



**The Maryland-National Capital Park & Planning Commission**

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6600 Kenilworth Avenue, Suite 205 • Riverdale, Maryland 20737 • 301-699-2569  
Fax: 301-301-454-1606

**PROPOSAL DOCUMENTS**

**RFP NUMBER: P41-135**

**Construction Manager at Risk Services**

**Oxon Hill Manor Roof and Roof Drainage Reconstruction**

**6901 Oxon Hill Road Oxon Hill, MD 20745**

**PROJECT DESCRIPTION:**

M-NCPPC is seeking the services of a qualified Construction Management firm to provide pre-construction services and construction services for the reconstruction of the Oxon Hill manor roof and roof drainage and associated improvements (Project).

The Project is located at 6901 Oxon Hill Road Oxon Hill, MD 20745 and generally involves pre-construction services such as design review and cost estimating of Construction Documents, value engineering services, constructability reviews and establishing a Guaranteed Maximum Price for the construction phase services. The construction phase services will be an "open book" reimbursable contract with specific fixed and not-to-exceed fees, scheduling and sub-contractor bidding and management.

**PROPOSAL DUE DATE/TIME: October 5, 2021 before 12:00 PM.**

**NOTE: A Pre-Proposal Conference will be held September 14, 2021 @11:00 A.M. at 6901 Oxon Hill Rd, Oxon Hill, MD 20745**

**SOLICITATION RELEASE DATE: September 1, 2021**

**THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION**

**REQUEST FOR PROPOSALS (RFP) SUMMARY**

<b>RFP Number:</b>	<b>P41-135</b>
<b>Proposal Name:</b>	Construction Manager at Risk Services For Oxon Hill Manor Roof and Drainage Reconstruction
<b>Pre-Proposal Meeting:</b>	A Pre-Proposal Conference will be held September 14, 2021 @11:00 A.M. at <b>6901 Oxon Hill Rd, Oxon Hill, MD 20745</b>
<b>Deadline for Technical Questions:</b>	<b>September 21, 2021 by 12:00 p.m.</b> All questions shall be submitted to <a href="mailto:Natasha.newton@pgparks.com">Natasha.newton@pgparks.com</a>
<b>Deadline for Proposals:</b>	<b>OCTOBER 5, 2021 BEFORE 12:00 PM</b>
<b>Submit Proposals to:</b>	<b>Maryland National Capital Park and Planning Commission</b> <b>Attn: Natasha Newton-Bryson</b> <a href="mailto:Natasha.newton@pgparks.com">Natasha.newton@pgparks.com</a>
<b>Proposal Submittal instructions:</b>	<b><u>The Proposal should indicate the Request for Proposal Number</u></b>  Due to the COVID-19 Pandemic, proposals for this Solicitation shall be submitted online through the Commission’s electronic bid service provider (ProcureNow). The Commission will not be accepting paper copies of bids or proposals. Please follow the below link to submit an electronic Proposal for this Solicitation:  <a href="https://secure.procurenow.com/portal/mncppc">https://secure.procurenow.com/portal/mncppc</a>  THE COMMISSION IS NOW REQUIRING ALL VENDORS TO REGISTER ON THE COMMISSION’S ONLINE VENDOR REGISTRATION (EZ PROCUREMENT) SITE AT <a href="http://MNCPPC.ORG/REGISTER.HTML">HTTP://MNCPPC.ORG/REGISTER.HTML</a> .
<b>Inquiries:</b>	All inquiries regarding this proposal are to be made to:  Natasha Newton-Bryson, Senior Procurement Specialist 6600 Kenilworth Avenue, Suite 205 Riverdale, MD 20737 Email: <a href="mailto:natasha.newton@pgparks.com">natasha.newton@pgparks.com</a> Office: (301) 699-2562

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## Construction Manager at Risk Services for Concord Manor Rehabilitation

The Maryland National Capital Park and Planning Commission (M-NCPPC), is seeking the services of a qualified Construction Management firm to provide pre-construction services and construction services for the reconstruction of the **Construction Manager at Risk Services Oxon Hill Manor Roof and Roof Drainage Reconstruction**

The Project is located at 6901 Oxon Hill Road Oxon Hill, MD 20745 and generally involves pre-construction services such as design review and cost estimating of construction documents, value engineering services, constructability reviews and establishing a Guaranteed Maximum Price for the construction phase services. The construction phase services will be an "open book" reimbursable contract with specific fixed and not-to-exceed fees, scheduling and sub-contractor bidding and management.

The scope of work shall include but may not be limited to:

### Roof Structure and Chimneys

The CMAR shall provide design review, cost estimating, constructability review and construction services to achieve the following in accordance with the project architect's plans and specifications and the budget:

- I. A complete or partial reconstruction of the Oxon Hill Manor roof system (main block and servant's wing), and its components, that will match the original design in scale, height, width, form, massing, materials and other character-defining features.
- II. Replace the modern, post-fire truss roof system with a new system that is harmonious with, and structurally compatible with the existing historic building. The design review shall address and include the defective post-fire second-floor ceiling (attic floor framing) located directly below the modern replacement roof truss system.
- III. The new roof system shall accommodate the larger and heavier historically accurate 100+/- year slate tiles without overloading the structure.
- IV. The new slate shall, to the greatest degree possible, match the buildings originally specified slate tiles in size, shape, texture, and color. (Gray Buckingham slate, 18" x random width, 1/4" to 3/8" thick, laid on felt with copper nails.)
- V. Natural Slate (non-synthetic) genuine Buckingham Virginia Slate (or other comparable recommended slate) with a useful life expectancy of 100+/- years shall be applied with appropriate decking and underlayment.
- VI. Installation of new slate in a proper watertight manner with correct overlap, exposure, pitch, and hardware according to manufacturer's directions.
- VII. Repair, re-cladding and replacement of the failing low-slope membrane roofs at both the main block and servant's wing with new membrane roofing that is compatible with the historic building, and the new 100+/- year slate roofing.
- VIII. Provide the repair and repointing of masonry features including the chimneys and parapets where needed and the replacement of cracked or damaged masonry. Provide the repair of any cracks or leaks in the exterior water table where the vertical parapet and horizontal water table meet.
- IX. Provide new roof system with lightning protection.

## 2) Roof Drainage

The CMAR shall provide design review, cost estimating, constructability review and construction services to achieve the following in accordance with the project architect's plans and specifications and the budget:

- i. Contribute to the assessment of the operability of existing built-in roof gutters and drains for size, capacity, locations, configuration and detailing including appropriate drain slope, flashing details, and drain outlets. Provide a drainage assembly that meets or exceeds the local and state building codes for drainage capacity based on roof area, geographic rainfall intensity, runoff rates etc.
- ii. Provide new copper flashing, downspouts, and gutters that match the original (or are compatible with the original) in design, color, finish, capacity, dimension and profile.
- iii. All flashing, fascia, fasteners and other new roof components shall have a life expectancy and physical characteristics compatible with the new slate roof and other roof materials, and historic methods of installation.
- iv. Retain, restore or replace in-kind any original decorative roof and drainage features (cornice, fascia, coping, overflow scuppers, downspouts, etc.)

## 3) Sub-Surface Drainage

The CMAR shall provide design review, cost estimating, constructability review and construction services to achieve the following in accordance with the project architect's plans and specifications and the budget:

- i. Contribute to the investigation of the existing sub-surface drain capacity and provide constructability design review of a drainage solution that is compatible with the historic roof drainage and is capable of accommodating the rainwater volume and flow based on roof area, geographic rainfall intensity, runoff rates, etc.
- ii. Provide sub-surface drainage with accurate slope, capacity and daylight locations; extend roof drainage and associated piping away from the building façade, terraces and foundations. Ensure that all drains are appropriately sized and functional.
- iii. Where needed, provide additional perimeter drainage (French drain or other such recommended system) that will protect the building foundation and terracing from future moisture intrusion. Re-grade as needed to maintain positive slope around the building.
- iv. Provide necessary sub-surface drainage with accurate slope, capacity and daylight locations; extend roof drainage and associated piping away from the building façade, terraces and foundations. Ensure that all drains are appropriately sized and functional.
- v. Repair/reconstruct attached main block brick terraces that exhibit signs of long-term movement due to faulty sub-grade drainage and moisture intrusion.

## The Contractor Shall:

- i. Execute all work to not less than industry standards (exemplary work is encouraged).
- ii. Utilize all in-kind restoration materials; any substitutions must receive prior approval from the project architect and M-NCPPC Project Manager (PM) prior to repair or replacement.
- iii. Stage all materials and equipment on-site with approval for location and methodology by M-NCPPC PM. Erection of scaffolding, as needed, requires approval and supervision by M-NCPPC's Archaeologist and PM; grounds, historic fabric, and weather-resistive components must be protected. Install perimeter (sheeting) protection as appropriate to collect stray/lost masonry materials.
- iv. Clean-Up: Daily and end of job to the M-NCPPC's satisfaction, the Contractor shall keep the site free from all waste and materials or rubbish caused by the activities of the Contractor or any of his subcontractors, either generated or brought to the site. Contractor shall be responsible for all

costs associated with removal and/or restoration, including costs associated with permitting and transportation. Should the Contractor fail to adequately clean-up, the M-NCPPC may do so with the cost of such charged to the Contractor.

- v. Furnish and provide all materials, management, labor, equipment, hazardous material abatement, supervision, and other services necessary to complete the project.

**SECTION I**  
**REQUEST FOR PROPOSALS**

## SECTION I – REQUEST FOR PROPOSALS

September 1, 2021  
RFP No.:P41-135

Title: Construction Manager at Risk for Oxon Hill Manor Roof and Roof Drainage Reconstruction

Deadline for Proposals: **October 5, 2021 before 12:00 PM.**

**Due to the COVID-19 Pandemic, proposals for this Solicitation shall be submitted online through the Commission’s electronic bid service provider (ProcureNow). The Commission will not be accepting paper copies of bids or proposals. Please follow the link below to submit an electronic Proposal for this Solicitation:**

<https://secure.procurenow.com/portal/mncppc>

Offerors are to conform to the procurement conditions herein including those for Subcontracting. The proposal shall clearly indicate the proposed subcontractors that will be utilized to accomplish the Scope of Services, if applicable.

This RFP has significant subcontracting opportunities and, therefore each Offeror must demonstrate compliance with the Commission’s Non-Discrimination in Subcontracting Program. An MFD subcontracting level of participation of eighteen percent (18%) has been established for this RFP. A Nondiscrimination in Subcontracting Bid Form must be completed and signed by an authorized person in order to be deemed responsive.

All inquiries regarding this proposal are to be made to Natasha Newton-Bryson, Senior Procurement Specialist, [Natasha.newton@pgparks.com](mailto:Natasha.newton@pgparks.com).



SECTION II  
**GENERAL INFORMATION**

## SECTION II - GENERAL INFORMATION

### 1. PRE SUBMISSION INFORMATION

#### A. Examination of Proposal Documents

Offerors must examine all of the solicitation documents very carefully and must tailor their proposal to the location and requirements of the proposed work. The submission of a proposal indicates that the Offeror thoroughly understands all of the terms and conditions, instructions, notices, and specifications of the proposal.

#### B. Commission Assistance in Proposal Preparation

Commission staff will not assist any Offeror or Offeror's agent in the actual preparation of the proposal. Offerors or their agents will not be permitted to use Commission telephones or other facilities in the preparation of the proposal.

#### C. Interpretation of Proposal Documents and Correction of Proposal Documents

Should a Offeror require an interpretation or clarification of any provisions of the RFP documents or related information provided by the Commission, or believe that there is an ambiguity, error, inconsistency or discrepancy in these documents or information, the Offeror must notify the Commission in writing at least five (5) working days prior to the date set for receipt of proposals.

An Offeror who fails to request any such interpretation or clarification waives any claim for additional cost or time spent addressing any ambiguity, error, inconsistency or discrepancy in any such documents or information which is found to have been apparent at the time of receipt of proposals.

All interpretations, clarifications, corrections, changes or other directions related to these requests of Offerors will be provided in writing by the Commission and sent to all known prospective Offerors who obtained copies of the documents and information from the Commission and [www.eMarylandmarketplace.com](http://www.eMarylandmarketplace.com).

#### D. Extension of Proposal Opening

The Commission may extend the proposal opening date at its option. If the date is extended, the Commission will notify all known prospective Offerors who have obtained copies of the proposal documents from the Commission and [www.eMarylandmarketplace.com](http://www.eMarylandmarketplace.com).

### 2. PREPARATION and SUBMISSION of PROPOSALS

The Offeror should submit one (1) electronic copy PDF format as indicated in the RFP announcement. The proposal must be:

- A. Initialed by the Offeror where there are erasures or other changes in the proposal.
  - B. Signed in ink by authorized principals with the Offeror's legal name fully stated. Corporations must give the state in which incorporated, using phrase "A Corporation organized under the laws of the State of \_\_\_\_\_". Partnerships must give names of partners, using phrase "Copartners, doing business under the firm name of \_\_\_\_\_". Individuals using a trade name must give the individual name, using phrase "An individual doing business under the trade name of \_\_\_\_\_".
  - C. Submitted in accordance with the format as specified in the section titled Proposal Format. Proposals may be submitted as the Offeror may determine, but the proposals must follow the prescribed format as to the requirements of content and order of content.
  - D. Fully completed by the Offeror, including all information requested and any attachments that may be required.
  - E. Received on or before the time, date and at the location specified in the RFP Announcement herein.
  - F. Offerors are requested to state in writing that their Offers are valid for a period of 120 days after submittal due date.
  - G. Proposals should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the RFP. Emphasis should be on completeness and clarity of context. Unnecessarily elaborate proposals, brochures of other presentations, expensive paper, bindings, visual and other presentation aids beyond that sufficient to present a complete and effective proposal are neither required nor desired.
  - H. M-NCPPC will not consider information other than the materials provided in a duly submitted proposal and/or subsequent interviews for proposal evaluation purposes.
  - I. M-NCPPC and their officers, employees or agents will not be responsible for the opening of a proposal envelope or package prior to the scheduled opening if that envelope or package is not appropriately sealed and marked as specified.
  - J. Conditional proposals are subject to rejection in whole or in part.
  - K. M-NCPPC is not liable for any costs incurred by any Offeror in connection with this RFP. The expenses incurred by Offeror in the preparation, submission, and presentation of the proposal are the sole responsibility of the Offeror.
3. **BID GUARANTIES, PAYMENT AND PERFORMANCE BONDS AND CERTIFICATES OF INSURANCE**

With submission of the Price Proposal in accordance with this RFP, Offerors are required to comply with the following requirements:

- A. The Offeror shall furnish and include with the with the Proposal a Proposal Bond in an amount equal to not less than five percent (5%) of the proposal amount, properly executed in favor of the Commission. Acceptable bonds shall comply with the provisions below. Proposal amount shall be defined as the sum total price of CM Pre-Construction phase fee, CM Construction Phase fee, and CM Not-to-exceed reimbursable costs for the project.
- B. Should the Offeror to whom a contract is awarded fail or be unable to execute the Contract, for any reason, within ten (10) calendar days after the issuance of the proposed contract, then an amount equal to the difference between the accepted price and that of the Offeror to whom the award subsequently is made shall be paid to M-NCPPC not as penalty but liquidated damages.
- C. Performance and Payment Bonds, each in the amount of 100% of the GMP, shall be furnished to the M-NCPPC with the proposed GMP Amendment to the Contract for the construction phase (Part 2) that has been signed by the Contractor. Acceptable bonds shall comply with provisions below.
- D. Acceptable security for bonds include:
  - 1) A bond in a form satisfactory to the Commission underwritten by an acceptable bonding company. Acceptable bonding companies are those having active claims offices in the District of Columbia; Arlington or Fairfax Counties or the City of Alexandria in Virginia; or Montgomery, Prince George's or Baltimore Counties in Maryland; and which are licensed by the Maryland Commissioner of Insurance and currently have a or better rating from A.M. Best Company, or a minimum Standard & Poor's rating of BBBq. The bonding company must have a resident agent named in Maryland.
  - 2) A bank certified check, bank cashier's check, bank treasurer's check, or bank trust account.
  - 3) Pledge of securities backed by the full faith and credit of the United States Government or bonds issued by the State of Maryland or Montgomery or Prince George's Counties in Maryland.
  - 4) Irrevocable Letter of Credit acceptable to the Commission.
  - 5) Alternative security approved by the Secretary-Treasurer.
- E. The life of all contract securities must be consistent with the performance period of the contract.
- F. All proposal guaranties will be returned upon request following the execution of the awarded contract by the successful Offeror.

#### 4. RECEIPT and OPENING of PROPOSALS

- A. Proposals received prior to the date and time specified for the receipt of proposals will be securely kept, unopened. The Commission representative, whose duty it is to open the proposals, will decide when the specified opening time has arrived.
- B. If the Offeror to whom an award is offered should fail to execute the contract (see Appendix for sample contract) or deliver any insurance certificates or bonds within the

time specified:

1) The award may be annulled and the project awarded to the Offeror ranked second under the evaluation criteria, who shall be required to fulfill all stipulations as if such Offeror were the original Offeror to whom the award was made, or

2) The Commission may reject all remaining proposals.

C. Unless otherwise stated in the Scope of Services Section, the Commission reserves the right to award in the aggregate or to make separate awards.

D. The Commission reserves the right, when reviewing proposals for award, to waive minor informalities or irregularities in the proposals and in the proposing procedure. The Offeror to whom the award is made will be notified at the earliest possible date.

E. The Commission reserves the right to reject any or all proposals, and to reject any or all optional items included in the proposal.

## 5. IRREVOCABILITY OF PROPOSALS

A. The Part 1 – Pre-construction phase CMAR fee price proposal for this project shall be irrevocable for one hundred twenty (120) calendar days from the proposal due date. Offerors are required to state in writing that their Offers are valid for a period of 120 days after submittal due date.

B. The Part 2 – Construction phase CMAR fee price proposal shall remain irrevocable until acceptance of the GMP and approval of the contract modification to reflect the GMP by the M-NCPPC.

## 6. AWARD OF CONTRACT

A. The award of a Contract, if one is to be awarded, will be made within one hundred twenty (120) calendar days of the date of Proposal receipt. If award cannot be made within that period, Offerors may be requested to extend the period for the acceptance of their proposal by the Commission.

B. The construction manager at risk contract will be awarded in two parts:

1) Part 1 - Pre-construction Phase which includes the preparation, submission and negotiation of the Guaranteed Maximum Price ("GMP");

2) Part 2 - Construction Phase that includes all construction and associated work to complete the GMP scope of work.

## 7. BID PROTESTS

A. Any actual or prospective Offeror who is aggrieved in connection with the solicitation of bids or award of a purchase may protest to the Commission's Purchasing Manager. Protesters are urged to seek resolution of their complaints initially with the Purchasing

Manager. A protest related to a Request for Proposals shall be submitted in writing prior to the closing date for the proposals, unless the aggrieved person did not know and should not have known of the facts giving rise to such protest prior to closing date for proposals. The protest shall be submitted in writing and received within 10 business days after such aggrieved person knows or should have known of the facts giving rise to the protest.

B. The protest must include:

- 1) The name and address of the protester;
- 2) Identification of the solicitation or purchase;
- 3) Statement of reasons for the protest;
- 4) Any supporting documentation to substantiate the claim made, unless the documentation is not available within the protest delivery time, in which instance the expected date the material will be available is to be stated; and
- 5) The remedy sought.

C. The Purchasing Manager shall, upon written request, make available to the protester information submitted that bears on the substance of the protest except where information is proprietary or otherwise confidential. The protester shall submit any additional information requested by the Purchasing Manager within five calendar days after receipt of the request for such information. Failure of the protester to respond to a request for information may result in the resolution of the protest on the basis of available information. The decision of the Purchasing Manager shall be final and conclusive; unless fraudulent, or:

- 1) Within 10 business days from receipt of the written decision, the protester mails or otherwise furnishes a written appeal to the Executive Director, or
- 2) Any person adversely affected by the decision commences an action in court. The decision of the Executive Director shall be final and binding.

8. ETHICS IN PROCUREMENT

By submitting a proposal, the Offeror agrees to adhere to the Commission's policy on ethics in purchasing. This policy prohibits any person from offering, giving, or agreeing to give any Commission employee or former Commission employee a gratuity or an offer of employment in connection with any aspect of Commission procurement. Further, payment or offers to pay contingent fees related to procurement of Commission purchases are prohibited except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Potential Offerors are urged to review the ethics policy in detail. Copies may be requested from the Purchasing Division (phone: 301/454-1600).

9. SPECIFICATIONS

All work must be furnished in accordance with the Scope of Services Section of the RFP.

10. PAYMENT

The Commission will make payment after acceptance of the work and submission by the Contractor of a suitable invoice. Cash discount will not be considered for less than two

percent (2%) and at least twenty (20) days for payment. Terms of payment otherwise will be Net 30 days.

## 11. COMPLETION OF WORK

Upon award of the proposal, Offeror must be prepared to complete/deliver the work within the time stated in the proposal.

## 12. ANTI-DISCRIMINATION PROGRAM

- A. By submitting a proposal, an Offeror shall understand and agree to:
- 1) Not discriminate against minority, female and disabled-owned firms (MFDs) in the selection of subcontractors on Commission contracts. For contracts with subcontracting opportunities, Offerors are required to provide MFDs the opportunity to submit proposals as subcontractors and to award those MFDs submitting low proposals the subcontracts unless there are legitimate reasons not to do so. On certain contracts, the Commission will require Offerors to submit standard forms with the proposals that indicate how they have complied with the subcontracting non-discrimination requirements. The Special Instructions section of the RFP specifies whether these forms must be submitted.
  - 2) Not discriminate against MFDs in their performance of work as subcontractors on Commission contracts.
  - 3) Submit forms verifying payment to subcontractors throughout the course of a contract.
  - 4) Not discriminate against any employee or applicant for employment because of age, sex, race, creed, disability or national origin. If a firm is determined by a final order of an administrative agency or a court to be in violation of federal, state or county non-discrimination laws, any agreement entered into by the Commission with a firm may be terminated or suspended in whole or in part by the Commission, and the firm may be debarred from proposing on future contracts with the Commission.
- B. This RFP has significant subcontracting opportunities and, therefore each Offeror must demonstrate compliance with the Commission's Non-Discrimination in Subcontracting Program.
- C. The subcontracting non-discrimination program shall apply not only to the Part Two GMP amendment to the contract, but also to certain major change orders and amendments that serve to increase the dollar value of the initial contract.
- D. Any violation of the Commission's Anti-Discrimination Program may result in suspension or debarment of the violator as well as other civil or administrative remedies. A minority-owned business is any entity that engages in commercial transactions and is at least 51 percent owned and controlled by one or more individuals from the following groups: African Americans (all persons having origins in and of the black racial groups of Africa), Hispanics (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race), Asians or Pacific Islanders (all persons having origins in any of the Far East, Southeast Asia, the Indian Subcontinent, or the

Pacific Islands), and Native Americans (all persons of American Indian, Aleut, Eskimo or Native Hawaiian background).

A female-owned business is any entity that engages in commercial transactions and is at least 51 percent owned and controlled by one or more women. A disabled-owned business is any entity that engages in commercial transactions and is at least 51 percent owned and controlled by persons with physical or mental impairment that substantially limits one or more of the major life activities of the individual, as defined in the Americans with Disabilities Act of 1990



**SECTION III**  
**GENERAL CONDITIONS**

## SECTION III – GENERAL CONDITIONS

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# THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

## GENERAL CONDITIONS

### 1. DEFINITIONS AND RESPONSIBILITIES

#### 1.1 Definitions

Whenever and wherever throughout the Bidding and Contract Documents the words, or pronouns used in their stead, terms and phrases or the abbreviations defined in this section appear, they shall have and be given the meanings set forth herein. Unless otherwise specifically defined in this section, however, or unless the context of their usage clearly requires a different meaning, all words, and terms and phrases not having a well-known or commonly accepted special usage in the construction industry, or a well-established technical meaning, shall be given their ordinary meaning.

Any use of masculine pronouns herein includes both the feminine and neuter genders, and vice versa. The use of the singular tense includes the plural, and the plural the singular.

The headings provided are listed for convenience only, and do not add to, alter or modify the meaning of the substantive text.

#### A. Words, Terms and Phrases

**ADDENDUM (ADDENDA)** Written or graphic documents issued by the Commission, or its Design Professional prior to the time of bid opening, which revise or interpret the Bidding Documents by addition, deletion, clarification or correction.

**AMENDMENT** A written document issued by the Commission, subsequent to the award and execution of the Contract and signed by the Contractor and the Commission, in which the Contractor and Commission mutually agree to undertake work beyond the scope of a Change Order.

**APPROVED EQUAL** Those materials or equipment which possess the salient characteristics of and which in terms of quality, design and performance are functionally equivalent or superior to those of any specified item of material or equipment.

**AWARD** The decision by Commission to execute a contract after all necessary approvals have been obtained.

**BID(S)** A completed and executed written offer contained upon the Bid Form, which is submitted to the Commission pursuant to and in accordance with an Invitation For Sealed Bids and which sets forth the price, terms and description of the supplies, materials, services and construction, or construction related Work which the Bidder proposes to furnish and perform on behalf of the Commission in response to an Advertisement For Bids.

**BID BOND** See "PROPOSAL GUARANTY."

**BID FORM** The approved form on which the Commission requires bids to be set forth and submitted.

**BIDDER** A legal entity formally submitting a Bid for the Work contemplated, acting directly or through a duly authorized representative.

**BIDDING DOCUMENTS** The documents which set forth the procedures and requirements for preparing a bid and indicate the terms and conditions upon which bids for a contract to be awarded by the Commission will be evaluated. Such documents include the Advertisement For Bids, the Invitation for Sealed Bids, the Instructions to Bidders and any Supplemental Instructions to Bidders, the Bid Forms, the Contract and all Contract Forms, the General Conditions and any Supplemental General Conditions, Special Conditions or other Conditions of the Contract, the Drawings, the Specifications and all Addenda or Amendments thereto.

Corporation, partnership, individual, sole proprietorship, joint venture or any other legal entity through which commercial activity is conducted.

**CALENDAR DAY** Every day shown on the calendar, Saturdays, Sundays and holidays included.

**CHANGE** An alteration or addition to, or deletion from, the requirements of the Contract Documents authorized to be made under the Contract.

**CHANGE ORDER** A written document signed and issued by an authorized representative of the Commission, subsequent to the award and execution of the Contract, directing a Contractor to make alterations or additions to, or deletions from, the requirements of the Contract Documents which the Changes clause of the Contract authorizes the Commission to order, with the consent of the Contractor unless issued unilaterally.

**COMPLETION** See "FINAL COMPLETION."

**COMPLETION DATE** the calendar date upon which the Work under the Contract is required to be complete.

**COMMISSION** The Maryland National Capital Park and Planning Commission and its authorized employees, representatives and agents.

**CONSTRUCTION** The process of building, altering, repairing, improving or demolishing any structure, building, roadway or other improvement to real property.

**CONSTRUCTION PROJECT MANAGER (MANAGER)** - The Maryland National Capital Park and Planning Commission designee acting as Owner's representative to observe the construction.

**CONSTRUCTION MANAGER AT RISK (or CONTRACTOR)** - The Construction Manager at Risk (CMAR) is the person or organization responsible for the delivery of the project within a Guaranteed Maximum Price (GMP) which is based on the construction documents and specifications at the time of the GMP plus any reasonably inferred items or tasks. The CMAR provides professional services and acts as a consultant to the M-NCPPC in the design development and construction phases. The CMAR may provide some of the actual construction of the project depending on the availability of bidders and the expertise the company has. In addition to acting in the M-NCPPC's interest, the CMAR must manage and control construction costs to not exceed the GMP as contractually any costs exceeding the GMP that are not change orders are the financial liability of the CMAR.

**CONTRACT** The written agreement executed between the Commission and the Contractor, covering the performance of the Work and the furnishing of labor, services, equipment and materials, by which the Contractor is bound to perform the Work and furnish the labor, services, equipment and materials, and by which the Commission is obligated to compensate the Contractor therefore at the mutually established and accepted rate or price.

**CONTRACT ADMINISTRATOR** - That person designated by the Commission to make decisions with respect to the administration of the Contract.

**CONTRACT CHANGE** See "CHANGE."

**CONTRACT DOCUMENTS** The documents which set forth the scope of and the requirements for the Work to be performed under the Contract, and the terms and conditions pursuant to which that Work is to be performed, as well as the respective obligations, responsibilities and rights of the parties to the Contract. Such documents include the Instructions to Bidders, and any Supplemental Instructions to Bidders, the completed Bid Forms as submitted, the executed Contract and all completed Contract Forms, the General Conditions and any Supplemental General Conditions, Special Conditions or other Conditions of the Contract, the Drawings, the Specifications and all Change Orders or Modifications thereto.

**CONTRACT DRAWINGS** See "PLANS."

**CONTRACT ITEM (PAY ITEM)** A part of the Work which is specifically described, and for which a price, either unit or lump sum, is provided, which includes the performance of all Work and the furnishing of all labor, equipment and materials, required by any of the Contract Documents.

**CONTRACT MODIFICATION** Any written alteration in the Contract Plans or Specifications, delivery point, date of delivery, Contract Time, Contract Price, quantity or any other provision of the Contract, whether accomplished in accordance with a contract provision or by the mutual action of the parties to the Contract, including Change Orders, Contract Amendments or any other written modification of the obligations, right or responsibilities of either party to the Contract.

**CONTRACT TIME** The number of calendar days provided for by the Contract Documents within which the Contractor is required to complete the Work contemplated by the Contract. If the Contract Documents provide a calendar date in lieu of a number of calendar days, the Work shall be completed on or before that date.

**CONTRACTOR** – See Construction Manager at Risk.

**CONTRACTOR'S FEE** – The compensation paid to the Contractor for salaries and other mandatory or customary compensation of the Contractor's employees at its principal and branch offices, except employees listed in Section VI, Cost Proposal, General Conditions On-Site CMAR Staff Reimbursable, the general and administrative expenses of the Contractor's principal and branch offices other than the field office, and the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work, and profit. The total amount earned by the Contractor as the Fee may decrease, depending upon the nature of the changes in the Work, and shall be adjusted by multiplying the amount of the change in the Cost of the Work by the Fee percentage provided on the Cost Proposal Form. Contractor's Fee is independent of modifications to the Contract that increase the GMP which are subject to General Conditions section 2.9 Modifications of Contract Price.

**CRITICAL PATH METHOD (CPM)** A scheduling and management system for the planning and performance of the Work, by Work element or construction activity, depicted on a network diagram and an accompanying logic printout, or depicted on a bar chart.

**DESIGN PROFESSIONAL** - An architect, landscape architect or engineer retained by the Commission to prepare contract documents for the Project. Should no independent Design Professional have been appointed to prepare contract documents or supervise the construction, then the Commission is the designated "Design Profession."

**DIRECTOR** - The Director of the Department of Parks, in Montgomery County, or the Director of the Department of Parks and Recreation, in Prince George's County.

**EXECUTIVE DIRECTOR** - Executive Director of The Maryland-National Capital Park and Planning Commission.

**FAIR PRACTICES OFFICER** - Fair Practices Officer of The Maryland-National Capital Park and Planning Commission.

**FINAL COMPLETION** The point in time at which the Contractor has completed all of the Work required under the Contract and has satisfied all of its obligations, duties and responsibilities under the Contract Documents.

**INSPECTOR** The authorized representative of the Commission assigned to make detailed inspections of any and all portions of the Work performed under the Contract on behalf of the Commission.

**INSTRUCTIONS TO BIDDERS** Instructions issued by the Commission setting forth bidding procedures for submission and award.

**INVITATION FOR SEALED BIDS** Any document, and all parts attached thereto or incorporated by reference therein, used in soliciting offers for competitive sealed bids, including requests for proposals or quotations.

**LETTER OF INTENT** - Written verification from the Commission that the Contractor is the apparent low bidder.

**MATERIALS** Any substances specified for use under the Contract Documents in the construction of the project and its appurtenances.

**NOTICE OF AWARD** A written document, signed by the designated authorized representative of the Commission, advising a bidder that the Commission has accepted its offer to perform a contract for the Commission.

**NOTICE TO BIDDERS** An advertisement for bids for required Work or materials, which indicates the location and magnitude of the Work to be done or the character and quantity of the materials to be furnished and the time and place of the opening bids.

**NOTICE TO PROCEED** Written notice to the Contractor of the date on or before which the Contractor shall begin the prosecution of the Work to be done under the Contract.

**OFFER** See "PROPOSAL."

**M-NCPPC** The Maryland National Capital Park and Planning Commission.

**PAYMENT BOND** The security, in a form approved by the Commission and executed by the Contractor and the Contractor's surety, paid for by Contractor, which provides a guarantee that the Contractor will pay in full all bills and accounts for materials and labor used in the construction of the Work.

**PERFORMANCE BOND** The security, in a form approved by the Commission and executed by the Contractor and the Contractor's surety, paid for by the Contractor, which provides a guarantee that performance of the Contract will be completed in accordance with the Contract Documents.

**PERSON** Any individual or a corporation, partnership, sole proprietorship, joint stock company, joint venture, unincorporated association, union, committee, club or other organization or legal entity.

**PLANS** The official drawings issued by the Commission as a part of the Contract Documents, including those incorporated into the Contract Documents by reference.

**PROPOSAL** The response by an offeror to an invitation for sealed bids or a request for proposals issued by Commission to purchase materials or labor. The response may include, but is not necessarily limited to, an offeror's price and terms for the proposed contract and a description of technical expertise, Work experience and other information requested in the solicitation. As used herein, the word "proposal" also means "bid."

**PROPOSAL GUARANTY** The security, in a form approved by the Commission, furnished by the bidder as a guaranty that the bidder will enter into a contract with the Commission if a contract for the Work is awarded to it.



**REGULATORY INSPECTORS** - Non-Commission inspectors with sole authority to review and approve Contractor's Work on behalf of licensing and permitting agencies.

**REPAIR** Where used in the Contract Documents, repair shall be taken to mean to restore after damage, deterioration or wear; to mend; to renovate by such means as appropriate, and to supply such materials and labor as necessary to render the item to be repaired sound, solid, true, plumb, square, even, smooth and fully serviceable.

Upon completion of such repair it must be, unless otherwise stated, rendered to such condition as to represent first class finished Work or, in instances where the repaired item serves as a base for additional finish, the repaired Work must be such as to permit a first class finish to be applied without extra cost to the Commission. When

the word "repair" is used in connection with machinery or mechanical equipment, it shall mean, in addition to the above, rendering the equipment completely serviceable and efficient, ready for the normal use for which it was intended originally.

**REQUEST FOR PROPOSALS** See "INVITATION FOR SEALED BIDS."  
**REQUEST FOR QUOTATIONS** See "INVITATION FOR SEALED BIDS."

**RESPONSIBLE BIDDER** A person who has sufficient experience, skill and capability to fully perform the Contract, including adequate managerial and administrative support, and sufficient facilities, equipment, supervision and labor forces to ensure that the bidder has the organizational integrity and reliability to assure good faith performance.

**RESPONSIVE BID** An offer or proposal, submitted in response to an Invitation for Sealed Bids or a Request For Proposals or Quotations, that conforms in all material respects to the requirements of the Bidding Documents.

**SPECIFICATIONS** A written description of the functional characteristics of or the discrete design for an item of material, equipment or Work to be incorporated into the construction, or a requirement of the Work to be performed under the Contract. It may include a statement of any of the user's requirements and may provide for inspection, testing or the preparation of a construction item before procurement.

**STATE** The State of Maryland acting through its authorized representative.

**SUBCONTRACTOR** Any person undertaking the construction of a part of the Work under the terms of the Contract by virtue of an agreement with the Contractor, including one who furnished material worked to a special design according to the Plans and Specifications for the Work. It excludes one who merely furnishes material not so worked.

**SUBSTANTIAL COMPLETION** The point in time at which the Work has so progressed as to make the project as a whole fit and occupiable for use for its intended purpose and safe for use by the public.

**SUPERINTENDENT** - An agent of the Contractor, capable of communicating in English and of reading and thoroughly understanding the Contract Documents, who is thoroughly experienced

in the type of Work being performed and can receive and execute instructions from the Commission or Inspectors.

**SUPPLIER (VENDOR)** Any person who furnishes directly to the Contractor materials or equipment not worked to a special design according to the Plans and Specification for the Work, or any person who furnishes to a subcontractor of the Contractor's any materials or equipment for the Work.

**SURETY** The corporate body bound with and for the Contractor to the Commission for the full and complete performance of the Contract, and for the payment of all debts pertaining to the Work. When applying to the Proposal Guaranty it refers to the corporate body which engages to be responsible for the execution by the Bidder of the Contract.

**VENDOR** - See "SUPPLIER."

**WORK** The Work shall be understood to mean the furnishing, in accordance with all of the requirement of the Contract Documents, of all the labor, materials, equipment, services, utilities and other incidentals necessary for the final completion of the project, and the carrying out of all the duties and obligations imposed upon the Contractor by the Contract,, including services during pre-construction and construction phases.

**WORK DAYS** - Monday through Friday, except: New Years' Day; Martin Luther King, Jr. day; Presidents' day; Memorial day; Fourth of July; Labor day; Veterans' Day; Thanksgiving day and the day after; Christmas day.

**WRITTEN NOTICE** Shall be deemed to have been duly served if delivered in person to the individual, or the member of the firm, or to an office of the corporation to whom it is intended, or if delivered to or sent first-class mail via the United States Postal Service, to the last business address known to the person who gives notice.

## B. Abbreviations

AAN	American Association of Nurserymen
AAPA	American Association of Port Authorities
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AIA	American Institute of Architects
AIEE	American Institute of Electrical Engineers
AISC	American Institute of Steel Construction

AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
ARA	American Railway Association
AREA	American Railway Association American Railway Engineering Association
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigeration and Air Conditioning Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
ATA	American Transit Association
AWWA	American Water Works Association
AWS	American Welding Society
AWPA	American Wood Preservers Association
AGC	Associated General Contractors of American
BOCA	Building Officials and Code Administrators
COMAR	Code of Maryland Regulations
CRSI	Concrete Reinforcing Steel Institute
EI	Edison Electric Institute
EIA	Electronic Industries Association
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration, U.S. Department of Transportation
FCC	Federal Communications Commission
FHWA	Federal Highway Administration, U. S. Department of Transportation

FRA	Federal Railway Administration, U.S. Department of Transportation
FSS	Federal Specifications and Standards, General Services Administration
IEEE	Institute of Electrical and Electronic Engineers
IES	Illuminating Engineers Society
IPCEA	Insulated Power Cable Engineers Association
IRT	Institute for Rapid Transit
MBMA	Metal Building Manufacturers' Association
MSMT	Maryland Standard Method of Tests (as developed by the State Highway Administration)
MUTCD	Manual on Uniform Traffic Control Devices
NBFU	National Board of Fire Underwriters
NBS	National Bureau of Standards
NEC	National Electrical Code
NEMA	National Electrical Manufacturers' Association
NFPA	National Fire Protection Association
OSHA	Occupational Safety and Health Administration
RLMI	Reflector and Lamp Manufacturers' Institute
SAE	Society of Automotive Engineers
SAWP	Society of American Wood Preservers
SHA	State Highway Administration
ULI	Underwriters Laboratories, Inc.
UMTA	Urban Mass Transportation Administration, U.S. Department of Transportation

## 1.2 Responsibilities

## A. Commission's Responsibilities

1. The Commission will furnish any required surveys describing the physical characteristics and legal limitations of the site of the Work, together with any necessary or required legal description of the site.

2. Information or services under the Commission's control will be furnished by it with reasonable promptness and so as to avoid any unreasonable delay

in the orderly progress of the Work.

3. The Commission will forward all instructions to the Contractor through its Construction Manager. Verbal instructions will be confirmed in writing.

4. The foregoing are in addition to any other duties and responsibilities of the Commission which are enumerated hereinafter, especially those related to Work to be performed either by the Commission itself or on its behalf by any separate or other

contractor(s), payments and completion, and insurance.

## B. Contractor's Responsibilities

1. The Contractor shall supervise and direct the Work, using the skill of a professional experienced in the construction field. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract.

2. The Contractor shall be responsible to the Commission and any third party, including separate contractors of the Commission, the State or any other political subdivision or governing body, for all acts and omissions of the Contractor's employees, subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor.

3. The Contractor shall not be relieved of any of its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Construction Manager in the Contractor's administration of the Contract or by any inspections, tests or approvals required or performed by persons other than the Contractor.

4. The Contractor shall confine its operations at the site as permitted by law, ordinance, permit and the Contract Documents, and shall not unreasonably encumber the site with any materials or equipment.

5. The Contractor shall forward all construction, contract and field communications to the Commission through the Construction Manager. All invoices shall be sent to the Contract Administrator.

6. The Contractor shall perform all Work in strict accordance with the lines, grades, cross sections, dimensions and other data indicated by the Contract Documents, as such may be modified by written change order, including the furnishing of all materials, services, implements, machinery, equipment, tools, supplies, transportation, labor and all other items, things or work necessary for the timely and satisfactory prosecution and completion of the Work in full compliance with the requirements of the Contract Documents.

## 2. **SCOPE OF WORK**

### 2.1 Intent Of Contract Documents

A. Generally. The documents comprising the Contract Documents are intended to be complementary and to describe the construction necessary for the completion of the Work. Anything mentioned in the Specifications but not indicated by the Drawings, or indicated by the Drawings but not mentioned in the Specifications, shall be given like effect and be treated as if indicated or mentioned by both.

B. Errors and Omissions. Omissions from the Drawings or Specifications, or their failure to describe or misdescription of details of Work, which are manifestly necessary to carry out the intent of the Drawings and Specifications or are customarily performed, shall not relieve the Contractor of its obligations to perform such omitted or misdescribed details of Work, and they shall be performed as if fully and correctly indicated on and described in the Drawings and Specifications.

C. It is the acknowledged intent of the Drawings and Specifications that the Contractor provide to the Commission a finished project, fully fit and useable for its apparent intended purpose and complete in every aspect required for its habitability and quiet enjoyment.

### 2.2 General Conditions Control

In the event of any conflict between these General Conditions and any other provision of the Contract Documents, these General Conditions shall prevail, unless such other provision expressly provides to the contrary.

### 2.3 Entire Contract

The Contract Documents represent the entire and integrated agreement between the parties hereto and supersede all prior negotiations, representations or agreements, either written or oral.

### 2.4 Interpretation Of Contract Documents

A. Generally. The Contract Documents are complementary. That which is called for by any one of such shall be as binding as if called for by all of them.

1. Interpretation. The Contract Documents are to be interpreted as including all work necessary for the proper completion of the Work, ready for continual occupancy and use

for its intended purpose. They are not, however, to be construed as including any work not reasonably inferable therefrom.

2. Clarification. The Contractor shall obtain clarification from the Construction Manager of any question which may arise regarding either the intent or the meaning of any of the Contract Documents, and the Construction Manager shall resolve any actual or purported conflict between or among any two or more provisions of the Contract Documents. Should the Contractor fail to obtain, or timely obtain, any such clarification, then the Construction Manager may direct that the Work proceed in accordance with any interpretation reasonably inferable from or indicated, specified or required by the Contract Documents which is consistent with maintaining the best construction practice. Such direction by the Construction Manager shall not, however, constitute the basis for any claim for either extra cost or additional time by the Contractor. The Contractor hereby acknowledges that it had the opportunity to request all such clarifications prior to submitting its bid and, therefore, agrees that the Contractor is not entitled to claim any such extra cost or time entitlements as a result of any such clarifications.

3. Jargon. Words that have a well-known technical or trade meaning when used to describe work of the nature required by the Contract Documents shall be given their recognized standard meanings.

4. Execution. The Contract Documents shall be signed in triplicate by the Commission and the Contractor.

B. Drawings. The Contractor shall do no Work without proper drawings and/or instructions. Drawings provided by the Commission will be, in general, drawn to scale, and symbols are used to indicate materials and structural requirements. When symbols are used, those parts of the Drawings are, of necessity, diagrammatic only and they are not intended to indicate all connections, fittings, fastenings, etc. which are required to be furnished for the proper execution of the Work. Diagrammatic indications of piping, duct work and conduit, and similar items in the Work are subject to field adjustment in order to obtain proper grading, fitting passage over, under or past obstructions, and to avoid exposure in finished rooms or unsightly and obstructing conditions. The Contractor shall make all such field adjustments as are necessary at no increased cost to the Commission.

1. Copies Furnished. The Commission will furnish the Contractor, without cost, four (4) copies of the Drawings and Specifications which were supplied for bidding purposes and four (4) copies of any additional large scale detail or supplemental drawings which are prepared for use during the Work. Additional copies of any drawings may be obtained by the Contractor upon payment of the cost of reproduction of the drawings.

2. Copies At the Site. The Contractor shall keep at the job site a complete set of all Drawings, Specifications, Shop Drawings, Schedules, Approved Permit Drawings, etc., in good order and make them available at all times to the Construction Manager and appropriate government representatives.

3. Ownership. All Contract Documents remain the property of the Commission. They shall not be used by the Contractor for or on any other work and shall, upon request, be returned to the Commission upon completion of the Work.

C. Large Scale Detail Drawings. The Construction Manager may furnish additional instructions, in the form of large scale developments of the Drawings used for bidding or otherwise, to amplify the Specifications for the proper execution of the Work. These shall be true developments of the Bidding Documents and reasonably inferable therefrom. The Work shall be executed in conformity therewith.

D. Dimensions. The Contractor shall carefully check all dimensions prior to the execution of any particular work. Whenever inaccuracies or discrepancies are found therein, the Contractor shall consult the Construction Manager prior to any construction or demolition. Should any dimensions be missing, the Construction Manager will supply them to the Contractor prior to execution of the particular work. Dimensions for items to be fitted into constructed conditions at the site will be taken in the field and will be the responsibility of the Contractor. The obvious intent of the documents, or obvious requirements dictated by conditions existing at the site or being constructed, supersede dimensions or notes which conflict therewith.

Whenever a stock size manufactured item or piece of equipment is specified by its normal or nominal size, it is the responsibility of the Contractor to determine the actual space requirements for setting or entrance to the setting space, and no extra will be allowed by reason of Work requiring adjustments in order to accommodate such particular items of equipment.

E. Building Locations. Whenever new work, buildings, additions or portions thereof are found by the Contractor not to be accurately located by drawing dimensions, the Construction Manager will supply exact position information prior to execution of the Work.

## 2.5 Shop Drawings

A. Submittals. The Contractor shall submit, for the Construction Manager's approval, at such times as are indicated in the CPM all shop drawings (including setting drawings and schedules) required by the Commission, its Construction Manager or its Design Professional(s) for the Work of the various trades. These shop drawings shall be prepared in conformity with the best practice and standards for the trade or craft involved. Due regard shall be given to speed and economy of fabrication and erection.

B. Identification. All shop drawings must show the name of the Project and the Commission contract number.

C. Size of Drawing. All shop drawings and details submitted to the Construction Manager for approval shall be printed on sheets of the same size as the Contract Drawings. When a standard drawing of a fabricator is of such size as to permit the printing of more than one such drawing on a sheet of the size of the Contract Drawings, such is acceptable.

Sheets larger than the Contract Drawings will not be accepted, except when specifically permitted by the Commission. Shop details supplied on a sheet of letter size (8-1/2" x 11") are acceptable for schedules and small details.

D. Items For Which Shop Drawings Will Be Required. Shop drawings are required for all items which are specifically fabricated for the Work, or when the assembly of several items is required for a working unit. Shop drawings are required for all reinforcing and structural steel, specially made or cut masonry units, miscellaneous metal work, specially made millwork, plaster



moulds or mouldings, marble and slate, special rough hardware and all heating, ventilating, plumbing and electrical items requiring special fabrication or detailed connections, including refrigeration, elevators, dumb waiters, laboratory equipment, ducts, etc.

E. Copies Required. The Contractor shall supply two copies of each shop drawing for the Construction Manager's file, in addition to the number of such copies which the Contractor may desire to be returned for its own use.

F. Examination and Approval. The Construction Manager will examine and return shop drawings, with reasonable promptness, either noting desired corrections or accepting or rejecting them.

G. Field Dimension and Conditions. The Construction Manager is not responsible for the checking of dimensions or existing conditions in the field, and such shall be the sole responsibility of the Contractor.

H. Resubmission. When the Construction Manager notes desired corrections, or rejects drawings, the Contractor shall resubmit the drawings with corrective changes.

I. Contractor's Responsibility. Unless the Contractor has, in writing, notified the Construction Manager to the contrary at the time of the submission, the Construction Manager will assume that drawings are in conformity with the Contract Documents and do not involve either any change in the contract price or any change which will alter the space within any structure or the nature of any structure from that contemplated by the Contract Documents.

J. Construction Manager's Notations. Should the Contractor consider any rejection or notation on the shop drawings to cause an increase in the cost of the Work required by the Contract Documents, the Contractor shall take no further action relative to the item in question and shall notify the Construction Manager, in writing, within five (5) days of the receipt of the notation or rejection. No Work shall be executed on that item until the entire matter is clarified and the Contractor is ordered to proceed. Failure of the Contractor to provide written notice, as required above, shall constitute a waiver by the Contractor of any claim in relation thereto. Should the notation or any alleged change involve less work than is required by the Contract Documents, the Contractor shall provide the Commission with a credit.

## 2.6 Variations In Estimated Quantities

Where the quantity of any item indicated by the Contract Documents is an estimated quantity, and where the actual quantity of such item varies more than 25 percent above or below the estimated quantity stated, an equitable adjustment in the contract price shall be made. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 125 percent or below 75 percent of the estimated quantity.

If the quantity variation is such as to cause an increase in the time necessary for completion, the Construction Manager shall, upon receipt of a written request for an extension of time submitted within ten (10) days from the beginning of the delay, or within such further period of time as may be granted by the Construction Manager before the date of final settlement of the

Contract, ascertain the facts and make any adjustment extending the completion date as the findings justify, in the Construction Manager's sole judgement.

## 2.7 Differing Site Conditions

A. Notice. The Contractor shall within five (5) days of learning of the conditions, and before such conditions are disturbed, notify the Construction Manager in writing of:

1. Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract Documents; or
2. Unknown physical conditions at the site of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for by the Contract.
3. The Construction Manager shall promptly investigate the conditions and, if the Construction Manager finds that such conditions do materially so differ and, further, cause an increase or decrease in the Contractor's cost of or the time required for performance of any part of the Work, whether or not changed as a result of such conditions, make an equitable adjustment and modify the Contract in writing accordingly.

### B. Waiver of Claim.

1. The Contractor waives all claims under this section not timely noticed as required in A. above. Upon good cause shown, the Construction Manager may extend the time to file such a claim.
2. No claim by the Contractor for an equitable adjustment hereunder shall be allowed unless asserted before Final Payment.

## 2.8 Changes In The Work

A. Express Change Orders Directed by the Commission. The Construction Manager may, at any time, and without notice to the sureties (if any) by written order designated or indicated to be a Change Order, make any change in the Work within the general scope of the Contract, including but not limited to changes:

1. In the Specifications (including Drawings);
2. In the method or manner of performance of the Work;
3. In Commission furnished facilities, equipment, materials, services or site; or
4. By directing acceleration of the performance of the Work or otherwise altering the time permitted for performing the Work.

B. Contractor Notice of Change. Any other written or oral order (which terms shall include directions, instructions, interpretations or determinations of the Construction Manager) which causes any such change, shall be treated as a Change Order under this section: The Contractor, prior to performing any Work required as a result thereof, must provide to the Construction Manager written notice stating the date, circumstances and source of the order, and indicating that the Contractor regards the order as a change. No claim for any change under this paragraph shall be allowed for any cost incurred more than ten (10) days before the Contractor gives written notice as herein required.

In the case of defective specifications for which the Commission is responsible, the equitable adjustment shall include increased costs reasonable incurred by the Contractor in attempting to comply with such defective specifications.

C. Statement of Claim. If the Contractor intends to assert a claim for an equitable adjustment under this section, the Contractor shall, within ten (10) calendar days after receipt of either a written Change Order under A. above or submittal of written notice under B. above, submit to the Construction Manager a written statement setting forth the general nature and monetary extent of such claim. For good cause shown, the Construction Manager may, in the Manager's sole discretion, extend the ten-day time limit. The statement of claim hereunder may be included in the notice under B. above.

D. Commission Review. Each modification or change order hereunder which affects the contract price shall be subject to the prior written approval of the Commission and to prior certification of the availability of funds and the effect of the modification or change order on the project budget or construction cost. If, according to the fiscal certification, the modification or change order will cause an increase in cost that will exceed budgeted and available funds, the modification or change order may not be made unless sufficient additional funds are made available or the scope of the Work is adjusted to permit its completion within the project budget.

E. Exclusive Remedy. Except as herein provided, no order, statement or conduct of the Construction Manager shall be treated as a change under this section or entitle the Contractor to an equitable adjustment hereunder.

F. Waiver of Claim. No claim by the Contractor for an equitable adjustment hereunder shall be allowed unless asserted before Final Payment.

## 2.9 Modifications Of Contract Price

When changes in the Work require modification of the contract price, such modifications shall be accomplished as follows:

A. Itemization. The Contractor shall promptly submit to the Construction Manager a fully itemized breakdown of the quantities and prices used in computing the value of the requested change, along with a detailed explanation of and justification for the proposed change, regardless of the nature of the change.

B. For all changes in the Work to be performed by a subcontractor, the Contractor shall furnish the subcontractor's fully itemized breakdown of quantities and prices, which shall bear the original signature of a representative of the subcontractor authorized to act for the subcontractor. If requested by the Construction Manager or Contract Administrator, proposals from suppliers or other supporting data required to substantiate costs shall be furnished.

C. Calculation of Change in Price. Modification of the contract price, when required, shall be determined as follows:

1. When unit prices are stated in the Contract, or have been subsequently agreed upon, by application of such unit prices.

2. A lump sum price agreed upon by both the Commission and the Contractor.

3. If project conditions or the extent of or nature of the change require, or if the Commission and the Contractor fail to agree upon a lump sum price or the application of unit prices to determine the cost of any proposed change, the Work shall be done on the basis of a Force Account as hereinafter stated under Section 7.2, Force Account Work.

4. If the change involves only a credit, the Contract Price will be reduced by the amount it would have cost the Contractor to perform the Work plus overhead and profit.

5. If the change involves both a reduction and an increase in Contract Price, both sums shall be shown and the two sums shall then be balanced to determine the adjusted total cost of or credit due for the change. No allowance to the Contractor shall be made or allowed for loss of anticipated profits on account of any change in the Work.

6. Unless otherwise specified, the allowable mark-up for combined overhead and profit for Work performed by the Contractor with the Contractor's own forces will be based upon the monetary value of the Work, in accordance with the following schedule:

<b>Value of Work</b>	<b>Combined Overhead and Profit</b>
\$0 - \$1,000	20%
\$1,001 - \$10,000	17%
\$10,001 - \$25,000	15%
Over \$25,000	Negotiated but not more than 15%

7. For Work performed by a subcontractor with the subcontractor's own forces, the percentages for combined overhead and profit for a subcontractor will be as stated in paragraph 6. above. On Work partly or solely performed by a subcontractor, the Contractor will be allowed 8% of the total cost of the subcontractor's labor and materials for overhead including taxes and insurance required by statute for labor.

8. The provisions of paragraphs 6 and 7 above shall apply only to modifications of contract price negotiated prior to completion of the changed Work and will not be applied to either Work performed on a Force Account basis as provided for in Section 7.2 or for variations in estimated quantities as provided for in Section 2.6.

9. On all changes in the Work, as defined in Section 2.8, no Contractor or subcontractor will be allowed any profit for employment of another contractor to perform Work for the Contractor or subcontractor.

10. On all changes in the Work, the Contractor will be reimbursed for the Contractor's expenditures for Workmen's Compensation Insurance, Social Security Taxes and Unemployment Compensation Taxes covering persons actually engaged upon the Work and the actual increased cost of bonds.

11. The cost of foremen and superintendents may be added only when the Change Order makes necessary the hiring of additional supervisory personnel or requires their continued employment for time additional to that originally required by the Contract.

12. The Contractor shall be allowed the actual cost of any rental of machine power tools or special equipment, including fuel and lubricants, which are necessary to execute the Work required on the change, but no percentages shall be added to this cost. Equipment rental rates are to be agreed upon by the Construction Manager and the Contractor. The rates agreed upon shall, generally, approximate those contained in the latest publication of the Associated Equipment Distributors.

13. No order for any change shall in any manner or to any extent relieve the Contractor of any of its obligations under the Contract.

14. The Construction Manager shall have the authority to make minor changes in the Work, not involving increases in either contract price or Time, which are not inconsistent with the purposes of the Work. Otherwise, except in any emergency endangering life or property, no extra Work or changes in the Work shall be performed by the Contractor unless previously authorized in writing by the Commission.

D. The allowable percentages of cost for overhead and profit are deemed to include, but not be limited to, job supervision and field office expense required by the Contract, expenses for timekeepers, clerks and watchmen, costs of correspondence of any kind, any insurance not specifically mentioned herein, all expenses in connection with the maintenance and operation of the field office, the use of small tools, any cost of small trucks generally used for transporting either workmen, materials, tools or equipment to the job location, and all incidental job burdens. No percentage allowances will be made for maintenance or operation of the Contractor's regularly established principal office, branch office or similar facilities.

## 2.10 Unauthorized Work

Work done contrary to or notwithstanding the instructions of the Construction Manager, work done beyond the lines and grades shown on the Contract Drawings or as given, or any

extra work done without written authority will be considered unauthorized and at the expense of the Contractor. Work so done may be ordered removed and/or replaced at the Contractor's expense.

### 2.11 Repairs And Replacements

Any damage done by the Contractor to existing improvements shall be repaired by him to the satisfaction of the Construction Manager and at no cost to the Commission.

### 2.12 Final Clean-Up

Upon completion of the Work specified in the Contract, and before final payment will be made, the construction area and all other adjoining areas occupied by the Contractor during the construction shall be cleaned of all surplus and discarded or spilled materials, excess materials left deposited on the permanent Work as a result of the Contractor's operations, false work, rubbish, and any temporary structures or buildings that were placed on the site by the Contractor. The adjoining areas mentioned above, even if outside the normal pay limits for seeding, will be reshaped, seeded and mulched or otherwise restored as directed by the Construction Manager at the Contractor's expense.

## 3. CONTROL OF WORK

### 3.1 Authority Of The Construction Manager

A. Document Interpretation and Project Management. Unless otherwise expressly provided to the contrary elsewhere in the Contract Documents, the Construction Manager shall, among other things, decide all questions which may arise under the Contract regarding the interpretation of any or all plans and specifications and shall furnish with reasonable promptness such clarifications as are consistent with the intent of the Contract Documents which the Manager may deem necessary for the proper execution of the Work. The Construction Manager shall also decide all questions which may arise during the performance of the Contract as to the quality and acceptability of materials furnished and Work performed, the amount and quantity of Work performed and materials furnished, payments to be made to the Contractor, the rate of progress of the Work, the conformance of the Contractor to the requirements of the Contract and satisfactory completion of the Work thereunder, and all Contractor requests or claims for additional compensation and extensions of time under the Contract.

B. Work Stoppages. The Construction Manager shall have the authority to suspend the Contractor's performance under the Contract, in whole or in part, due to the failure of the Contractor to conform to any requirement of the Contract or whenever the Manager determines that such stoppage may be necessary to insure the proper execution of the Work.

### 3.2 Conformity With Contract Documents

A. Generally, all Work performed and all materials furnished or equipment supplied shall be in strict conformity with the requirements of the Contract Documents.

B. Repair or Replacement. In the event that the Construction Manager finds that any of the Work performed or any of the materials furnished or equipment supplied, or any of the finished Work in which any of such materials are used or any of such equipment is installed, are not in strict conformity with the requirements of the Contract Documents and have resulted in an inferior or unsatisfactory performance, that work, materials and/or equipment shall be removed and replaced or otherwise be brought into strict compliance with the requirements of the Contract Documents by and at the sole cost and expense of the Contractor.

C. Adjustment to Contract Price. In the event that the Construction Manager finds that any of the Work performed or any of the materials furnished or equipment supplied, or any of the finished Work in which any of such materials are used or any of such equipment is installed, are not in strict conformity with the requirements of the Contract Documents but have not resulted in an inferior or unsatisfactory performance, the Construction Manager shall determine the acceptability of the Work, and in the event that the Manager decides to accept that Work shall obtain from the Contractor by a change order an appropriate downward adjustment in the Contract Price.

### 3.3 Discrepancies In And Descriptions Of The Contract Documents

A. Notice of Contract Document Errors. Prior to the execution of any of the Work, the Contractor shall review and check all Drawings and Specifications. In the event that the Contractor discovers any error, discrepancy or omission in or any conflict between any of the Contract Documents, the Contractor shall immediately notify the Construction Manager, who will then make such corrections thereto and render such interpretations thereof as the Manager may deem necessary to fulfill the intent of the Contract and provide for the proper execution of the Work thereunder.

B. Incorporation of all Contract Documents. The Contract Drawings will, in general, show dimensions, locations and types of construction, while the Contract Specifications will reflect the quality, quantity and other requirements of the Work. Any thing called for on the Drawings but not reflected in the Specifications, or vice versa, shall be construed as having been fully set forth by both. Work not particularly detailed, marked or specified shall be performed the same as similar parts of the Work that are so detailed, marked or specified. The Drawings, in general, are to scale, but figured dimensions shall always be followed and Drawings shall not be scaled.

### 3.4 Cooperation By Contractor

A. Supervision of Project. The Contractor shall at all times maintain competent and efficient supervision of the Work and use the Contractor's best skill and coordinating ability in performing the Work. The Contractor shall give the Work the constant attention necessary to facilitate its timely progress and shall cooperate fully with the Construction Manager and inspectors in every way possible.

B. Maintenance of Documents. The Contractor shall: (1) at all times maintain at the Work site one complete set of Contract Documents; (2) carefully study and compare all project drawings, specifications and other Contract Documents and check them against conditions

existing or being created during the Work; (3) at once report to the Construction Manager any error, inconsistency or omission between or among such documents or between any of those documents and conditions at the site.

C. Superintendent Required. The Contractor shall assign to the Work, as the Contractor's agent, a Superintendent. The Superintendent shall have full authority to execute the orders or directions of the Construction Manager on behalf of the Contractor without delay, and to promptly supply such materials, equipment, tools, labor and incidentals as may be required for the performance of the Work in a timely and efficient manner. Such superintendence shall be furnished regardless of the amount of Work sublet. Said Superintendent shall be on the project site at all times when the Work is in progress. If at any time the Superintendent is not on the Work site, the foreman shall assume the full authority of the Superintendent for purposes of the Work.

### 3.5 Contractor Coordination And Cooperation With Utilities

A. Location of Utilities. It is understood and agreed that the Contractor has taken into consideration in preparing its bid all of the indicated permanent and temporary utility appurtenances, in their present or relocated positions, and that no additional compensation will be allowed for delay, inconvenience or damage sustained by the Contractor due to any interference from such utility appurtenances, the operation of moving them or the making of new connections thereto if required by the Contract Documents. The Contractor warrants that it contacted Miss Utility prior to submitting its bid and is aware of the location of on-site utilities.

B. Notice to Utilities. The Contractor shall have responsibility for notifying all affected utility companies and Miss Utility 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 Contractor's operations shall be the responsibility of the Contractor.

C. Protection of Existing Utilities. At points where the Contractor's operations are being performed adjacent to or in the vicinity of the properties of railway, telegraph, telephone, water and power companies or other surface, overhead and underground installations, damage to which might result in expense, loss or inconvenience, Work shall not be commenced until all arrangements necessary for the adequate and complete protection of such have been made by the Contractor.

D. Cooperation with Utilities. The Contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations in order that those operations may progress in a reasonable manner, that relocation or rearrangement Work may be reduced to a minimum and that services rendered by those parties will not be unnecessarily interrupted.

E. Damage to Utilities. In the event of an interruption of any utility service arising as a result of its accidental breakage or of its being exposed or unsupported, the Contractor shall promptly notify the proper authority and fully cooperate with it in achieving the timely restoration of service. No Work shall be undertaken around fire hydrants until provisions for continued water service have been approved, by the local fire authority, and established.



### 3.6 Contractor Coordination And Cooperation With Other Contractors

A. Concurrent Work. The Commission shall have the right, at any time, to contract for and perform other work on, near, over or under the Work provided for by this contract. In addition, other overlapping work or work on adjoining projects by other contractors may be performed during the term of the Contract under the jurisdiction of another State, county or municipal authority. The Contractor shall cooperate fully with any and all such other contractors as may be necessary and shall carefully fit the Work to theirs as may be required by the Contract Documents or directed by the Construction Manager. Such cooperation by the Contractor shall include, but not be limited to:

1. Arrangement and conduct of work;

2. Storage and disposal of materials, etc., by each in such manner as to not unnecessarily interfere with or hinder the progress of the Work being performed by other contractors.

B. Disputes. The Contractor agrees that in the event of a dispute as to cooperation or coordination with an adjacent contractor, the Commission will act as referee and its decisions will be binding. The Contractor agrees to make no claims against the Commission for any inconvenience, delay or loss experienced because of the presence and operations of other contractors.

### 3.7 Authority And Duties Of Inspectors

A. Authority.

1. Commission Inspectors shall be authorized to inspect all Work done and all material furnished. Such inspections may extend to all or any part of the Work and to the preparation, fabrication or manufacture of materials to be used. The Inspector is not authorized to revoke, alter or waive any requirements of the Contract, nor is the Inspector authorized to approve or accept any portion of the project. The Inspector is authorized to call to the attention of the Contractor any failure of the Work or materials to conform to the requirements of the Contract, and shall have the authority to reject materials and suspend the Work until any questions at issue can be referred to and decided by the Construction Manager. Inspectors shall perform their duties at such times and in such manner as will not unnecessarily impede progress on the Contract.

2. Regulatory Inspectors. Regulatory inspectors review the Contractor's Work for compliance with state and local regulatory agency requirements. Their approval does not constitute express or implied acceptance on behalf of the Commission.

B. Disputes. The Inspector shall in no case act as foreman for or perform other duties for the Contractor, nor interfere with the management of the Work by the Contractor. Any advice, instruction, direction or other order which the Inspector may give the Contractor shall not

be construed as being binding upon the Construction Manager in any way or releasing the Contractor from fulfilling all of the terms of the Contract.

C. Limits of Authority. Where there is disagreement between the Contractor and the Inspector, the Inspector will immediately direct the Construction Manager's attention to the issue of disagreement and the Construction Manager will resolve the issue. If the Contractor refuses to comply with the Construction Manager's direction in that regard, the Construction Manager will prepare and deliver in writing to the Contractor, by mail or otherwise, a written order suspending the Work pending the resolution of the dispute. As soon as the Inspector is advised of the delivery of the shutdown order, the Inspector shall immediately leave the site of the Work and any Work performed during the Inspector's absence will not be accepted or paid for and may be required to be removed and disposed of at the Contractor's expense.

### 3.8 Inspection Of The Work

A. Generally. All materials, equipment and each part or detail of the Work shall be subject at all times to inspection by the Construction Manager or an authorized representative, and the Contractor will be strictly held to the standards of quality for materials and workmanship established by the Contract. Such inspections may include mill, plant or shop inspection, and any material or equipment furnished under the Contract is subject to such inspections. The Construction Manager or an authorized representative shall be allowed access to all parts of the Work and shall be furnished with such information and assistance by the Contractor as is required in order to make a complete and detailed inspection. All costs of maintenance during construction and before final acceptance shall be included in the bid and the Contractor will not be paid any additional amounts for such Work.

B. Review of Covered Work. If the Construction Manager requests it, the Contractor, at any time before acceptance of the Work, shall remove or uncover such portions of the finished Work as may be directed. After examination, the Contractor shall restore said portions of the Work to the standards required by the Contract. Should the Work thus exposed or examined prove acceptable, adjustments in Contract Time and price will be made pursuant to Section 2.8 for the uncovering or removing and the replacing of the covering or making good of the parts removed. Should the Work so exposed or examined prove unacceptable, the uncovering or removing and replacing shall be at the Contractor's expense.

C. Special Testing or Approval. If the Specifications, the Commission's instructions, or the laws, ordinances or regulations of any public authority require any Work to be specially tested or approved, the Contractor shall give the Commission timely notice of its readiness for inspection and, if the inspection is to be performed by another authority, the date fixed for such inspection. Inspections by the Commission shall be made promptly and, where practicable, at the source of supply. Any Work covered without the approval of the Construction Manager must, if required by the Construction Manager or the Commission, be uncovered for examination at the Contractor's expense.

### 3.9 Removal Of Defective Work

A. Generally. Any Work or materials which do not conform to the requirements of the Contract will be considered unacceptable, unless otherwise determined acceptable under the provisions of Section 3.2.

B. Contractor Repair or Replacement. All unacceptable or defective Work, whether the result of poor workmanship, the use of defective materials, damage through carelessness or any other cause, found to exist shall be removed and replaced by Work and materials which do conform to the requirements of the Contract or shall otherwise be remedied in an acceptable manner authorized by the Construction Manager.

C. Commission Repair or Replacement. Upon the failure of the Contractor to comply promptly with any order of the Construction Manager made under the provisions of these General Conditions, the Construction Manager shall have the authority to cause defective Work to be remedied or removed and replaced and to have unauthorized Work removed, and to deduct the cost of doing so from any monies due or to become due the Contractor under this Contract.

### 3.10 Load Restrictions

A. The Contractor shall comply with all State and local requirements pertaining to the speed, size and weight of motor vehicles.

B. The Commission will indicate in the Contract any load restrictions known to it regarding any road or structure within the vicinity of the Work.

C. The Contractor shall take into account any and all posted bridges, the crossing of which might be contemplated by the Work under the Contract. No loads in excess of posted limits will be allowed during the prosecution of the Work, unless the required permits are obtained from the appropriate State and local governmental agencies.

D. The Contractor shall consider the possible detrimental effects of operating heavy paving and grading equipment contiguous to retaining walls, pipe culverts, arches and forms for concrete work, as well as on structures existing prior to this Contract.

E. The Construction Manager shall have the right to limit the passage of heavy equipment (plus loads) when such passage or usage is causing apparent or visible damage to embankments, paving, structures or any other property.

### 3.11 Maintenance Of Work During Construction

A. Generally. The Contractor shall maintain the Work throughout its construction and until acceptance. This maintenance shall be continuous and effective, and shall be prosecuted with such equipment and forces as to insure that all parts of the Work are kept in satisfactory condition at all times and protected from damage of any kind from external sources.

B. Drainage. Particular attention shall be given to drainage, both permanent and temporary. The Contractor shall use all reasonable precautionary measures to avoid damage or loss that might result from accumulations and concentrations of drainage water and material

carried by such water, and such drainage shall be diverted or dispersed when and as necessary to prevent damage to excavations, embankments, surfaces, structures or property. Suitable measures shall be taken by the Contractor to prevent erosion of soil in all construction areas. Such measures shall be in compliance with the requirements of all governmental or regulatory entities having jurisdiction over the site of the Work.

C. Work Stoppages. In the event that the Contractor's Work is halted by the Commission or the Construction Manager for failure to comply with the provisions of the Contract, the Contractor shall maintain the entire project as provided for herein and also provide ingress and egress for local residents or tenants adjacent to the project site, tenants of the project site and the general public as may be necessary during the period of suspended Work or until the Contractor has been declared to be in default.

D. Traffic Management. On projects where traffic flow is to be maintained, the Contractor shall be responsible for the repair and restoration of all traffic damage to Work which has been either partially or totally completed until such time as the Work is accepted by the Commission.

### 3.12 Failure to Maintain Entire Project

The failure on the part of the Contractor to, at any time, comply with the provisions of Section 3.11 shall result in the Commission notifying the Contractor to comply with the required maintenance provisions. In the event that the Contractor fails to thereafter remedy any unsatisfactory maintenance within twenty-four (24) hours after receipt of such notice, the Commission will immediately proceed to itself maintain the Work, and the entire cost of all such maintenance will be deducted from monies due or to become due the Contractor.

### 3.13 Acceptance For Maintenance

A. Partial Acceptance for Maintenance. If at any time during the performance of the Work the Contractor substantially completes a unit or portion of the Work, the Contractor may request that the Construction Manager make an inspection of such Work. If the Construction Manager finds upon inspection that the Work has been satisfactorily completed in compliance with the Contract, the Manager may accept that Work as being complete and the Contractor may be relieved of further maintenance responsibility for that work. Partial acceptance for maintenance will only be considered when the Commission in its sole discretion feels that such action is in the public interest. Such partial acceptance for maintenance shall in no way void or alter any of the terms of the Contract.

B. Final Acceptance for Maintenance. Upon due notice from the Contractor of completion of the entire project, the Construction Manager shall make an inspection. If upon such inspection all construction provided for and contemplated by the Contract is found to have been satisfactorily completed in compliance with the Contract, such inspection shall constitute the final inspection and the Construction Manager shall assume responsibility for maintenance of the Work as of the date, with the Contractor being notified of such acceptance in writing at that time. After acceptance for maintenance the Commission will assume all responsibility for maintenance, except where otherwise provided by the Contract.

C. Inspection Prior to Acceptance. If at any construction inspection any Work, in whole or in part, is found to be unsatisfactory, the Construction Manager shall give the Contractor the necessary instructions as to the Work required for final completion and acceptance for maintenance. The Contractor shall comply with and execute such instructions. Upon completion of such Work another inspection shall be made, which shall constitute the final inspection if the Work is then found to have been completed satisfactorily. At that time, the Construction Manager shall make the acceptance for maintenance and the Contractor shall be notified as aforesaid.

D. Final Acceptance. Unless otherwise provided by the Contract, acceptance by the Commission shall be made as promptly as practical after completion and inspection of all Work required by the Contract, or that portion of the Work that the Construction Manager determines can be accepted separately. Acceptance shall be final and conclusive except as regards latent defects, fraud, such gross mistakes as may amount to fraud, the Commission's rights under any warranty or guarantee provisions of the Contract, and any claims or counterclaims reserved by the Commission.

### 3.14 Owner's Right To Perform Work

Should the Contractor fail or neglect to diligently prosecute the Work properly or to perform any provision of this contract, the Construction Manager may, upon three days written notice to the Contractor, make good such deficiencies and deduct the cost thereof from the monies then or thereafter due the Contractor.

### 3.15 Claims

A. Notice of Claim. Unless a shorter period is provided for by applicable statute, regulation or this contract, the Contractor shall file a written notice of any claim for an extension of time, equitable adjustment, extra compensation, damages or other additional compensation arising as a result of any action or failure to act of the Commission, its agents and employees, or for any other matter arising under or related to the performance of the Contract, with the Construction Manager within ten (10) calendar days after the basis for the claim is first known or should have been known, whichever is earlier.

The Contractor shall file written notice of a delay claim within five (5) days of the act or omission causing the delay to commence.

Contemporaneously with, or within ten (10) calendar days of the filing of any such notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Construction Manager its written claim, containing the following information:

1. An explanation of the claim, including references to all Contract provisions upon which it is based;
2. The amount of the claim;
3. The facts upon which the claim is based;

4. All pertinent data and correspondence that the Contractor relies upon to substantiate the claim; and
5. A certification by a senior official, officer or general partner and authorized representative of the Contractor or subcontractor, as applicable, stating that to the best of the person's knowledge and belief the claim is made in good faith, that the supporting data is accurate and complete, and that the amount requested accurately reflects the contract adjustment for which the Contractor and certifying person believe the Commission is liable.

B. Supporting Data. The claim shall also contain itemized supporting data for each of the elements of cost which the Contractor claims it has incurred or will incur. This data shall be in sufficient detail to permit analysis by the Commission of material, labor, equipment, subcontract and overhead costs, as well as profit, and shall include all Work covered by the claim, whether deleted, added or changed. Subcontract costs shall be supported by similar detailed data.

C. Waiver. A notice of claim or a claim that is not filed within the prescribed time will be waived.

D. Contract Work. Pending resolution of a claim the Contractor shall proceed diligently with the performance of the Contract.

E. Claim Based on Construction Manager's Failure to Act. Whenever it appears to the Contractor that, due to the exigencies of the Work or some emergency involving the Work, the Contractor is about to incur additional costs or suffer a delay in the performance of the Work as a result of the failure or refusal of the Construction Manager to issue direction, instruction or authorization necessary for the performance of changed or additional work, the Contractor shall immediately (but in no event more than two (2) days after the basis for the claim is first known or should have been known, whichever is earlier) notify the Construction Manager in writing of such circumstance, indicating both the action required of the Construction Manager and the time by which such action is required in order to avoid incurring such additional costs and/or delay. In the absence of such notice to the Construction Manager the Contractor shall have no right of entitlement to any such additional costs or extensions of time and any claim by the Contractor for such will be waived.

F. Claim Based on Stop Work Order. If the Contractor receives a stop-work order from a licensing or permitting regulatory agency as a result of the Contractor's acts or omissions in performing the contract, the Contractor shall abide by the changes ordered by the regulatory agency and will not be entitled to a claim for the cost of labor and materials incurred. Contractor will not be entitled to compensation for delay under this paragraph.

1. Under no circumstances will overhead or profit be permitted as items of a claim when such overhead or profit are for periods during which a "Stop Work" order is in effect due to an act, error or omission for which the Contractor is responsible.

2. No profit or overhead, including rental of equipment and the salaries of supervisory personnel, will be allowed the Contractor for any stoppage of Work assertedly

caused by the Commission when written notice of such stoppage, or impending stoppage, is not given reasonably in advance to permit the Commission to prevent such stoppage.

G. Excusable Delay. No claim for extra costs will be granted which includes costs of delays or Work stoppage due to strikes, lockouts, fire, unusually severe weather, avoidable casualties or damage, or delay in transportation for which the Commission or its agents are not responsible. Only time extensions for such causes of delay will be granted.

H. Bond Coverage. The Commission will not make payment for increased Payment or Performance Bond premiums as a result of any act or omission by the Commission which results in a claim.

### 3.16 Disputes

A. Generally. Except as may otherwise be provided by any applicable statute or regulation, all disputes arising under or as a result of the performance of this Contract, including changes thereto and the breach thereof, which are not resolved by the mutual agreement of the parties shall be resolved in accordance with this article. As used herein, "claim" means a written demand or assertion by one of the parties to the Contract seeking, as a legal right, the payment of money, adjustment or interpretation of any contract term, or other relief under or relating to the performance of this Contract.

1. A voucher, invoice or request for payment that is not in dispute when submitted is not a claim under this article.

2. A claim by a contractor shall be made in writing and submitted to the Construction Manager in accordance with Article 3.15 hereof for decision. A claim by the Commission against the Contractor shall also be subject of a decision by the Construction Manager.

B. Appeal Process. When a controversy between the parties cannot be resolved by mutual agreement, the Contractor shall submit a written request for a final decision of such to the Construction Manager. The written request shall set forth all the facts surrounding the controversy. The Construction Manager shall forward the claim to the Commission's Finance Department for a decision.

C. Final Decision. The Finance Department shall render a written final decision of all claims within ninety (90) days of receipt of the Contractor's written claim, unless a longer period is necessary to resolve the claim. Those decisions shall be furnished to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of its actual receipt by the Contractor. The Finance Department's decision shall be deemed the final action of the Commission. If a decision is not issued within ninety (90) days of the filing of the claim with the Construction Manager, the Finance Department shall notify the Contractor of the time within which a decision will be rendered.

D. Judicial Recourse. The Finance Department's decision of any Contractor appeal shall be final and conclusive unless the Contractor thereafter brings suit against the Commission in

accordance with the applicable statutes in the Maryland Circuit Court having jurisdiction over the matter.

E. Pursuit of Work Pending Final Decision. Pending the decision of a claim by the Finance Department, or the conclusion of any litigation of that claim by the Contractor, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Construction Manager's instructions or Final Decision.

#### 4. **CONTROL OF MATERIALS**

##### 4.1 General

A. Notice of Sources. All materials shall meet all quality requirements of the Contract. In order to expedite the inspection and testing of materials the Contractor shall, as soon as possible after receipt of notification of award of the Contract, notify the Construction Manager in writing of the sources from which the Contractor proposes to obtain all materials requiring approval, testing, inspection or certification prior to incorporation into the Work.

B. Standard of Materials and Construction. Materials include all manufactured products and processed and unprocessed natural substances required for completion of the Contract. The Contractor is assumed to be thoroughly familiar with the materials required and their limitations, as to use, as well as requirements for their connection, setting, maintenance and operation. Whenever an article, 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 good quality construction installation, such shall be included as if fully specified. Nothing in the Specifications shall be interpreted as authorizing any Work in any manner contrary to applicable laws, codes or regulations.

C. Approval. All materials are subject to the Construction Manager's approval as to conformity with the Specifications, quality, design, color, etc. No Work for which such an approval is necessary shall be performed until a written approval is given by the Construction Manager. Approval of a subcontractor or supplier, as such, does not constitute an approval of any material which is other than that provided for by the Specifications.

D. New Materials. Unless otherwise specified, all materials shall be new. Old or used materials may not be utilized as substitutes for new ones, regardless of their condition or repair, unless approved in writing by the Construction Manager.

E. Quality. Unless otherwise specified, all materials shall be of the best quality of their respective kinds.

F. Samples. The Contractor shall, as directed, furnish for approval all samples. The materials used shall be the same as the approved samples.

G. Proof of Quality. The Contractor shall, if requested, furnish, either before or after installation, satisfactory evidence as to the kind and quality of all materials. The Contractor shall pay for any tests or inspections called for in the Specifications and any other tests deemed necessary for "Substitutions," as set forth in Section 4.5 of these General Conditions.



H. Standard Specifications. When no specification is cited and the quality, processing, composition or method of installation of a thing is only generally referred to, then the pertinent provisions of the latest edition of the Montgomery County or Prince George's Building Code apply. Where the applicable Building Code is silent, then:

1. For items not otherwise specified below, the pertinent provisions of the latest edition of the applicable American Society for Testing Materials specifications constitute the governing specification.
2. For items generally considered as plumbing, and those items requiring plumbing connections, the applicable portions of the latest edition of the Washington Suburban Sanitary Commission specifications constitute the governing specification.
3. For items generally considered as heating, refrigeration, air-conditioning or ventilating, the applicable portions of the latest edition of the ASHRAE Handbook published by the American Society of Heating, Refrigerating and Air-Conditioning Construction Managers, Inc. constitute the governing specification.
4. For items generally considered as site work, the applicable portions of the Maryland SHA Standard Specifications constitute the governing specification.
5. For items generally considered as electrical, the applicable provisions of the latest edition of the National Electrical Code constitute the governing specification.
6. For items generally considered as fire protection, the applicable portion of the latest edition of the National Fire Protection Association Code constitute the governing Specification.
7. For items generally considered as drainage work the pertinent provisions of the Montgomery or Prince George's County Department of Transportation specifications apply.
8. For items generally considered as stormwater management and sediment control, the pertinent provisions of the Soil Conservation Service and Montgomery County or Prince George's County Department of Environmental Protection standards apply.

#### 4.2 Storage And Handling Of Materials

A. Generally. Materials shall be so stored as to assure the preservation of their quality and acceptability for the Work. Stored materials, even though approved before storage, may again be inspected prior to their use in the Work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the Work site may be used for storage purposes and for the placing of the Contractor plant and equipment; such storage areas must, however, be restored to their original condition by the Contractor at the Contractor's expense.

All materials and/or electrical equipment delivered to the job site shall be stored on pedestals, above ground and under roof or other approved covering. All enclosures for equipment shall be weatherproof. Any motors which are not totally enclosed and dry type

transformers that are involved in the Work, shall be stored in a heated area with a minimum temperature of fifty (50) degrees. All valves shall be stored under roof on wood pedestals, above ground. All insulation shall be stored under roof or in trailers, adequately protected from the weather. The Contractor shall follow all written instructions and recommendations of the manufacturer and all requirements of the Construction Manager regarding the oiling, protection and maintenance of equipment during storage. The Contractor shall be solely and completely responsible for the storage and care of equipment and materials. Material not properly stored prior to installation shall not be considered for payment.

Materials shall be handled in such a manner as to preserve their quality and acceptability for the Work.

B. Tools and Equipment. The Contractor shall confine tools and equipment and the storage of materials to the area delineated by the Contract Documents as the "Limit of Contract." The Contractor shall not load or permit any part of a structure to be loaded with a weight that will endanger the safety of the structure or any part thereof.

C. Explosives.

1. Explosives shall not be stored upon any property belonging to the Commission.
2. The Contractor shall receive prior written approval from the Construction Manager before using explosives on any project; the approval may stipulate time, place and quantity to be used and manner of use.
3. The Contractor shall assume all responsibility for injury to persons or property damage which may result from the use or transportation of explosives, as well as for complying with any and all ordinances, regulations and restrictions relating to the use of explosives.

D. Paints.

1. Oil base paints and inflammable liquids shall not be stored in large quantities on the Work site. Containers shall be limited to the five gallon size. Any liquid with a flash point of less than one hundred (100) shall be contained in safety cans, UL approved. Liquids with a higher flash point shall be stored in rigid cans.
2. Oily rags, waste, etc. must be removed from the work site at the close of each working day.

#### 4.3 Unacceptable Materials

A. Generally. Materials represented by samples taken and tested in accordance with specified tests and failing to meet required values shall be considered to be defective regardless of prior tests or approvals.

B. Removal from Site. Unless otherwise allowed by the Construction Manager, as set forth below, defective materials shall be removed from the site. Any tags, stamps or other markings that imply conformance with the Specifications shall be removed or obliterated.

C. Retests. Where defects can be corrected the Contractor may propose such corrective action as the Contractor deems appropriate to the Construction Manager. The Construction Manager may approve the corrective action, but in so doing does not assume responsibility for the success thereof. Retests will be made to determine the acceptability of the material after corrective measures have been taken. No person other than the Construction Manager may change any provision of the Specifications or the Contract without written authorization.

D. Costs. The cost of removing, replacing and/or correcting defective materials is solely the responsibility of the Contractor. The cost of repairing or replacing other materials damaged by the removal, installation and/or correction of defective materials is solely the responsibility of the Contractor.

#### 4.4 Owner Furnished Material Or Equipment

A. Generally. The Contractor shall furnish all materials required to complete the Work, except for those specified to be furnished by the Commission.

B. Materials Furnished by Commission. Materials to be furnished by the Commission, if any, will be delivered or made available to the Contractor at the point or points specified in the Special Provisions. The cost of handling and placing all materials after they have been delivered to the Contractor shall be considered as being included in the contract price. The Contractor will be held responsible for all Commission furnished material delivered to him, and deductions will be made from monies due him in order to make good any shortages and deficiencies, from any cause whatsoever, any damage which may occur after delivery to him, and for any demurrage charges.

C. Inspection and Acceptance. In any case where materials are supplied by the Construction Manager and incorporated into the Work by the Contractor, inspection and acceptance of such materials will not be a prerequisite for acceptance of the final product as the product pertains to these items.

#### 4.5 Substitutions

A. Notice of Intent to Substitute. Should the Contractor desire to substitute another material for one or more specified by name the Contractor shall apply, in writing, for such permission and state the credit or extra involved in the use of such material. The Construction Manager will not consider the substitution of any material different in type or construction methods unless such substitution effects a benefit to the Commission.

B. Prior Written Approval Required. The Contractor shall not submit for approval materials other than those specified without a written statement that such a substitution is proposed. Approval of a "substitute material" by the Construction Manager, where the Contractor has not designated such material as a "substitute," shall neither be binding on the

Commission nor release the Contractor from any obligation under the Contract, unless the Commission approves such "substitution" in writing.

#### 4.6 Approved Equals

The terms "Or Equal," "Equal" and "Approved Equal" are used as synonyms throughout the Specifications. They are, unless otherwise stated, implied in all references to any named manufacturers in the Specifications. Only materials fully equal will be considered. The Commission is the final judge as to equality.

#### 4.7 Contractor's Options

When several products or manufacturers are named in the Specifications for the same purpose or use, the Contractor may select any of those so named. However, all of any units of a like type required for and used in the Work must be of the same material and manufacturer.

#### 4.8 Testing

A. Notice of Readiness. If either the Contract Documents, laws, ordinance, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Construction Manager timely notice of its readiness for such so that the Construction Manager may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities.

B. Special Inspection or Testing. If the Construction Manager determines that any Work requires special inspection, testing or approval which the Contract Documents do not include, the Manager will instruct the Contractor to order such special inspection, testing or approval and the Contractor shall give notice as provided in subsection A. above. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for any Design Professional's additional services made necessary by such failure; otherwise the Commission shall bear such costs and an equitable adjustment will be made.

C. Certificates of Inspection. Required certificates of inspection, testing or approval shall be obtained by the Contractor and promptly delivered by him to the Construction Manager.

### 5. **LEGAL RELATIONSHIPS AND RESPONSIBILITIES**

#### 5.1 Laws To Be Observed And Complied With

A. Warranty of Good Business Standing. The Contractor hereby represents and warrants that the Contractor:

1. is qualified to do business in the State of Maryland and will take such actions as, from time to time hereafter, may be necessary to remain so qualified;

2. is not in arrears with respect to the payment of any monies due and owing to the State of Maryland or any political subdivision thereof, or any departments or units of such, including but not limited to the payment of taxes and employee benefits, and shall not become so in arrears during the term of this contract;

3. is currently in compliance with all Federal, State and local laws, regulations and ordinances applicable to the Contractor's activity and obligations under this contract. The Contractor will keep fully informed of all Federal, State and local laws, ordinances and regulations, and all orders and decrees of bodies or tribunals having any jurisdiction or authority over the Work, which in any manner affect those engaged or employed on the Work, or which in any way affect the conduct of the Work. The Contractor will at all times observe and comply with all such laws, ordinances, regulations, orders and decrees, and protect and indemnify the Commission and its representatives against any claim or liability arising from or based on the violation of any law, ordinance, regulation, order or decree, whether by the Contractor or its employees or subcontractors.

4. All requirements set forth in any federal assistance instruments applicable to this Contract shall be satisfied and, to the extent that the requirements which are specified in the assistance instrument conflict with any provision of the Contract or any State or local law, regulation or ordinance, the former shall control.

5. The Contractor will comply with the provisions of the Workmen's Compensation Act and all Federal, State and local laws relating to hours of labor.

B. Laws of Maryland. The provisions of this Contract will be governed by the laws of Maryland.

C. Notices Required by Law. The Contractor shall give all notices and comply with all Federal, State and Local laws, ordinances, rules and regulations bearing on the conduct of the Work as indicated and described by the Contract Document.

D. Non-Compliant Contract Documents. If the Contractor observes that the Drawings or Specifications are at variance with any law, the Contractor shall promptly notify the Construction Manager, and any necessary changes shall be made as provided for in the Contract for changes in the Work. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Construction Manager, the Contractor shall bear all costs arising therefrom.

## 5.2 Permits And Licenses

A. Commission Submittals. The Commission, or its authorized representative, will file with the appropriate State and/or local authority, Drawings and Specifications for the Work, as well as any other pertinent data reasonably proper for their information. The Contractor will be required to pay all necessary fees and post any necessary bonds to such authorities, and any regulatory agencies having jurisdiction, for inspection or for the privilege or right to execute the Work as called for in the Contract Documents, and the Contractor shall include the cost of said fees in its bid.

B. Contract Licensing. The Contractor shall be licensed as required by the Section 17-601 et. Seq. of the Business Regulation Article of the Annotated Code of Maryland. It is a condition of this Contract, and shall be made a condition of each subcontract entered into pursuant to this Contract, that the Contractor and any subcontractors comply with any construction safety and health standards and regulations promulgated by the Commissioner of Labor and Industry in accordance with the Maryland Occupational Safety and Health Act, Section 5-101 et. Seq. of the Labor and Employment Article of the Annotated Code of Maryland.

### 5.3 Patented Devices, Materials And Processes

If the Contractor is required or desires to use any design, device, material or process covered by letters of patent or copyright, the Contractor shall provide for such use by suitable legal agreement with the patentee or owner, pay for all royalty or license fees, and file a copy of such agreement with the Commission. If no such agreement is made and filed as noted, the Contractor and the Surety shall indemnify and save harmless the Commission, any affected third party and any political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, materials or process, or any trademark or copyright, and shall indemnify, protect and save harmless the Commission, its officers, agents and employees with respect to any claim, action, cost or judgment for patent, trademark or copyright infringement arising out of the Contractor's purchase or use of materials, construction, supplies, equipment or services covered by this Contract; except that the Commission shall be responsible for all such loss when a particular process or product of a particular manufacturer or manufacturers is specified, unless the Contractor has or should have had knowledge or information that the use of the process or article specified was an infringement of a patent, in which case the Contractor shall be responsible for such loss unless it promptly, and before any infringement, gives such information to the Commission.

### 5.4 Construction Safety And Health Standards

A. Generally. It is a condition of this contract, and shall be made a condition of each subcontract entered into pursuant to this Contract, that the Contractor and any subcontractors shall be licensed as required by the Section 17-601 et. Seq. of the Business Regulation Article of the Annotated Code of Maryland. It is a condition of this Contract, and shall be made a condition of each subcontract entered into pursuant to this Contract, that the Contractor and any subcontractors comply with any construction safety and health standards and regulations promulgated by the Commissioner of Labor and Industry in accordance with the Maryland Occupational Safety and Health Act, Section 5-101 et. Seq. of the Labor and Employment Article of the Annotated Code of Maryland.

B. Inspection. The Contractor and each subcontractor shall permit inspection, without delay and at any reasonable time, on any premises where the Work is being performed, by a federal or state inspector authorized to investigate compliance with the above mentioned federal and state statutes and regulations.

C. Compliance. The Contractor agrees to correct any violations found to exist during such inspections within a reasonable time after the issuance of any citation, unless he contests the validity thereof through the appropriate administrative and judicial process.

## 5.5 Public Convenience And Safety

The Contractor shall at all times conduct the Work in such a manner as to ensure the least practical obstruction to all forms of traffic and use. The convenience of the general public and of the residents along and/or adjacent to the improvement shall be provided for. Stored equipment and/or materials shall be placed so as to cause a minimum of obstruction to the public. Sprinkling shall be performed at the direction of the Construction Manager. The Contractor shall, unless otherwise specified, provide and maintain in a passable condition such temporary access, roads and bridges as may be necessary to accommodate traffic diverted from the project under construction, or using the project under construction, and shall provide and maintain in a safe condition temporary approaches to and crossings of the project. Existing Commission facilities planned to be removed, but which might be of service to the public during construction, are not to be disturbed until other and adequate provisions are made. Fire hydrants on or adjacent to the project shall be kept accessible to fire apparatus at all times, and no material or obstruction shall be placed within fifteen (15) feet of any such hydrant. All footways, gutters, sewer inlets and portions of the project adjoining the Work under construction shall not be obstructed more than is absolutely necessary. All provisions of this paragraph are incidental to the contracted work, and no additional payment to the Contractor will be made for compliance with requirements in this paragraph. Work closed down for the winter, or at any other times, shall be left entirely accessible at all points to fire apparatus.

## 5.6 Barricades And Warning Signs

A. Barricades. The Contractor shall provide, erect and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs and other traffic control devices, and shall take all necessary precautions for the protection of the Work and the safety of the public. All roadways and other Commission facilities closed to vehicular traffic shall be protected by effective barricades and obstructions shall be illuminated during hours of darkness with electrical lights.

B. Signage. The Contractor shall erect warning signs in advance of any place on the project where operations may interfere with the use of the facility by vehicular traffic and at all other points where new Work crosses or coincides with existing roadways. Such warning signs shall be constructed and erected in accordance with the Manual on Uniform Traffic Control Devices, or as directed. The Contractor shall furnish, erect and maintain warning and direction signs in the number required by the Construction Manager and at locations designated by the Construction Manager throughout the limits of the project. For roadway traffic, the signs shall conform in every respect to the requirements of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways. Signs must be freshly painted and adequately reflectorized before being placed on any project. No Work may be performed or begun unless an adequate number of signs of the proper category are in place.

C. Traffic Barriers. In cases where the Contractor's sequence of operations results in grade differentials which would be hazardous to vehicular traffic, the Contractor shall, at the direction of the Construction Manager, provide suitable substantial traffic barriers.

D. Incidental Responsibility. All provisions of this paragraph are incidental to the contracted work, and no additional payment to the Contractor will be made for compliance with requirements in this paragraph.

#### 5.7 Preservation And Restoration Of Property

A. Generally. The Contractor shall not enter upon any other public or private property (outside of the right-of-way or project area) for any purpose without obtaining permission, and shall be responsible for the preservation of all public and private property, trees, monuments, signs and markers, and fences thereon, and shall use every precaution necessary to prevent damage or injury thereto. All Commission signs and markers that are affected by the Work shall be carefully removed when grading operations begin and be delivered to the Construction Manager. The Contractor shall take suitable precautions to prevent damage to underground or overhead public utility structures, shall carefully protect from disturbance or damage all land monuments and property marks referenced by a licensed surveyor. Repair or replacement of all damaged monuments shall be paid for by the Contractor.

B. Damage to Public or Private Property. The Contractor shall be responsible for all damage or injury to property of any character during the prosecution of the Work resulting from any act, omission, neglect or misconduct in the Contractor's manner or method of performance and any defective Work or materials, and said responsibility shall not be released until the Work shall have been completed and accepted. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect or misconduct in the execution of the Work, or in consequence of the nonexecution thereof on the part of the Contractor, the Contractor shall restore, in an acceptable manner and at its own expense, such property to a condition similar or equal to that existing before such damage or injury occurred. In the case of any failure on the part of the Contractor to restore such property or make good such damage or injury, the Construction Manager may, upon 48 hours written notice, proceed to repair, rebuild or otherwise restore such property the Manager may deem necessary, and the cost thereof will be deducted from any monies due or which may become due to the Contractor.

C. On-Site Security. The Contractor shall continuously maintain adequate protection of all Work, Commission property and Contractor's trailer, tools and equipment from damage, and shall protect Commission property from injury or loss arising in connection with this Contract. Contractor must have an audible alarm system installed in any on-site trailer or storage shed. The Contractor shall repair and indemnify against any such damage, injury or loss, except such as may be directly due to errors in the Contract Documents or be caused by agents or employees of the Commission, and shall adequately protect adjacent property as provided by law and the Contract Documents.

D. Tree Protection. The Contractor shall protect all trees which are liable to injury by the moving, storing and working up of materials, and shall use no tree for any attachment or anchorage.

E. Special Hazards. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workmen and the public, and shall post danger signs warning against the hazards created by



such features of construction as protruding nails, hood hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials.

F. Emergency Conditions. In any emergency affecting the safety of life, or of the Work, or of adjoining property, the Contractor, without special instruction or authorization, is hereby permitted to act, at Contractor's discretion, to prevent such threatened loss or injury. If the Contractor is specifically instructed by the Construction Manager to do Work in an emergency, the Contractor shall do the Work and will be paid compensation as provided by Section 7.2 hereof.

## 5.8 Land, Air And Water Pollution

A. Generally. The Contractor shall incorporate all permanent erosion control features into the Work at the earliest practicable time. Temporary pollution control measures not associated with permanent control features for the Work must be used to correct conditions that develop during construction that were not foreseen by the Contractor, or that are needed prior to the installation of permanent pollution control features, or that are needed temporarily to control erosion that develops during normal construction practices.

B. Off-Site Measures. The Contractor's attention is directed to the fact that temporary pollution control may include measures off the Work site, where such work is necessary as a direct result of construction. The Commission shall be kept advised of all such off-site control measures taken by the Contractor, but such shall not relieve the Contractor of the basic responsibility for such work.

C. Corrective Measures. In case of any failure on the part of the Contractor to control erosion, pollution and/or siltation, the Commission reserves the right to employ outside assistance or to use its own forces to perform the necessary corrective measures. All expenses incurred by the Commission in the performance of such duties for the Contractor shall be withheld from monies due or to become due to the Contractor.

D. Verification of Compliance. The Contractor may be required to submit evidence to the Commission that the governing Federal, State and local air pollution control criteria have been and will be met. This evidence, and related documents, will be retained by the Commission for on-site examination

E. Compensation for Stop-Work Orders. If the performance of all or any part of the Work is suspended, delayed or interrupted due to an order of a court of competent jurisdiction related to any environmental litigation, as defined below, the Construction Manager, at the request of the Contractor, shall determine whether the order is due in any part to acts or omissions required of the Contractor by the Commission as one of the terms of this contract. If it is determined that the order results in any part because of acts or omissions of the Contractor required by the terms of this contract, such suspension, delay or interruption shall be considered as if ordered by the Construction Manager in the administration of this contract under the terms of the Suspension of Work provisions of this contract. The period of such suspension, delay or interruption shall be considered excusable and an adjustment shall be made for any increase in the cost of and time required for the performance of this contract (excluding profit).

F. "Environmental Litigation" Defined. The term "environmental litigation", as used herein, means a lawsuit alleging that the Work will have an adverse effect on the environment, or that the Commission has not duly considered, either substantively or procedurally, the effect of the Work on the environment.

#### 5.9 Contractor's Liability Insurance

A. Statutory Liability Coverage. The Contractor and its subcontractors shall maintain such insurance as will protect them from claims under the Workmen's Compensation Acts, U.S. Longshoremen's and Harbor Workers' Compensation Act, and the Federal Employers Liability Act by coverage with insurance companies or by methods acceptable to the State Insurance Commission, and by no other method, for damages which may arise from operations under this contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them.

B. General Liability Coverage. The Contractor shall similarly so protect himself and the Commission from any claim for Bodily Injury, Liability and Property Damage Liability.

1. The types and limits of coverage shall be specified in the Insurance Check List issued as part of the Instructions to Bidders for this project, and those types and limits are incorporated in full by reference herein.

2. The above policies for Bodily Injury and Property Damage Liability Insurance shall be so written as to include Contingent Bodily Injury and Property Damage Liability Insurance to protect the Contractor against claims from the operations of subcontractors.

C. Motor Vehicle Coverage. The Contractor shall also carry coverages as required by State law for the operation of motor vehicles by employees of the Contractor or subcontractors as a consequence of the Contract.

D. Verification of Coverage. Certificates of the Contractor's insurance, containing evidence of the Hold Harmless Clause protecting the Commission, shall be filed with the Commission and shall be subject to its approval for adequacy of protection. No Work shall be commenced or performed at the site until the appropriate certificates of insurance are filed with and approved by the Commission. The Commission shall have the absolute right to terminate this Contract if the policy of insurance is canceled at any time for any reason and a new policy is not promptly obtained by the Contractor and approved by the Commission.

#### 5.10 Contractor's Fire And Extended Coverage Insurance

A. Generally. The Contractor shall carry, at its own expense, Builder's Risk Insurance for the full Contract amount, insuring against the perils of fire and lightning, and providing extended coverage for vandalism and malicious mischief, subject only to the minimum standard deductibles currently filed by the Insurance Service Office with the Maryland State Insurance Department. The Commission will provide no coverage during the construction period.

B. Specific Endorsements. The Contractor's policy shall contain endorsements reading as follows:

1. This policy also covers, as part of the provisional amount, architect's, engineer's and builder's fees.

2. Permission is hereby granted for, as the case may be, use and possession or occupancy in whole or in part, pending acceptance by the Commission.

3. It is the intent of this insurance to cover, specifically, all the Work being done under the Contract between the Insured's and, as to such Work, this policy shall be primary insurance and shall not contribute or claim contribution from any other insurance being carried, which by its terms would also cover the property covered hereunder in the absence of this insurance.

4. Coverage afforded under this policy will not be canceled until at least fifteen (15) days prior written notice has been given to the Commission

C. Verification of Coverage. Certificates of insurance shall be submitted to the Commission for review and approval and shall be held by it for the duration of the Contract.

D. Duration of Coverage. The above insurance shall remain in full force and effect until such time as the Commission shall fully accept the Work covered by the Contract.

#### 5.11 Relationship Between Contractor And Public Officials And Employees

A. No Personal Liability for Commission Representatives. In carrying out any of the provisions of the Contract, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability imposed upon the Construction Manager or other authorized representatives of the Commission, it being understood that in all such matters they act solely as agents and representatives of the Commission.

B. Gratuities. It shall be unethical for any person to offer, give, or agree to give any Commission employee or former Commission employee, or for any Commission employee or former Commission employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore. The Commission may terminate the right of the Contractor to proceed under this Contract if it is determined that any above referenced gratuities or offers of employment were or are being offered by the Contractor, or any agent or representative of the Contractor, to any Commission employee or former Commission employee.

C. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

D. Termination for Improper Gratuities. In the event this Contract is terminated upon the grounds provided for in subsection B. hereof, the Commission shall be entitled (1) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor, and (2) in addition to any other damages to which it may be entitled by law, the Commission may seek exemplary damages in an amount which shall be not less than three nor more than ten times the cost incurred by the Contractor in providing any such gratuity to any such representative or employee.

E. Other Remedies. The rights and remedies of the Commission provided for by this section shall not be exclusive and are in addition to any other rights and remedies provided to it either by law or under this Contract.

#### 5.12 No Waiver Of Legal Rights

A. Generally. The Commission shall neither be precluded nor estopped by any measurement, estimate, certificate or payment made, either before or after the completion and acceptance of the Work, from showing the true amount and character of the Work performed and materials furnished by the Contractor, or that any such measurement, estimate, certificate or payment was erroneously or incorrectly made, or from showing that the Work or materials do not in fact conform to the requirements of the Contract. The Commission shall not be precluded or estopped, notwithstanding any such measurement, estimate, certificate or payment, from recovering from the Contractor or its sureties, or both, such damages as it may sustain by reason of the Contractor's failure to comply with the terms of the Contract. Neither acceptance by the Commission, or any representative of the Commission, nor any payment for, acceptance of or any possession taken, in whole or in part, of the Work, nor any extension of time given by the Commission, shall operate as a waiver of any portion of the Contract or of any power herein reserved, or of any right to damages.

B. Non-Waiver of Enforcement. A waiver by the Commission of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

#### 5.13 Covenant Against Contingent Fee

A. Generally. The 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 Contract, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide commercial selling agencies, any fee or any other compensation contingent on the making of this Contract.

B. Remedies for Breach of Covenant. For breach or violation of this covenant the Commission shall have the right to terminate this Contract without liability, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

#### 5.14 Federal Participation

If the United States Government pays all or any portion of the cost of a project, the Work shall be subject to the inspection of the appropriate federal agency. Such inspection shall in no way make the federal government a party to this Contract and will not otherwise affect, in any way, the rights of either party hereunder.

#### 5.15 NonDiscrimination In Employment

A. Generally. The Contractor agrees:

1. 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 disability unrelated in nature and extent to any impairment which would preclude the performance of such employment, as provided in the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. This requirement includes compliance with Maryland's Governor's Order pertaining to the Code of Fair Practices, dated July 9, 1976, which bars discrimination based on political or religious opinion or affiliation.

2. To include a provision similar to that contained in paragraph 1, above, in all subcontracts, except any subcontract for standard commercial supplies or raw materials.

3. 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 subsection.

4. That any failure to include in any subcontract a provision requiring compliance with the above requirements of this subsection will render that agreement void ab initio, but any party thereto shall be entitled to receive the reasonable value of services performed and materials supplied thereunder. At its option the Commission may elect to compel the performance of any agreement not containing the required nondiscrimination provisions, and may limit recovery thereunder to the reasonable value of services performed and materials supplied.

5. To include the substance of this entire Section 5.15 in all Contracts with its subcontractors.

B. Sanctions for Non-Compliance. The Contractor also agrees that:

1. In the event of the Contractor's, or any subcontractor's, non-willful failure to comply with the nondiscrimination provisions of this Contract, the Commission may impose such sanctions upon the Contractor or subcontractor as it may determine to be appropriate, including but not limited to;

a. withholding of payment to the Contractor and/or for the subcontractor under the Contract until the Contractor and/or subcontractor complies; and/or

b. suspension, cancellation or termination of the Contract or subcontract in whole or in part.

2. Where the Contractor willfully fails to comply with the nondiscrimination provisions of this Contract the Commission may, where the Contract is still executory in part, compel continued performances of the Contract, but it shall be liable only for the reasonable value of services performed and materials supplied from the date that the breach of contract was discovered or should have been discovered. Any sums previously paid by the Commission under the Contract shall be set off against the sums to become due as the Contract is performed.

3. If any subcontractor willfully fails to comply with the nondiscrimination provisions, the Commission may require that the Contractor void the subcontract, in which case both the Commission and the Contractor shall only be liable for the reasonable value of the services performed and materials actually supplied.

4. Any person, whether an employee, prospective employee or not, with information concerning violations of the requirements of this subsection may so inform the Commission, which may conduct an investigation of the charges. If the Commission concludes that the charges are true, it shall invoke the remedies set out in this subsection.

#### 5.16 Compliance with the Commission's Anti-Discrimination Program

It is the policy of the Commission that minority, female and disabled-owned (MFD) subcontractors on Commission contracts not be discriminated against by prime contractors in the selection of subcontractors and in the performance of the work for the prime contractors.

##### A. Verification of Compliance. The Contractor shall:

1. Maintain such records as are necessary to confirm compliance with nondiscrimination in subcontracting component of the Anti-Discrimination Program. These records shall indicate the identity of MFD and non-MFD subcontractors employed on the Contract; the type of Work performed by each; and the actual dollar value of work, services and procurement achieved by each contractor and subcontractor.

2. Submit information, with monthly cost breakdowns for progress payments, which indicate the dollar value of contracts awarded to MFD Firms and the payments to MFD firms as the Work occurs. This information will be submitted as a supplement to all applications for progress payments.

3. Retain all records concerning subcontractor participation and make them available for inspection by the Commission for a period of three years after final completion of the Contract.

B. Commission Right to Conduct Inspections and Ensure Compliance. The Commission will conduct inspections and investigations to confirm the Contractor's compliance with the terms of this section. If the Commission determines that the Contractor or its subcontractors are not in

compliance with this section, the Commission will notify the Contractor of those measures which the Contractor must take to restore the Contractor to a state of compliance.

C. Suspension and/or Termination. If the Contractor or its subcontractors fail to take timely corrective action, the Commission may, without additional cost to it, suspend the Contractor's performance of the Contract until such time as Contractor demonstrates to its satisfaction that Contractor can and will comply with the requirements of this section. If the Contractor continues or repeatedly fails, or refuses to comply with the requirements of this section, the Commission may terminate the Contract for default.

D. Further Enforcement. The Fair Practices officer shall present any indication of false or misleading information in the documentary material submitted by the Contractor or its subcontractors to determine MFD status or participation compliance, or of material noncompliance in the Anti-Discrimination Program, with an appropriate recommendation to the General Counsel for further investigation and possible legal action. The General Counsel may pursue any legal or administrative action including debarment of the violator through any established proceedings.

### 5.17 Conflict of Interest

A. Definition. An employee may not participate in any procurement, except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to it, if, to his knowledge, he, his spouse, parent, child, brother or sister has an interest therein or if any of the following is a party thereto:

1. Any business entity in which he has a direct financial interest of which he may reasonably be expected to know;
2. Any business entity of which he is an officer, director, trustee, partner, or employee, or in which he knows any of the above listed relatives has such interest;
3. Any business entity with which he or, to his knowledge, any of the above listed relatives is negotiating or has any arrangement concerning prospective employment;
4. Any business entity which is a party to an existing contract with the official or employee, or which the official or employee knows is a party to a contract with any of the above named relatives, if the contract could reasonably be expected to result in a conflict between the private interests of the official or employee and his official duties;
5. Any entity, either engaged in a transaction with the Commission or subject to regulation by the Commission, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if he may be reasonably expected to know of both direct financial interest;
6. Any business entity which the official or employee knows is his creditor or obligee, or that of any of the above named relatives, with respect to a thing of economic value

and which, by reason thereof, is in a position to affect directly and substantially the interest of the official or employee or any of the above named relatives.

B. Blind Trusts. Where an employee or any member of the employee's immediate family holds a financial interest in a blind trust, the employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

C. Waivers. The General Counsel or designee within the Legal Department may grant a waiver from the conflict of interest provision upon making a written determination that the interests of the Commission so require or when the ethical conflict is insubstantial or remote.

#### 5.18 Cost and Price Certification

A. Certificate of Accuracy. By submitting cost or price information upon which negotiations or price discussions are to be based, the Contractor certifies that, to the best of its knowledge, information and belief, the information submitted is accurate, complete and current.

B. Contractor Warranty for Price. The price under this Contract, and any change order or modification thereunder, including profit or fee, shall be adjusted to exclude any significant price increase occurring because the Contractor furnished cost or price information which was inaccurate, incomplete or not current.

C. Records Retention. The Contractor shall retain and maintain all records and documents, including but not limited to cost or pricing data, relating to this Contract for three years after final payment by the Commission hereunder, or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the Commission at all reasonable times.

D. Subcontractor Compliance. The Contractor shall include the provisions of subsection A. hereof in every subcontract.

#### 5.19 Relation of Contractor and Subcontractors

A. Generally. The Contractor agrees to include the following provisions in all subcontracts and supply contracts applicable to the Work unless specifically noted to the contrary in a subcontract approved in writing by the Commission.

1. Subcontractor agrees to be bound to the Contractor by the terms of the Contract Documents, including but not limited to the Agreement, the General Conditions, the Drawings and the Specifications, and to assume toward the Contractor all obligations and responsibilities that the Contractor, by those documents, assumes toward the Commission.

2. The subcontractor agrees to submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment under Article 7 of these General Conditions.



3. The subcontractor agrees to make all claims for extras, for extensions of time and for damages, delays or otherwise, to the Contractor in the manner provided for by these General Conditions for like claims by the Contractor upon the Commission.

4. The subcontractor agrees, upon completion of its work, to promptly pay all labor, material suppliers, vendors, subcontractors and others, so as to permit simultaneous final payment by the Contractor.

B. Reciprocal Agreements. The Contractor agrees to be bound to the subcontractor by all the obligations that the Commission assumes to the Contractor under the Contract Documents, including but not limited to the Agreement, the General Conditions, the Drawings and the Specifications, and by all the provisions thereof affording remedies and redress to the Contractor from the Commission.

C. Schedule of Payments to Subcontractors. The Contractor also agrees:

1. To pay the subcontractor under the schedule of values described in Article 7 of these General Conditions, the amount allowed to the Contractor on account of the subcontractor's work, to the extent of the subcontractor's interest therein.

2. To pay the subcontractor so that at all times the Contractor's total payments shall be as large in proportion to the value of the Work done by him as the total amount certified to the Contractor is to the value of the Work done by him.

3. To pay the subcontractor to such extent as may be provided by the Contract Documents or the subcontract, if either of these provides for earlier or larger payments than the above.

4. To pay the subcontractor on demand for Work or materials as far as executed and fixed in place, less the retained percentage, at the time any invoice is issued, even though the Construction Manager fails to issue payment for any cause not the fault of the subcontractor.

5. To pay the subcontractor a just share of any fire insurance money received by the Contractor.

6. To make no demand for liquidated damages or penalty for delay in any sum in excess of such amount as may be specifically named in the subcontract.

7. To give the subcontractor an opportunity to be present and to submit evidence in any matter involving the subcontractor's rights.

## 5.20 Subcontracting

A. Non-Assignment Clause. No portion of the Contract shall be subcontracted, assigned or otherwise disposed of except upon the written consent of the Construction Manager. Any assignment, subcontract or other disposition of all or part of this contract without the express written consent of the Construction Manager shall be null and void. Consent to subcontract,

assign or otherwise dispose of any portion of the Contract shall not be construed to relieve the Contractor or surety of any responsibility for fulfilling all the requirements of the Contract.

B. **Written Verification of Subcontractors.** The Contractor shall, as soon as practicable and before the execution of the Contract, notify the Construction Manager and the Commission in writing of the names of subcontractors proposed for the principal parts of the Work, and for such other parts thereof as the Construction Manager may direct, and shall not employ any subcontractor that the Construction Manager objects to as being incompetent or unfit.

C. **Contractor Responsibility for Subcontractors.** The Contractor assumes the same responsibility to the Commission for the acts and omissions of all subcontractors, and of persons either directly employed by them as the Contractor does for the acts and omissions of persons directly employed by him.

D. **No Commission Obligation to Subcontractors.** Nothing contained in the Contract Documents shall create any contractual relation between any subcontractor and the Commission, and nothing in the Contract Documents is intended to make the subcontractor a beneficiary of the Contract between the Commission and the Contractor. The Contractor and the subcontractor agree that nothing in the Contract Document shall create any obligation on the part of the Commission to pay to or to see to the payment of any sums to any subcontractor.

E. **Non-Assignment of Payments Due.** The Contractor shall not assign any monies due or to become due to him hereunder without the previous written consent of the Commission.

#### 5.21 Employees, Subcontractors and Work Conditions

A. **Qualification of Employees.** Only personnel thoroughly trained and skilled in the tasks assigned to them may be employed on any portion of the Work. Any employee found to be unskilled or untrained in the Work shall be removed from the Work.

B. **Licensed Employees.** When Municipal, County, State or Federal laws require that certain personnel (electricians, plumbers, etc.) be licensed, all such personnel employed on the Work shall be so licensed.

C. **Quantity of Labor.** The Contractor shall employ, at all times, sufficient personnel to complete the Work within the time stated in the Contract.

D. **Work Areas.** The Contractor shall confine the operations of employees and subcontractors to the limits of Work as provided for by the Contract Documents, law, ordinance, permits or directions of the Commission. Generally, the work area will be the same as any "Limit of Contract" line indicated in the Contract Documents.

#### E. **Methods and Quality.**

1. All workmanship shall be of good quality. Whenever the method of performing or manner of proceeding with the Work is not specifically stated in the Contract Documents, it is intended that the best standard practice be followed. Recommendations of the manufacturers of approved materials shall be considered a part of the Specifications and all materials shall be applied, installed, connected, erected, used, cleaned and conditioned as called for thereby.

Such, however, does not remove any requirement in the Specifications which adds to the manufacturer's recommendations.

2. All materials shall be accurately assembled, set, etc., as required by good construction practice, and shall be true to line, even, square, plumb, level and regularly spaced, coursed, etc. Under no circumstances, either in new or old work, shall any material be applied over another which has not been thoroughly cleaned, sanded or otherwise treated so as not to impair the finish, adhesion or efficiency of the next applied item.

3. All the methods, procedures and results are subject to the Construction Manager's approval as to the finished result to be obtained. However, this is not to be interpreted as placing upon the Construction Manager any responsibility for management of the Work, which is solely the responsibility of the Contractor.

#### F. Scheduling.

1. The Contractor shall so schedule the Work as to ensure its efficient and uninterrupted progress, and to hold to an absolute minimum the cutting and patching of new Work. All cutting, patching and digging necessary to the execution of the Work is included in the Contract scope.

2. The Contractor shall so schedule the construction to be performed by each group or trade that each installation or portion of the construction shall member with and join with all other new or old work, all as required for a complete installation according to accepted construction practice.

G. Superintendent. The Contractor shall keep on the job site, at all times during the Work's progress, a competent, English-speaking superintendent and any necessary assistants. Prior to commencement of the Work, the Contractor shall submit, in writing to the Commission, the name of the person it intends to employ as Superintendent for the execution of this Contract, with a statement of the proposed Superintendent's qualifications. This data will be reviewed by the Commission and an approval or rejection given in writing. Persons who have previously proven unsatisfactory on work executed for the Commission, or who are without proper qualifications, will not be approved. Should it become necessary to change the Superintendent, this procedure will be repeated. A single Superintendent will be permitted to superintend two or more jobs located at the same site or close to each other only when approved by the Commission in writing. The Superintendent shall represent the Contractor. All directions given to the Superintendent shall be as binding as if given to the Contractor. Important directions shall be confirmed in writing to the Contractor. Other directions shall be so confirmed, upon written request, in each case. Upon cause shown by the Commission the Superintendent shall be removed from the Work and a new Superintendent as described above and assigned to the Work.

H. Discipline. The Contractor shall, at all times, enforce strict discipline and good order among the employees and shall not employ or permit to remain on the Work any unfit person. The Contractor shall enforce all instructions relative to the use of water, heat, power, no smoking and the control and use of fires as required by law and the Commission. Employees must not be allowed to loiter on the premises before or after working hours.

I. Employee Safety. The Contractor shall designate a responsible member of its organization on the Work whose duty it shall be, in addition to any other duties, to prevent accidents and to enforce the standards of Section 5.4 of these General Conditions. The name and position of the person so designated shall be reported to the Commission, with a copy to the Construction Manager, by the Contractor prior to commencement of the Work.

## **6. PROSECUTION & PERFORMANCE**

### **6.1 Notice To Proceed**

After the Contract has been executed, the Commission will, within any time limit specified elsewhere in the Contract Documents, issue to the Contractor a "Notice to Proceed" with the Work, which will stipulate the time within which or the date upon which the Contractor is expected to begin Work. The Contract Time shall begin on the date stipulated in the Notice to Proceed. Work done prior to receipt of the Notice to Proceed is unauthorized and will neither be measured nor paid for.

### **6.2 Prosecution of the Work**

A. Time is of the Essence. All time limits stated in or indicated by the Contract Documents are of the essence to the Contract.

B. Date of Commencement. The date of commencement of the Work is the date established in a Notice to Proceed signed by the Contract Administrator. The Contractor shall begin the Work promptly on the date or within the time specified in the Notice to Proceed and shall notify the Construction Manager at least 48 hours in advance of starting the Work.

C. Time for Completion. It is hereby expressly understood and agreed by and between the Contractor and the Commission that the time stated by the Contract for the completion of the Work is a reasonable time, taking into consideration average climatic conditions and usual business conditions prevailing in the locality of the Work. The Contractor shall undertake Work only on Work days. The Construction Manager may authorize the Contractor to Work on non-working days for the convenience of the Commission.

D. Continuous Prosecution of the Work. After the Work has been started, it shall be prosecuted continuously on all acceptable working days, without stoppage, until the Contract is complete. Should prosecution of the Work, for any reason, thereafter be discontinued by the Contractor, the Contractor shall notify the Construction Manager of its intention to do so at least 24 hours in advance of both stopping and subsequently resuming operations. Said notifications shall be in writing.

E. Excusable Delay. If the Contractor is delayed at any time during performance of the Work by any act or neglect of the Commission or any of its officers, agents or employees, or by any separate contractor employed by the Commission, or by any change ordered in the Work, or by labor disputes, fire, unusual delay in transportation or unavoidable casualties, or by any cause which the Construction Manager determines may excuse the delay, the Contract Time shall be extended for such time as the Construction Manager finds appropriate.

### 6.3 Progress Schedule

A. Generally. Within thirty (30) calendar days of receipt of the Letter of Intent of the Contract, or within ten (10) calendar days of receipt of the Notice to Proceed with the Work, whichever is earlier, and in any event before undertaking performance of any Work under the Contract, the Contractor shall prepare and submit to the Construction Manager a "Progress Schedule," prepared in accordance with the Critical Path Method or bar graph chart, as determined by the Construction Manager. The Progress Schedule shall show scheduling; the proposed order of Work; the periods of time during which the several parts thereof will be performed and the dates of completion for various portions of the Work; and the time required for completion of the Work. The Progress Schedule shall also include the dates for submittals to the Construction manager or Design Professions and the dates for the return of approved submittals. The Construction Manager shall review and either accept or reject the Progress Schedule and the Contractor shall perform no Work until either the Manager has accepted either the original or a revised Progress Schedule. The Contractor's Progress Schedule shall be used by the Construction Manager to monitor and establish the progress of the Work and the Contractor shall submit Updated Progress Schedules on a monthly basis to the Construction Manager.

B. Commission's Acceptance Does Not Relieve Contractor's Obligation for Timely Completion. The Construction Manager's acceptance of the Contractor's Progress Schedule, and any updated Progress Schedules, shall not constitute an approval of any such schedule and shall not be deemed to establish either the reasonableness or appropriateness of the schedule for either the management, progress or completion of the Work by the Contractor.

C. Non-Payment for Non-Compliance. If the Contractor fails to submit any progress schedule within the time prescribed or requested, the Construction Manager may withhold approval of progress payments until such time as the Contractor submits the required schedule.

D. Contractor's Obligation to Maintain Schedule. If, in the opinion of the Construction Manager, the Contractor falls significantly behind the accepted progress schedule, the Contractor shall take any and all steps necessary to improve progress. This may require the Contractor to increase the number of shifts, initiate or increase overtime operations, increase days of work during the week, increase the amount of construction plant, or all of such. The Construction Manager may also require the Contractor to submit supplemental Progress Schedules detailing the specific operational changes to be instituted to regain the accepted schedule. All actions required under this paragraph shall be made without additional cost to the Commission.

E. Enforcement. Any failure of the Contractor to comply with the requirements of the Construction Manager under this provision shall be grounds for a determination by the Construction Manager that the Contractor is not prosecuting the Work with such diligence as will insure its completion within the Contract Time. Upon such determination, the Construction Manager may terminate the Contractor's right to proceed with the Work or any separable part thereof, in accordance with Section 6.11 of these General Conditions.

F. Modification of Contract Time and Progress Schedule. The Contract Time and the Progress Schedule will only be adjusted and extended, notwithstanding any other provision of the Contract, for excusable delay to the Contractor's performance which actually affects and critically delays the Contractor's ability to timely perform and complete the Work.

#### 6.4 Limitations Upon Contractor's Operations

The Contractor shall, at all times, conduct the Work in such a manner and in such a sequence as will assure the least inconvenience to and interference with the use of the facility by the public.

#### 6.5 Labor Disputes

A. Notice of Pending Delay. Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Construction Manager.

B. Subcontractor Obligations and Contractual Requirements. The Contractor agrees to insert the substance of Section 6.5, including this paragraph B., in any subcontract hereunder as to which a labor dispute may delay the timely performance of the Contract. Each such subcontract shall also provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier of subcontractor (or the Contractor), as the case may be, of all relevant information with respect to such dispute.

#### 6.6 Clean-Up

The Contractor shall, at all times, keep the construction area, including storage areas, free from accumulations of waste material or rubbish and, prior to completion of the Work, remove any rubbish from the premises and all tools, scaffolding, equipment and materials not the property of the Commission. Upon completion of the construction, the Contractor shall leave the Work and premises in a clean, neat and workmanlike condition, satisfactory to the Construction Manager.

#### 6.7 Suspension of Work

A. Suspension for Convenience. The Construction Manager may order the Contractor, in writing, to suspend, delay or interrupt all or any part of the Work for a period of time, as may be appropriate, for the convenience of the Commission.

B. Suspension Caused by Construction Manager's Failure to Act. 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 the Construction Manager in the administration of the Contract, or by the Manager's failure to act within a reasonable time, an adjustment shall be made for any increase in the cost of or time required for the performance of the Contract (excluding profit) necessarily caused by such an unreasonable suspension. However, no adjustment shall be made under this clause for any suspension, delay or interruption to the extent that (1) 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 other provision of the Contract.

C. Notice of Claim. No claim under Section 6.7.B shall be allowed (1) for any cost incurred more than ten (10) days before the Contractor has notified the Construction Manager in writing of the act or failure to act involved, and (2) unless the claim, in an amount stated, is asserted in writing within ten (10) calendar days of the termination of the suspension, delay or interruption, but not later than the date of final payment under the Contract.

D. Stop-Work Orders. If the Work should be stopped under an order of any court, or other public authority, for a period of three months, through no act or fault of the Contractor or of anyone employed by him, then the Contractor may, upon seven (7) days written notice to the Commission, suspend all Work and performance under the Contract and receive from the Commission payment for all complete Work.

## 6.8 Termination For Convenience

A. Generally. The performance of Work under the Contract may be terminated by the Commission, in accordance with this clause, in whole or from time to time in part, whenever the Construction Manager shall determine that such termination is in the best interest of the Commission. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of the Work under the Contract is terminated and the date upon which such termination becomes effective.

B. Process for Project Shut-Down. After receipt of Notice of Termination, and except as otherwise directed by the Construction Manager, the Contractor shall:

1. Stop all Work under the Contract on the date and to extent specified in the Notice of Termination.
2. 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, if any, as is not terminated.
3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination.
4. Assign to the Commission in the manner, at the time and to the extent directed by the Construction Manager all of the right, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the Commission 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.
5. Settle all outstanding liabilities and all claims arising out of the termination of orders and subcontracts, with the approval or ratification of the Construction Manager, to the

extent the Manager may require, which approval or ratification shall be final for all the purposes of this clause.

6. Transfer title and deliver to the Commission, in the manner, at the times and to the extent, if any, directed by the Construction Manager (a) the fabricated or unfabricated 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 (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 the Commission.

7. Use the Contractor's best effort to sell, in the manner, at the times, to the extent and at the price or prices directed or authorized by the Construction Manager, any property of the types referred to in paragraph 6 above; provided, however, that the Contractor (a) may not be required to extend credit to any purchaser and (b) may himself acquire any such property under the conditions prescribed by and at a price or prices approved by the Construction Manager; and shall be applied in reduction of any payments to be made by the Commission to the Contractor under the Contract or shall otherwise be credited to the price or cost of the Work covered by the Contract or be paid in such other manner as the Construction Manager may direct.

8. Complete performance of such part of the Work as may not have been terminated by the Notice of Termination.

9. Take any action that may be necessary, or that the Construction Manager may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Contractor and in which the Commission has or may acquire an interest. The Contractor shall submit to the Construction Manager a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items for which disposition has been directed or authorized by the Construction Manager, and may request the Commission to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Commission shall accept title to such 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 Construction 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 prior to final settlement.

C. Submission of Termination Claim. After receipt of a Notice of Termination, the Contractor shall submit to the Construction Manager a termination claim, in the form and with the certification prescribed by the Construction Manager. This claim shall be submitted promptly, but in no event later than ninety (90) days from the effective date of termination, unless one or more extensions in writing are granted by the Construction Manager upon the request of the Contractor, made in writing, within the ninety (90) day period or authorized extension thereof. If the Construction Manager determines that the facts justify such action, the Manager may receive and act upon any termination claim at any time after the ninety (90) day period or any extension thereof. Upon any failure of the Contractor to submit a termination claim within the time allowed, or any extension thereof, the Construction Manager may determine, on the basis of information available to him, the amount, if any, due to the Contractor



by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

D. Mutual Negotiation of Claim. Subject to the provisions of subsection C. hereof, the Contractor and the Construction 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 Contract Price, as adjusted for any changes and as reduced by the amount of payments otherwise made and as further reduced by the Contract Price of Work not terminated. The Contract shall be amended accordingly and the Contractor shall be paid the agreed amount. Nothing in subsection E. of this clause, which prescribes the amount to be paid to the Contractor in the event of the failure of the Contractor and the Construction Manager to agree upon the whole amount to be paid to the Contractor by reason of the termination of Work pursuant to this clause, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this subsection.

E. Commission Determination of Claim Amount. In the event of the failure of the Contractor and the Construction Manager to agree, as provided in subsection D., upon the whole amount to be paid to the Contractor by reason of the termination of Work pursuant to this clause, the Construction Manager shall pay to the Contractor the amounts, but without duplication of any amounts agreed upon in accordance with Paragraph D, determined by the Construction Manager as follows:

1. For completed supplies or services accepted by the Commission (or sold or acquired as provided in paragraph B.7. above) and for which payment has not theretofore been made, a sum equivalent to the aggregate price for the supplies or services computed in accordance with the price or prices specified in the Contract, appropriately adjusted for any saving of freight or other charges.

2. The total of

a. the costs incurred in the performance of the Work terminated, including initial costs and preparatory expenses allocable thereto, but exclusive of any costs attributable to supplies or services paid or to be paid for under paragraph E.1. hereof;

b. the cost of settling and paying claims arising out of the termination of Work under subcontracts or orders, as provided in paragraph B.5. 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 (a) above);

c. a sum, as profit and overhead on (a) above, determined by the Construction Manager to be fair and reasonable but not to exceed the percentages given in Section 7.2.A below. If, however, it appears that the Contractor would have sustained a loss on

the Contract had it been completed, no profit shall be included or allowed under this subparagraph (c) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

d. 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 the Contract.

3. The total sum to be paid to the Contractor under paragraphs 1. and 2. of this subsection shall not exceed the original or adjusted Contract Price as reduced by the amount of payments otherwise made and as further reduced by the Contract Price of Work not terminated. Except for normal spoilage, and except to the extent that the Commission shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in paragraph E.1. And 2. (a) above, the fair value, as determined by the Construction Manager, of property that is destroyed, lost, stolen or damaged so as to become undeliverable to the Commission or to a buyer pursuant to paragraph B.7.

F. Contractor Appeals. The Contractor shall have the right of appeal, under the clause of this Contract entitled "Disputes," from any determination made by the Construction Manager under subsections C., E., or H. hereof, except that if the Contractor has failed to submit a claim within the time provided for in subsections C. or I. hereof, and has failed to request an extension of such time, the Contractor shall have no such right of appeal. In any case where the Construction Manager has made a determination of the amount due under subsections D., E., or H. hereof, the Commission shall pay to the Contractor the following:

1. If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Construction Manager; or,
2. If an appeal has been taken, the amount finally determined on such appeal.

G. Deductions from Final Payment. In arriving at the amount due the Contractor under this clause there shall be deducted;

1. The amount of all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of the Contract;
2. The amount of any claim which the Commission may have against the Contractor in connection with the Contract; and
3. The agreed price for, or the proceeds of the 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 the Commission.

H. Partial Termination. If the termination hereunder be partial, the Contractor may file with the Construction 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 Construction Manager.

I. Partial Payments. The Commission 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 the Contract whenever, in the opinion of the Construction 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 the Commission 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 the excess is repaid to the Commission. 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 (10) days after the date of the retention or disposition, or a later date as determined by the Construction Manager by reason of the circumstances.

J. Records Retention. Unless otherwise provided for in the Contract, or by applicable statute, the Contractor shall, from the effective date of termination until the expiration of three years after final settlement under the Contract, preserve and make available to the Commission at all reasonable times at the office of the Contractor and without direct charge to the Commission, all books, records, documents and other evidence bearing on the costs and expenses of the Contractor under the Contract and relating to the Work terminated hereunder or, to the extent approved by the Construction Manager, photographs, microphotographs or other authentic reproductions thereof.

#### 6.9 Termination For Default - Damages For Delay – Time Extension

A. Generally. If the Contractor 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 the Contract, or any extension thereof, or fails to complete said Work within that time, the Commission may, by written notice to the Contractor, terminate the Contractor's right to proceed with the Work, or the part of the Work as to which there has been delay. In that event the Commission 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 of the Contractor as may be on the site of the Work and necessary therefor. Whether or not the Contractor's right to proceed with the Work is terminated, the Contractor and its sureties shall be liable for any damages to the Commission resulting from any refusal or failure to complete the Work within the specified time.

B. Liquidated Damages Upon Termination. If fixed and agreed upon liquidated damages are provided for in the Contract and the Commission terminates the Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until such reasonable

time as may be required for final completion of the Work, together with any increased costs occasioned by the Commission in completing the Work.

C. Liquidated Damages Pending Completion. If fixed and agreed upon liquidated damages are provided for in the Contract and the Commission does not terminate the Contractor's right to proceed, the resulting damage shall consist of liquidated damages until the Work is completed.

D. Circumstances Precluding Termination for Default. The Contractor's right to proceed may not, however, be so terminated, nor the Contractor charged with resulting damages if:

1. The delay in the completion of the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in its sovereign capacity, acts of the Commission in its contractual capacity, acts of another Contractor in the performance of a contract with the Commission, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of (at any tier) both the Contractor and the subcontractors or suppliers; and,

2. The Contractor, within ten (10) calendar days from the beginning of any such delay (unless the Construction Manager grants a further period of time before the date of final payment under the Contract), notifies the Construction Manager in writing of the causes of the delay. The Construction Manager shall then ascertain the facts and the extent of the actual critical delay, if any, and extend the time for completing the Work when, in the Manager's judgement, the findings of fact justify such an extension. The Manager's findings of fact shall be final and conclusive to the parties, subject only to appeal as provided in the Disputes Clause of the Contract.

E. Conversion to Termination for Convenience. If, after notice of termination of the Contractor's right to proceed under the provisions of this section, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to General Conditions 6.9, Termination For Convenience.

F. Non-Exclusive Remedy. The rights and remedies of the Commission provided for by this clause are in addition to any other rights and remedies provided by law under the Contract.

## 6.10 Liquidated Damages

A. Generally. For each day that any work shall remain uncompleted beyond the time(s) specified in the Contract, the Contractor shall be liable for liquidated damages in the amount(s) provided for in the Invitation For Sealed Bids or elsewhere in the Contract Documents; provided, however, that due account shall be taken of any adjustment of the specified completion time(s) for the completion of Work granted under approved change orders.

B. Methods of Collection. The Commission shall deduct and retain out of the monies due or to become due to the Contractor under the Contract the amount of liquidated damages, and in case the amounts due the Contractor are less than the amount of such damages, the Contractor shall be liable to the Commission for the difference.

#### 6.11 Partial Acceptance

A. Generally. If, during the performance of the Work, the Commission desires to occupy any portion of the Project, the Commission shall have the right to occupy and use those portions of the Project which, in the opinion of the Construction Manager, can be used for their intended purpose; provided that the conditions of occupancy and use are established and the responsibilities of the Contractor and the Commission for maintenance, heat, light, utilities and insurance are mutually agreed to by the Contractor and the Commission.

B. Full Completion Required. Partial occupancy shall in no way relieve the Contractor of its responsibilities under the Contract.

#### 6.12 Substantial Completion, Final Inspection and Acceptance

A. Notice of Substantial Completion. When the Work is substantially complete, the Contractor shall notify the Construction Manager that the Work is ready for inspection and test on a definite date. Sufficient notice shall be given to permit the Construction Manager to schedule the final inspection.

B. Confirmation of Substantial Completion; Work Remaining. On the basis of the inspection, the Construction Manager shall fix the time from within which the Contractor shall complete any remaining items of Work, which will be indicated on a list prepared by the Construction manager. If the Contractor fails to complete the remaining items so listed in the time stipulated, the Commission shall have the undisputed right to complete that Work and deduct any cost incurred in doing so from any monies retained under the Contract.

C. Final Payment. Final payment shall not be made until all Contract Work is complete to the satisfaction of the Commission.

D. Contract Completion. The Contract will be considered to be completed when the Work has been completed in accordance with the terms of the Contract; when final acceptance has occurred; when final payment has been authorized; when all of the obligations of the Contractor and its surety have been complied with; and when final payment has been made.

#### 6.13 Warranty of Construction

A. Generally. In addition to any other warranties at law or set out elsewhere in this contract, the Contractor warrants, for one year after final acceptance of the Work, that the Work performed under this Contract conforms to the requirements of the Contract and is free from any defect of equipment, material or design furnished, or workmanship performed by the Contractor or any of its subcontractors or suppliers at any tier. The Contractor also warrants 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.

Under this warranty the Contractor shall remedy at its own expense any such failure to conform, or any such defect. In addition, the Contractor shall remedy at its own expense any damage to Commission owned or controlled real or personal property when that damage is the result of the Contractor's failure to conform to Contract requirements or any defect of equipment, material, workmanship or design. The Contractor shall also restore any Work damaged in fulfilling the terms of this section. The Contractor's warranty with respect to Work repaired or replaced hereunder will run for one year from the date of the acceptance by the Commission of the repair or replacement.

B. Notice of Defect or Damage. The Commission will notify the Contractor in writing within a reasonable time after the discovery of any failure, defect or damage.

C. Commission Right to Repair. Should the Contractor fail to remedy any failure, defect or damage described in subsection A. above within five (5) calendar days after receipt of notice thereof, the Commission shall have the right to replace, repair or otherwise remedy such failure, defect or damage at the Contractor's expense.

D. Third-Party Warranties. In addition to the other rights and remedies provided by this section, all subcontractors', manufacturers' and suppliers' warranties, express or implied, respecting any Work and materials, at the direction of the Commission, shall be enforced by the Contractor for the benefit of the Commission. In such case, if the Contractor's warranty under subsection A. above has expired, any suit by the Commission to enforce a subcontractor's, manufacturer's or supplier's warranty shall be at the expense of the Commission. The Contractor shall obtain and provide to the Commission copies of all warranties which the subcontractors, manufacturers or suppliers would give in normal commercial practice.

E. Written Warranties. If directed by the Construction Manager, the Contractor shall require such warranties to be executed in writing to the Commission.

F. Exclusions from Warranties. Notwithstanding any other provision of this section, unless such a defect is caused by the negligence of the Contractor or its subcontractors or suppliers at any tier, the Contractor shall neither be liable for any defects of material or design furnished by the Commission nor for the repair of any damage which results from any such defect in Commission furnished material or design.

## 7. PAYMENT

### 7.1 Scope of Payment

A. Generally. Payments will be made, in accordance with the other provisions of this article, upon the basis of the value of the Work performed, including materials incorporated into that Work, or for the actual quantities of unit priced contract items performed; provided that such are in accordance with the Plans and Specifications. However, no payment made, except for final payment, shall in any way affect the obligations of the Contractor to perform all Work in strict accordance with the Contract Documents and to repair or replace any defective work and

bear all responsibility for any damages arising as a result of such defects in its performance. When requested in writing by the Contractor, and approved in the sole discretion of the Construction Manager, payment may also be made for nonperishable materials to be incorporated into the Work which are delivered to and stockpiled or stored at the work site or other approved location. However, no material for which said payment is made, in whole or in part, shall thereby be deemed to have been accepted by the Commission, and both title to and responsibility for such materials shall be deemed to remain with the Contractor until such are actually incorporated into the Work; provided that materials for which any such payment has been made by the Commission shall not be removed from the site or from storage at other locations until ready for use in performing the Work.

B. Schedule of Values. Prior to making application for any payment under the Contract, the Contractor shall submit to the Commission a Schedule of Values of the various parts of the Work, including quantities, aggregating the total sum of the Contract. The Schedule shall be so divided as to facilitate payments to subcontractors. The form of this submission shall be as the Contractor and the Construction Manager have agreed upon and shall be supported by such evidence as to its correctness as the Construction Manager may direct. The Schedule shall be used as a basis for certificates of payment, unless at a later date found to be in error.

C. Application for Payment Schedule. Application for payment shall be submitted on or about the 25th day of each month, but not less than thirty (30) days after the Contractor actually commences Work at the site nor before completing ten (10) days of such performance.

D. Itemized Application for Payment. In applying for payment the Contractor shall submit a statement, itemized in such form and supported by such evidence as the Construction Manager may require, showing the Contractor's right to the payment claimed. Each invoice shall prominently display the Contractor's Federal Employer Tax Identification Number, or if the Contractor has no such number then the Contractor's social security number.

1. With each payment application, the Contractor, when signing the payment form, certifies that he has made all prior payments and that he will make timely payments from the proceeds of progress payments and final payments then due him, to his sub-contractors and suppliers in accordance with his contractual arrangement with them.

2. In applying for all payments, excluding the first payment and final payment, the Contractor shall submit, in addition to the above, a certificate that it has paid:

- a. All labor to date.
- b. All vendors and material suppliers, in full, for all items received.
- c. All subcontractors, in full, less the retained amount.

3. In applying for final payment, the Contractor shall submit, in addition to the statement required in the first sentence of subsection D, above, the following:

a. In all cases as the Commission may demand, such evidence as will establish the Commission's title to materials and reasonable assurances that causes for liens by labor and others do not exist.

b. An electrical certificate from an independent (non-governmental) electrical inspection agency approved by the County Fire Marshall. The Contractor must make application for the inspection, coordinate same and pay the required inspection fees. The independent electrical inspection agencies are not considered local authorities.

c. All other guarantees as called for by the Contract.

d. All required equipment manuals and parts lists.

## 7.2 Force Account Work

A. Generally. When the Contractor is required to perform Work as a result of additions or changes to the Contract for which there are no applicable unit prices in the Contract, the Commission and the Contractor shall make every effort to come to an agreed upon price for the performance of such Work. If an agreement cannot be reached, the Commission may require the Contractor to do such Work on a force account basis, for which the Contractor will be compensated in accordance with the following:

1. Labor. For all labor, and for foreman in direct charge of the specific operations, the Contractor shall receive the actual wages for each and every hour the labor and foremen are actually engaged in such work.

2. Materials. For materials accepted by the Construction Manager and used, the Contractor shall receive the actual cost of such materials delivered to the site of the Work, including transportation paid by him (exclusive of machinery rentals as hereinafter set forth).

3. Equipment. For any machinery or special equipment (other than small tools, whether rented or owned), the use of which has been authorized by the Construction Manager, the Contractor shall receive the rates agreed upon in writing before such Work is begun, or the Contractor shall receive those rates which may be specified in Section 2.9.B.12 of the Contract. For purposes of definition, equipment with a new cost of \$500 or less will be considered small tools.

4. Materials and Supplies Not Incorporated into the Work. For materials and supplies expended in the performance of the Work (excluding those required for rented equipment) and approved by the Construction Manager, the Contractor shall receive the actual cost of such materials and supplies used.

5. Subcontractors. For Work done solely by a subcontractor, the subcontractor's cost shall be determined as stipulated in paragraphs, A.1 through 4, above. The allowable percentages for combined overhead and profit for the subcontractor shall be as stipulated hereinafter under paragraph A.7, below. The Contractor shall be entitled to a total allowance of eight percent (8%) of the subcontractor's total cost of doing the Work.



6. Superintendence. No additional allowance shall be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.

7. Contractor's Overhead and Profit. The Construction Manager and the Contractor shall negotiate a combined percentage fee for overhead and profit on force account Work performed pursuant to this section by the Contractor's forces and its subcontractors. However, in the event that the Construction Manager and the Contractor are unable to agree upon such a combined percentage, the Contractor will be paid that fee in accordance with the following:

<b>Value of Work</b>	<b>Combined Overhead and Profit</b>
\$0 - \$1,000	20%
\$1,001 - \$10,000	17%
\$10,001 - \$25,000	15%
Over \$25,000	Negotiated but not more than 15%

The Contractor's combined percentage fee for overhead and profit, whether negotiated or determined in accordance with the value of Work set forth above, shall include:

a. Compensation for all costs paid to, or on behalf of, workmen by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits that may be required by collective bargaining agreements or other employment contracts generally applicable to the classes of labor employed in the Work.

b. Bond premiums, property damage, liability and workmen's compensation insurance premiums, unemployment insurance contributions and Social Security taxes on the force account work.

B. Compensation. The compensation set forth above shall be received by the Contractor as payment in full for Work done on a force account basis. At the end of each day the Contractor's representative and the Construction Manager shall compare records of the cost of Work ordered on a force account basis.

C. Statements. No payment will be made for Work performed on a force account basis until the Contractor furnishes the Construction Manager duplicate itemized statements of the cost of such force account Work, detailed as to the following:

1. Name, classification, date, daily hours, total hours, rate and extension for laborers and foremen.

2. Designation, dates, daily hours, total hours, rental rate and extension for each unit of machinery and equipment.

3. Quantities of materials, prices and extensions.

4. Transportation of materials.

5. Payments of items under paragraphs 3 and 4 above shall be accompanied by original receipted invoices for materials used and transportation charges. If, however, the materials used in the force account Work are not specifically purchased for such Work, but are taken from the Contractor's stock, then in lieu of the original invoices the statements shall contain or be accompanied by an affidavit of the Contractor which shall certify that such materials were taken from the Contractor's stock, that the quantity claimed was actually used and that the price and transportation of the material as claimed represent actual cost.

### 7.3 Progress Payments

#### A. Current Estimates

1. Lump Sum Contracts. If requested by the Commission, the Contractor shall furnish an acceptable breakdown of the lump sum Contract Price showing the amount included therein for each principal category of the Work. Said breakdown shall be in such detail so as to provide a basis for estimating monthly progress payments.

2. Monthly Estimates. Each month the Commission will reimburse the Contractor for the value of the Work satisfactorily performed during the preceding calendar month including authorized extras and additions, less ten percent (10%) for retainage (provided Contractor has not furnished a 100% payment security and 100% performance security) and less any payments withheld under Section 7.7. For contracts where the contractor has furnished a 100% payment security and 100% performance security, the Commission will retain five percent (5%), in accordance with The Annotated Code of Maryland, Finance and Procurement Regulations, Title 17, Section 17-110. Upon completion of the items on the project close-out punch list, the Commission will release 50 percent of the project's total retainage, subject to any payments withheld under Section 7.7. The remaining 50 percent will be released in accordance with paragraph 7.8. Current estimates will be based upon the Construction Manager's estimate of the quantity of Work (including materials and/or equipment complete in place) satisfactorily performed. In the instance of lump sum items, the Construction Manager's estimate shall be the proper fraction of the lump sum items satisfactorily performed during the preceding month. All quantities, estimates and fractions will be reasonably accurate approximations and are subject to correction (a) in subsequent current estimates, (b) in any semi-final estimate and, (c) in final payment. Any and/or all partial payments may be withheld in the event any requirement of the Contract Documents has not been complied with by the Contractor. Should either the Construction Manager or the Contractor be of the opinion that any estimates, quantities and/or fractions (either as to an individual current estimate or accumulations thereof) do not represent a reasonably accurate approximation of the value of the actual Work then performed and completed, the details questioned shall be reviewed and any corrections adjusted for in the next current estimate.

#### 7.4 Certificate of Payment

A. Payment Due. If the Contractor has made application, as above, the Commission shall, not later than the date when such payment falls due, issue to the Contractor payment for such amount as it decides to be properly due. In approving such partial payments, there shall be retained the percentage of the estimated amount due in accordance with Section 7.3.A.2. of the General Conditions and The Annotated Code of Maryland, Finance and Procurement Regulations, Title 17, Section 17-110, until completion of all Work covered by the Contract.

B. Payment Does Not Constitute Acceptance of Work. No certification issued nor payment made to the Contractor, nor partial or entire use or occupancy of the Work by the Commission, shall be an acceptance of any Work or materials not in accordance with the Contract Documents.

#### 7.5 Correction of Work Before Final Payment

A. Removal of Non-Conforming Materials. The Contractor shall promptly remove from the premises all materials condemned by the Construction Manager as failing to conform to the Contract Documents, whether incorporated in the Work or not. The Contractor shall promptly replace and re-execute its own Work in accordance with the Contract Documents, and without expense to the Commission, and shall bear the expense of making good all Work of other contractors destroyed or damaged by such removal or replacement.

B. Commission's Right to Remove Non-Conforming Materials. If the Contractor does not remove such condemned Work and materials within the time scheduled by the Construction Manager, fixed by written notice, the Commission may remove them and may store the materials at the expense of the Contractor. If the Contractor does not pay the expense of such removal within ten (10) days time thereafter, the Commission may, upon ten (10) days notice, sell such materials and shall account for the net proceeds thereof, after deducting all costs and expenses that should have been borne by the Contractor.

#### 7.6 Deductions For Uncorrected Work

If the Commission deems it inexpedient to correct Work damaged or done not in accordance with the Contract Documents, an equitable deduction from the Contract Price shall be made therefore.

#### 7.7 Payments Withheld

A. Generally. The Commission may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to such extent as may be necessary to protect the Commission from loss on account of:

1. Defective Work not remedied.
2. Claims filed, or reasonable evidence indicating the probable filing of claims.

3. Failure of the Contractor to make payments properly to subcontractors for material or labor.
4. A reasonable doubt that the Contract can be completed for the balance then unpaid.
5. Damage to another contractor.
6. Work billed that was not completed as of the invoice date.

B. Payments Due Upon Compliance. When the above grounds are removed, payment shall be made for amounts withheld because of them.

#### 7.8 Acceptance And Final Payment

A. Generally, when the Contractor has completed the Work and supplied the Commission with as-built drawings of the project, and it has been finally accepted, the Commission will promptly proceed to:

1. Complete any necessary computation of quantities.
2. Submit to the Contractor, within sixty (60) days after final completion and acceptance of the Work by the Construction Manager, a tabulation of the proposed final quantities. This tabulation shall be accompanied by a statement setting forth: (a) any additional Work performed under change orders and/or supplemental agreements; (b) any authorized extension of time; (c) the number of any days of inexcusable delay which have been charged against the Contractor for having failed to timely complete the Contract, and (d) any deductions, charges or liquidated damages which have been made or imposed. Payment of the full apparent values of the Contract, thus determined, shall become due and payable to the Contractor ninety (90) days after final acceptance of the Work by the Construction Manager, as hereinafter provided. As a condition precedent to the Contractor's right to receive final payment, the Contractor shall be required to execute a general release of all claims against the Commission arising out of or in any way connected with the performance of the Contract.

B. Contractor's Right to Accept or Protest Final Payment. The Contractor shall have a period of ten (10) calendar days from the date upon which it receives the aforementioned tabulation from the Commission, within which to:

1. Decide whether or not to accept final payment upon such a basis.
2. Notify the Commission, in writing, of its decision. The Contractor may request an additional period of up to ten (10) calendar days in which to notify the Commission of its decision. In the event the Contractor notifies the Commission that it protests final payment on such a basis, that notification shall outline the reason(s) for said protest.

C. Contractor Acceptance. Upon receipt of a notification of acceptance as provided for in subsection B. above, the Commission shall prepare the final estimate and final payment forms and submit them to the Contractor. These forms shall show all data noted in subsection

A. above, together with deductions for all prior payments. The Contractor shall execute these forms and return them to the Commission within thirty (30) calendar days from the date they are received. If such signed forms are not received by the Commission within the specified time, the Commission will prepare duplicate forms for execution and payment. Such action by the Commission shall be deemed to constitute acceptance and final payment.

D. Partial Payment if Contractor Protests. If, under the provisions of subsection B. above, the Contractor notifies the Commission of its protest and nonacceptance of the data submitted to him, the Commission shall pay the Contractor a semi-final estimate, or an additional semi-final estimate in the event a semi-final estimate has already been paid upon the data noted in subsection A. above, with deductions for all prior payments. A retainage equal to not more than five percent (5%) of the total value of the Contract shall be withheld by the Commission. The acceptance of such semi-final estimate, or additional semi-final estimate, shall not be considered as a waiver on the part of the Contractor of its right to pursue a protest and an adjusted final payment.

E. Negotiation of Protest and/or Outstanding Claim. In the event the Contractor does not accept the data submitted to him as described in subsection A. above, and/or has outstanding a claim failed in accordance with General Condition 3.15, the Construction Manager and the Contractor shall confer at mutually convenient times and endeavor to reconcile all points of disagreement expeditiously. If such reconciliation is accomplished, the Commission will promptly proceed with acceptance and final payment on the reconciled basis and in accordance with the provisions of subsection C. above. If reconciliation is not accomplished within thirty (30) days, the decision of the Construction Manager shall be reviewed by the Commission and appropriate legal counsel. After review and confirmation by the Commission, the decision of the Construction Manager is deemed to be a final decision. The Construction Manager shall furnish a copy of the final decision to the Contractor by certified mail, return receipt requested. This decision may be appealed by the Contractor as provided for in General Condition 3.15. Failure to provide timely notification of appeal to the Construction Manager shall constitute a waiver by the Contractor of its rights under the Disputes Clause and final payment may then be made by the Commission based on the Construction Manager's recommendation.

F. Reimbursement for Overpayment. All prior partial estimates and payments shall be subject to correction at the time of acceptance and final payment, and if the Contractor has been previously overpaid the amount of such overpayment shall be set forth in the finally payment forms and the Contractor hereby agrees that he will reimburse the Commission for such overpayment within ninety (90) days of receipt of such advice, and it's surety will not be granted release from obligations under the terms of the Contract until reimbursement has been made in full.

## 7.9 Late Payment

A. Invoicing. A proper invoice shall include: (1) a description of the items or services provided; (2) the date the goods were received or the inclusive dates the services were rendered; (3) the contract price agreed upon pursuant to the Contract; (4) retention, if any; (5) the basis for the billing; (6) the Contract or Purchase Order Number; (7) the Contractor's Federal Tax Identification Number or Social Security Number; and (8) the name and address of the proper invoice recipient.

B. Grounds for Non-Payment. For purposes of the Contract, an amount will not be deemed due and payable if:

1. The amount invoiced is inconsistent with the Contract.
2. The proper invoice has not been received by the person or office specified in the Contract.
3. The invoice or performance under the Contract is in dispute, or the Contractor has failed to otherwise comply with the provisions of the Contract.
4. The item or services have not been accepted.
5. The quantity of items delivered is less than the quantity invoiced.
6. The items or services do not meet the quality requirements of the Contract.
7. The Contractor did not meet the inspector on-site prior to submission of the bill to verify quantities.
8. The Contract provides for progress payments and the proper invoice for the progress payment has not been submitted.
9. The Contract provides for withholding retainage and the invoice is for the retainage, or all stipulated conditions for release of the retainage have not been met.
10. The Contractor has not submitted satisfactory documentation or other evidence reasonably required by the Construction Manager or by the Contract concerning performance under the Contract and compliance with its provisions. Payments to the Contractor pursuant to this Contract shall be made no later than thirty (30) days after the Commission's approval of a proper invoice from the Contractor. The Commission's failure to remit timely payment may entitle the Contractor to interest as proscribed by Maryland Law.

C. Late Payments. Payments to the Contractor pursuant to this Contract shall be made no later than thirty (30) days after the Commission's approval of a proper invoice from the Contractor. The Commission's failure to remit payment within this period may entitle the Contractor to interest as proscribed by Maryland law.

#### 7.10 Audit

A. Contractor's Consent to Audit. The Contractor agrees that the Commission or its duly authorized representative shall, until the expiration of three (3) years after final payment under the Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contract involving transactions related to the Contract.

B. Subcontracts to Include Audit Consent Provision. The Contractor, further, agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Commission or its duly authorized representative shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor, involving transactions related to the subcontract.

**SECTION IV  
REQUIREMENTS**

**SECTION IV – REQUIREMENTS**

1. INTRODUCTION
2. SCOPE OF SERVICES
3. SPECIAL CONDITIONS
4. PROPOSAL FORMAT AND CONTENT
5. EVALUATION CRITERIA
6. COST PROPOSAL
7. FORMS



# 1. INTRODUCTION

## 1.1 Introduction

Generally, the Construction Manager at Risk (“Construction Manager” or “CMAR”) will be a member of the Project Team consisting of representatives from the M-NCPPC, the Architect/Engineer, and other consultants as required and as more fully set forth herein. Generally, it will be the responsibility of the Construction Manager to integrate the design and construction phases, utilizing its skill and knowledge of general contracting to develop schedules; prepare project construction estimates, to ensure constructability within the project construction guaranteed maximum price, study labor conditions, and in any other way deemed necessary, contribute to the development of the project during the pre-construction/design phase. During the construction phase, the CMAR will be responsible for constructing the project without exceeding the Guaranteed Maximum Price (“GMP”) inclusive of all construction services therein.

Upon selection of the CMAR firm and approval by the M-NCPPC Executive Director, the Contract will be executed for pre-construction phase services only which includes the provision for the development of the Guaranteed Maximum Price (GMP) for construction of the project by the CMAR.

Subsequently, and in accordance with the terms and conditions of this RFP, an amendment (also called Part 2 award) to the CMAR contract is anticipated to be issued for construction services upon acceptance of the GMP and approval by the M-NCPPC Executive Director. The Commission retains the option, at its sole discretion, to select a different CMAR after the completion of the Pre-Construction Phase or utilize a different selection and/or bidding process if deemed to be in the Commission’s best interest.

## 1.2 Project Description

### 1.2.1 Project Location:

Oxon Hill Manor  
6901 Oxon Hill Road Oxon Hill, MD 20745

### 1.2.1 The CMAR shall provide specialty services including:

- a. Design review of the architectural and engineering drawings produced by M-NCPPC’s consultant.
- b. Cost estimating of the project with emphasis on the following priorities:
  1. Structural
  2. Drainage
  3. Building Envelope
- c. Value engineering services
- d. Establishment of GMP at 85% drawing development or at another time agreeable to the CMAR and the Commission.
- e. Construction Feasibility Analysis

- f. Open book contracting
- g. Construction administration management
- h. Sub-contractor approval and employment
- i. Construction cost control
- j. Scheduling – Design and construction schedule

## 1.2.2 The Project will include:

### **Detailed Project Description**

Oxon Hill Manor is a large Neo-Georgian mansion constructed in 1929 by long-serving governmental official and career diplomat B. Sumner Welles (1892-1961). Welles served as Assistant Secretary of State, Ambassador to Cuba, and Under Secretary of State under Franklin D. Roosevelt. The building was designed by renowned French-born architect Jules-Henri de Sibour with formal gardens planned by Ellen Biddle Shipman, a notable early 20th-century female American landscape architect, and contemporary of Beatrix Farrand. The Manor is sited on a series of high bluffs overlooking the Potomac River and Alexandria, Virginia on lands originally granted to John Addison, the first Duke of Marlborough in 1681. Welles remained in the ownership of the property until 1952 when it was sold with 55 acres to Fred Maloof, who operated Oxon Hill as the John Hanson Museum and curio of art and antiques. M-NCPPC purchased Oxon Hill Manor and the approximately 15 surrounding acres in 1976.

The lavish 49-room residence consists of a two-story main block and extensive two-story servant's wing connected at the north elevation. The construction of the building is masonry throughout with exterior brick facing laid in Flemish bond. The main block is bordered by broad raised brick terraces paved in a herringbone pattern, spanning the pavilion bays of the manor. The mansard roof is clad with a blue-gray slate tile with a low-slope membrane roof at the center. There are eight brick chimneys on the main block and two on the connected servant's wing. Original roof design features include gutters concealed behind paneled brick parapets with stone coping, copper downspouts with boxed headers that terminated in subsurface terracotta drains away from the building façade. Other decorative features included large Ionic porticos, decorative belt coursing, light-colored stone trim, wooden cyma recta cornices, and modillions with "compo" leaf ornamentation.

Oxon Hill Manor and the associated property is listed in the National Register of Historic Places (NRHP), and the Maryland Inventory of Historic Properties. The Maryland Historical Trust (MHT) holds a perpetual Preservation Easement on the exterior and the interior of the manor building and the surrounding grounds. The property is also a Prince George's County Historic Site protected by the Prince George's County Historic Preservation Ordinance, Subtitle 29 of the Prince George's County Code. Therefore, all design and construction work are subject to review and approval by the Owner (Maryland-National Capital Park and Planning Commission (M-NCPPC)), MHT, and the Prince George's County Historic Preservation Commission (HPC).

Capturing the essence of a Georgian county estate with its extensive manicured English garden vistas and grand terraced hillsides, Oxon Hill remains an outstanding reflection of twentieth-century American opulence and estate-era architecture that to this day retains a high degree of architectural integrity, and fine interior details and finishes. Currently, Oxon Hill is used primarily as an event venue, with wedding parties frequently enjoying the elegant entertaining spaces of the manor and its beautiful grounds and gardens.

### **Existing Condition**

Numerous repair campaigns have altered the original roof structure, roof cladding, roof and sub-grade drainage, and introduced poor or incompatible replacement materials and methods of installation. The ongoing deterioration and failure of the roof and drainage systems has resulted in significant water intrusion and damage to Oxon Hill Manor.

In 2004, a fire destroyed the Southern end (approximately 1/3) of the main block and damaged the interior spaces of the second-floor below. The roof, roof/attic structure, and the second-floor ceiling structure were fully reconstructed at the southern end of the building. The original framing was replaced with modern, pre-fabricated roof trusses and modern connectors that differ drastically from the original framing system in style and orientation, and are not consistent with the building's original design intent, or historic preservation standards and best practices. At this time all of the original main block sheathing and slate was removed and replaced with slate that was sized and installed incorrectly and has been determined substandard in quality. The original copper flashing and gutter lining was also replaced with fiber-reinforced asphalt roof coating, along with the original sub-grade terra cotta piping with PVC drain lines. In 2007 the new post-fire plaster ceiling system of the second-floor southwest corner (Chamber 204) collapsed due to non-conventional structural framing and irregular plaster thickness.

### **Mission Statement**

The Construction Manager at Risk will provide design review services for the reconstruction of the Oxon Hill Manor main block and servant's wing roofs, and associated roof drainage system; including but not limited to the roof structure, second-floor ceiling structure, roof substrate, slate and membrane roofing, built-in roof gutters and roof drainage system, rain-leaders, downspouts, flashing and associated hardware. The design shall match the original 1929 roof in scale, height, width, massing, form and cladding, and be compatible with the building's existing historic structural and architectural components, drainage features, materials, and other character-defining features, following the Secretary of the Interior's Standards for the Treatment of Historic Properties.

The new roof and water proofing system must provide a durable, water-tight roof and drainage assembly with adequate bearing capacity for a new, appropriately specified slate roof with a 100+/- year useful life expectancy. The construction services will also address the defective second-floor ceiling (attic floor framing) located directly below the modern replacement roof truss system that contributed to the collapse of the plaster ceiling at Chamber 204.

The design of the roof, roof framing, attic floor framing, partial second floor ceiling framing, roof drainage systems and masonry work shall be in keeping with the building's historic design, scale, materials, and character-defining features, following the Secretary of the Interior's Standards for the Treatment of Historic Properties.

A. Comprehensive Pre-Construction services starting from the Waldon Studio Architects pre-design investigative report draft thru 100% construction documents and the ensuing permitting process, frequent cost estimating, coordination reviews and GMP development in order to provide complete and final occupancy for the intended use.

1. CMAR shall be responsible for obtaining and paying for permits from DPIE and any other required county permitting agencies.
2. CMAR shall be responsible for all trade permitting

B. Provide comprehensive construction services required for the prioritized schedule of Oxon Hill Manor Roof and Roof Drainage Reconstruction and associated improvements.

This rehabilitation scope of work will include but not be limited to:

1. Oxon Hill Manor Roof and Roof Drainage Reconstruction applying the following priorities:

- i. Structural
- ii. Drainage
- iii. Building Envelope

2. Coordinate with the Architect on the rehabilitation of all work:

A. Design and Bidding

1. Coordinate and meet regularly with the M-NCPPC and Architect to provide analysis, evaluations, and recommendations to ensure reconstruction/restoration design and other related improvements meet both project intent and project budget.
2. Baseline Schedule - Develop the critical path for the reconstruction/rehabilitation plan in consultation with the Architect and M-NCPPC. The Baseline Schedule shall be subject to review and approval by the M-NCPPC and the CMAR shall incorporate such adjustments to the Baseline Schedule as may be reasonably requested by M-NCPPC.
3. Provide constructability and cost estimates in consultation with the Architect and M-NCPPC.
4. Attend bi-weekly (every other week) meetings or conferences calls

with the M-NCPPC, Architect, and design team.

- B. Construction for the building and related improvements.
  - 1. Provide Gantt scheduling for project task implementation.
  - 2. Coordinate and meet regularly with the M-NCPPC and Architect to provide analysis, evaluations, and recommendations to ensure rehabilitation design and other related improvements meet both project intent and project budget.
  - 3. Baseline - Develop the critical path for the rehabilitation plan in consultation with the Architect and M-NCPPC. . The Baseline Schedule shall be subject to review and approval by the M-NCPPC and the CMAR shall incorporate such adjustments to the Baseline Schedule as may be reasonably requested by M-NCPPC.
  - 4. Provide constructability and cost estimates in consultation with the Architect and M-NCPPC.
  - 5. Attend bi-weekly (every other week) meetings or conferences calls with the M-NCPPC, Architect, and design team.

### **1.2.3 Preventative Measures:**

- A. Due to the high degree or archaeological sensitivity throughout the property, the CMAR shall consult with, and attain written approval from the M-NCPPC prior to carrying out any ground disturbing or ground compressing activity.
- B. The CMAR shall consult with, and attain written approval from the M-NCPPC on the location of any materials and equipment storage and staging on site, prior to project implementation.
- C. The CMAR shall consult with the M-NCPPC on the protection of trees, plantings, and other contributing landscape and site features that may be impacted by the undertaking, prior to project implementation.

- 1.3** M-NCPPC's total estimated maximum GMP for this project is **\$3,000,000.00** This is exclusive of Part 1 Pre-Construction Phase costs. The design for the project construction is being prepared by Waldon Studio Architects currently under contract with M-NCPPC. It is imperative the Commission, the AE team and the CMAR team (collectively the "Project Team") work cooperatively and successfully to keep the final cost of the Project within this fixed budget.

#### **1.4 Allowances:**

**1.5.1** Part 1 – Pre-Construction Phase: Offerors are to include the following not-to-exceed allowances in their fee proposal (specific cash allowances identified below are valued in Section VI. Cost Proposal):

- A. Reproduction - \$2400
- B. Contractor Design Assist - \$10,000

**1.5.2** Part 2 – Construction Phase: Offerors are to include the following not-to-exceed allowances in their fee proposal as reimbursable expenses and these allowances shall be included in the GMP.

- A. M-NCPPC Design & Construction Allowance
- B. Contractor’s Construction Contingency

#### **1.6 Project Duration**

The Offeror will provide pre-construction design phase services and total management services for the CMAR during construction. The project priorities provided in the scope of work will be the starting point for adjustments in order for the CMAR to perform within budget, time of performance and CMAR costs.

1.6.1.1 Part 1 - Pre-Construction CMAR Services during the full development of the project to 100% Issued for Construction (IFC) documents that meet the maximum GMP budget, and any revised permits shall be completed within one hundred and eighty (180) calendar days after the issuance of the Part 1 - Pre-Construction Design Notice to Proceed inclusive of the CMAR’s GMP preparation and negotiation.

1.6.1.2 Part 2 - Construction CM Services to achieve Substantial Completion shall be completed within one hundred and fifty (150) calendar days from the date of the Construction Notice to Proceed. The not-to-exceed General Conditions shall be based on 150 calendar days. The entire Project shall be Substantially Completed by February 28, 2023 (the “Substantial Completion Date”).

#### **1.7 Purpose and Definition of Construction Management with Guaranteed Maximum Price**

The CMAR with Guaranteed Maximum Price method centers on utilization of a Construction Manager, who is a member of the Project Team with the M-NCPPC, Architect/Engineers and other consultants as the project may require.

During the Pre-Construction/Design Phase (Part 1), the CMAR will utilize his skills and knowledge of construction to develop schedules, prepare construction cost models/estimates, conduct value engineering studies, study labor conditions, identify and address constructability issues, and advise on the sequencing of construction work for the Project. The M-NCPPC will pay the CMAR the fixed, Pre-Construction (Part 1) CMAR fee for this Project; such fees are to include all costs associated with the CMAR providing Pre-Construction Services, inclusive of the preparation of the GMP.

During the Construction (Part 2), the CMAR will provide construction management services and manage the project (inclusive of the award and management of all trade contracts) in the areas of change order review, quality assurance/inspections, schedule maintenance, cost control, meetings, shop drawing review, processing/monitoring of RFIs and substitution requests and claims resolution and coordination/communication of the activities of the Project Team throughout the construction phase.

**Please note** that the CMAR can NOT self perform trade packages.

The project will be an "open book" job whereby the M-NCPPC may attend any and all meetings, have access to any and all CMAR records on the project and whereby any and all cost savings or monies remaining in the GMP at completion revert to the M-NCPPC. The M-NCPPC will pay the CMAR for its fixed Construction (Part 2) CMAR fee as well as approved applicable reimbursable costs for actual expenditures only without any CMAR mark-up of any type.

## **2. SCOPE OF SERVICES**

**Reference Section XII Management Administration Plan for additional requirements.**

### **2.1 Part 1 – Pre-Construction Design Phase**

#### **2.1.1 Task A – Design Review and Evaluation**

Provide overall project review of the design of the project, starting from pre-design through permit approval. Provide analyses to determine constructability and budget adherence. Provide preconstruction services during the design phase and provide an acceptable Guaranteed Maximum Price (GMP) for the project.

#### **2.1.2 Task B - Project Management**

Overall project management and review:

Overall project management shall be provided by Construction Manager at Risk. Upon selection and after issuance of a notice to proceed, the CMAR shall become an integral part of the project team that will coordinate, develop, and process the design and construction process. Attend regular scheduled meetings with the A/E and M-NCPPC during the development of the design to advise the A/E on matters related to site use, improvements, selection of materials, building methods, construction details, building systems and equipment. Design meetings will be held in accordance with the Architect's project schedule.

- 2.1.2.1 Provide bi-weekly (every other) written project updates on all elements of the project via e-mail to the M-NCPPC project manager, including notice of any situation or issue that could or will impact project progress. The format and timing of the project updates will be jointly determined by the Consultant and M-NCPPC project managers. Project updates shall track accomplishments to date, current and projected timeline, current and projected schedule, current and projected budget and a running tally of meetings held by type.
- 2.1.2.2 Provide monthly detailed invoices with required documentation
- 2.1.2.3 Contribute to meeting notes for project team meetings including before and after photographic documentation; meeting notes provided by Architect.
- 2.1.2.4 Contribute to presentations of draft and final reports.

### **2.1.3 Task C - Cost Management**

The CMAR shall develop a project budget / cost estimate progressively modeled, independent from the A/E that will be updated at multiple intervals during the design phase for the project. The cost models shall be construction based, not data based. It is the responsibility of the CMAR to assist the Commission and A/E to keep the Project within the fixed project budget.

- 2.1.3.1 The base model format shall be developed and presented to M-NCPPC within 15 calendar days after the CMAR Part 1 – Pre-construction Services Notice to Proceed is issued.
- 2.1.3.2 A full scope of work cost estimate, to be provided within fifteen (15) working days after the CMAR receives the initial Construction Documents (est 30%), and;
- 2.1.3.3 A full scale update for the estimate, to be provided within fifteen (15) working days after any re-design or adjustment to the scope of work or drawings for approval.
- 2.1.3.4 Each cost estimate shall contain a statement of the total amount determined under that construction cost estimate to be the total hard construction costs for the Project in accordance with the Scope of Work.



- 2.1.3.5 The CMAR detailed cost estimates, as required, and probable project construction costs will be reviewed by the A/E and M-NCPPC for reasonableness and compatibility with the project construction budget.
- 2.1.3.6 Meetings and negotiations between M-NCPPC, A/E and the CMAR will be held to resolve questions and differences that may occur within the estimated project construction costs and the CMAR cost estimate.

#### **2.1.4 Task D – Bidding and Negotiating trade contracts**

- 2.1.4.1 The CMAR shall conduct the following during the pre-bid phase for all Trade Contracts: pre-bid meetings and bid opening sessions. It is anticipated that a pre-bid meeting will be held for each trade package, unless otherwise agreed to by M-NCPPC. The CMAR shall utilize the Construction Documents as prepared by the A/E to invite and receive competitive bids on all trade packages and materials as a basis for each GMP submission.
- 2.1.4.2 The CMAR shall provide coordinated drawings and specifications for all trade work for the construction of that phase of the project.
- 2.1.4.3 The CMAR may reject all bids and repeat the bidding for the trade work or repackage the trade work activity, at his cost. If M-NCPPC rejects a Trade Contractor recommended by the CMAR, the CMAR shall recommend an acceptable substitute at no additional cost to M-NCPPC.
- 2.1.4.4 The CMAR shall present a minimum of three (3) bids for each trade package to the Commission for review and concurrence to support the GMP proposal and prior to the CM awarding a sub-contract.

#### **2.2 Part 2. Construction Services**

- 2.2.1 Upon approval of the GMP Amendment by M-NCPPC, the CMAR shall provide all services as required to complete construction of the Project and maintain the established GMP for the Project.
- 2.2.2 Time of performance for Construction Phase CMAR services with general conditions to achieve substantial completion shall be completed within a total of one hundred fifty (150) calendar days after the date of the Construction Notice to Proceed. An additional thirty (30) calendar days thereafter The entire Project shall be Substantially Completed by February 28, 2023 (the “Substantial Completion Date”).are provided for Project Completion (punch out, training, permit closure, etc.).
- 2.2.3 The CMAR shall continue to advise and assist M-NCPPC and A/E during any continuing design activities required in the Project.
- 2.2.4 The CMAR shall recognize M-NCPPC’s maximum Project Construction Budget funding is estimated \$3,000,000.00. This amount is inclusive of the CMAR

on-site staff reimbursable costs, General Conditions and all allowances, CMAR Construction Phase fee, CMAR's and M-NCPPC contingencies, insurances and all trade contracts within the GMP. This amount is referred to in this RFP as the Project Construction Budget and is the budgetary allocation for all costs included within the GMP.

2.2.5 After acceptance of the GMP and issuance of a Part 2 - Construction Notice to Proceed for the construction phase of the project, and within fifteen (15) calendar days of the date of the written Construction Notice to Proceed, the CMAR shall submit a preliminary critical path method (CPM) schedule consistent with the time frames submitted during the design phase to achieve the Substantial Completion date. Reference General Conditions, paragraph 6.3.

2.2.6 The CMAR shall be responsible for logging and reviewing all, but not limited to, RFI's, ASI's, substitution request, project photographs, cost control, changes in scope, proposed change order request.

2.2.7 The CMAR shall inspect all work to guard against defects and deficiencies in the work and shall coordinate this activity with the on-site duties of the M-NCPPC and/or A/E. The CMAR shall advise the M-NCPPC and A/E of any apparent variation and deviation from the intent of the Contract Documents and shall take the necessary action to correct such variations and deviations within the terms of the contract documents.

2.2.8 The CMAR shall provide M-NCPPC on a monthly basis, or at M-NCPPC's request, a written report inclusive of the items, but not limited to the items below. The monthly report shall be provided every thirty (30) days beginning 30 days from the issuance of the Notice to Proceed for the Construction Phase:

- a. Project status
- b. Schedule
- c. Cost status
- d. Proposed Change Orders (PCO's) and Change orders (CO's)
- e. Shop drawings / Submittals
- f. Quality Assurance / Inspections
- g. Claims / Resolutions
- h. Punch Lists
- i. Contract close out documents
- j. Allowance Log

2.2.9 The CMAR shall maintain at the project site, on a current basis, records of all necessary contracts, shop drawings, samples, purchases, materials, equipment, maintenance and operating manuals and instructions, and permit information per DPIE, and any other documents and revisions thereto which arise out of the contract or the work.

### 3. SPECIAL CONDITIONS

#### 3.1 TIME FOR PROJECT COMPLETION AND LIQUIDATED DAMAGES

This contract shall be in effect from the date of the executed contract until final payment and disbursement of funds.

The Time of Performance for Part 1 – Pre-Construction Design Phase shall be approximately one hundred eighty (180) calendar days. Liquidated damages do not apply to Part 1 – Pre-Construction Design Phase services. M-NCPPC may, at its sole discretion, extend the time of performance for Part 1 as it deems necessary. In the event the Part 1 time of performance is extended, the Contractor will not be entitled to any monetary claims for additional overhead costs, loss of anticipated work and/or profit, extended home office overhead or other costs or damages unless caused by M-NCPPC's fraud, gross negligence or abandonment of contract.

The Time of Performance for Part 2 – Construction Services to **COMPLETE ALL WORK TO ACHIEVE SUBSTANTIAL COMPLETION DATE OF FEBRUARY 28, 2023 AND OBTAIN A TEMPORARY USE AND OCCUPANCY PERMIT ON OR BEFORE ONE HUNDRED FIFTY (150) CALENDAR DAYS.**

**FINAL COMPLETION AND PROJECT CLOSE-OUT SHALL BE COMPLETE NO LATER THAN THIRTY (30) CALENDAR DAYS AFTER THE DATE OF SUBSTANTIAL COMPLETION.**

The Part 2- Construction Services completion days shall be consecutive calendar days beginning immediately upon the date given in the Contract Administrator's written notice to commence work. If the Contractor refuses or fails to complete such work within the period hereinabove stated, subject to the conditions named in the specifications and drawing, the Commission may deduct from the final payment the sum of fifteen hundred dollars (**\$1500.00**) per day as fixed and agreed liquidated damages, but not as a penalty, for each calendar day delay after the expiration of such period until the final physical completion of the work and its acceptance by the Commission.

#### 3.2 GMP AGREEMENT

In the event that M-NCPPC and the selected CMAR firm cannot reach an agreement on a GMP for Part 2 – Construction Services, M-NCPPC reserves the right to:

- Not award Part 2 – Construction Services to the CMAR.
- Negotiate with the next highest evaluated offeror from the Request for Proposals for a GMP.
- Proceed with a competitively bid solicitation for construction.

#### 3.3 VALIDITY OF PROPOSALS

All proposals submitted in response to this RFP must be valid for a minimum of 120 calendar days from the proposal due date. Offerors are required to **state in writing** that their Offers are valid for a period of 120 days after submittal due date.

Part Two – Construction Phase services pricing shall maintain its validity for a minimum of one hundred twenty (120) calendar days **after** the CMAR has signed the Commission’s issued GMP Amendment.

### **3.4 MINORITY, FEMALE, AND DISABLED (MFD) SUBCONTRACTING LEVEL OF PARTICIPATION**

This Request for Proposals (RFP) has significant subcontracting opportunities and, therefore, each bidder must demonstrate compliance with the Commission’s nondiscrimination in subcontracting program. This RFP falls into the major procurement category of Construction. A MFD subcontracting level of participation of **18%** has been established for this RFP. A Nondiscrimination in Subcontracting Bid Form must be completed and signed by an authorized person in order to be deemed responsive. See Section VII. Forms, VII.6.

### **3.5 PROPOSED SUBCONTRACTOR FORM**

The Bidder shall be required to submit a detailed breakdown (type, amount, percentage of total project) of all work to be performed by the Bidder and each proposed Subcontractor with the GMP utilizing the Proposed Subcontractor found in the Forms Section. Once the Part 2 – Construction Phase contract amendment has been executed, no portion of the resulting contract shall be subcontracted, assigned or otherwise disposed of except upon written consent of the M-NCPPC Contract Administrator.

### **3.6 SUBCONTRACTOR UTILIZATION REPORT**

The Contractor agrees to document the utilization of all subcontractors by completing a Subcontractor Utilization Report found in the Forms Section. This report documents payment made to Subcontractors for work performed in connection with the RFP and contract identified on the report. The report includes the Subcontractor’s name, total contract amount, payments made this period, payments to date, and the total percentage paid. Submission of this report will be required with each request for payment.

### **3.7 DOCUMENTS REQUIRED OF THE CONTRACTOR**

Proof of Carriage of Insurances: The Contractor is required to provide the M-NCPPC with satisfactory proof of all required insurances with the return of the M-NCPPC proposed contract. Reference the Insurance Checklist found in the Forms Section for the types and limits of coverage required for this project. This list supersedes other insurance requirements that may be referenced in the general conditions.

Itemized GMP Contract Breakdown: The Contractor shall submit to the MNCPPC Project Manager a detailed breakdown of the contract price on an AIA G-703 continuation form at least 14 days before his first periodic request for partial payment. The values employed in making up this itemized contract breakdown will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the contract price.

Release of Liens:

Partial release of liens are required with each pay application. All release of liens shall be made upon the attached form (See Forms Section) or other approved format. A final release of liens must be submitted to the Engineer before final payment is made to the Contractor.

Guarantee: With the Contractor's request for final payment, the Contractor shall guarantee in writing upon the Commission's Guarantee Form (found in the Forms Section) to the Commission that he will repair or replace any or all work, together with any work, which may be displaced, damaged, or marred in doing so, that may prove defective in failure to conform for one (1) year.

### **3.8 DUST CONTROL**

Throughout the entire construction period, the Contractor shall maintain dust control. Inherent for this project is the control of airborne particulate in accordance with all regulating agencies.

### **3.9 BARRICADES**

The Contractor shall provide and maintain a temporary fence or other appropriate barricade to isolate the construction. Provide at least two (2) "No Trespassing" signs. The fencing must remain in place until final acceptance of work by the Commission, or otherwise directed by the Maryland-National Capital Park and Planning Commission.

### **3.10 REDUCTION IN RETAINAGE**

The Commission reserves the right to approve or disapprove the Contractor's request for a reduction in the Retainage being held under the contract. **No such reduction shall be considered before substantial completion is achieved.** Any such approvals granted to a request for a reduction in the Retainage shall be conditional upon receipt of a Consent of Surety to a reduction in the Retainage. Retainage shall be administered in accordance with The Annotated Code of Maryland, Finance and Procurement Regulations, Title 17, Section 17-110.

### **3.11 GUARANTEED MAXIMUM PRICE**

3.11.1 GMP Proposal. At such time as the M-NCPCC and Contractor jointly agree, but no later than when Construction Documents are at 85% completion, the Contractor shall submit a GMP Proposal in a format acceptable to the M-

NCPPC. The GMP shall be the sum of the estimated Cost of the Work for construction, including all costs listed as included in the Project Construction Budget. The GMP shall not exceed the Project Construction Budget and is subject to modification only as provided by a change order. The Contractor does not guarantee any specific line item provided as part of the GMP, but agrees that it will be responsible for paying all costs of completing the Work which exceeds the GMP, as adjusted in accordance with the Contract Documents.

3.11.2 If the Contract Drawings are not complete at the time the GMP Proposal is submitted to the M-NCPPC, the Contractor shall provide in the GMP for further development of the Contract Drawings consistent with the Design Criteria. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which if required, shall be incorporated by Change Order.

3.11.3 Basis of GMP. Contractor shall include with the GMP Proposal a written statement of its basis, which shall include:

3.11.3.1 a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal;

3.11.3.2 a list of allowances and a statement of their basis;

3.11.3.3 a list of the assumptions and clarifications made by Contractor in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications;

3.11.3.4 the Date of Substantial Completion and the Date of Final Completion upon which the proposed GMP is based, and the Schedule of Work upon which the Date of Substantial Completion and the Date of Final Completion is based;

3.11.3.5 a schedule of applicable alternate prices;

3.11.3.6 a schedule of applicable unit prices;

3.11.3.7 a statement of additional services included, if any;

3.11.3.8 the time limit for acceptance of the GMP proposal, but no less than forty five (45) calendar days;

3.11.3.9 the Contractor's Contingency;

3.11.3.10 a statement of any work to be self-performed by the Contractor; and

3.11.3.11 a statement identifying all patented or copyrighted materials,

methods or systems selected by the Contractor and incorporated in the Work that are likely to require the payment of royalties or license fees.

3.11.4 Review and Adjustment to GMP Proposal. Contractor shall meet with the M-NCPPC to review the GMP Proposal. If the M-NCPPC has any comments relative to the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall give prompt written notice of such comments or findings to the Contractor, who shall make appropriate adjustments to the GMP, its basis or both.

3.11.5 Acceptance of GMP Proposal. Upon acceptance by the M-NCPPC of the GMP Proposal, the GMP, its basis, the Dates of Substantial and Final Completion of the Work shall be established by amendment to the Contract ("GMP Amendment").

3.11.6 Failure to Accept the GMP Proposal. Unless the M-NCPPC accepts the GMP Proposal in writing on or before the date specified in the GMP Proposal for such acceptance and so notifies the Contractor, the GMP Proposal shall not be effective. If the M-NCPPC fails to accept the GMP Proposal, or rejects the GMP Proposal, the M-NCPPC shall have the right to:

3.11.6.1 Suggest modifications to the GMP Proposal. If such modifications are accepted in writing by Contractor, the GMP Proposal shall be deemed accepted in accordance with subsection 1.4.4;

3.11.6.2 Direct the Contractor to proceed on the basis of reimbursement as provided in and without a GMP, in which case all references to the GMP shall not be applicable; or

3.11.6.3 Terminate the Contract for convenience.

3.11.7 Pre-GMP Work. Prior to the M-NCPPC's acceptance of the GMP Proposal, the M-NCPPC is not obligated to reimburse any construction costs incurred as part of the Cost of the Work. Reference 3.12, below.

### 3.11.8 CONTINGENCIES

3.11.8.1 Owners, Design and Construction Contingency is defined as sum under M-NCPPC's exclusive control for M-NCPPC directives and other risk items, that are properly the Cost of the Work and are absent, undefined, not part of a represented system and could not be reasonably inferred in the "GMP drawings and specifications", but are added to the GMP drawings and specifications to achieve the benchmark of "issued for construction" set of drawings and specifications. CMAR shall request M-NCPPC's permission to use the Design and Construction Contingency monies, and upon providing the M-

NCPPC with evidence of the need of the contingency monies, the M-NCPPC shall issue a directive authorizing the reallocation of monies to the appropriate trade line in the GMP.

3.11.8.2 M-NCPPC's Construction Contingency is defined as a sum under the M-NCPPC's exclusive control for M-NCPPC's directives and other risk items.

3.11.8.3 Contractor's Contingency is defined as a sum mutually agreed upon and monitored by the Contractor and the M-NCPPC to cover costs which are properly reimbursable as a Cost of the Work attributed exclusively to the "issued for construction" set of drawings and specifications, but are not the basis for a Change Order. The Contractor's contingency shall only be used after the Contractor has exhausted any and all remedies such as credits or unused allowances. The Contractor's Contingency shall not be used for changes in scope or for any item that would be the basis for an increase in the GMP. The Contractor shall provide the M-NCPPC with a contemporaneous accounting of charges against the Contractor's Contingency with each application for payment. Contractor's Contingency shall be used at the discretion of and with the approval of the M-NCPPC in accordance with Contract Documents General Conditions. Contractor's Contingency will not be used for architectural or engineering design fees or expenses, CMAR staff reimbursable costs or general conditions, corrections of Work, for any increases to the CMAR Fee or liquidated damages payable to the M-NCPPC. Any monies remaining in the Contractor's Contingency upon Substantial Completion shall be reallocated to the M-NCPPC's Construction Contingency.

### 3.12 CONSTRUCTION PHASE SERVICES

The Construction Phase will commence upon the issuance by the M-NCPPC of a written Notice to Proceed with Construction. If construction commences prior to execution of the GMP Amendment, Contractor shall prepare for the M-NCPPC's written approval a list of the documents that are applicable to the part of the Work which the M-NCPPC has authorized (also called Early Release Package), which list shall be included in the M-NCPPC's written Notice to Proceed with Construction.

### 3.13 SCHEDULE OF WORK

The Contractor shall prepare and submit a schedule of work for the M-NCPPC's acceptance and written approval as to milestone dates. This schedule shall indicate the commencement and completion dates of the various stages of the Work, including the dates when information and approvals are required from the



M-NCPPC. The schedule shall be revised as required by the conditions of the Work.

### 3.14 PAYMENTS AND FINAL INSPECTION

All payment applications shall be submitted on notarized AIA Form G702 (Contractors Application for Payment) with AIA Form G703 (Schedule Values) attached.

Documents required from Construction Manager at Risk to substantiate periodic payment claimed:

3.14.8.1 The Contractor's labor that is being billed during design phase and construction phase as cost of the work (i.e. General Conditions) must be:

- a. Itemized by position
- b. Name of person
- c. Number of hours expended
- d. Team Hourly Rates accepted by contract
- e. Extended cost (hours times rate)
- f. Tasks accomplished
- g. Call it a "Project Labor Report" for consistency.

3.14.8.2 In accordance with the Management Administration Plan ("MAP"):

- a. Copies of sub-contracts executed during the period.
- b. Paid invoices for materials stored on site.
- c. Paid invoices and insurance forms for materials stored off site.
- d. CPM Cost Report
- e. Invoices and accounting of actual material and equipment costs billed for the period.
- f. Invoices and accounting of actual labor costs invoiced for the period (See #3, above).
- g. Invoices and accounting of actual other direct costs invoices for the period.

3.14.8.3 Forms required by this Request for Proposals:

Form VII.13 - Subcontractor Utilization Form

Form VII.14 - Subcontractor Report Of Payments Received

3.14.8.4 In applying for payment the Contractor shall submit a statement, itemized in such form and supported by such evidence as the Project Manager may require, showing the Contractor's right to the payment claimed.

3.14.8.5 A final inspection must be conducted to assure all specified work was completed correctly, and any resulting punchlist deficiencies must be corrected prior to final payment being approved. A final contract payment, less any liquidated damage accruals, shall be made upon satisfactory completion of the project and submission of a pay request. Final payment request must be accompanied by all items listed in Special Conditions, paragraph 3.12. and all Forms required by this Request for Proposals.

### 3.15 CLOSE OUT OF CONTRACT

In addition to the documents required by other sections of this RFP and the construction specification provided by the Architect, the following shall be provided when requested by the Commission in conjunction with the Contractor's request for contract close out.

Summary of items required for contract close out:

- 3.15.1 Final application for payment
- 3.15.2 Consent of surety to final payment
- 3.15.3 Release of Liens
- 3.15.4 Guarantees
- 3.15.5 As-built drawing set
- 3.15.6 Warranties and Operational Manuals
- 3.15.7 Punchlist

**SECTION V.  
PROPOSAL FORMAT AND CONTENT**

## SECTION V - PROPOSAL SUBMITTAL

### PROPOSAL SUBMITTAL

#### SECTION 1 - PROPOSAL FORMAT:

- 1.1 Offerors shall be submitted online through the Commission's electronic bid service provider (ProcureNow). The Commission will not be accepting paper copies of bids or proposals. Please follow the provided link to submit an electronic Proposal for this Solicitation.
- 1.2 **Transmittal letter** prepared on the Offeror's business stationery **must** accompany the Proposal Submittal. The purpose of this letter is to transmit the Proposal; therefore, the letter should be brief, but shall list all items contained within the Proposal and an itemized list of the all addenda issued and acknowledged as received. Offerors are required to state in writing that their Offers are valid for a period of 120 days after submittal due date. The letter must be signed by an individual who is authorized to bind the firm to all statements, including services and financials, contained in the Proposal.
- 1.3 The following information **must** be furnished in the Proposal. Failure to include any of the items listed below may disqualify your firm's response. Offerors should describe in detail and provide evidence supporting the qualifications requested below. All Offerors are to compile their Proposals in the order listed.

#### SECTION 2 – CONSTRUCTION MANAGER AT RISK TEAM ORGANIZATION and KEY PERSONNEL

##### 2.1 Organizational Chart and Relationships:

- 2.1.1 **Provide an organizational chart** of the proposed CMAR Team inclusive of the following:
  - i. Firm Name
  - ii. CMAR Team Organizational and Reporting Structure including the positions of the Project Executive, Project Manager, Field Superintendent, Project Estimator and other key personnel
  - iii. All key person's name and project role
  - iv. Any known key/specialty sub-contractors proposed
- 2.1.2 **Working Relationships:** Submit a statement that conveys the previous working relationships between and among the proposed CMAR team members. Key personnel including the Project Executive, Project Manager, Field Superintendent and Project Estimator that have previously worked together on successfully completed projects similar to the M-NCPPC's project are preferred.
- 2.1.3 **Key Supervisory Personnel Resumes:** Within this category the named positions are defined below. These people must be current employees of the Proposing Firm. By submitting the names for consideration under this Key

Personnel Section, the Offeror is committing these people to M-NCPPC for this project's duration if awarded the project. No personnel changes will be permitted without written authorization from the M-NCPPC. Offerors must have the same Project Manager for Pre-construction and Construction.

- i. CMAR Project Executive: Senior level position from Construction Manager (such as Vice President) who will oversee the project from an executive level and to whom the CM Project Manager directly reports.
- ii. CMAR Project Manager: Person from Construction Manager who will be involved on a continual basis from commencement of the contract until construction completion. This person will be responsible for the overall management of the CM team and the completion of the project.
- iii. CM Field Superintendent: Person from the Construction Manager who must be on site 100% once construction commences and will be responsible for the direct supervision of the trade contractors, daily coordination of the work on site to maintain the schedule, on site management such as material deliveries, outages, etc.
- iv. CM Project Estimator: Person from the CM who will be directly responsible for preparing, testing in the market place, explaining, and defending the estimate (s). Note: This is to be the person who will be directly preparing the estimate, not the head of the estimating department who will be overseeing and managing the process.

For each position named above, specify percentage of time and anticipated hours to be committed to this project during both the pre-construction and the construction phases on the Matrix Forms included.

**2.1.3.1** Resumé Content: Include specific project experience with similar trades work. For each project reference identify the role in pre-construction and construction that this person played. Projects where the role is the same as to be assigned on the Oxon Hill Manor Roof and Roof Drainage Reconstruction CMAR project are preferred.

- i. A description of the project should be given (unless the project is provided under the Firm's experience) inclusive of the type of work performed (i.e., renovation, new construction, addition, historic, etc.), the work setting (public or private historic building, office building, recreation, higher education, institutional, private), dollar volume of project, contract method (CM at Risk, CM Agent, GC, DB, etc.), and contact person name and phone number.
- ii. M-NCPPC reserves the right to check other sources available

Oxon Hill Manor Roof and Roof Drainage Reconstruction CMAR

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including itself even if not provided as such by the Offeror. Such references will be held in strictest confidence by the M-NCPPC.

- iii. Please ensure that the information is accurate and that the **reference named** can speak to the individual's **performance in the role to be assigned on this project**. All references of the Key People and the Firm will be checked.
- iv. NOTE: In the event that more than four (4) projects are listed for each named key person, only the first four (4) projects will be evaluated by the Evaluation Committee.

**2.1.4 Matrix of Anticipated Total Hours:** Complete the enclosed "Anticipated Total Hours Form" for design phase, home office construction phase and on-site staff during the construction phase. See Section VII. Forms, VII.2

**2.1.5 Matrix of Services:** Complete the "Matrix of Services Form" to indicate which of the key people have primary or secondary responsibility in performing pre-construction and construction services. **In completing this form, there should only be one person listed as having primary responsibility (1) for each service. Multiple people may be listed as having secondary responsibility (2) or Participating (P).** Include a narrative to explain the rationale behind how responsibilities are assigned. See Section VII. Forms, VII.3.

### **SECTION 3 - FIRM RELEVANT EXPERIENCE / FIRM REFERENCES / PROJECT SPECIFIC BACKGROUND:**

**3.1 CMAR Firm Experience:** Each Offeror shall submit information on two (2) relevant Historic Preservation/Restoration projects that required conformance to the Department of the Interior Historic Preservation Guidelines preferably constructed under a CMAR contract and of similar nature and size as the project in this RFP. Other project delivery methods will be considered such as projects performed as a General Contractor. Proposers may use the CM Experience Form (Form VII.4) or their own format. Projects that include roof, roof drainage: structural, building envelope restoration,

**3.1.1** Each project reference submission shall include the following:

- i. Project Name and Location
- ii. Project M-NCPPC, Contact Person and Telephone Number and email address
- iii. Construction Start and Project Completion Date
- iv. Construction Cost
- v. Contract Method (i.e., GC, CMAR, CMA or DB)
- vi. Project Gross Square Footage

- vii. Project Net Square Footage
- viii. Brief Project Description
- ix. Project Setting (i.e., recreational, institutional, governmental, private, etc.)
- x. Identify similarities of the submitted project to the M-NCPPC's project.

(Please note: The Construction Manager at Risk or Construction Manager with GMP contract method are synonymous and are defined to be that contract method in which the Construction Manager is retained to provide pre-construction and construction services to the Owner inclusive of constructing the facility under a guaranteed maximum price.)

**3.1.2** The projects submitted under this category should be similar in size, function and complexity to the M-NCPPC's project. The criteria used in the evaluation of these projects includes, but is not limited to the following, with a greater degree of consideration given if the majority of these factors are applicable to the projects submitted:

- i. Projects which are Historic Preservation/Restoration**
- ii. Projects with major restoration or rehabilitation, structural stabilization, envelope rehabilitation, roof repair/reconstruction/rehabilitation**
- iii. Projects with requiring careful consideration of architectural, archaeological site, and natural features that contribute to the historic value and character of property**

3.2 Historic Preservation / Restoration Sub-Contracting: Provide a narrative describing the Offeror's experience in locating, identifying and qualifying firms with suitable knowledge and experience in performing work on historic structures.

#### SECTION 4 - PROJECT SPECIFIC ITEMS:

**4.1 Project Challenge:** The Oxon Hill main block and servant's wing roof and drainage system has been modified, repaired, and partially reconstructed over several decades. How does the CMAR propose to achieve a structurally sound, lasting, and optimally functioning roof and drainage assembly (roof, roof drainage, and connected subterranean drainage) that will also match the original 1929 roof and drainage system in design, scale, form, materials, and other character defining features?

**4.2 Pre-Construction Services:** Provide examples of 100% Construction Documents estimates, constructability review, and value engineering reports, project schedule (inclusive of design phase and permitting activities) and the final GMP that your firm submitted in performing pre-construction services for one of the jobs you have listed under your firm's experience. Preferably, the estimates and reports must be from the

same project. While the final format and contents of these documents will be negotiated between the M-NCPPC and the CMAR for this project, the documents submitted under this requirement will be the foundation of the work product required in Part 1 – Pre-construction phase services concluding with GMP.

- 4.3 Construction Management Procedures:** Provide a discussion and examples of the construction management procedures, which will be refined during the design phase that will allow for the integration of all design and construction phase components of this project. The team's construction management procedures approach shall, from project inception, strive for project delivery that is timely, cost effective and within required quality standards set by the M-NCPPC and MHT.
- 4.4 QA/QC:** Provide a quality assurance / quality control (QA/QC) plan proposed for this project. Plans that include ensuring all work is done within the Secretary of the Interior's Standard for Historic Preservation are desired.
- 4.5 Safety Plan:** Provide the Offeror's safety plan proposed for this project.

#### **SECTION 5 - COST PROPOSAL:**

- 5.1** Offeror shall itemize costs on the cost proposal schedules provided herein. Other formats of the cost proposal shall not to be used.

#### **SECTION 6 - OTHER REQUIRED DOCUMENTS:**

- 6.1** Proposal / Bid Bond for in an amount equal to not less than five percent (5%) of the proposal amount of Cost Proposal, page 2 of 7, #3. Total CMAR Price Proposal (Sum of #1.1, #2.1, and 2.2.i and 2.2.ii)
- 6.2** Contractor's license (photocopy)
- 6.3** Certificate of Good Standing from Maryland State Department of Assessments and Taxation
- 6.4** Most current audited financial statement
- 6.5** Letter from Offeror's surety stating the Payment and Performance bonding capacity; identify single and aggregate capacity.
- 6.6** Statement of Evidence of Responsibility (Form V.6)
- 6.7** Non-discrimination in Sub-Contracting Form (Form V.7)
- 6.8** Insurance Checklist (form V.8)



**SECTION 7 - EVALUATION CRITERIA**

7.1 The following criteria have been established for the evaluation of the proposals received:

<b>Criteria</b>	<b>Maximum Points</b>
<b>SECTION 2 - Construction Manager At Risk Team Organization And Key Personnel; Matrix of Services and Matrix of Hours</b>	<b>20</b>
<b>SECTION 3 - Firm Relevant Experience/Firm References/Project Specific Background</b>	<b>30</b>
<b>SECTION 4 - Project Specific Items</b>	<b>20</b>
<b>SECTION 5 – Cost Proposal</b>	<b>30</b>
<b>Total Possible Points</b>	<b>100</b>

7.2 PROPOSAL RATING:

1. The M-NCPPC Evaluation Committee will evaluate all responsive and responsible proposals.
2. The M-NCPPC Evaluation Committee will score each proposal using the criteria listed above.
3. Price Proposals will be evaluated based on the sum total price of CM Pre-Construction fee, CM Construction Phase fee, and CM Not-to-exceed Reimbursable costs for the project. (See Cost Proposal, page 3 of 7, #3. Total CMAR Price Proposal (Sum of #1.1, #2.1, and 2.2.i and 2.2.ii)
4. The sum of all points received by a proposal will determine the ranking of the Offeror.
5. A Total Score of 60 points or better of the available evaluation points must be achieved in order for an Offeror to advance to any Oral Presentation phase of this procurement, if one occurs. Proposals cannot be modified, supplemented, cured, or changed in any way after the due date and time for technical proposals unless formally requested by the Commission. (Reference Section II General Information, 4.2).
6. The M-NCPPC Evaluation Committee may request oral presentations from two or more highest ranked Offerors.
7. Additional information may be requested by the M-NCPPC procurement staff to clarify the information submitted in the proposal or provided at an oral presentation.
8. The M-NCPPC procurement staff may elect to request Best & Final Price Proposal(s) from the two or more highest rated Offerors.
9. The Evaluation Committee will recommend award to the highest rated Offeror in accordance with M-NCPPC Purchasing Manual.

SECTION VI  
COST PROPOSAL

**SECTION VI – COST PROPOSAL**

**CONSTRUCTION MANAGER AT RISK SERVICES FOR  
Oxon Hill Manor Roof and Roof Drainage Reconstruction CMAR**

**Cost Proposal  
RFP #P41-135**

The Offeror certifies that this cost proposal is made without any previous understanding, agreement, or connection with any person, firm, or corporation making a bid for the same project, without prior knowledge of competitive prices, and is in all respects fair, without outside control, collusion, fraud, or other illegal action. The M-NCPPC reserves the right to award all or part of the scope of services of this RFP. Please submit separate cost for each deliverable. Offeror must fully complete all information below:

The undersigned hereby certifies that Offeror has examined and fully comprehends the requirements and intent of the Construction Manager at Risk Oxon Hill Manor Roof and Roof Drainage Reconstruction RFP, plans, and specifications and addendum

Number \_\_\_\_\_ Dated \_\_\_\_\_      Number \_\_\_\_\_ Dated \_\_\_\_\_  
Number \_\_\_\_\_ Dated \_\_\_\_\_      Number \_\_\_\_\_ Dated \_\_\_\_\_

for the above project; that the bidder has visited the site and examined all conditions affecting the work and proposes to furnish all labor, supervision, material, tools, equipment, engineering, etc., necessary for or incidental to, the proper execution of the work.

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

Name & Title (type or print) \_\_\_\_\_

Business Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

TelephoneNumber \_\_\_\_\_ Fax Number \_\_\_\_\_ E-Mail \_\_\_\_\_

By submitting a cost proposal and having received clarification on all matters upon which any doubt arose, the undersigned proposes to complete the work, inclusive of the CM Construction Phase Fee and **Not-to-Exceed** Reimbursable Costs based on the estimated guaranteed maximum price: Three Million Dollars (\$3,000,000.00)

1. **PART 1. PRE-CONSTRUCTION PHASE:**

1.1 **Pre-Construction Phase Services - Fee:** (in words and figures)

\_\_\_\_\_ (\$ \_\_\_\_\_ )  
(This is the SUM of Form 1.1 Schedule of Costs and Tasks on Page 4 of 7)

**Part 1 – Pre-Construction Phase**

- I. Reproduction - \$ 2,400
- II. Design Assist Services for trade contractor - \$ 10,000

2. **PART 2. CONSTRUCTION PHASE:**

2.1 **Construction Phase Services - Construction Management Lump Sum Fee:** (in words and figures)

\_\_\_\_\_ (\$ \_\_\_\_\_ )

**Fee percentage of Cost of the Work:** \_\_\_\_\_ ( \_\_\_\_\_ %)

The total amount earned by the Contractor as the Fee may increase or decrease, depending upon the nature of the changes in the Work, and shall be adjusted by multiplying the amount of the change in the Cost of the Work by the Fee percentage provided on the Cost Proposal Form. Contractor's Fee is not applicable to modifications to the Contract that increase the GMP which are subject to General Conditions section 2.9 Modifications of Contract Price.

**Cost of the Work excludes mandatory insurances, optional insurances, payment and performance bonds (Form 2.2.ii, lines 12 and 13), and construction management fee.**

**NOTE:** The Construction Management Fee shall include overhead not specifically identified as a reimbursable cost, and profit.

**NOTE:** The estimated total not-to-exceed Project Construction Budget for this construction Project is \$3,000,000.00. This firm budget is inclusive of, but not limited to, the following item:

- I. M-NCPPC Design & Construction Contingency Allowance – \$ 60,000

Project Construction Budget (GMP) is exclusive of:

- a. Architectural and Engineering fees.

**2.2: Reimbursable Items:** Each Proposer is to provide not-to-exceed amounts on **Part 2** breakdown forms for:

- i. Form 2.2.i -General Conditions - CMAR Staff Reimbursable Breakdown.
- ii. Form 2.2.ii - General Conditions - Non-Personnel Reimbursable Breakdown.

**3. TOTAL CMAR PRICE PROPOSAL (SUM OF #1.1, #2.1, and #2.2.i and #2.2.ii)**

\_\_\_\_\_ (\$ \_\_\_\_\_ )  
(in words and figures)

**PART 1 - PRE-CONSTRUCTION PHASE SERVICES - SCHEDULE OF TASKS AND COSTS**

OFFEROR'S NAME: \_\_\_\_\_

**NOTE:** This attachment is to be included with the Proposer's Cost Proposal.

<b>ITEM COST</b>	<b>LUMP SUM COST</b>
1. Project Review/Progress Meetings	\$ _____
2. Input Meetings – 3 (present results of services)	\$ _____
3. Value Engineering Services	
35% Design Development	\$ _____
65% Design Development	\$ _____
90% Design Development	\$ _____
Total for VE:	\$ _____
4. Cost Estimating Services (Inclusive of ad hoc estimating as needed)	
Schematic Design Phase	\$ _____
35% CD's	\$ _____
65% CD's	\$ _____
90% CD's	\$ _____
IFC Phase	\$ _____
Total for Cost Estimating:	\$ _____
5. Scheduling Services	
100% CD's	\$ _____
6. Constructability Review	
100% of CD's	\$ _____
7. Bidding and GMP Preparation	\$ _____
8. Reimbursable Allowances	
Reproduction for trade package bidding only	<u>\$ 2,400.00</u>
Destructive Testing (probe)	<u>\$10,000.00</u>
Total MNCPPC Allowances	<u>\$12,400.00</u>
9. CMAR Pre-Construction Phase Services Fee (Sum of 1 – 8) (Enter this amount on Page 2 of 7, 1.1)	\$ _____

**PART 2 - Form 2.2.i - GENERAL CONDITIONS CMAR STAFF  
REIMBURSABLE BREAKDOWN**

**NOTE:**

1. This attachment is to be included with the Offeror's Cost Proposal.
2. Total hours must match those positions provided for evaluation in the Proposal (Form VII.2) Matrix of Anticipated Hours.
3. If any of the positions below will not be filled by the Offeror's specific person, the Proposer is to note in the space provided what alternate position will be handling the duties associated with the unfilled position.
4. The amounts provided are **Not-To-Exceed**.

<b>POSITION</b>	<b>ESTIMATED HOURS</b>	<b>HOURLY RATE*</b>	<b>NTE TOTAL COST</b>
PROJECT EXECUTIVE	_____	\$ _____	\$ _____
PROJECT MANAGER	_____	\$ _____	\$ _____
ASS'T PROJECT MANAGER	_____	\$ _____	\$ _____
FIELD SUPERINTENDENT	_____	\$ _____	\$ _____
ASS'T SUPERINTENDENT	_____	\$ _____	\$ _____
PROJECT ENGINEER	_____	\$ _____	\$ _____
FIELD SECRETARY/CLERK	_____	\$ _____	\$ _____
CLERK/DOCUMENT CONTROL PERSON	_____	\$ _____	\$ _____
CLOSE OUT ENGINEER	_____	\$ _____	\$ _____
SCHEDULER	_____	\$ _____	\$ _____
NOT LISTED (PROVIDE STAFF TITLES)	_____	\$ _____	\$ _____
NOT LISTED (PROVIDE STAFF TITLES)	_____	\$ _____	\$ _____
<b>TOTAL HOURS AND COST</b>	_____		\$ _____

\*Hourly Rates shall be fully loaded to include the actual hourly rate plus the burden.

**PART 2 – Form 2.2.ii - GENERAL CONDITIONS NON-PERSONNEL  
REIMBURSABLE ITEMS**

OFFEROR'S NAME: \_\_\_\_\_

**NOTE:**

1. This attachment is to be included with the Proposer's Price Proposal.
2. This breakdown is for items **excluding field staffing**. The breakdown for staff reimbursable is on Form 2.2.i.
3. The amounts provided are **Not-To-Exceed**.

<b>Item</b>	<b>Description</b>	<b>NTE Cost</b>
1	Mobilization	\$
2.	CM's Field Housekeeping Costs: Waste management, daily cleaning and all related costs.	\$
3.	CM's Vehicle Costs: Field personnel vehicle costs, including lease, insurance, maintenance, repair and fuel; all related costs.	\$
4.	Safety and Site Security: including first aid; hardhats and goggles; safety signage; security locks; all related costs.	\$
5.	Temporary Field Facilities (min. 200 sq ft, min. dimension 10 ft. – Williams Scotsman model M04410 or equal), Supplies and Services: Rent, Set-up and removal trailers for CM and The M-NCPPC joint use, site utilities, security, communication services; cleaning; temporary sanitary facilities; project signs; office supplies for field offices; postage and shipping; all related costs.	\$
6.	Project documentation and Reproduction; all related costs.	\$
7.	Weather and other protection: Temporary weather and dust protection not in Trade Contracts	\$
8.	Tools / Equipment	\$
9.	Plans / Surveys / Testing	\$
10.	Close Out / Demobilization	\$



11.	CMAR GMP Construction Contingency (must be a minimum of <b>3% of the \$3 mil</b> Project Construction Budget)		\$
12.	Mandatory Insurances	General Liabilities, Auto, Umbrella, Workers' Comp & Builder's Risk (Reference Insurance Check List)	\$
	Optional Insurance	Subcontractor Default Insurance: <b>Identify the percentage of the total subcontracting amount will the SDI policy cover? _____%</b>	Cost %
13.	CMAR Contract Payment and Performance Bonds		\$
Total NTE General Conditions Non-Personnel Reimbursable Costs (Items 1 – 13; Item 12. Mandatory Insurances only)			

**Firm Name:** \_\_\_\_\_

**Authorized Name (Printed):** \_\_\_\_\_

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

**Authorized Signature:** \_\_\_\_\_

SECTION VII. FORMS

## **SECTION VII - FORMS**

### **List of Forms**

- VII.1 OFFEROR'S CHECKLIST**
- VII.2 MATRIX OF ANTICIPATED HOURS**
- VII.3 MATRIX OF SERVICES**
- VII.4 CM EXPERIENCE FORM**
- VII.5 STATEMENT OF EVIDENCE OF RESPONSIBILITY**
- VII.6 NONDISCRIMINATION IN SUBCONTRACTING BID FORM**  
Gives directions for documenting compliance with the nondiscrimination policy. A Non-Discrimination in Subcontracting Bid Form must be completed and signed by an authorized person.
- VII.7 PROPOSED SUBCONTRACTORS FORM**  
The proposer shall be required to submit a detailed breakdown (type, amount, percentage of total project) of all work to be performed by the Proposer and each proposed Subcontractor with his proposal.
- VII.8 INSURANCE CHECKLIST**  
The proposer shall be required to submit checklist signed by Insurance Agent
- VII.9 CONSTRUCTION PRICING FORM**  
This form will be requested from the selected CMAR.
- VII.10 GUARANTEE FORM**  
This form is required to be submitted as part of the contract closeout process.
- VII.11 RELEASE OF LIENS**  
This form is required to be submitted with every pay application and as part of the contract closeout process.
- VII.12 SUBCONTRACTING UTILIZATION REPORT**  
This report is required with each submission of a request for payment (invoice). This report documents payments made to subcontractors, and includes the subcontractor's name, total contract amount,

payments made this period, total payments to date, and the total percentage paid.

**VII.13**

**SUBCONTRACTOR REPORT OF PAYMENTS RECEIVED**

CMAR shall supply their subcontractors with this form to be completed by subcontractor and mailed directly to the Park Planning and Development Division.

FORM VII.1 OFFEROR'S CHECKLIST

**The following must be submitted with your proposal:**

- \_\_\_\_\_ **Bid Bond** in an amount equal to not less than five percent (5%) of Cost Proposal, page 2 of 7, #3. Total CMAR Price Proposal (Sum of #1.1, #2.1, and 2.2.i and 2.2.ii)
- \_\_\_\_\_ **Matrix of Anticipated Hours Form**
- \_\_\_\_\_ **Matrix of Services**
- \_\_\_\_\_ **Price Proposal Forms (seven pages)**
- \_\_\_\_\_ **Statement of Evidence and Responsibility**
- \_\_\_\_\_ **Non-Discrimination in Subcontracting Form**
- \_\_\_\_\_ **Proposed Subcontractors Form**
- \_\_\_\_\_ **Insurance Checklist**
- \_\_\_\_\_ **Other Required Documents (Section V, Number 6)**

**The following are forms to be submitted during and/or at conclusion of the construction services:**

- \_\_\_\_\_ **Construction Pricing Form**
- \_\_\_\_\_ **Guarantee Form**
- \_\_\_\_\_ **Release of Liens**
- \_\_\_\_\_ **Subcontracting Utilization Report**
- \_\_\_\_\_ **Subcontractor Report of Payments Received**

FORM VII.2 MATRIX OF ANTICIPATED HOURS

**Matrix of Anticipated Hours for Staff  
RFP # P41-135**

**Provide the anticipated number of hours for staff during pre-design phase, home office staff during construction phase and on-site staff during construction phase.**

<b>Position</b>	<b>Pre-Design Phase</b>	<b>Home Office Construction Phase</b>	<b>On-Site Construction Phase</b>
Project Executive			
Project Manager			
Assistant Project Manager			
Field Superintendent			
Assistant Superintendent			
Project Engineer			
Field Secretary/Clerk			
Clerk/Document Control Person			
Close-out Engineer			
Scheduler			
Estimator			
Additional Staff Members Not Listed (Provide title)			
<b>TOTAL HOURS</b>			

**FORM VII.3 MATRIX OF SERVICES**

**MATRIX OF SERVICES:** Include a narrative explaining the rationale behind responsibility assignments. Indicate the Key Person responsible for the following CM services. Use “1” for primary responsibility; “2” for secondary responsible party; and “P” for those key people who participate in the service, but are not the primary responsible party. **(Note: Only one person can be designated as primary (“1”) for each service.)**

**PRE-CONSTRUCTION PHASE CM SERVICES:**

Service	Project Executive	Project Manager	Field Super.	Project Estimator	BIM Manager Level 600
Project/Design Review					
CPM Schedule					
Cost Model/Estimates					
Value Engineering					
GMP Preparation					
Constructability Reviews/Recommendations					
Overall Management of During pre-construction					

**CONSTRUCTION PHASE CM SERVICES:**

Service	Project Executive	Project Manager	Ass't. Project Manager	Field Super.	Project Estimator
CPM Schedule					
Trade Contract Award					
Trade Contract Management					
Conduct Progress Meetings					
Conduct M-NCPPC's Meetings					
RFI's					
Substitution Requests					
Project Photos					
Change Orders					
Cost Control					
Project Safety					
QA/Inspections					

<b>Monthly Report</b>					
<b>Shop Drawings/Submittals</b>					
<b>Project Site Documents</b>					
<b>Contract Close Out</b>					
<b>Claims Avoid/Resolve</b>					
<b>Overall CM Team Mgmt.</b>					
<b>Other:</b>					



FORM VII.4 CM EXPERIENCE FORM

**CONSTRUCTION MANAGER EXPERIENCE FORM**

PROPOSER: \_\_\_\_\_

ARCHITECT'S NAME: \_\_\_\_\_

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

ARCHITECT'S ADDRESS: \_\_\_\_\_

PROJECT ADDRESS: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

PROJECT M-NCPPC'S NAME: \_\_\_\_\_

PROPOSER PROJECT MANAGER: \_\_\_\_\_ PROPOSER FIELD SUPERINTENDENT: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
(BASE)  
\_\_\_\_\_

CONSTRUCTION DOLLAR VOL. \$  
CHANGE ORDER DOLLAR VOL. \$

M-NCPPC'S CONTACT PERSON: \_\_\_\_\_

TOTAL CONSTRUCTION \$ VOL: \$ \_\_\_\_\_ \*  
(BASE CONTRACT PLUS C/Os)

TELEPHONE NUMBER: (\_\_\_\_) \_\_\_\_\_

PROJECT START DATE: \_\_\_\_\_

CONSTRUCTION METHOD: \_\_\_ D/B \_\_\_ CM at Risk\*\* \_\_\_ Other

PROJECT COMPLETION DATE\*\*\*: \_\_\_\_\_  
FOOTAGE: \_\_\_\_\_

TOTAL GROSS SQUARE

-----  
(CIRCLE ALL THAT APPLY):

TYPE OF PROJECT: LEED DESIGNATION/NEW CONTRUCTION or RENOVATION/OFFICE INTERIOR

HVAC/FACILITY FOR PUBLIC/INSTITUTIONAL CLIENT

PROPOSER: \_\_\_\_\_

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

-----  
**TRADES INCLUDED: (check all that apply)**

- Mechanical (HVAC) (name system type: \_\_\_\_\_)  Electrical  Carpentry  Kitchen Equipment
  - Plumbing  Drywall  Acoustical  Flooring  Painting  Telecommunications
  - Casework  Fire Protection  Masonry  Concrete  ATC  Carpeting  Audio/Video
  - Window  Structural (Name type of structural system: \_\_\_\_\_)
  - Computer Cabling  Other: \_\_\_\_\_
- 

**TYPE OF CM SERVICES PROVIDED: (Check all that apply)**

- Pre-construction/Design Phase:  Scheduling  Consultation during Design  Value Engineering
  - Cost Models/Estimates at:  100% Schematics,  100% Design Dev.  50% Construction Documents
  - Other Interval:  Constructability Review  Other: \_\_\_\_\_
- 

- Construction Phase:  Cost Control  Project Schedule  Project Control Services  Award and manage trade contracts  Project Safety
- Quality Assurance/Inspections  Change Order Review/Processing  Shop Drawing/Submittal Review/Processing
- Project Site Documents  Claims Avoidance/Resolution  Contract Close Out  Monthly Written Reports to M-NCPPC

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

**OVERALL DESCRIPTION  
OF THIS PROJECT**

**DESCRIBE SITE CONSTRAINTS, IF ANY:**

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**DESCRIBE THE SIMILARITIES OF THIS PROJECT TO THE CURRENT PROJECT:**

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**LIST BELOW ALL PROPOSED CM TEAM MEMBERS WHO WORKED ON THIS JOB BY NAME AND POSITION:**

TEAM MEMBER

POSITION HELD ON THIS PROJECT

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FORM VII.5 STATEMENT OF EVIDENCE OF RESPONSIBILITY

**STATEMENT OF EVIDENCE OF RESPONSIBILITY**

**RFP #P41-135**

**Construction Manager at Risk Services for  
Oxon Hill Manor Roof and Roof Drainage Reconstruction**

1. Name of Bidder \_\_\_\_\_

2. Business Address \_\_\_\_\_  
\_\_\_\_\_

3. Where Incorporated \_\_\_\_\_ Date \_\_\_\_\_

4. Give the numbers of years experience under the present firm's name \_\_\_\_\_

5. Give details if firm ever declared bankruptcy \_\_\_\_\_  
\_\_\_\_\_

6. Give details if firm has unsatisfied liens and/or judgements \_\_\_\_\_  
\_\_\_\_\_

7. Attach copy of latest Financial Statements (Balance Sheet and Income Statement). Provide audited financial statements, if available. If not available, provide unaudited or staff prepared financial statements. If neither is available, provide copy of latest Federal tax return.

8. Other Comments  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The above statements are true and the information submitted is accurate. The person signing below is authorized to sign for the Bidder.

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

Name & Title (type or print)  
\_\_\_\_\_

FORM VII.6 NONDISCRIMINATION IN SUBCONTRACTING FORM

**Firm Name:** \_\_\_\_\_ **IFB/RFP No.** \_\_\_\_\_

Oxon Hill Manor Roof and Roof Drainage Reconstruction CMAR

RFP #P41-135

Page 135 of 157

## The Maryland-National Capital Park and Planning Commission Nondiscrimination in Subcontracting Form

It is the policy of the Commission that any bidder/offeror seeking to contract with the Commission shall not discriminate against MFDs in the selection of subcontractors/suppliers on Commission projects. Specifically, bidder/offerors are required to provide MFDs the opportunity to submit bids/offers as subcontractor/suppliers and to award those MFDs submitting low bids the subcontracts unless there are legitimate reasons not to do so.

INDICATE COMPLIANCE WITH THIS POLICY BY CHECKING ONE OF THE FOLLOWING TWO STATEMENTS.

\_\_\_ **Statement 1.** The bidder/offeror will not contract with any subcontractors or materials suppliers to perform any portion of this contract and has not normally contracted with subcontractors or materials suppliers as a part of similar contracts in the past two years. Within five (5) days of notice, the bidder/offeror will show evidence as requested that it has not normally subcontracted portions of similar contracts within the past two years.

\_\_\_ **Statement 2.** The bidder/offeror has made efforts to provide MFD firms the opportunity to submit bids for subcontracting and/or materials supply components of this contract, and will document same using one of the two (2) options:

\_\_\_ **Option A** Within five (5) days of notice, the bidder/offeror will show evidence of the efforts described by providing the Commission copies of documents such as letters or faxes to MFDs; advertisements for bids; telephone logs or other notes concerning contacts with MFDs; evidence of participation in pre-bid conferences where interest in MFD bids was communicated; bids received from MFDs and notes concerning evaluation of those bids. (The above mentioned documents are only examples of possible documentation and are not exhaustive.) **OR**

\_\_\_ **Option B.** Within five (5) days of notice, the bidder/offeror will show evidence of efforts by producing letters of intent from MFD subcontractors and/or materials suppliers to perform at least **18%** to the total dollar value of the contract. The Commission has implemented an Online Supplier Registration (EZ Procurement). All Offerors and Sub Offerors must register online with the Commission to receive a Vendor number. The link is [www.mncppc.org/register.html](http://www.mncppc.org/register.html) We are no longer using the vendor information form and any previously assigned Vendor number is no longer valid. Any questions regarding the online Vendor registration should be made to (301) 454-1600.

Contractors are encouraged to contact the Procurement staff member assigned to this RFP or Commission's Purchasing Office (301/454-1600) with any questions concerning compliance with the nondiscrimination in subcontracting requirements. Either office can also provide a listing of firms, including MFD firms that have submitted Bidders List Registration Forms to the Commission.

I hereby declare and affirm under penalties of perjury that the contents of the foregoing document are true and correct to the best of my knowledge, information and belief.

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

\_\_\_\_\_  
**Authorized Signature**

\_\_\_\_\_  
**Printed Name/Title**

**NOTE: FAILURE TO FULLY COMPLETE AND RETURN THIS FORM MAY DEEM THE BID NON-RESPONSIVE, RESULTING IN THE BID BEING REJECTED. Revised: 11/5/2020**



FORM VII.7 PROPOSED SUBCONTRACTORS FORM

The Maryland -National Capital Park & Planning Commission  
Solicitation No. : P41-135  
Proposed Sub-Contractor

Type of Contract	Name of Sub-Contractor	Vendor #	Amount of Subcontract	Non-MFD	MFD	Sub-Contracting Total

FORM VII.8 INSURANCE CHECKLIST

**THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
INSURANCE CHECK LIST**

<b>COVERAGE REQUIRED</b>	<b>LIMITS (Minimums)</b>
<b>1. Worker's Compensation</b> <input type="checkbox"/> Accident (Each) <input type="checkbox"/> Disease (policy limits) <input type="checkbox"/> Disease (each employee)	Statutory Employer's Liability \$100,000 per person \$500,000 aggregate \$100,000 per disease
<b>2. General Liability</b> <input type="checkbox"/> Products Liability & Completed Operations <input type="checkbox"/> Contractual Liability <input type="checkbox"/> Premises & Operations <input type="checkbox"/> Independent Contractors <input type="checkbox"/> Personal Injury and Advertising <input type="checkbox"/> Medical Payment any one person <input type="checkbox"/> XCU for Trenching	All items in No. 2: \$1,000,000 Combined Single Limit of Bodily & Property Damage per Occurrence (or \$2,000,000. if no Full Umbrella Liability)  \$5,000 per occurrence
<b>3. Contractual Indemnity/Hold Harmless Exactly as Specified</b>	
<b>4. Automobile Liability</b> Owned Hired, Non-owned & Leased <input type="checkbox"/> Bodily Injury Each person Each occurrence <input type="checkbox"/> Property Damage Each occurrence Or Combined Single Limit	\$500,000 \$1,000,000  \$300,000  \$1,000,000
<b>5. Full Umbrella Liability</b> Combined Single Limit	\$1,000,000 (or \$2,000,000. General Liability as specified)
<b>6. The Maryland-National Capital Park and Planning Commission named as additional insured on all policies. The coverage is primary to all coverage the Commission may possess.</b>	
<b>7. Other Insurance</b> <input type="checkbox"/> Renovation over \$50,000 All Risk Builders Coverage	Required
<input type="checkbox"/> Professional Liability For errors, omissions and negligent acts, per claim and per aggregate, with one year discovery period and no greater than a \$25,000 deductible. Combined Single Limit (Professional services contracts only)	N/A
<b>8. 30 days Cancellation Notice Required</b> <b>45 days Cancellation Notice Required</b>	Under \$500,000 Over \$500,000
<b>9. Best's Guide A rating or better/ S&amp;P Rating of BBB</b>	
<b>10. The Certificate Must State Bid Number and Bid Title.</b>	Construction Manager @ Risk for Oxon Hill Manor Roof & Roof Drainage Reconstruction <b>RFP #P41-135</b>
<b>BIDDER AND INSURANCE AGENT STATEMENT</b>	
We understand the insurance requirements of these specifications and will comply in full if awarded this contract.	
<b>Bidder Signature</b>	<b>Insurance Agency Signature</b>

Revised 3/25/99

FORM VII.9 CONSTRUCTION PRICING FORM

**The Maryland-National Capital Park and Planning Commission  
CONSTRUCTION PRICING FORM**

**I. RFP/IFB No.** \_\_\_\_\_ **Date Issued** \_\_\_\_\_

**II. RFP/IFB Name:** \_\_\_\_\_

The M-NCPPC seeks this information in order to comply with governmental accounting financial reporting requirements.

\*\*\*\* M-NCPPC USE ONLY \*\*\*\*

**III. Project Description**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Location(s) \_\_\_\_\_

Originating Division \_\_\_\_\_ Originator \_\_\_\_\_ Phone \_\_\_\_\_

**IV. Contract No.** \_\_\_\_\_ **OCA Nos.** \_\_\_\_\_

**V. OFFERORS/BIDDERS**

**Please separate your prices for the above-named Request for Proposal (RFP) or Invitation for Bid (IFB) into the pricing categories listed below. Total costs should match the total cost of your base proposal or bid. Failure to complete this form and return it with a signed proposal or bid may result in your proposal or bid being found non-responsive.**

Name of Offeror/Bidder \_\_\_\_\_

Address of Offeror/Bidder \_\_\_\_\_

Signature of Person Signing Proposal/Bid \_\_\_\_\_

Print Name of Person Signing Proposal/Bid \_\_\_\_\_

Print Title of Person Signing Proposal/Bid \_\_\_\_\_

Pricing Categories

<b>Repair/Renovation</b>	A. Initial Estimate
Repair/Renovation	\$ _____
<b>New Construction/Replacements</b>	
Buildings/Structures	_____
Infrastructure <sup>1</sup>	_____
Play Equipment	_____
Other Improvements	_____
<b>TOTAL COSTS</b>	\$ _____

**To be Completed by  
M-NCPPC  
Accounting Office  
Only**

B. FINAL COST
\$ _____
_____
_____
_____
_____
_____
_____
_____
_____

FORM VII.10 GUARANTEE FORM

GUARANTEE FORM

Guarantee. The Contractor shall guarantee in writing to the Commission that he will repair or replace any or all work, together with any other work which may be displaced, damaged, or marred in so doing, that may prove defective in failure to conform to respective periods cited below, each such period to begin on the date of acceptance of the work by the Commission, without any expense whatsoever to the Commission, ordinary wear and unusual abuse or neglect excepted.

The following guarantees are required:

(1) General Contract Work and all workmanship 1 year

All contractor workmanship guarantees shall be made upon this form, and must be submitted to the Engineer before final payment is made to the Contractor.

**Guarantee for The Maryland-National Capital Park and Planning Commission**

Project: **CONSTRUCTION MANAGER AT RISK – Oxon Hill Manor Roof and Roof Drainage Reconstruction**

\_\_\_\_\_  
Completion Date

We hereby guarantee the **CONSTRUCTION MANAGER AT RISK OXON HILL MANOR ROOF AND ROOF DRAINAGE RECONSTRUCTION** which we have completed on the above-named project, for the periods of time stated above. We agree to repair or replace any or all such work together with any other work which may be displaced or marred in so doing, that may prove defective workmanship or materials within the above mentioned period (from the date of acceptance) without expense whatsoever to the Commission, ordinary wear and tear, unusual abuse and neglect excepted.

\_\_\_\_\_  
Signature of General Contractor

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Subcontractor (If applicable)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Date



FORM VII.11 RELEASE OF LIENS

# RELEASE OF LIENS

Maryland-National Capital Park  
and Planning Commission  
6600 Kenilworth Avenue  
Riverdale, Maryland 20737

\_\_\_\_\_, being the \_\_\_\_\_ (an officer or principal) of

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

Pursuant to Article 17-101, et. seq. of the State Finance and Procurement Article of the Annotated Code of Maryland (the "Little Miller Act") hereby certifies that \_\_\_\_\_ (name) has received progress payments totaling \$ \_\_\_\_\_ to date for work done in conjunction with the CONSTRUCTION MANAGER AT RISK OXON HILL HANOR ROOF AND ROOF DRAINAGE RECONSTRUCTION and that \_\_\_\_\_ (company name) has made and will continue to make timely payments from these proceeds to all his subcontractors and suppliers in accordance with his contractual arrangements with them.

Additionally, upon receipt and acceptance of final payment totaling

\$ \_\_\_\_\_  
Amount

The undersigned agrees to release the Commission, its officers, agents, and employees from all claims and liability to the Contractor for anything done or furnished or withheld, and for anything relating to the work or any act or neglect of the Commission, its officers, agents, and employees.

By: (Name) \_\_\_\_\_

\_\_\_\_\_  
Signature, Title and Date

Subscribed and Sworn to before the undersigned, a Notary Public for the County of

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

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Notary \_\_\_\_\_

FORM VII.12 SUBCONTRACTOR UTILIZATION FORM

**The Maryland-National Capital Park and Planning Commission  
Subcontractor Utilization Report**

Period - Beginning Date \_\_\_\_\_ End Date \_\_\_\_\_

<b>CONTRACTOR:</b>	
<b>Contract #:</b>	<b>IFB/RFP#: P41-135</b> <b>Total Contract Amount:</b>
<b>Invoice #:</b>	<b>Application #:</b>
<b>Contract Specified Total MFD subcontracting: \$</b>	<b>Percentage of MFD subcontracting to Total Contract Amount: _____ %</b>

	A	B	C	D	F
<u>Subcontractor</u>	<u>MFD Y/N</u>	<u>Total Subcontract Amount</u>	<u>Payments this period</u>	<u>Total Payments to date</u>	<u>Total % Paid (col E/C)</u>
<b>Column Totals:</b>					

**I HEREBY CERTIFY THAT THE ABOVE INFORMATION IS ACCURATE AND THAT I WILL VERIFY SAID INFORMATION UPON REQUEST.**

\_\_\_\_\_ **PRIME CONTRACTOR OR CONSULTANT**      \_\_\_\_\_ **DATE**

**FORM VII.13 SUBCONTRACTOR REPORT OF PAYMENTS RECEIVED**



Subcontractor Company Name: \_\_\_\_\_

Prime Contractor Company Name: \_\_\_\_\_

Contract Number/Title: \_\_\_\_\_

Project

Location: \_\_\_\_\_

Subcontract Amount: \$: \_\_\_\_\_

**PLEASE READ CAREFULLY BEFORE SIGNING**

This certifies that for the month of \_\_\_\_\_, my company received \$ \_\_\_\_\_ for work performed, services rendered and/or materials supplied on the above contract.

TOTAL AMOUNT OF SUBMITTED INVOICES TO DATE: \$ \_\_\_\_\_

TOTAL PAYMENTS RECEIVED TO DATE: \$ \_\_\_\_\_

Are you experiencing any contract problems with the prime contractor and/or the project? Yes \_\_\_\_\_ No \_\_\_\_\_

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

I certify that the above information is true and accurate to the best of my record documentation and knowledge.

\_\_\_\_\_  
 (TYPED/PRINTED COMPANY NAME)

\_\_\_\_\_  
 (TYPED/PRINTED NAME OF COMPANY OFFICIAL)

\_\_\_\_\_  
 (TITLE)

\_\_\_\_\_  
 (SIGNATURE OF COMPANY OFFICIAL)

\_\_\_\_\_  
 (DATE)

TELEPHONE      FAX      E-MAIL

Mail to: M-NCPPC  
 Park Planning & Development Div.  
 Procurement Unit  
 6600 Kenilworth Avenue, Suite 205  
 Riverdale, MD 20737

## **SECTION VIII. Attachments**

1. **MANAGEMENT ADMINISTRATION PLAN (MAP)**
2. **Oxon Hill Manor (80-001) DBA Condition Assessment Report**
3. **DBA Wagner Intrusion Study**
4. **Oxon Hill Manor Water Intrusion Leak Investigation North Wing**
5. **Oxon Hill Manor Changes to Renovation and Restoration Fire Damage Assessment Drawings**
6. **Sample Contract**

### **SAMPLE CONTRACT**

**This sample contract is representative of the actual contract which will be issued by the Commission to the low, responsive and responsible bidder. No changes or modifications shall be permitted to the contract. By submitting a bid in response to this solicitation, the bidder hereby agrees to sign and submit to designated Commission personnel the contract, without modifications, within ten days of receipt of notification letter and contracts. The timely submission of the contract shall be accompanied by the required bonds and insurance certificates. Failure to execute and return the contracts and other required documents within five (5) calendar days shall render the Contractor non-responsive and therefore no longer eligible for consideration for this project. Reference Instructions to Bidders, page IB-14 of 15, Item 28. EXECUTION OF CONTRACT and page IB-14 of 15, Item 29. FAILURE OF SUCCESSFUL BIDDER TO EXECUTE CONTRACT.**

**SAMPLE CONTRACT**

**THIS CONTRACT** (“**Contract**”) is made the date last signed by the parties below (“Effective Date”), between the MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, a public body corporate and agency of the State of Maryland (“**Commission**”), and XXXXXXXXXXXXX, a Maryland corporation, with its business address at 111 Main Street, Riverdale, MD 20737 (“**Contractor**”).

RECITALS:

- A. The Commission issued RFP-37-\*\*\* for Construction Manager at Risk Services for \*\*\*\*\* (the “Project”), dated June \*\*, 20\*\* (“RFP”), and Addendum No. One, dated July \*\*, 20\*\* and Addendum No. Two, dated August \*\*, 20\*\* (the RFP and all addenda collectively defined as the “Solicitation”) to obtain pre-construction and construction services for the Project; and
- B. The Contractor submitted a proposal on August \*\*, 20\*\* (“Proposal”) offering to perform the work as set forth in the Solicitation; and
- C. Based on the Commission’s evaluation of the Proposal, the Contractor was selected to perform the Pre-construction Phase services described in the Solicitation.

**ACCORDINGLY**, the parties agree as follows:

1. **Recitals.** The capitalized terms defined in the preamble and recitals above are incorporated into this Contract by reference.

2. **Scope of Services.**

(A) The Contractor shall perform all Pre-construction Phase work described in the Solicitation, which includes but is not limited to assisting the Commission towards finalizing the design of the Project and development and negotiation of a guaranteed maximum price for construction of the Project (“GMP”).

(B) In accordance with the terms of the Solicitation, after the parties’ negotiation of the GMP, the Commission has the option to pursue an amendment to this Contract jointly executed for Part 2 – Construction Phase Services, which includes all construction and associated work to complete the Project. This Contract does not obligate the Commission to enter into any subsequent amendment for construction or construction services for the Project for Part 2. The Commission reserves the right, in its sole discretion, to not construct the Project, to select a different contractor after the completion of the Pre-Construction Phase or utilize a different selection, bidding process or other alternative if deemed to be in the Commission’s best interest.

3. **Precedence of Project Documents.** The documents incorporated into this



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Contract are the: (1) Solicitation; and (2) the Proposal and all other forms and documents submitted by the Contractor in response to the Solicitation. In case of any conflict, the documents shall have precedence in the following order: (1) this Contract and all change orders and amendments issued subsequently thereto; (2) Addenda to the RFP; (3) the RFP, and (4) the Proposal and all forms and document submitted by the Contractor.

**4. Compensation.**

(A) The Commission shall pay the Contractor a fee of \*\*\*\*\* (\$\*\*, \*\*\*) for the satisfactory completion of the work under Part 1 – Pre-construction Phase (“Pre-Construction Phase Services Fee”). The Commission’s policy is to pay the Contractor in accordance with the Contract Documents (as defined in the Solicitation). Each invoice for services rendered must include the Contractor’s Federal Tax Identification Number. 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, are prohibited.

(B) The contract value of this Contract may be increased by the amount of the GMP following negotiations if the Commission exercises its option for Part 2 and an amendment is executed by the parties. The GMP shall not exceed the Project Construction Budget GMP of \$\*\*\*\*\*, which is exclusive of the Pre-Construction Phase Services Fee. The GMP is the maximum guaranteed price the Commission will pay the Contractor to fully manage and completely construct the Project, in accordance with the approved Contract Documents. The GMP is subject to modification only as provided by an amendment or change order signed by both parties. As work is complete during the Construction Phase, the Commission will pay the Contractor its fixed Construction Management Fee as well as approved reimbursable costs for actual expenditures only, without any Contractor mark-up.

**5. Term.** The term of this Contract is from the Effective Date until contract completion in accordance with Section 6.12.D. of the Solicitation’s General Conditions.

**6. Commencement.** The Contractor shall commence Pre-Construction Phase work on the start date specified in the Pre-construction Services Notice to Proceed from the Commission. If the Contractor commences such work prior to the date established by such notice, the Contractor shall waive, release, forfeit and forever discharge the Commission from all right to reimbursement for that portion of the unauthorized services and work performed.

**7. Completion of Work.** The Contractor shall fully complete the Pre-Construction Phase work within \*\*\*\*\* (\*\*) calendar days of commencement of such work. If the parties execute an amendment to establish the GMP, the Contractor shall achieve Substantial Completion and obtain a temporary use and occupancy permit within \*\*\*\*\* (\*\*) calendar days of the start date established by the Commission’s Construction Notice to Proceed. By signing this Contract, Contractor represents to the Commission that the contract time for each phase is reasonable for completion of the work and that Contractor will complete the respective work within the indicated time.

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8. **Time is of the Essence.** Time is of the essence in this Contract. The Contractor shall perform all duties and services and make all decisions called for under this Contract promptly and shall give the Project the highest priority to cause the Project to be timely performed. The failure of the Contractor to complete the work within the specified time provided herein shall constitute a material breach of the Contract by the Contractor and may result in the assessment of liquidated damages as provided in the Solicitation and termination of the Contract for default.

9. **Non-discrimination.** In addition to Section 5.15 of the Solicitation, the Contractor shall comply with the Federal, State and local non-discrimination in employment laws and regulations. The Contractor shall post in a conspicuous place, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination in employment clause. The Contractor shall not discriminate against any person because of race, creed, sex, age, color, national origin or disability. If the Contractor is determined to be in violation of Federal, state, or local nondiscrimination laws by an order, opinion or a decision of a court or an administrative body or agency, the Commission may terminate or suspend this Contract in whole or in part, and the Commission may declare the Contractor ineligible for any future contracts with the Commission.

10. **Insurance.**

(A) The Contractor shall maintain, at its own expense, during the term of the Contract, such insurance as shall protect it and any subcontractor(s) performing work under this Contract, from claims, damages, liability, legal actions, costs and expenses, which may arise from operations under this Contract. The Contractor shall provide the Commission with a certificate of insurance verifying the existence of the types of coverage and limits required by the Commission's Risk Management Office. The certificate of insurance shall name the Commission as an additional insured and will provide for minimum of 45 days' advanced notice in the event of termination or cancellation of coverage.

(B) Certificate(s) of the Contractor's insurance, shall be filed with the Commission to be held by it for the duration of the Contract, and shall be subject to its approval for adequacy of protection. No work shall be commenced or performed at the site until the appropriate certificates of insurance are filed with and approved by the Commission. The Commission shall have the absolute right to terminate this Contract if the policy of insurance is cancelled at any time for any reason and a new policy is not promptly obtained by the Contractor and approved by the Commission.

(C) Before permitting any Affiliate (defined in Section 11(A) below) to begin work on the Project, the Contractor shall require the Affiliate to provide evidence to the Commission that it carries insurance adequate to the scope of its work naming the Commission and the Contractor as additional insured parties.

11. **Indemnification.**

(A) The Contractor shall indemnify, defend, and hold harmless the Commission, its Commissioners, officers, employees, agents, and representatives

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(collectively, the “Indemnitees”), and shall require that each subcontractor indemnify, defend, and hold harmless, the Indemnitees, from and against any losses, claims, liabilities, injuries, damages, and expenses whatsoever, including attorneys’ fees, that the Indemnitees face or incur by reason of (a) the breach of this Contract by the Contractor; (b) any liens asserted against the Project in respect of labor or materials for which the Commission has already paid; or (c) any injury or damage sustained to any person or property (including, but not limited to, any one or more of the Indemnitees) arising out of, or occurring in connection with (i) the Contractor’s errors, omissions or negligent or wrongful acts or those of any of its Affiliates; or (ii) the performance or lack of performance by the Contractor or any of its Affiliates or their duties and obligations under this Contract. For purposes of this Contract, subcontractors and suppliers of all tiers, and their employees and agents, are referred to as “Affiliates.”

(B) The Contractor’s foregoing indemnification obligations shall not be reduced because of any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or an Affiliate of the Contractor under worker’s compensation acts, disability benefit acts or other employee benefits acts.

12. **Termination.** The Commission may terminate this Contract for convenience or for default or as otherwise authorized in accordance with the Solicitation.

13. **Compliance.** The Contractor agrees that it shall comply with all applicable provisions under the Commission Purchasing Manual, Practices, Rules and all other Commission regulations and with all applicable Federal, State, and local laws pertaining to the payment and withholding of wages, worker’s compensation, equal opportunity employment, and the subject matter and performance of this Contract. Further, the Contractor hereby represents, warrants, and covenants that:

- a. It is qualified to do business in the State 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 the respect to the payment of any monies 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 terms of this Contract;
- c. It shall comply with all federal, state, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract;
- d. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract;
- e. It has the necessary special expertise and experience to complete the work under this Contract; and
- f. It shall provide the Commission any requested certification on the release of the Commission for claims and demands for delays and disruptions in the event of any mutually agreed change orders arising under this Contract in form and substance acceptable to the

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Commission.

14. **Assignment; No Delegation.** The Contractor may not assign or transfer any rights, or delegate any duties and responsibilities, under this Contract without prior written consent of the Commission.

15. **Entire Agreement.** This document, and the documents incorporated herein, contains the entire agreement between the parties and supersedes all prior negotiations, representations and agreements, either written or oral. This Contract may be amended only by written instrument signed by both parties.

16. **Severability.** If any provision of this Contract is determined to be invalid or illegal by a court or an administrative body or agency, that provision shall be severed from this Contract and shall not affect the remainder or any other provision contained in this Contract.

17. **Applicable Law; Jurisdiction.** The parties agree and affirm that this Contract was made and will be performed in the State of Maryland. Accordingly, the parties agree that this Contract (a) shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Maryland; and (b) enforced in any court of competent jurisdiction in Prince George's County, Maryland.

18. **Waiver.** The failure of the Commission to enforce any part of this Contract shall not be deemed as a waiver thereof.

19. **Independent Contractor.** The Contractor is an independent Contractor. The Contractor and the Contractor's employees and agents are not agents or employees of the Commission.

20. **Survival of Representations, Warranties, and Guarantee.** All warranties and guarantees on goods, services and construction shall survive the completion of performance, expiration or termination of the Contract and shall continue through the warranty or guarantee period.

21. **Disputes.** This Contract shall be subject to the provisions of the Commission's Practice 4-10 and the Purchasing Manual. These documents can be obtained by contacting the Commission's Purchasing Division. If there is a dispute concerning this Contract, Contractor shall comply with Chapter 14 of the Commission's Purchasing Manual, which is the procedure for resolving contract disputes and claims between the parties. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the contract in accordance with the Purchasing Manual and the Solicitation.

22. **Cross Default.** Any occurrence of a material breach of Contractor's obligations, due performance, representations, warranties, or other agreements under this Contract shall be deemed a material breach of and default under any other contract the Contractor has with the Commission (referred to as the "**Default**"). Upon such Default, the Commission shall be entitled to exercise, in its sole and absolute discretion, all rights and remedies available under this Contract and any other contract the Contractor has

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with the Commission, including, but not limited to the right to terminate this Contract and/or any other contract the Contractor has with the Commission, whether now existing or arising in the future. Contractor expressly understands, acknowledges, and accepts the Commission's rights and remedies created by this provision.

23. **Jury Waiver.** Each party waives right to a jury in any litigation in connection with this Contract, or the property, or the transactions contemplated by this Contract. Each party acknowledges that this waiver has been freely given after consultation by it with competent counsel.

**TO EVIDENCE the parties' agreement to this Agreement, they have executed and delivered it as of the Effective Date.**

**EXPERT CONSTRUCTION COMPANY**

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

By: \_\_\_\_\_  
(Signature)

Typed Name: \_\_\_\_\_

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

**ATTEST/WITNESS:**

\_\_\_\_\_  
(Signature)

**MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION**

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

By: \_\_\_\_\_  
Executive Director

**ATTEST:**

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

Secretary-Treasurer