

IMLA CONSTRUCTION CONTRACT DRAFTING INITIATIVE (CCDI)

MODEL DESIGN-BUILD AGREEMENT

Part 2 – Design-Build Agreement

Editor's Note: This contract is based off a Montgomery County, MD Design-Build Agreement and contains project specific references, including references to the Maryland Code. Readers must consult state specific laws when using this document. Please disregard all references to any attachments or appendices, as they have been removed from the document.

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Design-Build Agreement

PROJECT: _ _ _ _ _ _ _ _ _ _ _ _ _

FIXED PRICE DESIGN-BUILD
CONTRACT BETWEEN
OWNER AND DESIGN-
BUILDER

This FIXED PRICE DESIGN-BUILD CONTRACT (the "Contract") between OWNER AND DESIGN-BUILDER (Owner and Design-Builder together the "Parties") is made and entered into by and between COUNTY, a body corporate and politic and a political subdivision of the STATE (the "Owner") and (the "Design-Builder").

This Contract is effective on the date executed by the COUNTY.

This Contract is for the design and construction of a project identified as _____

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree:

ARTICLE 1. CONTRACT DOCUMENTS

Certain Definitions. Refer to Part 1, Article 1.1 for the meaning of various terms used in the Contract Documents.

Contract Documents. The Contract Documents are comprised of _____ Parts, as follows:

Part 1: General Conditions of Contract (GC), Articles 1-21

Part 2: This executed Design-Build Agreement,

Part 3: G e n e r a l Design Requirements and Performance Specifications;

Part 4: Special Conditions of Contract Provisions;

The Contract Documents will also include an Initial Notice to Proceed (INTP) and Construction Notice to Proceed (CNTP) (INTP and CNTP are collectively referred to as the NTP); the Master Schedule and Critical Contract Completion Period, as amended by agreement of the parties; and any supplemental agreements, amendments, Change Orders and Contract Modifications. The Contract Documents shall be deemed to include all provisions required by law to be inserted in the Contract, whether actually inserted or not. See Part 1, Article 4, 4.3.1 for the Governing Order of Contract

Documents.

ARTICLE 2. SCOPE OF WORK

A general description of the scope of the Work is set forth in Appendix A hereto. The Design-Builder shall perform all design and construction services and provide all material, equipment, tools and labor necessary to complete the Work described in and reasonably inferable from the Contract Documents, on or before the Completion Deadlines specified herein. The Design Plans and Construction shall be in accordance with the General Design Criteria contained in the Contract Documents.

ARTICLE 3. CONTRACT TIME – LIQUIDATED DAMAGES

Notice To Proceed. The Design-Builder shall begin the Work as specified in, and on the date set forth in, the INTP issued by the COUNTY ("Date of Commencement") unless the consent of the COUNTY, in writing, is given to begin at a later date.

Time is an essential element of the Contract. The Design-Builder agrees, that by executing this Contract, that it has reviewed the Contract Documents in their entirety, including the General Design Criteria and Performance Specifications, and the Contract Time provided is an adequate amount of time to complete the Work. The Design-Builder must commence the performance of this Contract upon issuance of the INTP as set forth in Article 1 and in the General Conditions, and must diligently perform under the Contract and complete the Work without interruption through final completion of the Work for the Project. The Design-Builder must achieve Substantial Completion of the Work for the Project within the time period specified in Section _____ of Notice of Proceed and in this Article 3 of the Contract.

Completion Deadlines. The Design-Builder shall diligently prosecute the Work so as to achieve completion on or before the following deadlines:

Substantial Completion: _____

For Final Completion: 30 days after the date specified by the COUNTY for Substantial Completion.

It is important that the Work be pursued vigorously to completion. The public is subject to detriment and inconvenience when full use of infrastructure cannot be made because of an incomplete Project. See Part 1 – Article 14 for more information regarding the requirements for Partial Occupancy, Substantial Completion, Final Completion/Acceptance for Maintenance/(letter of Final Acceptance for Owner facilities) and Final Acceptance and Payment.

Time Extensions. No extension of any Completion Deadline shall be effective unless in writing signed by the COUNTY. See Part 1 – Article 11.6 for more information regarding time extensions. Any extension shall be for such time and terms and conditions as shall be fixed by the COUNTY.

If Acceptance for Maintenance fails to occur by the date specified in this Article, the Design-Builder shall be assessed and, upon assessment, shall be obligated for liquidated damages in accordance with the following scale provided, however, that due account shall be taken of any adjustment of specified completion time(s) for completion of Work as granted by approved Change Orders or Contract Modifications:

Liquidated Damages Per Calendar Day
$10,000.00

The COUNTY may withhold liquidated damages from any payments under the Contract and, in any event, the Design-Builder's surety shall be liable for such liquidated damages under the Performance Bond. Liquidated damages shall continue until Acceptance for Maintenance occurs.

See Part 1 – Article 11.7.2 for additional information on liquidated damages.

ARTICLE 4. REPRESENTATION AND WARRANTIES OF THE DESIGN-BUILDER

The Design-Builder makes the following representations and warranties in order to induce the Owner to execute this Contract. The Design-Builder recognizes that, in making these representations and warranties, Owner is entitled to rely upon the Design-Builder's representations and warranties and is relying upon them in entering into this Contract. The Design-Builder, by executing this Contract, makes the following express representations and warranties to the Owner:

(A) The Design-Builder is fully qualified to act as the Design-Builder and perform the Work for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the Design-Builder for, and to construct, the Work for the Project.

(B) The Design-Builder has become familiar with the Project Site, the local conditions under which the Project is to be constructed and operated and its surrounding territory and is informed regarding all of the conditions affecting the Work to be done and labor and materials to be furnished for the completion of this Contract, including the existence of poles, wires, pipes, and other facilities and structures of municipal and other public service corporations on, over, or under the site, except latent conditions that meet the requirements of Part 1 – Article 12.4, and that its information was secured by personal and other investigation and research. See also Part 1 – Article 5.1.1 for more information regarding site examination.

(C) The Design-Builder has received, reviewed and carefully examined all of the documents which make up this Contract and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for design and construction of the Work for the Project. Design-Builder is responsible for performing Work shown on the Contract Documents, including reasonably implied or inferred Work from the Contract Documents, which a reasonably prudent Design-Build Design-Builder of Design-Builder's reputation, expertise and experience would conclude were inferable from the Contract Documents. The Design-Builder is obligated to conduct a careful and thorough pre-Bid review of all of the Contract Documents and to inform the Owner prior to Contract execution of any errors, omissions, or conflicts or other issues in the Contract Documents which will either increase the Contract Price or extend the Contract Time. Design-Builder's performance with respect to its review of the Contract Documents shall be that of an experienced Design-Build Design-Builder performing work of a similar nature in the locale of the Project. Design-Builder will not be compensated for the performance of any additional or change order work or for any delays or cumulative impact, lost efficiency, or lost productivity arising from any errors, omissions or conflicts or other issues in Contract Documents which Design-Build Design-Builder or a reasonably prudent Design-Build Design-Builder of Design-Builder's reputation, expertise and experience should have discovered as a result of such review.

ARTICLE 5. INTENT AND INTERPRETATION

The Work identified in the Contract Documents shall be performed in accordance with the true intent and meaning of the Contract Documents without any further expense of any nature whatsoever to the COUNTY other than the consideration named in this Contract.

With respect to the intent and interpretation of this Contract, the Owner and the Design-Builder agree as follows:

(A) This Contract (which includes all Contract Documents) constitutes the entire and exclusive agreement between the parties with reference to the Work and the Project. This Contract supersedes any and all prior discussions, communications, representations, understandings, negotiations, or agreements.

(B) Anything that may be required, implied, or inferred by the documents that make up this Contract, or any one or more of them, must be provided by the Design-Builder for the Contract Price within the Contract Time.

(C) Design-Builder shall incorporate the obligations of this Contract into its respective Subcontracts, supply agreements, and purchase orders.

(D) When a word, term, or phrase is used in this Contract, it is to be interpreted or construed first, as defined in the General Conditions including any supplemental terms and conditions of the Contract, if any; second, as defined in this Contract; third, if not defined, according to Referenced Standards and its generally accepted meaning in the construction industry; and fourth, if there are no Referenced Standards or generally accepted meaning in the construction industry, according to its common and customary usage.

(E) The words "include", "includes", or "including", as used in this Contract, are deemed to be followed by the phrase, "without limitation".

(F) The specification in this Contract of any act, failure, refusal, omission, event, occurrence, or condition as constituting a material breach of this Contract does not imply that any other, non-specified act, failure, refusal, omission, event, occurrence, or condition is to be deemed not to constitute a material breach of this Contract.

(G) In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Design-Build Agreement, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Article 1 hereof. The Design-Builder has a continuing duty to read, examine, review, compare, and contrast each of the Contract Documents that make up this Contract, and must give written notice of to the Owner and COUNTY Construction Manager of any conflict, ambiguity, error, or omission which the Contractor may find with respect to the Contract Documents, Shop Drawings, or other Submittals that come to the attention of Design- Builder during the course of the Work and before proceeding with any part of the Work affected by the conflict, ambiguity, error, or omission.

The COUNTY reserves the right, at any time during the progress of the Work, to alter the scope of Work, or omit any portion of the Work as it may deem reasonably necessary for the public interest, making allowances for additions and deductions with compensation made in accordance with the Contract Documents for the altered or omitted Work, in accordance with Part 1 – Article 12 and Part 1 – Article 16.

ARTICLE 6. FIXED SUM AND CONTRACT PAYMENTS

(A) The Owner will pay, and the Design-Builder accepts, as full and complete payment for the Design-Builder's timely performance of its obligations under this Contract (including performance of and compliance with all of the General Conditions and other Contract Documents) the fixed sum of _____Dollars ($_____). The sum set forth in this Article 6 constitutes the Contract Price, which cannot be modified except as provided in the General Conditions or by written Amendment executed by the parties to this Contract

(B) The Design-Builder is bound by the Schedule of Values apportioning the Contract Price among the different elements of the Work for the Project for purposes of periodic and final payment as provided in the General Conditions of Construction Contract. The Design-Builder's Schedule of Values must not be inflated, unbalanced or misstated in any way to give the Design-Builder an unfair advantage during the Bid or Proposal or construction processes. The violation of this provision by the Design-Builder constitutes a material breach of this Contract. The Design-Builder's Schedule of Prices as approved by the Owner as provided in the General Conditions will be utilized for the Design-Builder's Applications for Payment.

(C) As the Work progresses in accordance with this Contract and in a manner that is satisfactory to the COUNTY, the COUNTY will make payments to the Design-Builder for Work completed in accordance with Part 1 – Article 13.

(D) When payment is received from the Owner, the Design-Builder must immediately pay all Subcontractors, materialmen, laborers, and Suppliers the amounts they are due for the Work covered by such payment, as provided in the General Conditions. The Owner will have the right, but not the duty, to issue future checks and payment to the Design-Builder of amounts otherwise due under the Contract naming the Design-Builder and any such Subcontractor, materialmen, laborer, or Supplier as joint payees. Such joint check procedure, if employed by the Owner, does not create any rights in favor of any person or entity beyond the right of the named payees to payment of the check and does not require the Owner to repeat the procedure in the future.

(E) If the Design-Builder does not comply with any direction concerning the Work or materials given by the Contract Administrator or his/her representative, the Design-Builder shall not be entitled to have any payment made for the non-complying Work, nor shall any payment be rendered on account of Work done or materials furnished until such direction aforesaid has been fully and satisfactorily complied with. See Part 1 – Article 10.7.8.2 regarding Review and Disposition of Non-Conforming Product and Article 11.6 Time and Related Cost Adjustments.

(F) Neither payment to the Design-Builder, utilization of the Work or the Project for any purpose by the Owner, nor any other act or omission by the Owner is to be interpreted or construed as an acceptance of any Work of the Design-Builder that is not strictly in compliance with applicable industry standards and the requirements of this Contract.

(G) The Owner has the right to refuse to make payment and, if necessary, may demand the return of a portion or the entire amount previously paid to the Design-Builder due to any reason stated in Part 1 - Article 13. The Design-Builder must immediately comply with any written demand by the Owner for repayment or reimbursement of the Owner for any amounts previously paid by the Owner as contemplated in this Article.

(H) The Design-Builder has no right to stop Work as a consequence of non-payment. In the event of any dispute between the Design-Builder and Owner involving the Design-Builder’s claim to

entitlement to payment the Design-Builder's only remedy is to file a claim with the Contract Administrator as provided in the General Conditions of Construction Contract. The Design-Builder must diligently proceed with the Work pending resolution of the dispute. Any payments on Certificates for Payment which are approved by the Owner as "proper invoices" within the meaning of applicable laws and regulations not made within thirty (30) days after the Owner approves the Certificate for Payment shall bear interest at a rate equivalent to the interest rate paid by 5 year U.S. Treasury Bills as of the date interest first begins to accrue under Section 11B-34 of the Montgomery County Code, 2004, as amended. An Owner approved Certificate for Payment is one that has been certified as required by the Architect, and signed by the Owner's Construction Representative, the Owner's Project Manager, and the Director of the Office of Procurement and fully complies with the requirements of Part 1 - Article 13.

(I) Prior to being entitled to receive final payment, and as a condition precedent to final payment, the Design-Builder must furnish the Owner all items required in Part 1 - Section 14.3 in the form and manner required by Owner.

(J) This Contract shall be deemed executory only to the extent of money available to the COUNTY for the performance of the terms hereof, and no liability on account thereof shall be incurred by the COUNTY beyond moneys available for the purpose thereof.

ARTICLE 7. INFORMATION AND MATERIAL SUPPLIED BY OWNER - DETERMINATION AS TO VARIANCES

(A) In addition to the Contract Documents, the Owner will, if requested by the Design-Builder, furnish to the Design-Builder, the legal description of the Project Site, and any required survey in the Owner's possession or under the Owner's control. Such written and tangible material is furnished to the Design-Builder only in order to make complete disclosure of such material as being in the possession of the Owner and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and has no liability for any statements or representations made in the written and tangible material furnished under this provision.

(B) In any case of any ambiguity in the Contract Documents or between any of the various Parts of the Contract Documents, the matter must be immediately submitted to the Contract Administrator, who shall determine and direct a course of action relevant thereto.

(C) Owner will approve variance affecting facilities they currently own/maintain or will own/maintain.

ARTICLE 8. OWNERSHIP OF THE DOCUMENTS WHICH MAKE UP THE CONTRACT

The Contract Documents, and each of them, as well as any other documents furnished by the Owner, remain the property of the Owner. The Design-Builder must not use, or permit to be used, any portion or all of the Contract Documents or other documents furnished by the Owner on other projects without the Owner's prior written authorization.

ARTICLE 9. DESIGN-BUILDER'S PERFORMANCE

The Design-Builder must perform all of the Work required, implied or reasonably inferable from the Contract Documents including, but not limited to, the following:

(A) Design and Construction of the Work (including all warranty work) for the Project.

(B) The furnishing and maintenance of all required surety bonds, insurance, Warranties, and related documentation.

(C) The provision or furnishing, and prompt payment, of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, or other utilities, required for construction of the Work for the Project, and all necessary permits and licenses required for the construction of the Work for the Project, as provided in the General Conditions of Construction Contract.

(D) Full, prompt, and complete compliance with all of the Contract Documents, without limitation, including the General Conditions of Construction Contract

ARTICLE 10. DISADVANTAGED AND MINORITY-OWNED BUSINESS ENTERPRISE GOALS

This Contract is subject to federal laws concerning Disadvantaged Business Enterprises (DBE), see Part 2 – Appendix B – Federal Requirements.

The Design-Builder must comply with the provisions of Part 1 – Article 18. The Design-Builder shall also comply with the Design-Builders DBE participation schedule and plan included in Part 8. It is noted that the Design-Builders DBE participation schedule and plan may be modified during the course of this Contract. However all modifications require prior approval as indicated in Part 2 Appendix B Attachment 4. The overall DBE participation goal established in Part 2 Appendix B Attachment 4, includes professional services. The Design-Builder's good faith efforts to achieve this goal shall include efforts to achieve a DBE participation in performance of professional services under the Contract (including design; supplemental geotechnical investigations, surveying and other preliminary engineering; quality control as defined in the Contract; environmental compliance activities; utility coordination; permitting; project controls and public information) equal to or greater than overall DBE participation goal established in Part 2 Appendix B Attachment 4 for that portion of the Contract Price allocable to such services. (Refer to Part 8, Form SP-1 for WBS elements applicable to professional services).

ARTICLE 11. DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE DESIGN- BUILDER

In addition to any and all other duties, obligations, and responsibilities of the Design-Builder set forth in this Contract and the General Conditions, the Design-Builder has and must perform the following duties, obligations, and responsibilities:

(A) All Work must conform strictly to the requirements of the Contract.

(B) The Design-Builder must strictly supervise the performance and completion of the Work, and must monitor the Work as it progresses. The Design-Builder is strictly liable for all acts and omissions of those engaged in the Work on behalf of the Design-Builder.

(C) The Design-Builder warrants that all labor furnished under this Contract will be competent to perform the tasks undertaken; that the product of such labor will yield only first class results; that all

materials used in the Work and equipment provided will be new and of high quality; that the Work will be complete, of high quality, without defects, when completed; and that all of the Work will strictly comply with the requirements of the Contract. Any Work not strictly complying with the requirements of the Contract will be a breach of the Design-Builder's warranty.

(D) The Design-Builder must obtain and pay for all required permits, fees, and licenses as set forth in Part 1 - Article 5.2.3, in any Supplemental Conditions and in any other Contract Documents. The Design-Builder must comply with all Laws and Regulations applicable to the Project and to the Work.

(E) The Design-Builder must employ and maintain at the Project Site only competent supervisory personnel. Key personnel must be assigned by the Design-Builder to this Project and may be changed only as provided in the General Conditions.

(F) The Design-Builder must provide the Owner its Project Progress Schedule in accordance with the General Conditions. The Progress Schedule must conform to the General Conditions, be in the format specified in the Contract Documents, and otherwise be acceptable to the Owner. The Design-Builder's Progress Schedule must be updated no less frequently than monthly and must be updated to reflect the current progress of the Work, any conditions that change the critical path or the dates for Substantial or Final Completion of the Work, and any additions or changes to the Work. Each such revision is to be furnished to the Owner and the Architect. Strict compliance with the requirements of this Article 11 (F) is a condition precedent to payment to the Design-Builder, and failure by the Design-Builder to strictly comply with these requirements constitutes a material breach of this Contract.

(H) The Design-Builder must keep an updated copy of the Contract, the General Conditions, any Supplemental Conditions, and an updated posted set of the plans and specifications reflecting any and all changes at the Project Site.

(I) The Design-Builder must maintain the Project Site in a reasonably clean condition during performance of the Work. Upon Final Completion, the Design-Builder must thoroughly clean the Project Site of all debris, trash and excess materials or equipment as provided in the General Conditions.

(K) At all times relevant to this Contract, the Design-Builder must permit the Owner to enter upon the Project Site and to review or inspect the Work without formality or other procedure.

ARTICLE 12. PROJECT ORGANIZATION AND CONTACTS

CONTRACT ADMINISTRATOR

The Contract Administrator identified below will serve as the main point of contact for the Design-Builder. All notices must be sent via e-mail to the Contract Administrator at the following address, unless specifically stated otherwise in the Contract Documents:

Name:
Address:
Telephone number:
Fax number: _____
E-mail address: _____

Design-Builder's Project Organization. The following information is the contact information for the

Design-Builder's Project Manager. The Design-Builder's Project Manager will serve as the main point of contact for the COUNTY. All notices must be sent to the Design-Builder's Project Manager at the following address:

Name:
Address:
Telephone number:
Fax number: _____
E-mail address: _____

See Part 8 for specific information regarding the Design-Builder's Project organization, including information regarding its representatives authorized to make decisions and bind the Design-Builder on matters relating to the Contract Documents.

ARTICLE 13. CLAIMS BY THE DESIGN-BUILDER

Claims by the Design-Builder against the Owner are subject to the following terms and conditions:

(A) All Design-Builder claims against the Owner must be initiated by a written claim submitted to the Owner in strict accordance with the Contract Documents. Any claim must be received by the Owner no later than ten (10) days after the event, or the first appearance of the circumstances, causing the claim. ANY CLAIM NOT FILED WITH THE OWNER WITHIN SUCH TIME AND IN COMPLIANCE WITH THE PRECEDING PROVISIONS SHALL BE DEEMED CONCLUSIVELY TO HAVE BEEN WAIVED AND SHALL BE DISMISSED.

(B) The Design-Builder must continue its performance under this Contract regardless of the existence of any claims submitted by the Design-Builder.

(C) In connection with any claim by the Design-Builder against the Owner for compensation in excess of the Contract price, any liability of the Owner to the Design-Builder shall be strictly limited and computed in accord with Part 1 - Articles 11 and 12 and shall in no event include indirect costs (such as home office overhead) or consequential damages of the Design-Builder or any estimated costs or damages. The Owner is not liable to the Design-Builder for claims of third parties, including Subcontractors or Suppliers. The Design-Builder may not add or join the Owner as a Party (third-party defendant or otherwise) in any litigation or arbitration between Design-Builder and any third parties, including Subcontractors or Suppliers. In addition, the Owner's liability for any contract claims is limited in the case of a Change Order to amounts computed in accordance with Part 1 - Section 12.2.2, and in the case of any compensable delay claim to amounts computed in accordance with Part 1 - Article 11.6.6.

(D) In the event the Design-Builder is delayed in performing any task, which at the time of the Delay is then critical, as provided in the General Conditions, or which during the delay becomes critical, as the sole and exclusive result of any act or omission by the Owner, or someone acting on the Owner's behalf, or by Owner authorized Change Orders, unusually severe weather not reasonably anticipatable, fire, or other Acts of God, occurring without the fault or negligence of the Design-Builder, the date for achieving Substantial Completion, or, as applicable, Final Completion, will be appropriately adjusted by the Owner upon the written claim of the Design-Builder to the Owner filed in full compliance with Article 11 of the General Conditions. A task is critical within the meaning of this Article 13 (D) if, the task is on the critical path of the most recently approved Progress Schedule so that a Delay in performing the task will Delay the ultimate completion of the Project. ANY CLAIM FOR AN EXTENSION OF TIME BY THE DESIGN-BUILDER MUST STRICTLY

COMPLY WITH THE REQUIREMENTS OF ARTICLE 13 (A) ABOVE. IF THE DESIGN-BUILDER FAILS TO MAKE SUCH CLAIM AS REQUIRED IN THIS ARTICLE 13 (D), ANY CLAIM FOR AN EXTENSION OF TIME WILL BE WAIVED AND SHALL BE DISMISSED.

ARTICLE 14. INSURANCE

14.1 Insurance Program. The Design-Builder shall maintain in full force and effect liability insurance necessary to cover claims arising from the Design-Builder's operations under this Design-Build Agreement. The Design Builder must incorporate these Minimum Insurance Requirements into its Subcontracts with Subcontractors at every tier. Unless otherwise noted, "claims made" insurance policies are not acceptable. Insurance policies must be written on admitted paper (unless otherwise indicated herein) with an insurance company acceptable to the COUNTY.

Any insurance policy utilizing a Self-Insured Retention (SIR) requires approval from the Owner. Compliance with the Minimum Insurance Requirements herein does not relieve the Design Builder nor subcontractors of any tier from their respective liability to Owner should their liability exceed the Maximum Insurance Limits or should the insurance provided fail to respond. The following types of insurance coverage shall be provided for the Project:

(a) Commercial General Liability, including Terrorism Insurance (see Section 14.3)

(b) Umbrella Liability (see Section 14.4)

(c) Automobile Liability (see Section 14.5)

(d) Workers' Compensation/Employer's Liability (see Section 14.6)

(e) Environmental Liability (see Section 14.7)

(f) Builder's Risk (see Section 14.8)

(g) Architect & Engineer Professional Liability (see Section 14.9)

In addition, the following types of insurance coverage shall be provided for the portions of the Project owned, operated and maintained by Owner:

(a) Design-Builder's Pollution Legal Liability (see Section 14.10)

(b) Railroad Protective Liability (RPRPL) (see Section 14.11)

14.2 Evidence of Insurance. Evidence of the requisite insurance policies in the form of certificates of insurance shall be delivered to Montgomery COUNTY, Maryland and to Owner (both shall be named as Certificate holders) at least five (5) Business Days before the Design-Builder begins any work on the Project. Evidence of all Railroad Protective Liability insurance and Builder's Risk insurance policies must consist of complete policies. A renewal certificate/policy shall be delivered to Montgomery COUNTY Maryland and Owner prior to the expiration of the coverage period(s) set forth on the then-current certificate. Any policy deductibles and self-insured retentions shall be shown on the face of the certificate of insurance. The certificate of insurance shall be accompanied by a

document (a copy of State of Maryland license or letter from insurer) which indicates that the agent signing the certificate is an authorized agent of the insurer.

The certificates of insurance and policies shall be sent to: (a)

Name:
Address:
Telephone number:
Fax number: _____
E-mail address: _____

(b) Office of Insurance

Name:
Address:
Telephone number:
Fax number: _____
E-mail address: _____

With copies to:

(c)

Name:
Address:
Telephone number:
Fax number: _____
E-mail address: _____

At any time, upon request by the COUNTY, the Design-Builder shall provide the COUNTY with complete copies of all policies of insurance required by this Design-Build Agreement. Receipt of Certificates of Insurance, policy endorsements or polices does not relieve the Design Builder of the obligation to remain in compliance with the requirements of Part 1 - Article 17 and Part 2 – Article 14. The Design Builder's failure to comply, and to continuously comply with these insurance requirements shall constitute a material breach of contract. Failure to provide satisfactory evidence of all required insurance may result in the Design Builder and/or subcontractors at every tier being denied access to work locations, including but not limited to Owner properties.

(a) Owner requires ACORD Certificates of Insurance that reflect total limits of insurance for the types of insurance required under this contract. ACORD Certificates of Insurance shall specifically delineate the following: Who is an Additional Insured under the policies delineated herein;

(b) That each Additional Insured(s) as required herein is an additional insured on a primary and non-contributory basis;

(c) That each Additional Insured(s) is an additional insured for ongoing operations in addition to the products and completed operations coverage;

(d) That coverage providing a waiver of subrogation to each Additional Insured is compliant with the Waiver of Subrogation requirements in Section 14.12;

(e) That the issuing insurance company will mail written notice of cancellation of any of the required insurance policies to Owner within 30 days of Cancellation. Use of "will endeavor to" as respects to this requirement is not acceptable and must be deleted. Such notices shall be sent to the locations identified in above.

14.3 Commercial General Liability Insurance

Coverage

Commercial General Liability Insurance coverage shall be at least as broad as the most recently promulgated version of ISO Form CG 0001 (Occurrence-Basic Coverage). The policy shall also include provisions that offer protection against all risks and exposures including the following:

(a) Premises and Operations Coverage with no exclusions for explosion, collapse and underground work (X, C, and U Exclusions), with waiver of subrogation as to the COUNTY.

(b) Products and Completed Operations (including Latent Defect) Coverage

(c) Contractual Liability Coverage (Assumed by Oral or Written Agreement) covering the Design-Builder's obligations, including any indemnity provisions. Contractual liability exclusion to include an exception for insured contract and construction contract to be an insured contract.

(d) Broad Named Insured Endorsement.

(e) Notice, Knowledge and Unintentional Errors and Omissions Coverage

(f) Incidental Malpractice Coverage

(g) Independent Design-Builders Coverage

(h) Personal Injury Coverage (Hazards A, B, and C) with no exclusion for liability assumed contractually or injury sustained by employees of the Design-Builder

(i) Broad Form Coverage for damage to property of the COUNTY, as well as other third parties resulting from the Design-Builder's work

(j) Any aggregate limits apply on a "per project" basis

(k) Pollution Exclusion shall not be more extensive that the ISO Absolute Pollution Exclusion with "Hostile Fire" and "Building Heating System" Exceptions.

(l) Terrorism Insurance

Limits

The Design Builder minimum limits of liability dedicated to the Project of $50,000,000 for each occurrence and $50,000,000 aggregate and $50,000,000 products and completed operations shall be provided. The Subcontractor minimum limits of liability dedicated to

the Project of $2,000,000 for each occurrence and $2,000,000 aggregate and $2,000,000 products and completed operations shall be provided. Required minimum limits of coverage may be achieved through a combination of the CGL coverage form and umbrella excess liability coverage form(s), provided that the umbrella excess liability forms(s) provide the same or broader coverage than the prescribed CGL coverage form.

Deductibles/Self-Insured Deductibles/Self-Insured Retentions

Design-Builder is responsible for payment of all deductibles or self-insured retentions.

Status of the COUNTY and Other Parties as Additional Insureds

The policy shall name the COUNTY as additional insureds. The Design-Builder must use ISO Form 2010 (11/85 Edition) or equivalent additional insured endorsement. Year 2014 ISO Additional Insured endorsements are not acceptable. Coverage to prove Additional Insured shall be primary and non-contributory to any other insurance available to the Additional Insured. Coverage must provide defense coverage for additional insureds. Coverage provided to any Additional Insured shall be for claims arising out of both ongoing operations and products and completed operations hazard. Coverage available to any Additional Insured under the products and completed operations hazard can only be limited to that applicable statute of repose in the jurisdiction where the contract scope of work takes place. Coverage available to the Additional Insured is not limited to the Minimum Limits of Coverage outlined in this Agreement.

Term of Coverage

For the full Contract period (e.g., until the Design-Builder receives notice of Final Acceptance from the COUNTY), except that extended coverage shall be provided for the Products/Completed Operations policy, for not less than five years following the completion and acceptance of all Work under the Contract. The Design-Builder shall continue to name all additional insureds for the entire period.

Other Coverage Features

The policy is also subject to the following requirements:

(a) The policy shall include a provision that no act or omission of the Design-Builder or any party acting under its direction will affect or limit the obligations of the insurance company in respect of any additional insured, except with respect to provisions limiting coverage for the sole negligence of an additional insured.

(b) The policy shall provide coverage for third-party action over claims, including bodily injury to an employee of any insured or employees of the premises owner or employees of the insured's subcontractors or sub-consultants.

(c) The policy shall delete any warranty stating that coverage is null and void (or words to that effect) if the Design-Builder does not comply with the most stringent regulations governing the Work under the Contract.

(d) The definition of "Insured Contract" shall be modified to provide coverage for contractual liability for contracts for construction or demolition operations that are within 50 feet of a railroad, and sidetrack agreements.

(e) Defense Costs (Allocated Lass Adjustment Expense) must be included and in excess of the policy limits for all primary and Umbrella Excess Policies.

(f) Policy shall be endorsed with ISO endorsement CG 25 03 03 97; "Designated Construction Project(s) General Aggregate Limit", and designate "Any and all construction projects" as the designated Construction project.

(g) Policy shall be endorsed with ISO endorsement CG 25 04 03 97; "Designated Location General Aggregate Limit", and designate "Any and all locations" as the designated location.

(h) The Additional Insured Endorsement shall include Products and Completed Operations Coverage with no limitations on when claims can be made.

14.4 Umbrella Liability Insurance

Coverage

Umbrella liability insurance coverage shall be at least as broad as the underlying primary commercial general liability policy and also include excess coverage for any automobile liability and employer's liability exposures.

Limits

Limits of liability dedicated to the Project of $50,000,000 for each occurrence and $50,000,000 aggregate excess of the primary $1,000,000/2,000,000 limits for commercial general liability shall be provided.

Deductibles/Self-Insured Retentions

The Design-Builder is responsible for payment of all deductibles or self-insured retentions.

Status of the COUNTY and Other Parties as Additional Insureds

The policy shall name the COUNTY, as additional insureds.

Term of Coverage/Other Coverage Features

The provisions of Sections 12.2(5) and (6), above, shall apply to all Umbrella Liability Policies required hereunder. Umbrella Excess Liability forms must provide defense coverage for Additional Insureds.

14.5 Automobile Liability Insurance

Coverage

Automobile Liability Insurance coverage shall be at least as broad as the most recently promulgated version of ISO Form CA 00 01 03 06, or its equivalent. Equivalency shall be made in the COUNTY's and Owner's determination. Any Auto (Symbol 1), with an MCS-90 Endorsements and a CA 9948 Endorsement attached if hazardous materials or

waste are to be transported by the Design-Builder's vehicles. All vehicles owned, non-owned, hired, rented, or leased used in performance of the Work shall be insured. Loading and unloading of any motor vehicle must be covered. The policy shall be endorsed with a Waiver of Subrogation Endorsement(s) in compliance with Part 2 – Article 14.12.

Limits

The coverage under such policy shall have a combined single limit for bodily injury liability and property damage liability of $2,000,000 per occurrence. The coverage under such insurance policy must include mandatory uninsured motorist coverage where applicable. If any of the work involves the transportation or disposal of any hazardous material or waste off of the Project Site, the MCS-90 is required and the auto liability limits must be $5,000,000 per occurrence. Auto Liability minimum Combined Single Limit requirements may be obtained through the combination of a Primary Business Auto Liability policy and an Umbrella Excess Liability policy provided that the Umbrella Excess Liability policy complies with the requirements of this section.

Deductibles/Self-Insured Retentions

The Design-Builder is responsible for payment of all deductibles or self-insured retentions.

Status of the COUNTY and Other Parties as Additional Insureds

The policy shall name the COUNTY as additional insureds.

14.6 Workers' Compensation/Employer's Liability Insurance

Coverage

Statutory workers' compensation as required by the COUNTY, State, or applicable federal laws or the applicable laws of other jurisdictions. If a Design-Builder is self-employed and has no employees, he or she should indicate so in writing and the requirement for workers' compensation coverage may be waived. Worker's Compensation Statutory Coverage must be provided on an "All States" basis.

Limits

A policy complying with the requirements of the statutes of the jurisdiction(s) in which the work will be performed, with Employers Liability limits of $1,000,000 per accident or illness.

Deductibles/Self-Insured Retentions

The Design-Builder is responsible for payment of all deductibles or self-insured retentions.

14.7 Environmental Liability Insurance

Coverage

The Design-Builder's Environmental Liability Insurance policy shall be written on an occurrence basis with coverage for bodily injury, property damage and environmental

damage, including cleanup costs arising out of third party claims, for pollution conditions, and including claims of environmental authorities, for the release of pollutants caused by construction activities related to the Contract. Coverage shall include the Design-Builder as the named insured and shall include coverage for acts by others for whom the Design-Builder is legally responsible.

Coverage to be provided for bodily injury to or destruction of tangible property, including the resulting loss of use thereof, loss of use of tangible property that has been physically injured, and natural resource damage.

There shall be no exclusions or limitations regarding damages/injury from existence, removal or abatement of lead paint.

There shall be no insured vs. insured exclusion in the policy.

Defense including costs, charges, and expenses incurred in the investigation, adjustment or defense of claims for damages shall be included.

Limits

Minimum limits of liability dedicated to the Project of $25,000,000 for each occurrence and $25,000,000 aggregate must be provided.

Deductibles/Self-Insured Retentions

The Design-Builder is responsible for payment of all deductibles or self-insured retentions.

Status of the COUNTY and Other Parties as Additional Insureds

The policy shall name the COUNTY, and any other entities designated by the COUNTY as additional insureds.

14.8 Builder's Risk Insurance

Coverage

The Design-Builder's (or their subcontractors) Builder's Risk Insurance Policy shall cover all risks of direct physical loss of or damage to property (including additional perils of flood, earthquake and collapse) affected by this Project.

Coverage shall be as broad as possible with respect to both covered property interests and covered locations.

Coverage shall apply to all materials, supplies and equipment that are consumed on or intended for specific installation in the Project while such materials, supplies and equipment are located at the Project site(s).

Coverage for transit and storage away from the Project site(s) shall be covered as appropriate.

The policy shall be endorsed (a) waiving the insurance company's rights of recovery under subrogation against all insureds and additional insureds on the policy; (b)

designating the COUNTY as a loss payee for all claims; and (c) deleting any provisions that void coverage with respect to the COUNTY for acts or omissions of the Design-Builder or any other party.

Limits

The limits of insurance shall, at all times, be equal to the total replacement cost value of the structures as then completed. Such policy shall be on an all-risks policy form. If a deductible is carried on this coverage, such deductible shall be no more than $50,000 per claim or loss.

Deductibles/Self-Insured Retentions

The Design-Builder is responsible for payment of all deductibles or self-insured retentions.

Named Insured and Status of the COUNTY and Other Parties as Additional Insureds

The policy shall name the Design-Builder as the first named insured, the COUNTY and any other entities designated by the COUNTY as additional insureds. Owner shall be a Loss Payee and Named insured on this policy.

14.9 Architect & Engineer Professional Liability Insurance

Coverage

Professional Liability insurance shall be provided to protect against liability arising out of any negligent act, error or omission in performance of design or engineering services for the Project. If the Design-Builder provides design or engineering services in-house, Design-Builder's professional liability insurance or the equivalent is required. If any design or engineering services are furnished by a subcontractor, the subcontractor shall be required to provide professional liability coverage. Actual coverage or tail coverage must be purchased and maintained for a period of time equal to the statute of repose.

Limits

The Design-Builder shall require the Designer to provide and maintain professional liability coverage with limits of $5,000,000 per claim and a maximum deductible of $250,000. The Design-Builder agrees to provide a one-year discovery period under this policy.

Deductibles/Self Insured Retentions

The policy shall provide for a waiver of subrogation against the COUNTY. Any policy deductible shall be subject to approval of the COUNTY, State and any other entities designated by the COUNTY as additional insureds.

Named Insured and Status of the COUNTY and Other Parties as Additional Insureds

The policy shall name the Design-Builder as the first named insured, the COUNTY, and any other entities designated by the COUNTY as additional insureds.

14.10 Design-Builder's Pollution Legal Liability

Coverage

The Design-Builder's Pollution Legal Liability shall cover the liability of the Design-Builder and any environmental subcontractor during construction of the Project for the process of removal, storage, transport, and disposal of hazardous waste and contaminated soil. The policy shall include coverage for bodily injury, property damage and loss of, damage to, or loss of use of property directly or indirectly arising out of the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquid or gas, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere, or any water course or body of water, whether it be gradual, sudden or accidental.

Limits

The limits shall be not less than $5,000,000 per occurrence. The policy shall include an extended reporting period of at least three years.

Named Insured and Status of the COUNTY and Other Parties as Additional Insureds

The policy shall name the Design-Builder as the first named insured, the COUNTY, and any other entities designated by the COUNTY as additional insureds.

14.11 Deficiencies in Coverage and Failure to Maintain Insurance

The insurance policies required by this Section shall not be cancelled, terminated, or modified (except to increase the amount of coverage) without thirty (30) calendar days prior written notice from the insurer or an agent or broker of the insurer or the insured the COUNTY. If Design-Builder fails to maintain any insurance required by this Design-Build Agreement, the COUNTY may, after no less than fifteen (15) calendar days prior written notice to Design-Builder (during which period the Design-Builder may obtain such insurance), procure and maintain such insurance at the expense of Design-Builder. The COUNTY shall notify the Design-Builder in writing of the date, purposes and amounts of any such insurance premium payments made by it, and any amounts of money paid therefor by the COUNTY shall be repaid to the COUNTY by the Design-Builder. If the required insurance policies are not reinstated or replaced by the Design-Builder within fifteen (15) calendar day period (irrespective of any other notice, default, discussion, or cure provisions or procedures in this Design-Build Agreement), then such failure to replace or reinstate shall constitute a Default by Design-Builder, without any further cure period.

14.12 Waiver of Subrogation

The Design Builder and contractors and subcontractors at every tier are required to have insurance policies purchased by the Design Builder and contractors and subcontractors at every tier, endorsed to waive the insurance company's rights of recovery against the COUNTY. Coverage shall be provided on an endorsement that is acceptable to the COUNTY.

ARTICLE 15. SURETY BONDS

The Design-Builder shall furnish, at the Design-Builder's expense, Performance and Payment Bonds in accordance with Part 1 – Article 17. Performance and Payment Bonds shall be issued in an amount equal to 100% of the Contract Price, and 100% of the Contract Price, respectively.

ARTICLE 16. CHANGE ORDERS

The Owner may order one or more changes to the Work within the general scope of this Contract. The Design-Builder must proceed with any such changes, and any Design-Builder claim regarding any such change must be made in strict accordance with Part 1 -Articles 11, 12 and 16 and Article 13 of this Design-Build Contract.

(A) The Design-Builder must notify and obtain the consent and approval of the Design-Builder's Surety with reference to all Change Orders if such notice, consent or approval is required by the Owner, the Design-Builder's Surety or by law. The Design-Builder's performance of Change Order Work constitutes the Design-Builder's warranty to the Owner that the surety has been notified of, and consents to, such Change Order Work AND THE SURETY SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN NOTIFIED OF SUCH CHANGE ORDER WORK AND TO HAVE EXPRESSLY CONSENTED TO THE CHANGE ORDER WORK.

(B) ANY CLAIM ABOUT AN ADJUSTMENT IN THE CONTRACT TIME OR CONTRACT PRICE DUE TO A CHANGE MUST BE GIVEN IN WRITING TO THE OWNER AS PROVIDED IN PART 1 - ARTICLES 11, 12 AND 16 AND ARTICLE 13 OF THIS DESIGN-BUILD CONTRACT, OR THE CLAIM IS WAIVED. Any failure to agree upon an adjustment in the Contract Time or Contract Price must be resolved under Part 1 - Article 16. The Design-Builder must proceed with the
prosecution of the Work as changed, even if there is an unresolved claim. No charge for any extra work, time or material will be allowed, except as provided in this Article.

ARTICLE 17. DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

Inspection and correction of the Work and Design-Builder's warranties shall be as provided in Part - Article 10.

ARTICLE 18. NO TERMINATION BY THE DESIGN-BUILDER

The Design-Builder does not have a right to terminate the Contract. As provided in Part 1 - Article 15, the Design-Builder has no right to stop Work on the Project. In the event of any dispute between Design-Builder and Owner involving the Design-Builder's claim to entitlement to any payment, the Design-Builder, as required by Part 1 - Article 11, must diligently proceed with the Work pending resolution of the dispute.

ARTICLE 19. OWNER'S RIGHT TO SUSPEND DESIGN-BUILDER'S PERFORMANCE

The Owner maintains the right to suspend or stop Work as provided in Part 1 - Articles 11 and 15

ARTICLE 20. TERMINATION BY THE OWNER

The Owner may terminate this Contract in accordance with Part 1 - Article 15.

ARTICLE 21. COMPLIANCE WITH THE LAW

The Design-Builder shall comply with, and ensure that all Subcontractors comply with, all Applicable Law, as defined in Part 1, Article 1, Section 1.1.11Governmental Rules, including the federal requirements found in Appendix B hereto. Noncompliance with Applicable Law may result in the owner suspending work where the noncompliance effects health, safety and the environment.

ARTICLE 22. NON-COLLUSION AND OTHER DESIGN-BUILDER REPRESENTATIONS

The Design-Builder represents and agrees that the only Person or Persons interested as principal or principals in the Proposal submitted by the Design-Builder for this Contract are named therein, and that no Person other than those mentioned therein has or will have any interest in the above mentioned Proposal, in the securing of the award of this Contract, or in the Contract; that this Contract has been secured without any connection with any Person or Persons other than those named; that the Proposal is in all respects fair and was prepared, and the Contract was secured, without collusion or fraud; and that neither any officer nor employee of the COUNTY has or shall have a financial interest in the performance of the Contract or in the supplies, Work, or business to which it relates or in any portion of the profits thereof.

See Exhibit 1, "Contract Affidavit," at the end of this agreement for additional Design-Builder representations and affirmations.

ARTICLE 23. INDEPENDENT DESIGN-BUILDER

The relationship of the Design-Builder to the COUNTY is that of an independent Design-Builder, and said Design-Builder, in accordance with its status as an independent Design-Builder, covenants and agrees that it will conduct itself consistently with such status, that it will neither hold itself out as nor claim to be an officer or employee of the COUNTY by reason hereof, and that it will not, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the COUNTY, including workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit. The COUNTY does not assume, and expressly disclaims, any implied or express warranty for the sufficiency of the Design Plans and Specifications under United States v. Spearin, 248 U.S. 132 (1918) or any other common law or statutory doctrine. The Design-Builder shall be the sole responsible party for determining the adequacy and sufficiency of the plans and specifications and the COUNTY shall have no liability or responsibility for the same.

ARTICLE 24. SUFFICIENT FUNDING

Part 0 – ITP, 4.1.3.1 Price Evaluation Factors, identifies the Fixed Fee for this Contract. This obligation is only valid, effective and binding on the COUNTY to the extent that sufficient authorizations and appropriations of funds are made by the Stakeholders and/or the Congress of the United States for performance of the Contract.

ARTICLE 25. SET-OFF RIGHTS

The COUNTY shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include the COUNTY's option to withhold, for the purposes of set-off, any moneys due to the Design-Builder under this Contract up to any amounts due and owing to the State with regard to this Contract, any other contract with any COUNTY department or agency, including any contract for a term commencing prior to the term of this Contract, plus any amounts due and owing to the COUNTY for any other reason including, without limitation, tax delinquencies, fee delinquencies, or monetary penalties relative thereto.

ARTICLE 26. RECORDS

The Design-Builder shall establish and maintain complete and accurate books, records, documents, accounts, and other evidence directly pertinent to performance under this Contract (hereinafter, collectively called the "Records"). The Records must be kept for a minimum of three years after Final Payment. The COUNTY and any of its authorized employees or agents shall have access to the Records during normal business hours at an office of the Design-Builder within the State or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing, and copying. The COUNTY will take all reasonable steps to protect from public disclosure any of the records which are exempt from disclosure under the Maryland Public Information Act ("PIA"), provided the following:

The Design-Builder timely informs the Contract Administrator, in writing, of the identity of the Records that should not be disclosed; and

Designation of said Records as exempt from disclosure under the PIA is reasonable.

Nothing contained herein shall diminish, or in any way adversely affect, the COUNTY's right to discovery in any pending or future litigation.

ARTICLE 27. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION

Federal Employer Identification Number and/or Federal Social Security Number. All invoices submitted for payment must include the Design-Builder's taxpayer identification number, i.e., either the federal employer identification number or federal social security number, or both such numbers if the Design-Builder has both such numbers. That number is as follows: _____. Failure to include this number or numbers may delay payment.

Privacy Notification. The authority to request the above personal information from the Design-Builder is found in COMAR 21.07.01.03. Disclosure of this information by the Design-Builder is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses, and others who have been delinquent in filing tax returns or may have understated their tax liabilities. The information will be used for tax administration purposes and for any other purpose authorized by law.

ARTICLE 28. APPLICABLE LAW

This Contract must be construed under the law of _____, without regard to conflicts of law provisions

ARTICLE 29. SUCCESSORS AND ASSIGNS

This Contract is binding on the Parties and their respective successors, heirs, and assigns. The Contract must not be assigned without prior written consent of the Owner and except as otherwise provided in this Contract.

ARTICLE 30. NON-ASSIGNMENT CLAUSE

Neither this Contract nor any right, title, or interest therein may be assigned, transferred, conveyed, sublet, or disposed of by the Design-Builder without the previous written consent of the State. Any attempts to assign the Contract without the COUNTY's written consent are null and void.

ARTICLE 31. UNION ACTIVITY

Furthermore by signing, or performing work under this Contract, the Design-Builder expressly certifies that it will not expend COUNTY funds to assist, promote, deter, or otherwise influence union activity or organizing, and that it will comply with the requirements of Montgomery COUNTY Code, Section 11B-33B. **[NOTE: This provision shall be included when required by state or local statute or collective bargaining requirements.]**

ARTICLE 32. FEDERAL CLAUSES

The Work to be performed under this Contract will be financed in part with federal funds and is therefore subject to federal statutes, rules and regulations applicable to work financed with federal funds, including the federal requirements set forth in Appendix B. In the event of any conflict between any applicable federal requirements and the other requirements of the Contract Documents, the federal requirements shall prevail, take precedence and be in force over and against any such conflicting provisions, but only to the extent of the conflict. **[NOTE: Article 32 Applies only if the contract is federally funded.]**

IN WITNESS WHEREOF, this Contract has been executed by the COUNTY and the Design-Builder, effective as of the day and year first written above.

MONTGOMERY COUNTY BY MONTGOMERY CONTY DEPARTMENT OF TRANSPORTATION

RECOMMENDED:

_____ _____

Chief, Division of Transportation Engineering Contract Administrator — Date

Approved for Execution:

_____ Date: _____

Director, Department of General Services

Approved as to form and legal sufficiency:

_____ Date: _____

Montgomery COUNTY Office of the COUNTY Attorney

(INCORPORATED FIRMS SIGN BELOW)

Design Build Firm License Number	Date Issued	Place of Issuance (COUNTY)

ATTEST:

Secretary's Signature	By (Seal) President's Signature
Printed Name	Printed Name
	Federal ID # or Social Security #

(INDIVIDUAL DESIGN-BUILDERS OR PARTNERSHIP FIRMS SIGN BELOW)

_____	_____	_____
Design Build Firm	Date Issued	Place of Issuance
License Number		(COUNTY)

WITNESS:

_____

_____ (Signature)

_____ _____ (Signature)

_____ (Signature)

_____ (Signature)

Trading as

_____

Design-Builder's Signature

_____

Printed Name

_____

Federal ID # or Social Security#