

Attachment No. 1 - Sample Contract

THIS CONTRACT (“**Contract**”), is made this ____ day of _____, 2021, between the MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION, a public body corporate and agency of the State of Maryland (“M-NCPPC”), and _____, a _____ [corporation / limited liability company / partnership, etc], with its business address at _____ (“**General Contractor**”).

RECITAL:

- A. M-NCPPC issued a Request for Proposals No. _____, dated _____, (the “RFP”) and Addenda dated _____, _____ (RFP and all Addenda shall collectively be defined as the “Solicitation”), requesting sealed proposals to provide Design/Build Services for the Design / Build Services for the Prince Georges Sports and Learning Complex (“Project”).
- B. General Contractor submitted a proposal on _____, 20____ (“Proposal”), offering to perform the work for the Project.
- C. M-NCPPC has determined that the General Contractor is the most qualified responsive and responsible Offeror.

ACCORDINGLY, the parties agree as follows:

1. **Recitals.** The capitalized terms defined in the preamble and recitals above are incorporated in to this Contract by reference.

2. **Scope of Services.** The General Contractor shall perform the services described in the Solicitation and the Proposal. The documents incorporated into this Contract are the: (1) Solicitation; and (2) the Proposal and all other forms and documents submitted by the General Contractor in response to the RFP.

3. **Precedence of Project Documents.** In case of any conflict, the Project documents shall have precedence in the following order: (1) the Contract; (2) Purchasing Manual; (3) Addendum No. Three, dated _____, Addendum No. Two, dated _____, and Addendum No. One, dated _____; (4) RFP; (5) the Proposal and all other forms and documents submitted by the General Contractor. The General Contractor agrees that the foregoing Project documents are complimentary, and what is required by any one shall be as binding as if required by all.

4. **Compensation.** Upon satisfactory final completion of the services under this Contract and in accordance with the Solicitation, the M-NCPPC shall pay the General Contractor an amount not to exceed the Guaranteed Maximum Price that will be established during the Project at an amount no greater than the Contract Cost Limit of \$_____. The M-NCPPC’s policy is to pay the General Contractor within 30 calendar days after receipt by the M-NCPPC of a proper invoice and acceptance of the invoice by the M-NCPPC. Each invoice for services rendered must include the General 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.

5. **Term.** The term of this Contract is from the date of last signature of this Contract until the M-NCPPC makes final payment as provided in Section _____ of the General Conditions.

6. **Commencement.** The General Contractor shall commence work on the start date specified in the Notice to Proceed from the M-NCPPC.

7. **Completion of Work.** The General Contractor acknowledges that the M-NCPPC is relying upon the General Contractor's skill and expertise in connection with the Project. The General Contractor shall achieve Substantial Completion within _____ calendar days from the Notice to Proceed; Project Closeout shall be ___ calendar days from Substantial Completion.

8. **Time is of the Essence.** Time is of the essence in this Contract. The General 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 so as to cause the Project to be timely performed. The failure of the General Contractor to complete the work within the specified time provided in this Contract shall constitute a material breach of the Contract by the General Contractor and may result in the assessment of liquidated damages as set forth in _____ of Special Conditions of the RFP; Part _____ of General Conditions of the RFP; and termination of the Contract for default as set forth in _____ of General Conditions of the RFP.

9. **Non-discrimination.** The General Contractor shall comply with the Federal, State and local non-discrimination in employment laws and regulations. The General 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 General Contractor shall not discriminate against any person because of race, creed, sex, age, color, national origin or disability. If the General 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 M-NCPPC may terminate or suspend this Contract in whole or in part, and the M-NCPPC may declare the General Contractor ineligible for any future contracts with the M-NCPPC.

10. **Insurance.**

- A. The General 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 General Contractor shall provide the M-NCPPC with this signed Contract, a certificate of insurance verifying the existence of the types of coverage and limits required by the M-NCPPC's Risk Management Office. The certificate of insurance shall name the M-NCPPC as an additional insured and will provide for minimum of 45 days advance notice in the event of termination or cancellation of coverage.
- B. Certificate(s) of the General Contractor's insurance, shall be filed with the M-NCPPC 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 M-NCPPC. The M-NCPPC 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 General Contractor and approved by the M-NCPPC.

- C. Before permitting any Affiliate (defined in Section ___ below) to begin work on the Project, the General Contractor shall require the Affiliate to provide evidence that it carries insurance adequate to the scope of its work naming the M-NCPPC and the General Contractor as additional insured parties.

11. Indemnification.

- A. The General Contractor shall indemnify, defend, and hold harmless the M-NCPPC, its officers, employees, agents and representatives (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 General Contractor; (b) any liens asserted against the Project in respect of labor or materials for which the M-NCPPC 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 General 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 General 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 General Contractor's foregoing indemnification obligations shall not be reduced as a result of any limitation on the amount or type of damages, compensation or benefits payable by or for the General Contractor or an Affiliate of the General Contractor under worker's compensation acts, disability benefit acts or other employee benefits acts.

12. Termination. The M-NCPPC may terminate this Contract for convenience or for default in accordance with the General Conditions of the RFP.

13. Compliance. The General Contractor agrees that it shall comply with all applicable provisions under the M-NCPPC Purchasing Manual, Practices, Rules and all other M-NCPPC 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 General Contractor hereby represents, warrants, and covenants that:

- A. 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.

- B. It has the necessary special expertise and experience to complete the work under this Contract.
- C. All subcontractors engaged by the General Contractor (and any contractors engaged by such subcontractors) shall possess the skill and experience appropriate to the services to be provided, and the General Contractor shall require that each subcontractor, and any contractor(s) engaged by such subcontractor, to comply with and be bound by the terms and conditions of this Contract.
- D. The General Contractor is and will be financially solvent, able to pay all debts as they mature and possessed of sufficient working capital to complete the Project and perform all obligations under this Contract.
- E. The General Contractor has the resources, including an adequate labor supply, to fulfill its obligations under this Contract.
- F. All design services shall be performed by qualified architects, engineers, and other professionals (licensed when required by law), selected and paid by the General Contractor.
- G. The General Contractor shall be responsible for all design services provided, including the quality and timeliness of all services under the Contract and the professional quality, technical accuracy, and the coordination of all plans and specifications.
- H. All information and documents provided to the M-NCPPC is true and accurate.
- I. Each person executing this Contract, whether on its own or behalf the General Contractor, is duly authorized to execute this Contract on behalf of the General Contractor.
- J. It shall provide the M-NCPPC any requested certification on the release of the M-NCPPC for claims and demands for delays, additional costs, and/or disruptions in the event of any mutually agreed change orders arising under this Contract.

14. **M-NCPPC Review.** Notwithstanding anything to the contrary contained or implied in this Contract or the Project documents, the M-NCPPC's review and approval of the General Contractor's Proposal or any other documents, or other matters required or permitted by this Contract shall be solely for the purpose of providing the General Contractor with information as to the M-NCPPC's objectives and goals with respect to the Project and not for the purpose of determining the accuracy and completeness of those documents and shall not create any liability on the part of the M-NCPPC for errors, inconsistencies or omissions in any approved documents, nor shall any such review and approval or payment alter the General Contractor's responsibilities under this Contract and with respect to such documents.

15. **General Contractor's Duty to Review.** Notwithstanding anything to the contrary contained or implied in this Contract or the Project documents, the General Contractor shall review and confirm the sufficiency or any tests or information furnished to the General

Contractor by or on behalf of the M-NCPPC.

16. **Confidentiality.** All information concerning the Project is confidential to the M-NCPPC and proprietary to the M-NCPPC, unless otherwise expressly indicated to the General Contractor or released to the public by the M-NCPPC. The General Contractor shall take all steps necessary to protect the confidentiality of this information.

17. **Third Party Beneficiary.** The General Contractor agrees that the M-NCPPC is an intended third-party beneficiary of all contracts for design services, subcontracts, supply agreements, purchase orders, and other agreements between the General Contractor and third parties. Other than the M-NCPPC, the parties agree that there are no third-party beneficiaries to this Contract. Other than the M-NCPPC, nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against either party.

18. **Ownership of Documents.** The General Contractor agrees that the drawings, specifications, and other documents furnished by the General Contractor for the Project shall become the property of the M-NCPPC, whether or not the Project is commenced.

19. **Assignment; No Delegation.** The General Contractor may not assign or transfer any rights, or delegate any duties and responsibilities, under this Contract without prior written consent of the M-NCPPC.

20. **Entire Agreement.** This document 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.

21. **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.

22. **Applicable Law; Jurisdiction.** The parties agree and affirm that this Contract was made 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.

23. **Waiver.** The failure of the M-NCPPC to enforce any part of this Contract shall not be deemed as a waiver thereof.

24. **Independent Contractor.** The General Contractor is an independent Contractor. The General Contractor and the Contractor's employees and agents are not agents or employees of the M-NCPPC.

25. **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. In addition, all of the representations, warranties, covenants, promises, and agreements of the parties contained in this Contract, or any document delivered or to be delivered pursuant to this Contract, shall survive execution, acknowledgment, sealing, and delivery of this Contract, completion of the Project, and the consummation of any other services contemplated under this Contract.

26. **Disputes.** This Contract shall be subject to the provisions of the M-NCPPC's Practice 4-10 and the Purchasing Manual. These documents can be obtained by contacting the M-NCPPC's Purchasing Division. If there is a dispute concerning this Contract, General Contractor shall comply with Chapter 14 of the M-NCPPC's Purchasing Manual, which is the procedure for resolving contract disputes and claims between the parties. Pending resolution of a claim, the General Contractor shall proceed diligently with the performance of the contract in accordance with the Purchasing Manual.

27. **Cross Default.** Any occurrence of a material breach of General 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 General Contractor has with the M-NCPPC (referred to as the "Default"). Upon such Default, the M-NCPPC shall be entitled to exercise, in its sole and absolute discretion, any and all rights and remedies available under this Contract and any other contract the General Contractor has with the M-NCPPC, including, but not limited to the right to terminate this Contract and/or any other contract the General Contractor has with the M-NCPPC, whether now existing or arising in the future. General Contractor expressly understands, acknowledges, and accepts the M-NCPPC's rights and remedies created by this provision.

28. **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.

Article II. **TO EVIDENCE** the parties' agreement to this Agreement, they have executed and delivered it as of the day and year last below written.

[COMPANY NAME]

ATTEST/WITNESS:

(Signature)

By: _____
(Signature)

Date: _____

Typed Name: _____

Title: _____

ATTEST:

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

By: _____
Joseph C. Zimmerman
Secretary-Treasurer

By: _____
Asuntha Chiang-Smith
Executive Director

Date: _____

