8 Non-Conforming Work Remedied

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

21.8.2 The Owner's determination shall be final subject only to appeal as provide in the Disputes clause in Article 27.

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

Section 21.9 Final Payment

21.9.1 Conditions for Final Payment.

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

21.9.2 The Owner has approved and accepted the Final Project Report (*see **Exhibit G***) with all required submissions.

21.9.3 The Owner shall have received from the Construction Manager all documents (which are Construction Manager's responsibility) for the use of the Project, including those which by their nature cannot be obtained prior to completion of the project. Upon completion of the Work and as a condition of receiving payment of retainage, the Construction Manager shall submit at final completion "As-Built" Drawings and Specifications showing all of the Work including all changes, locations and installations for the Owner's approval and acceptance.

21.9.4 The Construction Manager shall have met all of its insurance, indemnification and all of its other obligations under the Contract Documents.

21.9.5 The Construction Manager has provided all required MBE documentation in accordance with the Agreement.

21.9.6 Except as provided in Section 21.9.7 below, final payment constituting the unpaid balance of the Cost of the Work and the Construction Manager's Fee shall be due and payable when Final Completion has been achieved in accordance with Section 9.1.4 and Article 10 herein and this Agreement has been substantially performed including but not limited to checkout, initial start-up, testing and training pursuant to Article 12 herein.

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

Section 21.10 Cost Savings

21.10.1 Cost Savings is the amount of CM Contingency remaining at the time of Final Completion of the Project.

The Construction Manager 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 Owner. At a minimum, the request shall outline the Construction Manager's efforts during the execution of the Project that realized Cost Savings.

21.10.2 The Owner has the sole discretion to:

- (1) approve the request in full.
- (2) approve a portion of the request; or
- (3) deny the request.

ARTICLE 22 CONSTRUCTION MANAGER'S INSURANCE

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

Coverage limits shall be as follows:

Builder's Risk	All Risk Policy
Worker's Compensation and Employer's Liability	Statutory
<i>Auto Liability</i> (Combined single limit)	\$ 2,000,000
General Liability Occurrence	\$ 2,000,000
General Aggregate	\$ 4,000,000
Products-completed/Operations Aggregate	\$ 4,000,000
Excess Liability Occurrence and Aggregate	\$25,000,000

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

22.1.3 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.

22.1.4 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.

22.1.5 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.

22.1.6 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.

22.1.7 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.

22.1.8 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.

22.1.9 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.

22.1.10 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.

22.1.11 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 23
TERMINATION & EVENTS OF DEFAULT**

Section 23.1 Termination for Convenience

23.1.1 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.

23.1.2 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.

23.1.3 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.

23.1.4 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.

23.1.5 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.

23.1.6 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 Owner (or sold or acquired as provided in Section 23.1.2(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 Construction Manager'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 23.1.4, 23.1.5, and 23.1.6 (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 23.1.4, 23.1.6 (a), (b) or 23.1.6(g) hereof, except that if the Contractor has failed to submit his claim within the time provided in Sections 23.1.4 or 23.1.6(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 23.1.4, 23.1.6 (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 23.2 Events of Default

23.2.1 If the Construction Manager:

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

(b) Fails to prosecute the Work to completion thereof in an expeditious, efficient, workmanlike, skillful and careful manner and in strict accordance with the provisions of the Contract Documents,

(c) Fails to utilize full crews of labor and other personnel and a full complement of equipment needed to maintain the progress of the Work in accordance with the schedule;

(d) Breaches any of its other obligations under the Contract Documents, and does not rectify any such breach within five (5) days after written notice thereof, or if such failure is of such nature that it cannot reasonably be cured within seven (7) days, or such longer period as may be agreed upon in writing between the Owner and Construction Manager, if the Construction Manager 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 Construction Manager 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 23.3 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.

23.3.1 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.

23.3.2 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.

23.3.3 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."

23.3.4 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.

23.3.5 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.

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

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

23.3.8 If the Construction Manager 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 Construction Manager, terminate the Construction Manager'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 Construction Manager's right to proceed with the work is terminated, the Construction Manager and its sureties shall be liable for any damage to MSA resulting from the Construction Manager's refusal or failure to complete the Work within the specified time.

**ARTICLE 24
SUSPENSION OF WORK**

Section 24.1 Suspension of Work

24.1.1 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.

24.1.2 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.

24.1.3 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 25
MBE LIQUIDATED DAMAGES**

25.1.1 This contract requires the Construction Manager to make good faith efforts to comply with the MBE Program and contract provisions with respect to subcontractors. The Owner and the Construction Manager acknowledge and agree that the Owner will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Construction Manager does not make good faith efforts to comply with the requirements of the MBE Program and MBE contract provisions. Because the precise dollar amount of such damages is impossible to determine, Construction Manager agrees upon a determination by Owner that Construction Manager failed to comply with one or more of the specified requirements of the MBE Program, related contract provisions, or the prompt payment requirements, Construction Manager shall pay liquidated damages to Owner calculated as follows:

MBE COMPLIANCE

COMPLIANCE FAILURE

(a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B(3)

(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)

(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.

(d) Failure to meet the Construction Manager's total MBE participation goal and sub-goal commitments.

LIQUIDATED DAMAGES CALCULATION

\$120 per day until the monthly report is submitted as required.

\$60 per MBE subcontractor

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.

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 26
AUDITS BY OWNER & RECORD RETENTION**

26.1.1 Access to Construction Manager's Books and Records: The Construction Manager agrees that the owner or any of its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine any pertinent books, documents, papers, and records of the Construction Manager involving transactions related to this Agreement.

26.1.2 Access to Trade Contractor's Books and Records: The Construction Manager agrees to include in all Trade Contracts a provision to the effect that the Trade Contractors, 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.

26.1.3 Retention of Records: The Construction Manager 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 27
DISPUTES

27.1.1 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 Construction Manager and MSA's Project Manager shall be resolved in accordance with this Article.

27.1.2 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.

27.1.3 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.

27.1.4 When a claim cannot be resolved by mutual agreement, the Construction Manager 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.

27.1.5 The Construction Manager shall be afforded an opportunity to be heard by the Project Executive and to offer evidence in support of its claim.

27.1.6 The Project Executive shall render a written decision on all claims within ninety (90) days of receipt of the Construction Manager'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 Construction Manager of the time within which a decision shall be rendered and the reasons for such time extension. The decision shall be furnished to the Construction Manager, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The Project Executive's decision shall be deemed the final action of the MSA.

27.1.7 The Project Executive's decision shall be final and conclusive without prejudice to the rights of the Construction Manager to institute suit after completion of the Work in a court of competent jurisdiction for losses incurred by Construction Manager as a result of the Project Executive's decision. Construction Manager 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.

27.1.8 Pending resolution of a claim, the Construction Manager shall proceed diligently with the performance of the contract in accordance with the Project Executive's decision.

**ARTICLE 28
STATE TERMS**

Section 28.1 General State Terms

28.1.1 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.

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

28.1.3 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 Construction Manager shall notify the Owner immediately in writing of any significant changes in its ownership or organization or in the ownership or organization of any of the joint venturers comprising the Construction Manager

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

28.1.5 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.

28.1.6 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 28.2 Non-Discrimination Provisions

28.2.1 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.

28.2.2 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 28.3 Disclosures and Ethics

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

28.3.2 Statement of Political Contributions. Contractor shall comply with the Election Law Article, Title 14 Subtitle 1, Md. Code Ann., which requires that a person doing public business with the State, shall file a statement with the State Board of Elections as provided in section 14-104. Generally, this applies to every person that enters into contracts, leases, or other agreements with the State of Maryland or a political subdivision of the State, including its agencies, during a calendar year in which the person receives in the aggregate \$200,000 or more, shall file with the State Board of Election a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

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

283.4 Contingent Fees. Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Contract.

Section 28.4 Subject to Appropriations

28.4.1 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 Construction Manager and the Owner from future performance of this Agreement, but not from their rights and obligations existing at the time of termination. The Construction Manager shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of this Agreement. The Owner shall notify the Construction Manager as soon as it has knowledge that funds may not be available for the continuation of this Agreement for each succeeding fiscal period beyond the first. Contractor may not recover anticipatory profits or costs incurred after termination.

Section 28.5 Drug and Alcohol Free Workplace

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

Section 28.6 Indemnification

28.6.1 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 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 28.7 Tax Exemption

28.7.1 MSA is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. Where a Contractor is required to furnish and

install material in the construction or improvement of real property in performance of a contract, the Contractor shall pay the Maryland Sales Tax and the exemption does not apply.

Section 28.8 No Delegation of Authority

28.8.1 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 28.9 Governmental Immunities

28.9.1 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 28.10 Tort Claims Acts

28.10.1 Contractor agrees for itself and for its insurers, that neither Contractor nor its insurers may raise or use any governmental immunity from or limitation of liability for torts (including under the Maryland Tort Claims Act and/or the Maryland Local Government Tort Claims Act) in the adjustment of claims or in the defense of suits against Owner or Client, unless requested by Owner.

Section 28.11 Independent Contractor Status

28.11.1 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 28.12 Remedies Cumulative

28.12.1 The remedies of the Owner provided in this Agreement shall be in addition to, and not in substitution for, the rights and remedies which would otherwise be vested in the Owner, under law or at equity, all of which rights and remedies are specifically reserved by the Owner; and the failure to exercise any remedy provided for in this Agreement shall not preclude the resort to any such remedy for future breaches by the Construction Manager; nor shall the use of any special remedy hereby provided prevent the subsequent or concurrent resort to any other remedy which by law or equity would be vested in the Owner for the recovery of damages or otherwise in the event of a breach of any of the provisions of this Agreement to be performed by the Construction Manager.

Section 28.13 No Arbitration

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

Section 28.14 Approvals

28.14.1 This Agreement shall not be effective until all required approvals of the Maryland Stadium Authority Board and the State of Maryland Board of Public Works have been obtained. No Work shall be commenced hereunder until Owner notifies the Construction Manager that such approvals have been obtained.

Section 28.15 No Third Party Beneficiaries

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

Section 28.16 Owner Approval

28.16.1 Whenever provision is made herein or in the Contract Documents for the approval or consent of the Owner, or that any matter be to Owner's satisfaction, unless specifically stated to the contrary, such approval or consent shall be made by Owner in its sole discretion and determination.

Section 28.17 Time of the Essence

28.17.1 Time is of the essence in the performance of the obligations of the Construction Manager under this Agreement.

Section 28.18 Counterparts

29.18.1 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 28.19 Contract Representatives

28.19.1 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 28.20 Notice

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

If to the Owner:

Maryland Stadium Authority
351 West Camden Street, Suite 300

[PROJECT NAME] GMP

Baltimore, MD 21201-2435
Attention: Al Tyler, Vice President

If to the Construction Manager:

Company Name
Address
City, State Zip Code
Attention: Name, Title

Any party may designate another addressee or change its address by notice given to the other party pursuant to this Section. All notices shall be deemed given upon receipt thereof or at the time delivery is refused.

[Remainder of Page Intentionally Left Blank]

[PROJECT NAME] GMP

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: CONSTRUCTION MANAGER

By: _____ By: _____(SEAL)
Authorized Officer

CONTRACT AFFIDAVIT
ATTACHED TO THE GMP AGREEMENT AND MADE A PART THEREOF.

A. AUTHORITY

I HEREBY AFFIRM THAT:

I, (print name) _____ possess the legal authority to make this Affidavit.

B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

I FURTHER AFFIRM THAT:

_____ is a (check applicable items):

- (1) Corporation – ___ domestic or ___ foreign;
- (2) Limited Liability Company – ___ domestic or ___ foreign;
- (3) Partnership – ___ domestic or ___ foreign;
- (4) Statutory Trust – ___ domestic or ___ foreign;
- (5) ___ Sole Proprietorship

and is registered or qualified as required under Maryland Law.

I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation.

(Print ID Number) _____ SDAT

The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

(Print name) _____

(Print address) _____

If it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies the true name and address of the principal or owner as:

Name and Department ID Number: _____

Address: _____.

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require the business to file with the Secretary of State of Maryland certain specified information, including disclosure of beneficial ownership of the business, within 30 days of the date the aggregate value of any contracts, leases, or other agreements that the business enters into with the State of Maryland or its agencies during a calendar year reaches \$200,000.

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31.

E. DRUG AND ALCOHOL FREE WORKPLACE

I CERTIFY THAT:

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

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

- (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
- (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
- (c) Prohibit its employees from working under the influence of drugs or alcohol;
- (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;

- (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business's policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
 - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b) of this affidavit;
 - (h) In accordance with the statement required by §E(2)(b) of this affidavit, notify its employees that as a condition of continued employment on the contract, the employee shall:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
 - (i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii) of this affidavit or otherwise receiving actual notice of a conviction;
 - (j) Within 30 days after receiving notice under §E(2)(h)(ii) of this affidavit or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
 - (i) Take appropriate personnel action against an employee, up to and including termination; or
 - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
 - (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a) through (j) of this affidavit.
- (3) If the business is an individual, the individual shall certify and agree, as set forth in §E(4) of this affidavit, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
 - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
 - (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated _____, 20____, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

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

Date: _____ By: _____
(printed name of Authorized Representative and affiant)

(signature of Authorized Representative and affiant)

[PROJECT NAME]

Guaranteed Maximum Price Agreement

EXHIBIT A
GMP SUBMISSION

Guaranteed Maximum Price Submission dated _____, 20__; see attached.

[PROJECT NAME]

Guaranteed Maximum Price Agreement

EXHIBIT B
PROJECT MANUAL

See attached General Requirements and refer to Specifications, Drawings, and Addenda.

[PROJECT NAME]

Guaranteed Maximum Price Agreement

EXHIBIT C
PROJECT DESCRIPTION

[PROJECT NAME]

Guaranteed Maximum Price Agreement

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. Construction Manager, 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.

Construction Manager 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 Construction Manager 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.

Attachment D. Minority Business Enterprise (MBE) Forms

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

PART 1 - INSTRUCTIONS

PLEASE READ BEFORE COMPLETING THIS DOCUMENT

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

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

- ✓ In order to receive credit for self-performance, an MBE prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE prime is self-performing and include information regarding the work it will self-perform.
 - ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.
 - ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime's ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
 - ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the contract has subgoals, regardless of MBE Prime's ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to use other MBEs for each of any remaining subgoals or request a waiver. As set forth in Attachment 1-B Waiver Guidance, the MBE Prime's ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
 - ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to the Governor's Office of Small Minority & Women Business Affairs' website for the MBE Prime Regulations Q&A for illustrative examples.
http://www.goMDsmallbiz.maryland.gov/Documents/MBE_Toolkit/MBEPrimeRegulation_QA.pdf
6. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the Contract that the certified MBE performs with its own forces toward fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.
7. The work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.
8. **Materials and Supplies: New Guidelines Regarding MBE Participation.**
- ✓ Regular Dealer (generally identified as a wholesaler or supplier in the MDOT Directory): Up to 60% of the costs of materials and supplies provided by a certified MBE may be counted towards the MBE participation goal(s) if such MBE is a Regular Dealer of such materials and supplies. Regular Dealer is defined as a firm that owns, operates, or maintains a store, a warehouse, or any other establishment in which the materials, supplies, articles, or equipment are of the general character described by the specifications required under the contract and are bought, kept in stock, or regularly sold or leased to the public in the usual course of business; and does not include a packager, a broker, a manufacturer's representative, or any other person that arranges or expedites transactions.

Example for illustrative purposes of applying the 60% rule:

Overall contract value: \$2,000,000

Total value of supplies: \$100,000

Calculate Percentage of Supplies to overall contract value: \$100,000 divided by \$2,000,000 = 5%

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

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

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

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

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

10. CAUTION: The percentage of MBE participation, computed using the percentage amounts determined for all of the MBE firms listed in PART 3, MUST meet or exceed the MBE participation goal and subgoals (if applicable) as set forth in PART 2- for this solicitation. If a bidder/offeror is unable to meet the MBE participation goal or any subgoals (if applicable), then the bidder/offeror must request a waiver in PART 2 or the bid will be deemed not responsive, or the proposal not reasonably susceptible of being selected for award. You may wish to use the attached Goal/Subgoal Worksheet to assist in calculating the percentages and confirming that your commitment meets or exceeds the applicable MBE participation goal and subgoals (if any).
11. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT's Office of Minority Business Enterprise at 1-800-544-6056 or via email to mbe@mdot.state.md.us sufficiently prior to the submission due date.

Subgoals (if applicable)

Total African American MBE Participation: _____ %
Total Asian American MBE Participation: _____ %
Total Hispanic American MBE Participation: _____ %
Total Women-Owned MBE Participation: _____ %

Overall Goal

Total MBE Participation (include all categories): _____ %

**PART 2 - MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT &
MBE PARTICIPATION SCHEDULE**

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

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

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

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

- _____ percent for African American-owned MBE firms
- _____ percent for Hispanic American-owned MBE firms
- _____ percent for Asian American-owned MBE firms
- _____ percent for Women-owned MBE firms

Therefore, I am not seeking a waiver pursuant to COMAR 21.11.03.11. I acknowledge that by checking the above box and agreeing to meet the stated goal and subgoal(s), if any, I **must** complete PART 3 - MBE Participation Schedule and Part 4 Signature Page in order to be considered for award.

OR

After making good faith outreach efforts prior to making this submission, I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals I acknowledge that by checking this box and requesting a partial waiver of the stated goal and/or one or more of the stated subgoal(s) if any, I **must** complete Part 3, the MBE Participation Schedule and Part 4 Signature Page for the portion of the goal and/or subgoal(s) if any, for which I am not seeking a waiver, in order to be considered for award. I acknowledge that by checking this box and requesting a full waiver of the stated goal and the stated subgoal(s) if any, I **must** complete Part 4 Signature Page in order to be considered for award.

Additional MBE Documentation

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

- (a) Good Faith Efforts Documentation to Support Waiver Request (Attachment D-1C)
- (b) Outreach Efforts Compliance Statement (Attachment D-2);
- (c) MBE Subcontractor/MBE Prime Project Participation Statement (Attachments D-3A and 3B);
- (d) Any other documentation, including additional waiver documentation if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal and subgoals, if any.

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

Information Provided to MBE firms

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

PART 3 - MBE PARTICIPATION SCHEDULE

SET FORTH BELOW ARE THE (I) CERTIFIED MBEs I INTEND TO USE, (II) THE PERCENTAGE OF THE TOTAL CONTRACT VALUE ALLOCATED TO EACH MBE FOR THIS PROJECT AND, (III) THE ITEMS OF WORK EACH MBE WILL PROVIDE UNDER THE CONTRACT. I HAVE CONFIRMED WITH THE MDOT DATABASE THAT THE MBE FIRMS IDENTIFIED BELOW (INCLUDING ANY SELF-PERFORMING MBE PRIME FIRMS) ARE PERFORMING WORK ACTIVITIES FOR WHICH THEY ARE MDOT-CERTIFIED.

Prime Contractor	Project Description	Project/Contract Number

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

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

<p>MBE Prime Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____% Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p>Percentage of total Contract Value to be performed with own forces and counted towards the subgoal, if any, for my MBE classification (up to 100% of not more than one subgoal): _____%</p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%) <input type="checkbox"/> Manufacturer (count 100%) <input type="checkbox"/> Broker (count reasonable fee/commission only) <input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work your firm is self-performing to calculate amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</p> <p>A. Percentage amount of subcontract where the MBE Prime firm is being used for manufacturer, furnish and install, and/or services (excluding products / services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p>B. Percentage amount for items of work where the MBE Prime firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule). Total percentage of Supplies/Products ___% x 60% = ___%</p> <p>C. Percentage amount of fee where the MBE Prime firm is being used as broker (count reasonable fee/commission only) ___%</p> <p>Description of the work to be performed with MBE prime's own forces: _____ _____</p>
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SECTION B: For all Contractors (including MBE Primes and MBE Primes in a Joint Venture)

<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</p> <p>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p>B. Percentage of total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule). Total percentage of Supplies/Products ___% X 60% = ___%</p> <p>C. Percentage amount of fee where the MBE firm is being used as broker (count reasonable fee/commission only) ___%</p> <p>Description of the work to be performed: _____ _____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE Firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</p> <p>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p>B. Percentage of total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule). Total percentage of Supplies/Products ___% X 60% = ___%</p> <p>C. Percentage amount of fee where the MBE firm is being used as broker (count reasonable fee/commission only) ___%</p> <p>Description of the work to be performed: _____ _____</p>

<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that for the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</p> <p>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p>B. Percentage of the total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule). Total percentage of Supplies/Products ___% X 60% = ___%</p> <p>C. Percentage amount of fee where the MBE firm is being used as broker (count reasonable fee/commission only) ___%</p> <p>Description of the work to be performed: _____ _____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</p> <p>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p>B. Percentage of total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule). Total percentage of Supplies/Products ___% X 60% = ___%</p> <p>C. Percentage amount of fee where the MBE firm is being used as broker ___%</p> <p>Description of the work to be performed: _____ _____</p>

CONTINUE ON SEPARATE PAGE IF NEEDED

PART 4 – SIGNATURE PAGE

**To complete Affidavit committing to MBE(s) or requesting waiver,
Bidder/Offeror must sign below:**

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

Bidder/Offeror Name
(PLEASE PRINT OR TYPE)

Signature of Authorized Representative

Address

Printed Name and Title

City, State and Zip Code

Date

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

[PROJECT NAME]

Guaranteed Maximum Price Agreement

EXHIBIT E
PREVAILING WAGE SCALE

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

Prevailing Wage documents are attached.

EXHIBIT E-1
PREVAILING WAGE
INSTRUCTIONS FOR THE CONSTRUCTION MANAGER

CONTRACT NO.

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

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

I. DEFINITIONS.

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

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

II. PREVAILING WAGE NOTICE.

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

III. PAYROLL RECORDS.

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

A. When Due.

Within 14 days after the end of each payroll period, the Construction Manager and each Trade Contractor shall submit electronically a complete copy of the Construction Manager’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 Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager 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) Construction Manager 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 Construction Manager 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 Construction Manager shall comply with and cause subcontractors to comply with the Act. Any employee of the Construction Manager 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 Construction Manager 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) Construction Manager 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 Construction Manager 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 Construction Manager 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.	Construction Manager (or subcontractor at any tier) knew or reasonably should have known of the Construction Manager’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.

	VIOLATION	PENALTY OR FEE
5.	<p>(a) Failure of Construction Manager to cooperate with investigation, refusal to correct or cooperate with MSA to correct violations, determination by MSA that Contractor is not acting in good faith.</p> <p>(b) Subcontractor failure to cooperate with investigation, refusal to correct or cooperate with MSA or Construction Manager to correct violations, or determination of MSA that Trade Contractor or subcontractor is not acting in good faith.</p>	<p>(a) May be an Event of Default under the Contract subject to termination.</p> <p>(b) MSA may require Construction Manager to terminate subcontractor contract. Cost of any associated delays or substitutions shall be the sole responsibility of Construction Manager 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. Construction Manager Consent.

Construction Manager 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. Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager 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, Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager. MSA has no duty or responsibility to assist Construction Manager 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.

[PROJECT NAME]

Guaranteed Maximum Price Agreement

EXHIBIT F
PROJECT PROGRESS REPORT

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

- (a) Schedule Status Report per Section 1.9.4 of **Exhibit J**.
 - (i) Tabular and Graphic Reports per Section 1.9.2 and Section 1.9.3 of **Exhibit J**.

- (b) Cost Status
 - (i) Current Payment Application per **Exhibit L**.
 - (ii) Log of Anticipated Changes (Section 15.2.4 of the Agreement). A log and summary statement **showing** potential Change Orders which require the MSA's immediate attention.

- (c) Trade Contracts/Subcontracts/Purchase Orders
 - (i) Provide a log of each Trade Contract/Subcontract/Purchase Order issued for the Project including a contract reconciliation summary matrix.
 - (ii) Provide copies of Trade Contracts/Subcontracts/Purchase Orders issued during the month being reported.
 - (iii) Provide copies of any Contract Modifications and/or Amendments issued during the month being reported.

- (d) Project Logs/Reports
 - (i) Contractor's Daily Construction Reports for the month being reported.
 - (ii) Payroll Reports. Certified Payroll reports submitted by each Trade Contractor/Subcontractor and for trade work performed directly by the CM during the month being reported. Provide a statement that completed copies of all payrolls have been submitted electronically to the *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) CM Completion List (Section 10.1.5 of the Agreement)
 - (vii) Punch List (Section 10.1.6 of the Agreement)
 - (viii) CM QA/QC Log and reports from the month being reported.
 - (ix) MSA QA/QC Log and reports from the month being reported.

- (e) Photographs of work performed during the month being reported.

[PROJECT NAME]

Guaranteed Maximum Price Agreement

EXHIBIT G
FINAL PROJECT REPORT

Upon completion of the Work, the CM shall submit a Final Project Report. Acceptance of the Final Project Report by MSA is a condition precedent for releasing final payment per Section 21.9 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.

[PROJECT NAME] GMP

[PROJECT NAME]

Guaranteed Maximum Price Agreement

EXHIBIT H
CERTIFICATES OF SUBSTANTIAL & FINAL COMPLETION

Certificates of Substantial and Final Completion; see attached.

EXHIBIT H

[PROJECT NAME] GMP

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

[PROJECT NAME] GMP

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: _____

[PROJECT NAME] GMP

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 Construction Manager has completely and satisfactorily performed all of its obligations and the Certificate of Final Completion has been issued.

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

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

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

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

OWNER:

CONTRACTOR:

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

EXHIBIT H

[PROJECT NAME] GMP

[PROJECT NAME]

Guaranteed Maximum Price Agreement

EXHIBIT I
STAFFING PLAN

See attached.

[PROJECT NAME] GMP

[PROJECT NAME]

Guaranteed Maximum Price Agreement

EXHIBIT J
SCHEDULES, REPORTS and SCHEDULE OF VALUES

See attached.

[PROJECT NAME]

Guaranteed Maximum Price 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 Construction Manager'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 Construction Manager's own resources, their various subcontractors, vendors, and other individuals or entities in performing or furnishing any aspect of the Construction Manager's scope of Work.
 3. Form the basis of preparation and evaluation of the Construction Manager'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 Construction Manager'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 Construction Manager is solely responsible for the Schedule. MSA’s acceptance of any schedule submitted by the Construction Manager in no way makes MSA insurers of success of the Construction Manager’s time performance, or liable for time or cost overruns flowing from the shortcomings of a Construction Manager authored schedule. MSA disclaims and the Construction Manager waives any MSA obligation or liability by reason of MSA’s acceptance of the Construction Manager’s schedule submissions.
- (b) All schedule submissions are to be an accurate reflection and model of the Construction Manager’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 Construction Manager 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 Construction Manager or MSA, shall be corrected by the Construction Manager before the next monthly schedule update and shall not be cause for delay of completion of construction within the required time. The Construction Manager acknowledges that MSA is not required or otherwise obligated to discover errors or omissions in the Construction Manager’s proposed schedule. MSA’s acceptance of a schedule does not relieve the Construction Manager of its responsibility for the schedule.
- (d) Inclusion of activities and/or specific items in the Schedule does not relieve the Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager's responsibility to ensure that subcontractors and vendors performing Work at all tiers, as well as the Construction Manager'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 Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager shall provide an agenda for MSA's review and approval prior to conducting the first workshop. The Construction Manager 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 Construction Manager 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 Construction Manager is to employ the WBS approved by the MSA to create the Preconstruction CPM Schedule. The Construction Manager 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 Construction Manager 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 Construction Manager.
 - 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 Construction Manager’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 Construction Manager 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 Construction Manager prior to the submission of the Detailed Construction Schedule. All other cost distributions are to be linear.
10. The revenue for Construction Manager'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 Construction Manager. The Construction Manager 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 Construction Manager 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 Construction Manager 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 schedules 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 Construction Manager shall submit the Detailed Construction Schedule for review and approval by MSA.
- (b) The Construction Manager 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 Construction Manager'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 Construction Manager'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 Construction Manager prepared the schedule and demonstrates how the Schedule accurately models the Construction Manager'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 Construction Manager's execution plan for completing the Work in accordance with the time performance requirements defined within the Contract. The Construction Manager 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 Construction Manager's general sequencing for completing the Project;
 - (b) A detailed explanation of key sequencing requirements, in particular preferential sequencing, that the Construction Manager 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 Construction Manager whose contract value is equal to or greater than 1.5% of the Construction Manager’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 Construction Manager 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, unbanded 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 Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager shall keep the schedule continuously updated throughout the execution of the Project.
 - 1. The Construction Manager shall present and discuss the most current Schedule at all periodic Progress Meetings.
 - 2. The Construction Manager 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 Construction Manager plans to continue construction to meet the contract completion date. The Construction Manager 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 Construction Manager shall prepare an Update each month.
1. The Construction Manager 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 Construction Manager may propose changes to the MSA in writing in advance of an Update. The following are a list of changes the Construction Manager 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 Construction Manager 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 Construction Manager's basis and application for interim payment. The Construction Manager'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 Construction Manager shall respond by submitting a revised schedule if it accepts MSA's revision requests, or the Construction Manager shall submit in writing the justification why such revisions should not be implemented. If the Construction Manager's justification for not implementing the revisions is acceptable to MSA, MSA will accept the Construction Manager'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 Construction Manager's schedule does not absolve the Construction Manager of the requirement to meet the completion date required by the Contract.
- (b) MSA reserves the right to direct the Construction Manager 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 Construction Manager'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 Construction Manager has met the general requirements of this Exhibit and the Contract Documents. Acceptance by MSA of the Update does not relieve the Construction Manager of any responsibility for the accuracy or feasibility of the Construction Manager'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 Construction Manager's proposed or accepted schedule.
- (d) Within three (3) calendar days of MSA's acceptance of the Update, the Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager'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 Construction Manager is to provide a general overview of the changes made in the schedule and substantiation as to why the changes are necessary. The Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager has fallen behind in meeting milestones as presented in the schedule, the Construction Manager shall take such steps as may be necessary to improve progress. Upon MSA's written notice that the Construction Manager is behind schedule as a result of inexcusable causes, the Construction Manager 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 Construction Manager 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 Construction Manager shall prepare a Recovery Schedule that clearly details the Construction Manager's plan to bring the work back into compliance with the project requirements. The Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager.

9.0 RE-BASELINE SCHEDULE

- (a) The Construction Manager may propose to make substantial and material changes to its execution plan and schedule. The MSA may direct the Construction Manager in writing to revise its execution plan and schedule, and the Construction Manager 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 Construction Manager 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 Construction Manager'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 Construction Manager's accelerated work for planned early completion of the Project. The Construction Manager is not entitled to any increase in the Contract value or overall project duration for Re-Baseline Schedules. The Construction Manager 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 Construction Manager to submit a Re-Baselined Schedule to recover or mitigate lost time due to excusable delay events. The Construction Manager may be entitled to be reimbursed for the cost to recover or mitigate this lost time. The Construction Manager 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 Construction Manager 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 Construction Manager to submit a Re-Baselined Schedule to recover lost due to inexcusable delay events or any delay event caused by the Construction Manager. The Construction Manager is not entitled to be reimbursed for the costs necessary to recover or mitigate this lost time due to inexcusable delay events. The Construction Manager 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 Construction Manager's Re-Baseline Schedule. The Construction Manager 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 Construction Manager'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 Construction Manager'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 Construction Manager'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 Construction Manager's execution plan for completing the Work in accordance with the time performance requirements defined within the Contract. The Construction Manager 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 Construction Manager's general sequencing for completing the Project.
 - (b) A detailed explanation of any key sequencing requirements, in particular preferential sequencing, the Construction Manager 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 Construction Manager 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 Construction Manager'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 Construction Manager 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 Construction Manager. 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 Construction Manager 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 Construction Manager, 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 Construction Manager 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 Construction Manager 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 Construction Manager.
- (d) If the Construction Manager wishes to complete construction earlier than the time required, the following shall apply:
 - 1. The Construction Manager 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 Construction Manager’s proposed earlier completion date.
 - 3. The Construction Manager 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 Construction Manager 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 Construction Manager’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 Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager shall comply with all notification and submission requirements delineated within this Exhibit and the Contract documents. The Construction Manager 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 Construction Manager will prepare an as-built TIA that includes only those impacts that occurred during the update period. If the Construction Manager does not submit an as-built TIA with its Update, the Construction Manager 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 Construction Manager 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 Construction Manager to prepare a TIA that expands the duration of alleged excusable delay events that were included in a previously submitted as-built TIA. The Construction Manager 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 Construction Manager. 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 Construction Manager 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 Construction Manager 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 Construction Manager. 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 Construction Manager-caused delay events.

- (m) If the Construction Manager 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 Construction Manager must clearly demonstrate that but-for the MSA caused delays, the Construction Manager 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 Construction Manager caused delays, unless the Construction Manager 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 Construction Manager 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 Construction Manager for any constructive acceleration related costs in the event the Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager will make every reasonable effort to mitigate the potential delay by either isolating its impact or planning “work around” approaches to the Work. The Construction Manager will remove any float suppression techniques within the TIA, as determined by the MSA. The Construction Manager 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 Construction Manager 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 or 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, unbanded 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 Construction Manager 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 Construction Manager's proposed impact fragnets and as-built TIA. The Construction Manager also agrees to provide any requested documentation that MSA deems necessary to investigate and review the alleged delay event. The Construction Manager 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 Construction Manager will use its most recently submitted as-built TIA in order to create the forward-looking TIA. The Construction Manager is to forecast the completion date of the impact fragnet in question. This forecast completion date is to reflect when the Construction Manager 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 Construction Manager at the time the TIA is being developed.
 2. The Construction Manager 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 Construction Manager can request.
 3. The Construction Manager shall make every reasonable effort to mitigate the potential delay by either isolating its impact or planning "work around" approaches to the Work. The Construction Manager will remove any float suppression techniques within the TIA, as determined by the MSA. The Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager's proposed impact fragnets and forward-looking TIA. The Construction Manager also agrees to provide any requested documentation that MSA deems necessary to investigate and review the alleged delay event and the Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager 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 Construction Manager 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.

[PROJECT NAME]

Guaranteed Maximum Price Agreement

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

See attached.

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

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

[PROJECT NAME] GMP

[PROJECT NAME]

MSA Project No. _____

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

State of _____ Date: _____

County of _____

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

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

[PROJECT NAME] GMP

[PROJECT NAME]

MSA Project No. _____

Exhibit K

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

State of _____ Date: _____

County of _____

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

Now, therefore, for, in consideration of, and upon receipt of \$ _____ for value received, the undersigned do(es) hereby irrevocably waive and receive any lien or claim or right to lien for the period and work covered by this and all previous invoices for which the contractor has received payment, against the above described premises under and by virtue of the statute of the State of **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[®] Document G707™ – 1994

Consent Of Surety to Final Payment

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

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

on bond of
(Insert name and address of Contractor)

, SURETY,

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

, CONTRACTOR,

as set forth in said Surety's bond.

, OWNER,

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

(Surety)

(Signature of authorized representative)

(Printed name and title)

Attest:
(Seal):

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User Notes: (3B9ADASE)

[PROJECT NAME]

Guaranteed Maximum Price Agreement

EXHIBIT L
DESCRIPTION OF CM INVOICE

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

APPLICATION AND CERTIFICATION FOR PAYMENT

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]
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order	\$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:

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

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

ARCHITECT'S PROJECT NO:

A ITEM NO.	B BID PACK.	B DESCRIPTION OF WORK	C ORIGINAL SCHEDULED VALUE	IN-SCOPE CHANGES	ADJUSTED SCHEDULE VALUE	D WORK COMPLETED		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)
						FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
		<i>(Fill in & break down contract values)</i>										
		<i>(Add any change order(s) descriptions)</i>										
		GRAND TOTALS	\$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

[PROJECT NAME]

Guaranteed Maximum Price Agreement

EXHIBIT M
PRECONSTRUCTION AGREEMENT

See Attached

ATTACHMENT O
CONTRACT AFFIDAVIT

Contract Affidavit

A. AUTHORITY

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

B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

I FURTHER AFFIRM THAT:

The business named above is a (check applicable box):

- (1) Corporation - domestic or foreign;
- (2) Limited Liability Company - domestic or foreign;
- (3) Partnership - domestic or foreign;
- (4) Statutory Trust - domestic or foreign;
- (5) Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name and Department ID Number: _____

Address: _____

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID Number: _____

Address: _____

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$200,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$200,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of

\$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31.

E. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its Proposal, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
 - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
 - (c) Prohibit its employees from working under the influence of drugs or alcohol;
 - (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
 - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
 - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business's policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
 - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), above;
 - (h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

- (i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
 - (j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
 - (i) Take appropriate personnel action against an employee, up to and including termination; or
 - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
 - (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
 - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
 - (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated _____, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

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

Date: _____

By: _____ (print name of Authorized Representative and Affiant)
 _____ (signature of Authorized Representative and Affiant)

ATTACHMENT P

WORKFORCE DEVELOPMENT GUIDE



Employer's Workforce Development Process Guide

Revised 3/2021

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***All forms/attachments are available electronically in LCP Tracker under the E-Documents tab – *View Document Templates* section.**

Mayor's Office of Employment Development Recruiting, Selection, and Hiring Process

Recruiting, selection and hiring process for construction management companies and their subcontractors.

- Contractors and subcontractors submit job postings to the Mayor's Office of Employment Development (MOED) [EMAIL], and the Maryland Stadium Authority (MSA) [EMAIL] using the job posting form (**Attachment A**). This form is also available on the MOED website (www.oedworks.com). Employers receive a reply email from MOED to confirming receipt of the job posting.
- MOED assigns a Business Services Representative (BSR) to screen candidates for posted job(s). The BSR will contact employers within one business day after receipt of the job posting to confirm the company's contact information and obtain additional information, if necessary. Direct contact between the employers and jobseekers prior to BSR screening is discouraged.
- The BSR works in partnership with job training providers to select candidates that meet the job posting requirements. MOED maintains a database of resumes for candidates who have expressed interest in working with the construction program. The possibility exists that a significant number of candidates have trade experience, while others are recent graduates from a construction training program. In the unlikely event that the applicant pool does not have qualified candidates to for referral, the employer will be notified by the BSR and the company is encouraged to pursue other avenues for recruitment.
- All Baltimore City residents recommended by MOED will be prescreened before referral to an employer.
- Construction Managers and subcontractors agree to provide feedback on each candidate referred for interview within two business days after the interview using the Construction Referral Feedback form (**Attachment B**). The completed form should be emailed to MOED at [EMAIL].
- Construction Managers are responsible for submitting the Quarterly Job Projections and Skill Requirements Form for all positions (including sub-contractor positions) through the term of the contract no later than the first Monday of each quarter (January, April, July, & October). This form must be emailed to MSA at [EMAIL] (**Attachment F**). From there, it will be forwarded to MOED.

Maryland Stadium Authority

Workforce Development Monitoring and Tracking Process

The Maryland Stadium Authority (MSA) is committed to ensuring that a strong measurement strategy is implemented to analyze issues, risks, and trends, and to support metrics that align with project and local commitments. The MSA staff are available to review the templates introduced below at any point during the process. All forms are available electronically.

FORMS

Job Projections and Skill Requirements (Due during Pre-Construction)

Construction Managers (CM) are responsible for submitting consolidated Workforce Development (WFD) projections for all GMP Packages. This form must be submitted with the Pre-Construction Request for Proposal (RFP). **(Attachment C)**

Job Commitments and Skill Requirements (Due with Early Packages and Final GMP)

Construction Managers are responsible for submitting consolidated WFD commitments for all GMP Packages. This includes early packages and final GMP submission. **(Attachment D)**

New Hire Supporting Documentation (Due the first Monday of each Month)

Construction Managers will be responsible for submitting a consolidated list of Baltimore City New Hires for all subcontractor throughout the term of the contract. This form is due MONTHLY and must be emailed to MSA at [EMAIL] no later than the first Monday of each month. **(Attachment E)**

Quarterly Job Projections and Skill Requirements (Due the first Monday of each Quarter)

In order to help MOED their partners train, recruit, and identify candidates for work on construction projects, MSA requires contractors to submit reliable projections of upcoming job opportunities. Construction Managers are responsible for submitting consolidated projections for all positions (including sub-contractor positions) through the term of the contract no later than the first Monday of each quarter (January, April, July, & October.) This form must be emailed to MSA at [EMAIL]. **(Attachment F)**

Additional Information

Quarterly Review Process

Review of the WFD contract deliverables will be conducted quarterly. This process entails reviewing Certified Payroll submissions provided by subcontractors on the project (in LCP Tracker) and a comparison of the information available in the New Hire Supporting Documentation report to verify Baltimore City resident new hires. MSA issues a letter detailing the results of the review. **(Attachment G)** CM's are then required to provide a response letter along with revised New Hire Supporting Documentation form within 30 days.

Manpower Report

This report is generated by MSA, using all certified payrolls within LCP Tracker. The report monitors the commitments of the CM and includes: total workers on payroll, total number of Baltimore City residents on payroll, new positions filled, new positions filled by Baltimore City residents, total labor-hours for the project, and total labor-hours for Baltimore City residents.

Baltimore City Resident New Hire Requirements

LCP Tracker

The following information must match in LCP Tracker to receive credit for a Baltimore City Resident New Hire. Everything must be spelled correctly and match the supporting documentation provided monthly.

- Name
- Address
- Contractor
- Hire Date
- New Hire Status

Zip Code

MSA verifies the number of City residents employed, by confirming employee's address, through certified payroll record submission process.

Several Baltimore City zip codes are considered "crossover zip codes". These zip codes cross Baltimore City boundaries and are shared with another jurisdiction. When an address for a new hire is submitted in one of these zip codes, the address must be verified as a Baltimore City address before the CM can receive credit for the hire.

MSA consolidates all data and communicates a status report in the monthly Collaborative Meeting as needed.

Minimum Hours Worked Requirement

An employee must work a minimum of 40 hours to receive credit as a Baltimore City Resident New Hire.

Monitoring Good Faith Efforts

The CM and its respective subcontractors shall make good faith efforts as noted below, but not limited to: Ensuring that MOED and MSA are made aware of employment opportunities fully through outreach and recruitment activities.

Actively recruit City of Baltimore residents via MOED and collective and independent job fair recruiting efforts.

Hiring Baltimore City residents for job opportunities with the intention of maintaining their employment on the project for as long as possible.

E-Documents

Construction Managers and subcontractors may upload certified payroll for Baltimore City residents submitted on the New Hire Supporting Documentation form who are non-prevailing wage or administrative staff.

If an unverified address is submitted into LCP Tracker you will receive an error message and you will not be allowed to certify payroll or enter new employees.

ATTACHMENTS

Job Posting Form (MOED)
ATTACHMENT – A



Job Posting Form

COMPANY INFORMATION			
Company		FEIN	
Street Address			
City Baltimore	State MD	ZIP	
Website/URL	# of Employees	Industry	
Contact Name		Title	
Email Address	Phone	Contract #/Name	
JOB POSTING INFORMATION			
Job Title		Job/School Location	
Hours of Work to	Number of Open Positions	Status: FT <input type="checkbox"/> PT <input type="checkbox"/> Temp <input type="checkbox"/>	
Salary/ Hr. Wage	Benefits: NO <input type="checkbox"/> YES <input type="checkbox"/>	Type License	
Level of Education Required: H.S. /G.E.D. <input type="checkbox"/> College <input type="checkbox"/> Tech <input type="checkbox"/> Degree		Licenses/Certification Required: NO <input type="checkbox"/> YES <input type="checkbox"/> List:	
Car Required: NO <input type="checkbox"/> YES <input type="checkbox"/>	Is the company accessible by public transportation? NO <input type="checkbox"/> YES <input type="checkbox"/> Bus#		
Pre-Employment Screening: Alcohol/Drug Test <input type="checkbox"/> Credit <input type="checkbox"/> References <input type="checkbox"/> Criminal Background Check <input type="checkbox"/> Other			
JOB DESCRIPTION			
Experience/ Skills Required:			
EMPLOYER CERTIFICATION			
I certify that the information on this job posting is accurate and is provided to recruit for a valid employment opportunity.			
Signature/Title		Date	
MOED STAFF OFFICE USE ONLY			
Post in MWE? NO <input type="checkbox"/> YES <input type="checkbox"/>	MWE #	Show name? NO <input type="checkbox"/> YES <input type="checkbox"/>	
MOED Services Requested	Direct Hire <input type="checkbox"/>	Tax Credit <input type="checkbox"/>	Customized Training <input type="checkbox"/> LMI <input type="checkbox"/> BDC <input type="checkbox"/>
Referral Process	Status: Position filled <input type="checkbox"/> Not filled <input type="checkbox"/> Reason		
Follow-up results:	Date:		
	SCBSR Assigned/Date:		

Construction Referral Feedback Form (MOED)

ATTACHMENT – B

Updated 03/2019

Thank you for using the MOED recruitment services. Recently, we referred candidates to interview for a position with your company. Please provide feedback regarding the status of the interview(s) on the chart below. You can email the completed chart to [MOED BSR] at: [EMAIL] or call us at [PHONE NUMBER] to discuss the referral status in detail.

Company Name: _____ Interviewer Name: _____

Candidate Name	Position	Status- Hired <i>(provide hire date)</i>	Salary rate <i>(provide exact hourly rate)</i>	Status- Pending <i>(please provide future interview or hire date here)</i>	Status- Not Hired <i>(provide reason)</i>


Completed by:
Company Rep. Name: _____

Date _____

Phone #: _____

Email Address: _____


ATTACHMENT – C

	Maryland Stadium Authority Job Projections and Skill Requirements						Updated 2/2021
	Instructions: Construction Managers are responsible for submitting consolidated Workforce Development projections for all GMP Packages. This form must be submitted with the Pre-Construction Request for Proposal (RFP).						
Construction Management Firm:						Date:	
Name of Project:							
Positions (Please adjust positions as necessary)	Total Employees	Total Baltimore City Resident Employees	Total Baltimore City Resident *New* Hires	Total Overall Labor Hours	Total Baltimore City Resident Labor Hours	Total Baltimore City Resident *New* Hire Labor Hours	
Abatement Laborer							
Carpenters							
Cement Mason							
Clerical/ Admin.							
Drywall Finisher							
Electricians							
Equipment Operator							
HVAC							
Insulators							
Ironworkers							
Mason							
Plumber/Pipefitters							
Skilled Laborer							
Sprinkler Fitter							
Tile Setters							
Unskilled Laborers							
Welders							
Other Positions:							
Grand Total:	0	0	0	0.00	0.00	0.00	
Preparer's Name:						Title:	

Baltimore City Resident Job Projections and Skill Requirement – Due w/ Pre-Construction RFP

- **Positions:** Listing of positions needed over the life of the project. This column should then stay the same quarter to quarter.
- **Total Employees:** Projected number of all employees. This includes new and existing Non Baltimore City and Baltimore City Residents.
- **Total Baltimore City Resident Employees:** Projected number of new and existing Baltimore City Residents.
- **Total Baltimore City Resident "New" Hires:** Projected number of Baltimore City Resident to be hired.
- **Total Overall Labor Hours:** Projected number of all labor hours to be worked by new and existing Non Baltimore City and Baltimore City Residents.
- **Total Baltimore City Resident Labor Hours:** Projected number of hours to be worked by new and existing Baltimore City Residents.
- **Total Baltimore City Resident "New" Hire Labor Hours:** Projected number of hours to be worked by Baltimore City Resident New Hires.

ATTACHMENT – D

		Maryland Stadium Authority Construction Job Commitments and Skill Requirements						Updated 2/2021	
Instructions: Construction Managers are responsible for submitting consolidated Workforce Development commitments for all GMP Packages. This includes all early packages and Final GMP submission.									
Construction Management Firm:								Date:	
Name of Project:									
Trade Packages	(Please								
adjust below trades packages as necessary)		Total Employees	Total Baltimore City Resident Employees	Total Baltimore City Resident "New" Hires	Position(s) of Baltimore City Resident "New" Hires	Total Overall Labor Hours	Total Baltimore City Resident Labor Hours	Total Baltimore City Resident "New" Hire Labor Hours	
Division 01 - General Requirements									
Division 02 - Existing Conditions									
Division 03 - Concrete									
Division 04 - Masonry									
Division 05 - Metals									
Division 06 - Wood, Plastics, Composites									
Division 07 - Thermal and Moisture Protection									
Division 08 - Openings									
Division 09 - Finishes									
Division 10 - Specialties									
Division 11 - Equipment									
Division 12 - Furnishings									
Division 13 - Special Construction									
Division 14 - Conveying Equipment									
Division 21 - Fire Suppression									
Division 22 - Plumbing									
Division 23 - Heating, Ventilating, and Air Conditioning (HVAC)									
Division 25 - Integrated Automation									
Division 26 - Electrical									
Division 27 - Communications									
Division 28 - Electronic Safety and Security									
Division 31 - Earthwork									
Division 32 - Exterior Improvements									
Division 33 - Utilities									
Division 34 - Transportation									
Division 35 - Waterway and Marine Construction									
Division 40 - Process Integration									
Division 41 - Material Processing and Handling Equipment									
Division 42 - Process Heating, Cooling, and Drying Equipment									
Division 43 - Process Gas and Liquid Handling, Purification and Storage Equipment									
Division 44 - Pollution and Waste Control Equipment									
Division 45 - Industry-Specific Manufacturing Equipment									
Division 46 - Water and Wastewater Equipment									
Division 48 - Electrical Power Generation									
Grand Total:		0	0	0		0	0.00	0.00	0.00
Preparer's Name:								Title:	

Baltimore City Resident Job Commitments and Skill Requirement – Due with GMP Packages and Final GMP

- **Trade Packages:** Trade Packages from projects GMP.
- **Total Employees:** Committed number of all employees. This includes new and existing Non Baltimore City and Baltimore City Residents.
- **Total Baltimore City Resident Employees:** Committed number of new and existing Baltimore City Residents.
- **Total Baltimore City Resident "New" Hires:** Committed number of Baltimore City Residents to be hired.
- **Position(s) of Baltimore City Resident "New" Hires:** Actual position title for every Baltimore City Resident to be hired per GMP Package
- **Total Overall Labor Hours:** Committed number of all labor hours to be worked by new and existing Non Baltimore City and Baltimore City Residents.
- **Total Baltimore City Resident Labor Hours:** Committed number of hours to be worked by new and existing Baltimore City Residents.
- **Total Baltimore City Resident "New" Hire Labor Hours:** Committed number of hours to be worked by Baltimore City Resident New Hires.

ATTACHMENT – E

Updated 2/2021



Maryland Stadium Authority
Baltimore City Resident New Hire Supporting Documentation

Instructions: Construction Managers will be responsible for submitting a consolidated list of Baltimore City New Hires for all sub contractors throughout the term of the contract. This form is due MONTHLY and must be emailed to MSA no later than the first Monday of each month.

Construction Management Firm:				Date:	
Name of Project:				Reporting Month:	
Baltimore City Resident New Hire - Employee Name	Baltimore City Resident New Hire - Employee Position	Employee Address	Employee Zip Code	Sub Contractor Company Name	Employee Hire Date
		Mar-21			
		Apr-21			
		May-21			
		Jun-21			
		Jul-21			
		Aug-21			
Preparer's Name:				Title:	

Baltimore City Resident New Hire Supporting Documentation – Due Monthly

- **Reporting Month:** The month the employee is reported to Maryland Stadium Authority (MSA)
- **Baltimore City Resident New Hire - Employee Name:** Employees full name from certified payroll and driver’s license/identification card.
- **Baltimore City Resident New Hire - Employee Position:** Position employee was hired to fill.
- **Employee Address:** Employees address from certified payroll and driver’s license/identification card.
- **Employee Zip Code:** Employees zip code from certified payroll and driver’s license/identification card.
- **Subcontractor Company Name:** Subcontractor that submits the employees certified payroll to LCP Tracker
- **Employee Hire Date:** Date the employee begins work on the project.



Baltimore City Resident Quarterly Job Projections and Skill Requirements

Instructions: Construction Managers will be responsible for submitting consolidated projections for all positions (including sub-contractor positions) through the term of the contract. This form must be emailed to MSA no later than the first Monday of each quarter (January, April, July, & October.)

Construction Management Firm:					Date:
Name of Project:					
Positions (Please adjust positions as necessary)	Total Baltimore City Resident "New" Hires (Total Reported On Commitment Form)	Already Filled - Baltimore City Resident "New" Hires	New Positions Open To Baltimore City Residents - Anticipated This Quarter	New Positions Currently Advertised	Hiring Requirements (including experience, certifications and licenses)
Abatement Laborer					
Carpenters					
Cement Mason					
Clerical/ Admin.					
Drywall Finisher					
Electricians					
Equipment Operator					
HVAC					
Insulators					
Ironworkers					
Mason					
Plumber/Pipefitters					
Skilled Laborer					
Sprinkler Fitter					
Tile Setters					
Unskilled Laborers					
Welders					
Other Positions:					
Grand Total:	0	0	0	0	
Preparer's Name:				Title:	

Baltimore City Resident Quarterly Job Projections and Skill Requirement – Due Quarterly

- **Positions:** Listing of positions needed over the life of the project. This column should then stay the same quarter to quarter.
- **Total Baltimore City Resident "New" Hires:** Committed number of Baltimore City Residents to be hired.
- **Already Filled – Baltimore City Resident "New" Hires:** Job vacancies that have been filled to date by Baltimore City residents in the given positions. This column will be updated each quarter.
- **New Positions Open To Baltimore City Residents – Anticipated This Quarter:** Job Vacancies to be filled by Baltimore City Residents. This column will be updated each quarter.
- **New Positions Currently Advertised:** Number of current public job postings advertised through Mayors Office of Employment Development (MOED). This column will need to be updated each quarter.
- **Hiring Requirements:** Such as experience, certifications, licenses, etc. that will be needed for the vacant positions coming up during the quarter. This could also include whether this is an apprenticeship, whether the position must be union, etc. This column will be updated each quarter.

Quarterly Review Verification Letter

Attachment – G



Larry Hogan
Governor

Michael J. Frenz
Executive Director

Members

Thomas E. Kelso
Chairman

Leonard J. Attman
Joseph C. Bryce
Gary L. Mangum
Manervia W. Riddick
Jodi C. Stanalonis

Capital Projects
Development
Group

Gary McGuigan
Executive Vice President

Eric Johnson
Senior Vice President

Al Tyler
Vice President

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Voice: 800-201-7165
TTY: 800-735-2258

March 4, 2021

Ms. Michelle Douglas
Douglas Construction
987 Pear Lane
Gaithersburg, MD 20878

RE: 2020 4th Quarter Review

Dear Ms. Douglas

Our office has completed a review of Douglas Construction’s Supporting Documentation (SD) Reports through December 2020 (Q4). This process entails reviewing certified payroll (CP) submissions in LCP Tracker provided by subcontractors on the project and a comparison of the information provided in your reports to verify Baltimore City Resident (BCR) new hires. *Names marked with an asterisk (*) are discrepancies not cleared from previous quarterly review.*

During our review the following employees were verified:

(Verification does not include background checks. All employees must have a background check before working on site.)

- o Ben Jones
- o Tiana Brook

The following discrepancies were identified for the reasons listed below:

Employee address could not be verified

- o John Doe – Not a BCR

Employee listed as *Non-New Hire on Project* in LCP Tracker

- o Dexter White
- o John Doe

Employee has no certified payroll submissions in LCP Tracker:

- o Tammy Lane

Please reconcile these items with the appropriate subcontractor or hiring personnel for each employee within 30 days of the date of the letter.

If you have any questions, please feel free to contact Maryland Stadium Authority, Office of Collaborative Development.

Construction Program
Point of Contact(s)

City of Baltimore, Mayors Office of Employment Development (MOED)

Contact: [BSR NAME]

[EMAIL]

[PHONE NUMBER]

Maryland Stadium Authority, Office of Collaborative Development

Contact: Nicole Matthews

nmatthews@mdstad.com

(410) 385-4660

ATTACHMENT Q
CAPACITY SUMMARY SHEET

ATTACHMENT R

CORPORATE DIVERSITY ADDENDUM & AFFIDAVIT

CORPORATE DIVERSITY ADDENDUM

Effective August 18, 2022

Instructions: Pursuant to § 11-101 of the Tax-Property Article, certain entities must provide a Corporate Diversity Addendum, which contains certain diversity data specified by Code of Maryland Regulation (“COMAR”) 24.01.07. To determine whether you must provide the Corporate Diversity Addendum, please complete Worksheet A.

Failure to complete the Addendum or failure to meet the criteria therein, may prohibit you from receiving certain State benefits. For more information, refer to COMAR 24.01.07.

Please be aware, the information you include in the Corporate Diversity Addendum may be shared with other Maryland State agencies.

Worksheet A

1. Are you an entity that is required to be in good standing with the State Department of Assessments and Taxation (“SDAT”), and meets the following definition:

(1) A commercial enterprise or business that is formed in the State or registered with SDAT to do business in the State; or (2) a corporation, foundation, school, hospital, or other legal entity for which none of the net earnings inure to the benefit of any private shareholder or individual holding an interest in the entity?

Yes – Proceed to Question 2

No – STOP. You are not required to complete the Corporate Diversity Addendum. Complete Affidavit (I) on Page 2 and submit with the application for a State benefit.

2. Check the appropriate box if you are any of the following types of entities:

Sole Proprietor

Limited liability company (LLC) owned by a single member

Privately held company if at least 75% of the company’s shareholders are family members

Entity that (1) has an annual operating budget or annual sales less than \$5,000,000; and (2) has not qualified for or applied for, and does not intend to apply for, a State benefit, as defined below

Did you check at least one box?

Yes – STOP. You are not required to complete the Corporate Diversity Addendum. Complete Affidavit (I) on Page 2 and submit with the application for a State benefit.

No – Proceed to the Corporate Diversity Addendum on Page 3.

“State benefit” means (1) a State capital grant funding totaling \$1.0 million or more in a single fiscal year (July 1 – June 30); (2) State tax credits totaling \$1.0 million or more in a single fiscal year (July 1 – June 30); or (3) the receipt of a State contract with a total value of \$1.0 million or more. “State contract” means a contract that (a) resulted from a competitive procurement process and (b) is not federally funded in any way.

AFFIDAVIT (I)

UNDER PENALTIES OF PERJURY, I hereby swear that the entity submitting this report is not required to submit the Corporate Diversity Addendum.

Entity/Business Name: _____

Federal Employer Identification Number (FEIN): _____

SDAT Identification Number: _____

Name of Entity's representative completing this Affidavit (print clearly):

Title: _____

Signature: _____

Date: _____

CORPORATE DIVERSITY ADDENDUM

Instructions: If you are required to provide the Corporate Diversity Addendum, completing Affidavit (II) on Page 4 is mandatory. A response to both items is required. Failure to provide a complete response to either of the two items may render the entity ineligible for certain state benefits. For more information, refer to COMAR 24.01.07.

I. A response to Item I is required. However, the content of your response has no bearing on eligibility for State benefits. Select below the underrepresented communities which are represented on this entity's board or in executive leadership. Select all that apply.

- Alaska Native
- Asian-Pacific Islander
- Black or African-American
- Hispanic or Latino
- Native American
- Native Hawaiian
- One or more of the racial or ethnic groups listed above
- None of the above

II. Check the box next to the following Corporate Diversity indicators that pertain to this entity. *Note that references to underrepresented communities refers to communities listed in Item I above. The examples provided are intended to be representative, not exclusive.* Select all that apply.

1. Entity maintains written workforce diversity, equity, and inclusion (“DEI”) policies.
2. Entity offers DEI training to its workforce.
3. Entity assigns a senior-level employee as responsible for oversight and direction of the entity's DEI efforts.
4. Entity reports performance of its workforce DEI programs on its website.
5. Entity includes DEI objectives in performance plans of its managers.
6. Entity publishes information on its website about its DEI commitments and efforts.
7. Entity provides career advancement training/opportunities for employees, including members of underrepresented communities.
8. Entity collaborates with educational institutions, or is an educational institution, serving significant or predominant student populations or affinity groups from underrepresented communities (e.g., career fairs, scholarships, internships, apprenticeships).
9. Entity has a supplier diversity policy that provides business opportunities to diverse suppliers, including businesses owned by members of underrepresented communities, such as State-certified Minority Business Enterprises (“MBEs”).
10. Entity publicizes its procurement opportunities to encourage participation from businesses owned by members of underrepresented communities.
11. Entity measures percentage of contract dollars awarded to businesses owned by members of underrepresented communities, including MBEs.
12. Entity provides support and outreach to underrepresented communities and/or organizations that represent underrepresented communities.

Only entities that meet at least 33% (4) of the Corporate Diversity Indicators above, by checking all the applicable boxes, qualify to receive a State benefit.

AFFIDAVIT (II)

UNDER PENALTIES OF PERJURY, I declare that I have examined this Corporate Diversity Addendum, and to the best of my knowledge and belief, it is true, correct, and complete.

Entity/Business Name: _____

Federal Employer Identification Number (FEIN): _____

SDAT Identification Number: _____

Name of Entity's representative completing this Affidavit (print clearly):

Title: _____

Signature _____ Date _____

Penalties for Submitting False Information. If information provided by the entity in this form or by other means is materially false, the entity and the individual providing the false information may be subject to criminal prosecution for perjury, procurement fraud, and other crimes and may be subject to debarment, and all State benefits or contracts to the entity made in reliance upon the inaccurate form or other information may be void or subject to termination for default. See COMAR 24.01.07.

ATTACHMENT S

PRIME CONTRACTOR LIST OF ALL SUBCONTRACTORS

Attachment S - Prime Contractor List of ALL Subcontractors Anticipated/Used During Contract									
socioeconomic program status or certifications. Provide a State of Maryland certification number for firms that do hold MBE, VSBE, and/or SBR certifications, regardless of whether they are fulfilling									
Attachment S is required to be submitted with the bidder/offeror's bid/proposal whenever there is a MBE and/or VSBE participation goal(s) included in the solicitation.									
Attachment S will be used during the life of the contract to track Subcontractors working for the Prime with a final report of all subcontractors and payments made to the subs regardless of their socioeconomic program status.									
Instructions on How to Complete Attachment									
1.	There are two spreadsheets/tabs in Attachment P - "Anticipated Subcontractors" and "Actual Subcontractors".								
2.	The first tab - "Anticipated Subcontractors" is to be completed and submitted with the bid/proposal.								
3.	The following information must be filled out at the top of the first spreadsheet prior to submitting the attachment with the bid/proposal:								
A.	Bidder/Offeror Name: (Bidder/Offeror's Company Name responding to the solicitation)								
B.	Agency and Program Name: (State Agency/Program that published the solicitation named on both the cover page and the Key Information Summary Sheet)								
C.	Solicitation Name / Number: (Solicitation Name and Number found on the cover page of the solicitation and the Key Information Summary Sheet)								
D.	Overall MBE % Goal for Contract: (The total MBE participation goal for the contract identified on the Key Information Summary Sheet)								
E.	Overall VSBE % Goal for the Contract: (The total VSBE participation goal for the contract identified on the Key Information Summary Sheet)								
F.	Contract Duration: (Contract duration identified in the Key Information Summary Sheet)								
G.	Bidder/Offeror Signature: (The Bidder/Offeror's representative with the power to sign a State of Maryland contract and affirm the statement below: "By my signature above, I affirm that the list below contains all currently known anticipated subcontractors that will be used to fulfill the contract requirements.")								
4.	The following information must be filled out in the body of the first spreadsheet for all known subcontractors prior to submitting the attachment with the bid/proposal:								
A.	Subcontractor Name (The Subcontractor Company's Name that has an agreement with the Prime to work on the contract)								
B.	MBE/VSBE/SBR - State of Maryland Certification # or NA (If the Subcontractor is a MBE, VSBE, or SBR list their Maryland certification number found on their eMMA profile or MDOT MBE								
C.	Brief Description of Work to be Performed (For MBEs and VSBEs, ensure the work being identified is work they are certified to perform) *								
D.	Individual MBE/VSBE % Goal or NA (If you are utilizing more than one MBE or VSBE to meet the overall goals identified at the top of the spreadsheet, enter the percentage that this								
* NOTE: Any MBE or VSBE named and listed on this spreadsheet must also be listed on the MBE Forms - Attachment D or VSBE Forms - Attachment E required to be submitted with									
actually utilized during the life of the contract. For example, if you modified the contract to add or change a MBE or VSBE from the original named MBE(s) or VSBE(s), or added any subcontractors,									
5.	The second tab - "Actual Subcontractors" is to be completed and submitted as required by the procurement officer and/or contract monitor/project manager during the contract performance								
6.	The following information must be filled out at the top of the second spreadsheet prior to submitting the attachment when requested and at contract close out:								
A.	Prime Contractor Name: (Bidder/Offeror Awarded the Contract that performed as the Prime Contractor)								
B.	Agency and Program Name: (Copied from the first spreadsheet)								
C.	Contract Name / Number: (Copied from the first spreadsheet)								
D.	Overall MBE % Goal for Contract: (Copied from the first spreadsheet)								
E.	Overall VSBE % Goal for the Contract: (Copied from the first spreadsheet)								
F.	Contract Term (Start Date - End Date): (The actual start and end dates of the Contract)								
G.	Total Amount Invoiced to/Paid by the State to the Prime Contractor: (Total amount paid to the Prime Contractor by the State)								
H.	Prime Contractor Signature: (The Contractor's representative with the power to sign a State of Maryland contract and affirm the statement below: "By my signature above, I affirm that the list below contains all subcontractors that were used to fulfill the contract requirements and the total amount paid to each subcontractor to close out the contract.")								
7.	The following information must be filled out in the body of the second spreadsheet for all subcontractors that worked on the contract during the time period requested and at contract close out:								
A.	Subcontractor Name (The Subcontractor Company's Name that has an agreement with the Prime to work on the contract)								
B.	MBE/VSBE/SBR - State of Maryland Certification # or NA (If the Subcontractor is a MBE, VSBE, or SBR list their Maryland certification number found on their eMMA profile or MDOT MBE								
C.	Brief Description of Work to be Performed (For MBEs and VSBEs, ensure the work being identified is work they are certified to perform) *								
D.	Individual MBE/VSBE % Goal or NA (If you are utilizing more than one MBE or VSBE to meet the overall goals identified at the top of the spreadsheet, enter the percentage that this								
E.	Total \$\$ Paid to Subcontractor (Total amount invoiced by the Subcontractor and paid by the Prime to the Subcontractor during the life of the contract with the State of Maryland) **								
** NOTE: Any MBE or VSBE named and listed on this spreadsheet must also be listed on the MBE Forms - Attachment D or VSBE Forms - Attachment E submitted with the bid/proposal									
8.	These spreadsheets are not protected, so you may modify the forms to enter the information required and add rows as needed for additional subcontractors.								

ATTACHMENT T

MBE GOAL SETTING FACTORS

(to be issued via addendum)