



**Maryland Stadium Authority
Request for Proposals
Construction Management Services
Athletic Fields - Western Maryland Regional Sports Complex at
Frostburg State Complex**

Issue Date: March 5, 2024

Minority Business Enterprises are encouraged to respond to this Request for Proposals.

KEY INFORMATION SUMMARY SHEET

MARYLAND STADIUM AUTHORITY

**Request for Proposals
Construction Management Services
Athletic Fields - Western Maryland Regional Sports Complex at
Frostburg State University**

RFP Issue Date: March 5, 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: 10% overall, no subgoals

**Web Pre-Proposal
Conference:** March 15, 2024 at 10:00 a.m.
(Local Time)

Closing Date and Time (Local Time)
Technical Proposals: April 8, 2024 at 1:00 p.m.

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SECTION 1

GENERAL INFORMATION

1.1 Summary Statement

Frostburg State University (“FSU”) has engaged the Maryland Stadium Authority (“MSA”) to oversee and manage services related to the construction of outdoor athletic fields on the campus of Frostburg State University. A concept of the proposed project is included in **Attachment C** of this RFP.

MSA is seeking a highly qualified Construction Management (“CM”) firm to provide preconstruction services, with the possibility of entering into a Guaranteed Maximum Price (“GMP”) contract, for the construction of outdoor athletic fields. The scope of work includes, without limitation, design and constructability reviews, logistics planning, cost estimating, and project scheduling as described in Section 3 of this Request for Proposals (the “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 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** (pre-construction).
- c. Client – Frostburg State University (“FSU”)
- d. COMAR - Code of Maryland Regulations (available at <http://www.dsd.state.md.us>).
- e. Construction Manager (“CM”) – The construction management firm that executes an Agreement with MSA as a result of this RFP.
- f. eMMA -eMaryland Marketplace Advantage (<https://emma.maryland.gov>).
- g. Guaranteed Maximum Price (“GMP”) – As defined in Article 1 of the

Guaranteed Maximum Price Agreement, **Attachment N**.

- h. Guaranteed Maximum Price (GMP) 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**.
- i. Local Time – Time in the Eastern Time Zone as observed by the State.
- j. MBE –Minority Business Enterprise certified by the Maryland Department of Transportation (“MDOT”).
- k. MSA – Maryland Stadium Authority (<http://www.mdstad.com>)
- l. MSA Business Hours – 8:30 A.M. to 5:00 P.M., local time, Monday through Friday, excluding State holidays and official State closures.
- m. MSA Procurement Policies – MSA procurement policies and procedures (available at <http://www.mdstad.com>).
- 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. Procurement Officer (“PO”) – The MSA representative responsible for this RFP. MSA may change the Procurement Officer at any time and will provide written notice to the Offerors of any such change.
- q. Project – Construction of up to two (2) outdoor athletic fields.
- r. Project Components –Outdoor Athletic Field(s).
- 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 – Includes the A/E, MSA, FSU, MSA’s CM, and any other consultant, entity or government agency MSA may engage on the Project.
- u. Proposal - The submission provided by Offerors in response to this RFP. “Proposal” includes any technical clarifications, financial or Best and Final Offers requested by the Procurement Officer.
- v. Proposal Closing Date – as identified in Section 1.10 of the RFP or as amended via addendum.
- w. Request for Proposals (“RFP”) - This document announcing the Project and soliciting proposals for the execution of the Project, as amended.
- x. Selection Committee- The persons responsible for selecting the successful Offeror.
- y. 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 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 **March 15, 2024 at 10:00 a.m.** Please use the link below to register:

https://us02web.zoom.us/meeting/register/tZosdu6srzsoE9dDtZzvlom_dQH8elwgFuGe

Site Visit will take place on **March 20, 2024 at 10:30 a.m., Local Time.** Please click on the link below to register.

<https://www.eventbrite.com/e/site-visit-cm-frostburg-state-university-athletic-facility-improvements-tickets-856965746617?aff=oddtcreator>

1.7 The Project Manager

The Project Manager is:

Malaika Damon
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 **March 21, 2024 at 1:00 p.m. (Local Time)**:

<https://mdstad.sharefile.com/r-r801d12d869324149aac77f7d614b065f>

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 **April 8, 2024 at 1:00 p.m. (Local Time)**:

<https://mdstad.sharefile.com/r-rcf3b220598834177860e1c78b2317c54>

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

1.11 Virtual Oral Presentations

Short-listed Offerors will be required to make virtual oral presentations. Significant representations made by an Offeror during their oral presentation must be confirmed in writing. All such representations will become part of the Offeror's Proposal and are binding if an Agreement is awarded as a result of this RFP. Oral Presentations are to be held on **April 16, 2024 and April 17, 2024**. In your technical Proposal, please state your availability. Typically, oral presentations will follow a specified format and generally be limited to 60 minutes [45 minutes for the presentation and 15 minutes for questions]. The Procurement Officer will notify the short-listed Offerors with details and instructions prior to the presentation. The presentation must consist of, but not be limited to, a discussion of the Offeror's specific approach to the project and understanding of the scope of work.

1.12 Duration of Offer

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

1.13 Proposal Affidavit

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

1.14 Contract Affidavit

All Offerors are advised that if 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 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.

- a. An overall MBE subcontractor participation goal as identified in the Key Information Summary Sheet has been established for this procurement, representing a percentage of the total contract dollar value, including all renewal option terms, if any. 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).
- b. 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.
- c. By submitting a response to this solicitation, the Offeror acknowledges the overall MBE subcontractor participation goal and subgoals, and commits to achieving the overall goal and subgoals by utilizing certified minority business enterprises, or requests a full or partial waiver of the

overall goal and subgoals.

- d. An Offeror that does not commit to meeting the entire MBE participation goal outlined in this Section 1.20 must submit a request for waiver with its proposal submission that is supported by good faith efforts documentation to meet the MBE goal made prior to submission of its proposal as outlined in **Attachment D-1B**, Waiver Guidance.
- e. 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.
- f. 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.

- g. 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.
- h. 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**);
 - 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.
- i. 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.

- j. 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.
- k. 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**).
- l. 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 \$3 million. The 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 Performance Bond and Payment Bond forms are included in **Attachment K** and **Attachment L** respectively.

1.40 Maryland Law

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

1.41 Acceptance of Terms and Conditions

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

1.42 Procurement Regulations

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

1.43 Multiple Proposals

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

SECTION 2

OFFEROR'S QUALIFICATIONS

2.1 Qualifications

The Offeror shall clearly demonstrate in the Executive Summary of its technical proposal that as of the Proposal Closing Date the Offeror meets the minimum qualifications listed below. The Executive Summary shall include a reference(s) to the page number(s) in the proposal where such evidence can be found.

- 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 ability to meet the bonding and insurance requirements set forth in Section 1.39, **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 enter into an Agreement with a qualified Construction Management (CM) firm to provide preconstruction services related to the construction of up to two (2) athletic fields on the campus of Frostburg State University. A concept of the proposed project is included in **Attachment C** of the RFP.

3.2 Overview

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 Guaranteed Maximum Price Limit (the "GMP Limit") for the project is estimated to be **Three Million Two Hundred Thousand Dollars (\$3,200,000)**. Reference the GMP Calculation Form as Attachment B in the financial Proposal form included in **Attachment I**.

Preconstruction services are anticipated to commence in the late spring/summer 2024.

3.3 Scope of Work

The CM will provide preconstruction services for the Project as outlined in this RFP and per 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 every other week. The purpose of these meetings is to discuss and review 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 three (3) community engagement and/or public outreach meetings.
5. Other: A minimum of ten (10) meetings are anticipated relating to the review of the design of civil, mechanical, electrical, plumbing, fire alarm, telecommunications, security, building enclosure, and other systems.

c. Cost Estimating and Budgeting

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

1. The base cost estimate and budget shall be established from the schematic design (SD) documents produced by the A/E. 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 model 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. Cost estimates are to be provided within five (5) business days after receipt of the Schematic Design (SD) and within seven (7) business days of the Design Document (DD) and Construction Document (CD) submissions (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 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 C of the preconstruction services Agreement (**Attachment M**).

If the project moves into the construction phase, the CM will 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**).

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, and 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. 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. 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.

h. 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.

i. Collaborative Efforts

The 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 local residents employed on the project.

1. 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 local 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 local residents.

j. 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 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.
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.
- j. CM Contingency

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

k. 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**.
- m. 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**.
- n. 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.
- o. 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.
- p. Upon approval of the 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.

- q. 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.

SECTION 4

PROPOSAL SUBMISSION AND REQUIREMENTS

4.1 Solicitation Process

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

1. Step 1– Submission of Technical Proposal

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

2. Step 2 – Review of Technical Proposals

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

3. Step 3 - Short-List and Oral 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.

4. 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.

5. Step 5 – Recommendation for Award

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

4.2 Instruction for Submission of Proposals – General Requirements

Offerors shall submit proposals labeled “**Athletic Fields - Western Maryland Regional Sports Complex at Frostburg State University - 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 Section 1.9 of the RFP. **The electronic submissions (formatted as .pdf file) shall include the firm’s name in the file name and shall be formatted so each page can be legibly printed in 8 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 title of this RFP. A table of contents for the Proposal should follow the title page. Information that is claimed to be confidential shall be clearly identified. Unless there is a compelling case, an entire proposal should not be labeled confidential; only those portions that can reasonably be shown to be proprietary or confidential should be so labeled.

c. Executive Summary

The Offeror shall condense and highlight the contents of the technical Proposal in a separate section titled “Executive Summary.” The summary shall:

1. Acknowledge the receipt of any amendments or addenda associated with this RFP;
2. Provide the Offeror’s tax identification number;

3. State the Offeror's legal name. The legal name is the full name of the entity that, if selected as the successful Offeror, will be awarded the contract Agreement;
4. Identify joint ventures at the time of submission, if any, and the roles these relationships will have in the performance of the Contract. Upon MSA's request, Offerors shall make available within 24 hours the joint venture scope of work documents and/or agreement;
5. Cross reference each minimum qualification requirement, identified in Section 2 of the RFP, with the location in the submission (section or page number) where the Offeror has demonstrated or documented that it meets the requirement;
6. Provide the Offeror's availability for oral presentations; and
7. List any exceptions the Offeror has taken to the requirements of this RFP, the sample contract Agreement, or any other exhibits or attachments. If an Offeror takes no exception, the Executive Summary should so state.

Warning: A general statement that qualifications/exceptions will be discussed at a later date is not acceptable. Offeror must provide specific information regarding any requested changes. Exceptions to terms and conditions may result in having the proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.

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. A completed Project Experience Form (**Attachment F**).
5. A completed Staffing Plan (**Attachment G**)
6. A completed Key Personnel Project Experience Matrix (**Attachment H**).
7. A completed Prime Contractor List of All Subcontractors (**Attachment P**)

8. A completed Capacity Summary Sheet for all prime and subcontractor key personnel (**Attachment R**).
9. A completed Corporate Diversity Addendum (**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 (3) references. The form must be completed by the Offeror and all joint venture partners, if applicable.
 - b. Insurance: Provide proof of insurance certifying the Offeror's ability to comply with the insurance requirements 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. Contracts/Agreements: The Offeror shall identify any exceptions it has taken to the requirements of this RFP or any modification(s) it proposes to make to the preconstruction services Agreement and/or GMP Agreement attached hereto as **Attachment M** and **Attachment N** respectively.

Offeror must provide specific information regarding any requested changes to these contracts. If no exceptions are taken, the Offeror shall so state. Please refer to **Section 4.3.c.7** above.

2. Corporate Experience
 - a. Submit information on three (3) relevant projects, valued at approximately \$3 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 sub-consultants as outlined in the Project Experience Form, **Attachment F**.
 - b. The project examples shall include the following information:
 1. Identification of project, role of Offeror (preconstruction, construction, etc.), project location, project gross square footage, project type, and building type.

2. Method of delivery such as: D/B with GMP, D/B, CM at Risk, GC, CM Agency.
 3. Original project construction cost at time of award, final project cost and percentage change, explain variance.
 4. Original completion date at time of award and actual completion date, explain variances.
 5. Similarities of the reference project 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.
 6. Project owner's name, email address, and telephone number.
 7. Identification of the Project Executive, Project Manager, Project Superintendent, and Project Scheduler for the Project.
 8. Identification of any of the proposed Key Personnel who were involved in the project including their role and responsibilities.
 9. Project color photographs.
3. Key Personnel Experience and Past Performance
- a. Provide an Organizational Chart identifying the Key Personnel that will be assigned to the Project. At a minimum, the Key Personnel shall include the positions listed in 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 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. References. Provide two references for each of the identified Key Personnel. For each reference, please include the full name, title, contact information (email and cell), a summary of the project, and the Key Personnel's role.
- 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 \$3 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 \$3 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 \$3 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 \$3 million in construction cost. Explain specific experience estimating early design concepts and value engineering.

- 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. Staffing Plan. Provide a Staffing Plan in the format included in this RFP as **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.
2. Project 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.
3. Project Challenges: Identify three (3) 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.
4. GMP Limit. Comment on the adequacy of the GMP Limit amount identified in Section 3.2 to meet the goals of the Project as presented in the RFP. Highlight any issues or circumstances (i.e., market, administrative, contractual, etc.) that could impact the Offeror's ability to ensure the execution of the Project occurs within the established GMP Limit.

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 proposed services.
- b. Experience and qualifications of the Offeror and its Key Personnel, with specific emphasis on key personnel with similar projects.
- c. Past Performance and References of Offeror, Key Personnel, and subconsultants.
- d. Work Capacity of Offeror and Key Personnel.
- e. 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 on 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-se9b59e45d23642fc9d916279b4608a2c>

- A.**BID/PROPOSAL AFFIDAVIT****
- B.**CONFLICT OF INTEREST AFFIDAVIT****
- C.**PROJECT CONCEPTUAL DESIGN****
- 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.**RESERVED****
- 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.**PRIME CONTRACTOR LIST OF ALL
SUBCONTRACTORS****
- Q.**MBE PROCUREMENT REVIEW GROUP
INFORMATION (to be issued via addendum to the RFP)****
- R.**CAPACITY SUMMARY SHEET****
- S.**CORPORATE DIVERSITY ADDENDUM****

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

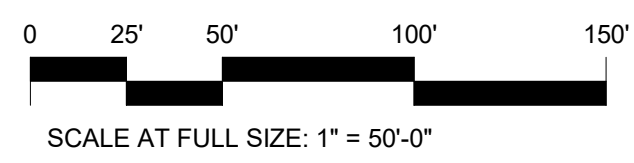
ATTACHMENT C

PROJECT CONCEPTUAL DESIGN

FROSTBURG BOBCAT SOFTBALL FIELD



1 SOCCER & SOFTBALL ADD ALT
SCALE: 1" = 50'-0"



PRELIMINARY SITE STUDY

FROSTBURG STATE UNIVERSITY
MARYLAND STADIUM AUTHORITY



02/20/2024

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 Solicitation No. Construction Management Services- Athletic Fields- Western Maryland Regional Sports Complex at Frostburg State Complex, 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 10 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
	CM Services- Athletic Fields - Western Maryland Regional Sports Complex at Frostburg State Complex	

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</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>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%)</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 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: <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

Construction - Corporate Profile

Firm Contact Information

Firm Name: _____

Federal ID Number: _____

Point of Contact: _____ Phone Number: _____

Regional Office Address: _____

Firm Background Information

Year Firm Founded: _____

Is the firm MDOT MBE Certified? Yes No If certified, provide the certification number and minority status.

Primary Business/Service Provided: _____

Number of Years Performing Services: _____

Number Full Time Employees (Corporate/Regional Office): _____/_____

Provide a brief narrative outlining the firm's history.

Provide a brief narrative outlining what services the firm intends to self-perform.

Provide a brief narrative outlining what services the firm intends to subcontract to others.

Provide a brief narrative outlining the firm's familiarity with standards, laws and conditions as they apply to the work to be performed under this project.

Provide a brief narrative clarifying the firm's capacity to perform services as outlined in the solicitation.

Provide sales volume and project completion 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.

Volume	Annual Sales	Completed Projects	Largest Project
2020	_____	_____	_____
2021	_____	_____	_____
2022	_____	_____	_____
2023	_____	_____	_____

Firm References

Provide three (3) references. Note that references are to be from different projects; that is, only one reference per project is allowed. MSA staff members cannot be considered as a firm's reference.

Project Name: _____

Name: _____
Title: _____
Company Name: _____
Phone Number and email: _____
Project Relationship: _____

Project Name: _____

Name: _____
Title: _____
Company Name: _____
Phone Number and email: _____
Project Relationship: _____

Project Name: _____

Name: _____
Title: _____
Company Name: _____
Phone Number and email: _____
Project Relationship: _____

Disclosure of Contract Issues; Litigation; Criminal Investigations

In the last five years, list and discuss any alleged prior or ongoing contract failures (potential judgment/settlement in excess of \$100,000), contract breaches (potential judgment/settlement in excess of \$100,000), other significant civil litigation, and all criminal litigation or investigations, which involved your firm.

Failure to Complete

In the last five (5) years, disclose any projects that your firm was involved with that were not completed.

Insurance

Include current certificates of insurance showing the limits of liability maintained by your firm in each of the following categories: workers' compensation, employer's liability, commercial general liability, automobile liability, umbrella or excess liability, and property insurance.

Safety

Have you received any regulatory citations (e.g. federal or state OSHA) in the last three years? Yes/No

If yes, provide explanation:

Provide your Workers' Compensation Experience Modification Rates (EMR) for the last 4 years

2019 _____

2020 _____

2021 _____

2022 _____

If EMR not applicable, provide explanation _____

Prepared By:

Name: _____

Title: _____

Signature: _____

Date: _____

ATTACHMENT F
PROJECT EXPERIENCE FORM

Request for Proposals (RFP)
Athletic Fields - Western Maryland Regional Sports Complex at Frostburg State University

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

Request for Proposals (RFP) - CM Services - Athletic Fields - Western Maryland Regional Sports Complex at Frostburg State University

Key Personnel Project Experience Matrix

KEY PERSONNEL							
Names of Key Personnel (From the Staffing Plan)	Role Performed on Sample Project	Role Proposed on this Contract	Example Projects (From the Project Experience Form. Fill in "Example Projects Key" section below before completing this table. Place and "X" under the project key number for participation in same or similar role.)				
			1	2	3	4	5

EXAMPLE PROJECTS KEY	
Project Number	Project Name / Title (From the Project Experience Form)
1	
2	
3	

ATTACHMENT I
SAMPLE REQUEST FOR FINANCIAL
PROPOSALS

**REQUEST FOR FINANCIAL PROPOSAL
CM SERVICES
ATHLETIC FIELDS - WESTERN MARYLAND REGIONAL SPORTS COMPLEX AT FROSTBURG STATE UNIVERSITY
ATTACHMENT A
FINANCIAL PROPOSAL FORM**

1.0 Preconstruction Services (Lump Sum):	\$	-
Allowance For Travel and Reimbursables:	\$	-
Subtotal:	\$	-
Owner Contingency (equal to 10% of Subtotal):	\$	-
Owner's Allowance (Software, Licenses, etc.):	\$	500.00
Total Preconstruction Services Fee:	\$	500.00

2.0 Percentage multiplier if the subtotal Cost of Work (<i>Cell E12 on Attachment B</i>) is between:	\$2,500,000 and \$2,750,000	\$2,750,001 and \$3,000,000	\$3,000,001 and \$3,250,000	
Trade Contractor P& P Bonds/Default Insurance (<i>Cell B13 on Attachment B</i>):	0.00%	0.00%	0.00%	
CM Contingency based on 70% CDs (<i>Cell B15 on Attachment B</i>):	0.00%	0.00%	0.00%	
CM Builder's Risk Insurance (<i>Cell B19 on Attachment B</i>):	0.00%	0.00%	0.00%	
CM Payment and Performance Bonds (<i>Cell B21 on Attachment B</i>):	0.00%	0.00%	0.00%	
CM Insurances (i.e GLI, Auto, etc.) (<i>Cell B23 on Attachment B</i>):	0.00%	0.00%	0.00%	
CM Fee (<i>Cell B25 on Attachment B</i>):	0.00%	0.00%	0.00%	

3.0 Estimated General Conditions Fee (Attachment C): \$ -

**REQUEST FOR FINANCIAL PROPOSAL
CM SERVICES
ATHLETIC FIELDS - WESTERN MARYLAND REGIONAL SPORTS COMPLEX AT FROSTBURG STATE
UNIVERSITY
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 70% 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 GLL, Auto, etc.)	0.00%	of	\$ -	\$ -
24	Subtotal				\$ -
25	CM Fee	0.00%	of	\$ -	\$ -
26	Subtotal				\$ -
27	CM Project Allowances & Holds (Attached):	1	LS	\$ -	TBD
28	Owner Contingency, Allowances & Holds	1	LS	\$ -	TBD
29	TOTAL GUARANTEED MAXIMUM PRICE				\$ -

REQUEST FOR FINANCIAL PROPOSAL

CM SERVICES

ATHLETIC FIELDS - WESTERN MARYLAND REGIONAL SPORTS COMPLEX AT FROSTBURG STATE

UNIVERSITY

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*	<input type="text" value="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*	<input type="text" value="0.00%"/>		of \$	-	\$	-
Subtotal					\$	-
CM Payment and Performance Bonds*	<input type="text" value="0.00%"/>		of \$	-	\$	-
Subtotal					\$	-
CM General Liability Insurance*	<input type="text" value="0.00%"/>		of \$	-	\$	-
Subtotal					\$	-
CM Fee*	<input type="text" value="0.00%"/>		of \$	-	\$	-
TOTAL ALLOWANCES & HOLDS					\$	-

* Amounts from GMP Calculation Form

**REQUEST FOR FINANCIAL PROPOSAL
CM SERVICES**

**ATHLETIC FIELDS - WESTERN MARYLAND REGIONAL SPORTS COMPLEX AT FROSTBURG STATE UNIVERSITY
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	-	\$ -	\$ -
Project Manager #2		0.00	-	\$ -	\$ -
Assistant Project Manager		0.00	-	\$ -	\$ -
Assistant Superintendent		0.00	-	\$ -	\$ -
Project Engineer		0.00	-	\$ -	\$ -
Field Engineer		0.00	-	\$ -	\$ -
Accounting		0.00	-	\$ -	\$ -
QA/QC		0.00	-	\$ -	\$ -
MBE		0.00	-	\$ -	\$ -
BIM		0.00	-	\$ -	\$ -
Other:		0.00	-	\$ -	\$ -
Other:		0.00	-	\$ -	\$ -
Other:		0.00	-	\$ -	\$ -
Other:		0.00	-	\$ -	\$ -
SUBTOTAL LABOR COST:					\$ -
Safety and Site Security	First aid supplies; hardhats and goggles; safety signage; security locks.	0.00		\$ -	\$ -
Temporary Field Facilities and Services	Rent, set-up, and removal of trailers for the CM and for MSA site representative; field offices' utilities, security, communication services, and cleaning; temporary sanitary facilities; Project signs.	0.00		\$ -	\$ -

**REQUEST FOR FINANCIAL PROPOSAL
CM SERVICES**

**ATHLETIC FIELDS - WESTERN MARYLAND REGIONAL SPORTS COMPLEX AT FROSTBURG STATE UNIVERSITY
ATTACHMENT C**

ESTIMATED GENERAL CONDITIONS

Field Offices' Equipment and Software	Field office equipment, maintenance and repair; field office furniture; field office computer equipment, software, maintenance, repair, and support; equivalent requirements for the MSA on-site field representative (with the exception of computer equipment and software).	0.00	-	\$ -	\$ -
Field Offices' Supplies and Postage/Shipping	Office supplies for CM and MSA; postage/ shipping.	0.00		\$ -	\$ -
Professional Services	Cost of Services Not Included in the CM's Construction Services Fee or Trade Contracts	0.00		\$ -	\$ -
Other:		0.00		\$ -	\$ -
Other:		0.00		\$ -	\$ -
Other:		0.00		\$ -	\$ -
Other:		0.00		\$ -	\$ -
Other:		0.00		\$ -	\$ -
Project Documentation and Reproduction	Per Requirements of Contract Documents		With General Requirements in Cost of Work		
Temporary Utilities	Consumption for Temporary Project Utilities		With General Requirements in Cost of Work		
Waste Management and Daily Cleaning	Cost of Services for Dumpsters, Street Sweeping, Etc.		With General Requirements in Cost of Work		
Weather and Other Protection	Temporary weather and dust protection not in Trade Contracts; site snow removal; materials for maintenance of erosion control not in Site Trade Contract.		With General Requirements in Cost of Work		
Material Handling	Chutes, Rental Equipment, etc.		With General Requirements in Cost of Work		
Elevator Operator(s)	If Applicable		With General Requirements in Cost of Work		
Miscellaneous Materials and Small Tools	Miscellaneous materials; small tools; surveying equipment.		With General Requirements in Cost of Work		
Protection of Finished Work	If Not Included In Trade Contracts		With General Requirements in Cost of Work		
Permit Fees	Cost of the Building Permit is by Owner. Costs associated with construction related permits are to be included in the GMP and/or the Trade Contracts.		Construction related permits included in Trade Contracts		
SUBTOTAL NON-LABOR COST:				\$	-
TOTAL ESTIMATED GENERAL CONDITIONS (Labor plus Non-Labor Cost):				\$	-

ATTACHMENT K

PERFORMANCE BOND FORM

PERFORMANCE BOND
ATHLETIC FIELDS – WESTERN MARYLAND REGIONAL SPORTS COMPLEX AT
FROSTBURG STATE UNIVERSITY

PERFORMANCE BOND

PRINCIPAL:

BUSINESS NAME

BUSINESS ADDRESS

OBLIGEE

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

351 W. Camden Street, Suite 500
Baltimore, Maryland 21201-2435
BUSINESS ADDRESS

SURETY:

BUSINESS ADDRESS

_____, 2024
DATE BOND EXECUTED

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

SUM OF BOND (Equal to Contract Price):

SUM OF _____ Dollars (\$ _____)

CONTRACT:

CONTRACT NUMBER AND IDENTIFICATION

_____, 2024
DATE OF CONTRACT

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

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

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

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

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

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

1. Failure of the OBLIGEE to withhold retainages pursuant to the Contract;
2. Failure of the OBLIGEE to withhold other payments from the PRINCIPAL pursuant any right of the OBLIGEE so to do;
3. Waiver by the OBLIGEE of, or failure by the OBLIGEE to enforce, any right remedy against the PRINCIPAL, and

4. Withholding by OBLIGEE of any payment(s) from the PRINCIPAL under a claim of a contractual right to do so, provided that, in the case of (.4), any amount so withheld is approved by the Architect under the Contract or is reasonable under the circumstances and is withheld in good faith.

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

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

ATTEST:

PRINCIPAL:

SIGN: _____ SIGN: _____ (SEAL)

NAME: _____ NAME: _____

TITLE: _____ TITLE: _____

ATTEST:

SURETY:

SIGN: _____ SIGN: _____ (SEAL)

NAME: _____ NAME: _____

TITLE: _____ TITLE: _____

AGENT (COMPANY): _____ (SEAL)

AUTHORIZED BY: _____

NAME: _____ **TITLE:** _____.

ATTACHMENT L

LABOR AND MATERIAL PAYMENT BOND FORM

**LABOR AND MATERIAL PAYMENT BOND
ATHLETIC FIELDS – WESTERN MARYLAND SPORTS COMPLEX AT FROSTBURG
STATE UNIVERSITY**

PRINCIPAL:

BUSINESS NAME

BUSINESS ADDRESS

OBLIGEE:

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

351 W. Camden Street, Suite 500
Baltimore, Maryland 21201-2435
BUSINESS ADDRESS

SURETY:

BUSINESS ADDRESS

_____, 2024
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:

_____, 2024
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 PRE-CONSTRUCTION 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 development of ___ (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 B.

(e) Prepare/update a construction cost estimates.

(f) Prepare/update construction schedules in accordance with Exhibit A 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 B. 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 D.

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 _____.

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

Exhibit B

Exhibit C

CONTRACT AFFIDAVIT

1.0 AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the (title) _____

and the duly authorized representative of _____

and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

2.0 CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

.1 The business named above is a (domestic) (foreign) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is:

Name: _____

Address: _____

.2 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, the State Department of Assessments and Taxation, and the Employment Security Administration, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

3.0 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, or any of its employees directly involved in obtaining or performing contracts with public bodies (as defined in Section 16-101(f) of the State Finance and Procurement Article of the Annotated Code of Maryland), has been convicted of, or has had probation before judgment imposed pursuant to Article 27, Section 641 of the 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 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):

4.0 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 or agent 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 or agent, any fee or any other consideration contingent on the making of the Contract.

5.0 DRUG AND ALCOHOL FREE WORKPLACE

I CERTIFY THAT:

.1 Terms defined in COMAR 21.11.08 shall have the same meaning 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 this contract, the business shall:

- .1 Maintain a workplace free of drug and alcohol abuse during the term of the contract;
- .2 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;
- .3 Prohibit its employees from working under the influence of drugs or alcohol;
- .4 Not hire or assign to work on the contract anyone whom 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;
- .5 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;
- .6 Establish drug and alcohol abuse awareness programs to inform its employees about:
 - .1 The dangers of drug and alcohol abuse in the workplace;
 - .2 The business policy of maintaining a drug and alcohol free workplace;
 - .3 Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - .4 The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
 - .5 Provide all employees engaged in the performance of the contract with a copy of the statement required by §5.2.2, above;
 - .6 Notify its employees in the statement required by §5.2.2, above, that as a condition of continued employment on the contract, the employee shall:
 - .1 Abide by the terms of the statement;
 - .2 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;
- .7 Notify the procurement officer within ten (10) days after receiving notice under §5.2.8.2, above, or otherwise receiving actual notice of a conviction;
- .8 Within thirty (30) days after receiving notice under §5.2.8.2, 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:

- .1 Take appropriate personnel action against an employee, up to and including termination; or
 - .2 Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
 - .9 Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §5.2.1-.10, above.
- .3 If the business is an individual, the individual shall certify and agree as set forth in §5.4, 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:
- .1 The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
 - .2 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
 - .3 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 21.08.06.

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)

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 C	Project Description
Exhibit D	MBE Goals & Reporting Forms (A-H)
Exhibit E	Prevailing Wage Scale
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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 _____ 2024.

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 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)	\$ _____
General Liability Occurrence	\$ _____
General Aggregate	\$ _____
Products-completed	\$ _____
Operations Aggregate	\$ _____
Excess Liability Occurrence and Aggregate	\$ _____

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/offeree fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.

1. Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) subcontractor participation goal stated in the Invitation for Bids or Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.
2. MBE Goals and Subgoals: Please review the solicitation for information regarding the Contract's MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from the various MBE classifications to meet the remainder of the overall MBE participation goal.
3. MBE means a minority business enterprise that is certified by the Maryland Department of Transportation ("MDOT"). Only MBEs certified by MDOT may be counted for purposes of achieving the MBE participation goals. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm, including a MBE prime, must be MDOT-certified for the services, materials or supplies that it is committed to perform on the MBE Participation Schedule. A firm whose MBE certification application is pending may not be counted.
4. Please refer to the MDOT MBE Directory at <https://mbe.mdot.maryland.gov/directory/> to determine if a firm is certified with the appropriate North American Industry Classification System ("NAICS") Code **and** the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS codes, please visit <https://www.census.gov/eos/www/naics/>. Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the MBE participation goals. **CAUTION:** If the firm's NAICS Code is in graduated status, such services/products may not be counted for purposes of achieving the MBE participation goals. A NAICS Code is in the graduated status if the term "Graduated" follows the Code in the MDOT MBE Directory.
5. **Guidelines Regarding MBE Prime Self-Performance.** Please note that when a certified MBE firm participates as a prime contractor on a Contract, a procurement agency may count the distinct, clearly defined portion of the work of the Contract that the certified MBE firm performs with its own workforce toward fulfilling up to, but no more than, fifty-percent (50%) of the overall MBE participation goal, including up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the Contract.

- ✓ In order to receive credit for self-performance, an MBE prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE prime is self-performing and include information regarding the work it will self-perform.
 - ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.
 - ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime's ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
 - ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the contract has subgoals, regardless of MBE Prime's ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to use other MBEs for each of any remaining subgoals or request a waiver. As set forth in Attachment 1-B Waiver Guidance, the MBE Prime's ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
 - ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to the Governor's Office of Small Minority & Women Business Affairs' website for the MBE Prime Regulations Q&A for illustrative examples.
http://www.goMDsmallbiz.maryland.gov/Documents/MBE_Toolkit/MBEPrimeRegulation_QA.pdf
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): _____ %

**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

Refer to Article 9 of the GMP.

[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, 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 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, 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 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):

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

APPLICATION NO:
 APPLICATION DATE:

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

PERIOD TO:

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

PRIME CONTRACTOR LIST OF ALL SUBCONTRACTORS

Attachment P - Prime Contractor List of ALL Subcontractors Anticipated/Used During Contract											
<i>Effective beginning for Fiscal Year (FY) 2023, the State of Maryland is required to collect the names and total payments of all subcontractors used during the life of the contract with no regard to</i>											
<i>Attachment P 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.</i>											
<i>Attachment P 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.</i>											
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.)											
<i>"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."</i>											
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											
<i>The State is aware that circumstances change during the course of a contract that requires substitutions among subcontractors. Thus, this second tab of the form is to capture all subcontractors</i>											
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.)											
<i>"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."</i>											
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 Q

MBE PROCUREMENT REVIEW GROUP INFORMATION (to be issued via
addendum to the RFP)

ATTACHMENT R
CAPACITY SUMMARY SHEET

ATTACHMENT S

CORPORATE DIVERSITY ADDENDUM

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.