

CANAL PLACE PRESERVATION & DEVELOPMENT AUTHORITY

GENERAL CONTRACT PROVISIONS

This document sets out provisions generally applicable to all Canal Place Preservation and Development Authority (“Authority”) contracts. The provisions herein do not constitute a complete agreement, and must be appended to a document, executed by all parties, which identifies the specific work to be performed, compensation, term of the agreement, incorporated attachments, and special conditions if any (the “Basic Agreement”). This document and the Basic Agreement are intended to be complementary and shall be construed accordingly. Should there be a direct contradiction between the terms and conditions contained herein and the Basic Agreement, the Basic Agreement shall govern and control those contradictory terms and conditions which are not mandatory provisions as required in all Authority agreements by the State Finance and Procurement Article of the Annotated Code of Maryland. As used herein, the term “State” includes the State of Maryland, its various departments, units, agencies, employees or agents as may be appropriate.

1. AMENDMENT:

This Contract constitutes the entire agreement between the parties and all other communications prior to its execution, whether written or oral, with reference to the subject matter of this Contract are superseded by this agreement. Any amendment to this Contract must first be approved in writing by the Procurement Officer, subject to any additional approvals required by State law. No amendment to this Contract shall be binding unless in a writing signed by the parties. The foregoing notwithstanding, the Authority shall have the right to order in writing changes in work that fall within the scope of the Contract.

2. NON-HIRING OF EMPLOYEES:

No official or employee of the State, as defined under State Government Article, §15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this contract, shall during the pendency and term of this contract and while serving as an official or employee of the State become or be an employee of the Contractor or any entity that is a subContractor on this contract

3. GOVERNING LAWS:

This Contract shall be governed by the laws of the State of Maryland.

4. DISPUTES:

(a) This contract is not subject to the provisions of State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland, or Title 21, Subtitle 10, Code of Maryland Regulations.

(b) Except as otherwise may be provided by law, all disputes arising under or as a result of a breach of this Contract that are not disposed of by mutual agreement shall be resolved in accordance with this clause.

(c) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed as to liability or amount, it may be converted to a claim for the purpose of this clause.

(d) A claim shall be made in writing and submitted to the Procurement officer for decision.

(e) When a claim cannot be resolved by mutual agreement, the Contractor shall submit a written request for final decision to the Procurement Officer. The written request shall set forth all the facts surrounding the controversy.

(f) The Contractor, at the discretion of the Procurement Officer, may be afforded an opportunity to be heard and to offer evidence in support of his claim.

(g) The Procurement Officer shall render a written decision on all claims within 180 days of receipt of the Contractor's written claim, unless the Procurement Officer determines that a longer period is necessary to resolve the claim. If a decision is not issued within 180 days, the Procurement Officer shall notify the Contractor of the time within which a decision shall be rendered and the reasons for such time extension. The decision shall be furnished to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The Procurement Officer's decision shall be deemed the final action of the Authority.

(h) Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the contract.

5. NON-DISCRIMINATION:

(a) The Contractor agrees: (i) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (ii) to include a provision similar to that contained in subsection (i), above, in any subcontract expect a subcontract for standard commercial supplies or raw materials; and (iii) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

(b) As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As

part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, disability, or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

(c) As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

6. CONTINGENT FEE PROHIBITION:

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this agreement. For breach or violation of this warranty, the Authority shall have the right to terminate this Contract without liability, or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

7. TERMINATION OF CONTRACT FOR DEFAULT:

If the Contractor fails to fulfill its obligation under this contract properly and on time, or otherwise violates any provision of the contract, the Authority may terminate the contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the Authority's option, become the Authority's property. The Authority shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and

the Authority can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

8. TERMINATION OF CONTRACT FOR CONVENIENCE:

The performance of work under this contract may be terminated by the Authority in accordance with this clause in whole, or from time to time in part, whenever the Authority shall determine that such termination is in the best interest of the Authority or the State. The Authority will pay all reasonable costs associated with this contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

9. DELAYS AND EXTENSIONS OF TIME:

The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances, from any cause whatsoever during the progress of any portion of the work specified in this Contract. Time extensions will be granted only for excusable delays that arise 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 Authority or the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or subcontractors or suppliers.

10. SUSPENSION OF WORK:

The Procurement Officer may unilaterally order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the Authority or the State.

11. PAYMENT:

Payments by the Authority to the Contractor pursuant to this Contract shall be made no later than 30 days after the Authority's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited.

12. FINANCIAL DISCLOSURE.

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

13. POLITICAL CONTRIBUTION DISCLOSURE:

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

14. REMEDIES:

(a) Contractor agrees to perform the work as may be necessary to correct errors, defects, and omissions in the services required under this Contract, without undue delays and without cost to the Authority. The acceptance of the work set forth herein by the Authority shall not relieve the Contractor of the responsibility of subsequent correction of such errors.

(b) The Authority may deduct from and set-off against any amounts due and payable to the Contractor any back-charges, penalties, or damages sustained by the Authority, its agents, employees or recipients of its services, by virtue of any breach of this Contract by the Contractor or by virtue of the failure or refusal of the Contractor to perform the services or any part of the services in a satisfactory manner. Nothing herein shall be construed to relieve the Contractor of liability for additional costs resulting from a failure to satisfactorily perform the services.

15. RESPONSIBILITY OF CONTRACTOR:

(a) The Contractor shall perform the services with that standard of care, skill, and diligence normally provided by a Contractor in the performance of services similar to the services hereunder.

(b) Notwithstanding any review, approval, acceptance or payment for the services by the Authority, the Contractor shall be responsible for the professional and technical accuracy of its work, design, drawings, specifications and other materials furnished by the Contractor under this Contract.

(c) If the Contractor fails to perform the services, or any part of the services, in conformance with the standard set forth in paragraph 15(a) above, and such failure is made known to the Contractor within two years after expiration of this Contract, it shall, if required by the Authority, perform at its own expense and without additional cost to the Authority, those services necessary for the correction of any deficiencies or damage resulting, in whole or in part, from the Contractor's failure. This obligation is in addition to and not in substitution for any other remedy available to the Authority under paragraph 14, or otherwise available by law.

16. DISSEMINATION OF INFORMATION:

(a) During the term of this Contract, the Contractor shall not release any information

related to the services or performance of the services under this Contract nor publish any final reports or documents without the prior written approval of the Authority.

(b) The Contractor shall indemnify and hold harmless the Authority and the State, its officers, agents and employees, from all liability which may be incurred by reason of dissemination, publication, distribution or circulation, in any manner whatsoever, of any information, data, documents, or materials pertaining in any way to this Contract by the Contractor, its agents or employees.

17. OWNERSHIP OF DOCUMENTS AND MATERIALS:

(a) The Contractor agrees that all documents and materials including but not limited to reports, drawings, studies, specifications, estimates, maps, photographs, designs, graphics, mechanicals, artwork, and computations prepared by or for the Contractor under the terms of this Contract shall at any time during the performance of the services be made available to the Authority upon request by the Authority and shall become and remain the exclusive property of the Authority upon termination or completion of the services. The Authority shall have the right to use the same without restriction or limitation and without compensation to the Contractor other than that provided in this Contract. The Authority shall be the owner for the purposes of copyright, patent or trademark registration.

(b) If the Contractor obtains or uses for purposes of this Contract, or subcontracts for, any design, device, material, or process covered by letters of patent or copyright, it shall provide an assignment to the Authority of ownership for purposes of copyright, patent or trademark and of all right to possess and to use such design, device, material or process by a legally sufficient agreement with the patentee or owner, and a copy of such agreement shall be filed with the Authority.

(c) The Contractor shall indemnify and save harmless the State and the Authority 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 Authority, the State, their officers, agents, and employees with respect to any claim, action, cost or judgment for patent, trademark or copyright infringement, or for royalties or user fees, arising out of purchase or use of materials, construction, supplies, equipment or services covered by this Contract.

18. RETENTION OF RECORDS:

The Contractor shall retain and maintain all records and documents relating to this Contract for three years after final payment by the Authority hereunder of any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the Authority or the State, including the Procurement Officer or designee, at all reasonable times.

19. CORPORATE REGISTRATION AND TAX PAYMENT CERTIFICATIONS:

Corporations are required to execute a Certification of Corporation Registration and Tax Payment. Each invoice submitted hereunder must indicate a Federal tax identification number or a Social Security Number.

20. COMPLIANCE WITH LAWS:

The Contractor hereby represents and warrants 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 respect to the payment of any monies due and owing the Authority or the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

(c) It shall comply with all Federal, State, Authority, and local laws regulations, and ordinances applicable to its activities and obligations under this Contract; and

(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.

21. COST AND PRICE CERTIFICATION:

(a) The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:

(1) A negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the Procurement Officer; or

(2) A change order or contract modification expected to exceed \$100,000, or a smaller amount set by the Procurement Officer.

(b) The price under this Contract and any change order or modification hereunder, including any profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

22. BANKRUPTCY:

Upon the filing for any bankruptcy proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit or creditors, the Contractor must notify the Authority immediately. Upon learning of the actions herein identified, the Authority reserves the right at its sole discretion either to cancel the Contract or to affirm the Contract and hold the Contractor responsible for damages. The exercise of this right is in addition to any other rights the Authority or the State may have as provided in this Agreement or by law.

23. SUBCONTRACTING OR ASSIGNMENT:

The benefits and obligations hereunder shall inure to and be binding upon the parties hereto and neither this Contract nor the services to be performed hereunder shall be subcontracted, or assigned or otherwise disposed of, either in whole or in part, except with the prior written consent of the Authority. The Authority has the right to withhold such consent for any reason the Authority or the State deems appropriate.

24. RESPONSIBILITY FOR CLAIMS AND LIABILITY:

The Contractor shall be responsible for all damage to life and property due to its activities or those of its agents or employees, in connection with the services required under this Contract. Further, it is expressly understood that the Contractor shall indemnify and save harmless the Authority, its officers, agents, and employees from and against all claims, suits, judgments, expenses, actions, damages and costs of every name and description, including attorney's fees, arising out of or resulting from the negligent performance of the services of the Contractor under this Contract.

23. ANTI-BRIBERY:

The Contractor is required to be aware of Section 13-405 of the State Finance and Procurement Article of the Annotated Code of Maryland which requires that any person convicted of bribery, or conspiracy to bribe based upon acts committed after July 1, 1977, in the obtaining of a contract from the State or any of its subdivisions, shall be subject to disqualification pursuant to Section 13-405 from entering into a contract with the State, or any county or other subdivision of the State, for the supply of materials, supplies, equipment, or services by the person.

Contractor: _____
(Print Name of Firm)

By: _____
(Signature)

Name/Title: _____