

State of Maryland
Department of General Services
Standard Form of Agreement with Architects and Engineers

Project Title [insert]

DGS Project Number [insert]

This Agreement is made this ___ day of _____, between the State of Maryland ("State"), acting by and through the Department of General Services ("DGS") and _____ ("A/E"), whose principal place of business is [insert address of A/E here], hereinafter collectively referred to as the Parties.

WHEREAS, the A/E has represented themselves to be professionally qualified and having met the requirements of the Code of Maryland Regulations (COMAR) §21.12.04 or §21.12.05, as applicable; and having been fully informed as to the scope of the project and having read and examined the State's RFP No. [_____] and titled _____ and dated, _____, _____ and any addenda issued thereto; and

WHEREAS, the parties mutually agree to enter into this negotiated agreement based upon the Scope of Work set forth within the above referenced RFP, and attached hereto as Exhibit 1.

NOW, THEREFORE, under the terms and conditions named herein, the Parties agree as follows:

The A/E shall perform all services consistent with this Agreement, the Program, the DGS Procedure Manual for Professional Services as amended, and within the mutually agreed upon schedule for the completion of the several phases of services utilizing good professional skill and care along with the timely and orderly progress of the work.

PART I
DEFINITIONS

In this Agreement, the following words have the meanings indicated:

- A. "COMAR" means the Code of Maryland Regulations
- B. "A/E" means the Architect/Engineer ("A/E") firm
- C. "DGS" means the Department of General Services, or Agency, or State, or Owner
- D. "Procedures Manual" means the State of Maryland-Department of General Services Procedure Manual for Professional Services
- E. "Program" means the document(s) that is used as the justification for the capital project; defines and explains the scope of work; and provides detailed guidance for the project design.
- F. "Project" means a government-sponsored endeavor initiated to facilitate the creation, in whole or in part, of a specific capital improvement including, but not limited to, programming, consulting services, design services, construction services and/or other relevant tasks/services which support the creation of the specified capital improvement, executed over a specified period of time under specified guidelines and within specified cost limitations.
- G. "Secretary" means the Secretary of the Department of General Services, or designee

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**PART II
ORDER OF PRECEDENCE**

If there is any conflict among the Agreement documents then the following order of precedence will govern:

1. This Agreement, including all Exhibit 1-Scope of Services and Exhibit 2-Agreement Affidavit hereto; and any amendments thereto;
2. The RFP No. [insert] and titled [insert], and subsequent addenda;
3. The Procedures Manual; then
4. The A/E's Proposal.

**PART III
PERIOD OF PERFORMANCE**

The term of this Agreement begins on the date the Agreement is signed by the Department following any required approvals of the Agreement, including approval of the Board of Public Works, if such approval is required. This Agreement shall end on [insert date here], but may be extended at the sole discretion of the Department and at the prices quoted and accepted in the A/E's final price proposal.

**PART IV
THE ARCHITECT'S/ENGINEER'S SERVICES**

- A. The A/E's services shall consist of some or all of the following six (6) principal phases in accordance with this Agreement and Exhibit 1-Scope of Services and shall include the A/E's final negotiated price proposal: (1) Schematic Design Phase, (2) Design Development Phase, (3) Construction Documents Phase, (4) Bidding Phase, (5) Construction Phase and (6) Post Construction Phase (hereinafter collectively referred to as "Design Phases").
- B. In rendering these services, the A/E shall comply with the DGS Procedure Manual for Professional Services for each phase of work for which the A/E has entered into this Agreement; and be solely responsible for the technical completeness and sufficiency of all Construction Documents consisting of drawings and specifications which is set forth in detail the requirements for the construction of the Project. DGS acknowledges that, in order for the A/E to complete the work, construction contractors and related vendors may be required to provide additional information, including but not limited to shop drawings, product data, samples and similar submittals for the A/E to review.

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**PART V
OWNERSHIP OF DOCUMENTS AND RIGHTS TO RECORDS**

- A. All documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data ("deliverables") which are prepared by the A/E and form a part of its services for the purpose of this Agreement, shall, upon completion of the deliverables, become the sole property of the State of Maryland and shall be delivered to the Secretary upon request and upon completion. The State shall receive all original deliverables and the A/E shall retain a reproducible copy. If at any time the A/E is requested to reproduce or deliver in electronic format reproducible copies of the deliverables prepared for the purpose of this Agreement, the A/E shall be responsible for the protection and/or replacement of any of the deliverables, except to the extent that such deliverables are: 1) modified by someone other than the A/E; 2) modified at the direction of someone other than the A/E; or 3) there is an unlicensed use of such deliverables not under the custody and control of the A/E after transmission.
- B. The State shall have the right to use the same without restriction and without compensation to the A/E other than that specifically provided for herein.
- C. The A/E agrees that at all times during the term of this Agreement and thereafter, works created as a deliverable under this Agreement, and services performed under this Agreement shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Agreement are not works made for hire for the State, the A/E hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Agreement, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- D. The A/E shall report to the Project Manager, promptly and in written detail, each notice or claim of copyright infringement received by the A/E with respect to all data delivered under this Agreement; and agrees to indemnify and hold harmless the State and DGS for any claim of copyright infringement in the use of any works made for hire which are either determined by a court of competent jurisdiction to be the property of another, or agreed to in any manner by the A/E to be the property of another.
- E. The A/E shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

**PART VI
FEES AND PAYMENT**

- A. The extent of the A/E's services required by this Agreement shall govern and determine the method and amount of compensation to be paid by the State to the A/E with a total amount not to exceed [insert total amount of the Agreement here]. The A/E may apply to the Secretary for

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periodic progress payments based upon approved invoices submitted by the A/E. However, the granting of any such application in whole or in part, is solely within the Secretary's discretion, who may refuse such application and may require the A/E to complete the deliverables required for any particular Phase and any revisions thereto as hereinbefore provided. The A/E shall secure the approval of such documents as a prerequisite to the A/E's entitlement to payment of said compensation. The granting of the A/E's application for such periodic payments by the Secretary and the remittance thereof shall not constitute, in any sense, approval by the State of Maryland for the percentage of work completed for such Phase, or any part thereof, such approval being expressly reserved to the Secretary upon the completion of each of the said Phases, and in accordance with this Agreement.

- B. Agreement Work / Elements: When the Scope of Services to be performed by the A/E under this Agreement includes the Schematic Design Phase and the Design Development Phase, any one or all of the Construction Documents Phase, the Bidding Phase, the Construction Phase and the Post Construction Phase, the A/E shall be compensated as provided for below. However, at the completion of each of the Phases and the approval thereof by the Secretary the periodic progress payments submitted by the A/E by way of invoices, shall not exceed the following:
1. At the completion and approval of the Schematic Design Phase = \$
 2. At the completion and approval of the Design Development Phase = \$
 3. At the completion and approval of the Construction Documents Phase = \$
 4. At the completion and approval of the Bidding Phase = \$
 5. At the completion and approval of the Construction Phase = \$
 6. At the completion and approval of the Post Construction Phase = \$
 7. Other = \$

When required by the Secretary to substantiate the degree of completion claimed in any such application for periodic progress payments, the A/E shall furnish copies of the deliverables evidencing the degree of completion claimed.

- C. Additional Services / Agreement Modifications:
1. The Procurement Officer may, at any time, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Agreement.
 2. Any other written order from the Procurement Officer which causes any such change, shall be treated as a change order under this clause, provided that the A/E gives the Procurement Officer written notice stating the date, circumstances, and source of the order and that the A/E regards the order as a change order.
 3. Except as herein provided, no order, statement, or conduct of the Procurement Officer shall be treated as a change under this clause or entitle the A/E to an equitable adjustment hereunder.
 4. If any change under this clause causes an increase or decrease in the A/E cost of, or the time required for, the performance of any part of the work under this Agreement, whether or not changed by any order, an equitable adjustment shall be made and the Agreement modified in writing accordingly. If the A/E intends to assert a claim for an equitable adjustment under this clause, it shall, within 30 days after receipt of a written

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change order under subsection 1 above or the furnishing of written notice under subsection 2 above, submit to the Procurement Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the State. The statement of claim hereunder may be included in the notice under subsection 2 above.

5. No claim by the A/E for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Agreement.
- D. When the Scope of Services to be performed by the A/E under this Agreement includes the Construction Phase, applications by the A/E for periodic progress payments of its compensation under this Phase shall correspond to and be based upon the work then completed by the A/E upon the Project.
- E. Within the discretion of the Project Manager, the compensation payable to the A/E under this Agreement may be reduced because of additional costs of constructing the Project incurred by the State of Maryland because of errors in, and improper coordination of the drawings and specifications comprising the Construction Documents. The amount of such reduction in compensation, if any, shall not exceed the amount of such additional costs of constructing the Project.
- F. Upon all applications for periodic payments of compensation, excepting only the first such application, the A/E shall certify in writing to the Secretary, under penalty of perjury, that all consultants and sub-consultants, the extent of whose work comprised a portion of the prior application for periodic payment, were paid in full to the extent of such, as was approved by the Secretary, within ten (10) calendar days next succeeding the date on which the A/E received payment from the State for such prior application. All A/E invoices to the State shall set forth the A/E's Federal Employer identification number or Social Security number.

PART VII
GENERAL PROVISIONS

- A. **Schedule of Dates:** Within thirty (30) days after the date of this Agreement, the Secretary and the A/E shall mutually agree upon a schedule of dates for the completion of the several Phases on the A/E's services, as provided herein.
- B. **Termination for Default:** If the A/E fails to fulfill its obligations under this Agreement properly and on time, or otherwise violates any provision of the Agreement, the State may terminate this Agreement by written notice to the A/E. The notice shall specify the acts or omissions relied on as cause for termination. All finished or unfinished supplies and services provided by the A/E, shall at the State's option, become the State's property. The State shall pay the A/E fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by A/E's breach. If the damages are more than the compensation payable to the A/E, the A/E will remain liable after termination and the State 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 21.07.01.11(B).

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- C. **Non-Assignment:** The A/E may not assign or transfer any interest in this Agreement except with the written approval of the Secretary. In the event that death or other cause necessitates substitution by the State of another A/E in place of the party hereto in order to complete the services called for by the Agreement, the Secretary shall determine the division of the fee between the substitution and the A/E who is party hereto.
- D. **Change in A/E Organization/Personnel:** The A/E must promptly notify the Secretary of any major changes in its organization or personnel by submitting revised Standard Form 330. Such change shall not occur without the approval of the Secretary.
- E. **Disputes:** This Agreement shall be subject to the provisions of State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the A/E shall proceed diligently with the performance of the Agreement in accordance with the Procurement Officer's decision. COMAR 21.07.01.06(A).
- F. **Delays and Extensions of Time:** The A/E 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 Agreement. 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 A/E, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another A/E in the performance of an Agreement 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 negligence of either the A/E or the subcontractors or suppliers. COMAR 21.07.01.13.
- G. **Suspension of Work:** The Procurement Officer unilaterally may order the A/E in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the State. COMAR 21.07.01.16.
- H. **Termination for Convenience:** The performance of work under this Agreement may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the Procurement Officer shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Agreement that the A/E has incurred up to the date of termination and all reasonable costs associated with termination of the Agreement. However, the A/E shall not be reimbursed for any anticipatory profits which 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).
- I. **Pre-existing Regulations:** In accordance with the provisions of §11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in COMAR Title 21 in effect on the date of execution of this Agreement are applicable to this Agreement. COMAR 21.07.01.17.
- J. **Payment of State Obligations:** Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, Payments to the A/E pursuant to this Agreement shall be made no

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later than 30 days after the State's receipt of a proper invoice from the A/E. The A/E may be eligible to receive late payment interest at the rate of 9% per annum if:

1. The A/E submits an invoice for the late payment interest within thirty days after the date of the State's payment of the amount on which the interest accrued; and
2. An Agreement claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

The State is not liable for interest:

1. Accruing more than one year after the 31st day after the agency receives the proper invoice; or
 2. On any amount representing unpaid interest. Charges for late payment of invoices are authorized only 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. COMAR 21.07.01.18.
- K. **Contingent Fee Prohibition:** The A/E, architect, or engineer (as applicable) warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the A/E, architect, or engineer, 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. COMAR 21.07.01.09.
- L. **Nondiscrimination in Employment:** The A/E agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry genetic information or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a) above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) 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. COMAR 21.07.01.08.
- M. **Commercial Nondiscrimination Clause:** As a condition of entering into this Agreement, the A/E represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, the A/E may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the A/E retaliate against any person for reporting instances of such discrimination. The A/E shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector

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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. A/E understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of A/E from participating in State Agreements, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

In addition, as a condition of entering into this Agreement, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against the A/E under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, the A/E agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that the A/E has used in the past 4 years on any of its Agreements that were undertaken within the State of Maryland, including the total dollar amount paid by the A/E on each subcontractor or supply contract. The A/E 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. The A/E understands that violation of this clause is a material breach of this Agreement and may result in Agreement termination, disqualification by the State from participating in State Agreements, and other sanctions. COMAR 21.07.01.26

- N. **Compliance with Laws:** The A/E hereby represents and warrants that:
1. 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;
 2. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Agreement;
 3. It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Agreement; and
 4. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement.
COMAR 21.07.01.22.
- O. **Maryland Law Prevails:** The provisions of this agreement shall be governed by the laws of the State of Maryland. COMAR 21.07.01.07.
- P. **Retention of Records:** The A/E shall retain and maintain all records and documents relating to this Agreement for three years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times. COMAR 21.07.01.21.
- Q. **Truth-In-Negotiation Certification:** This provision is applicable solely for those A/E Agreements that exceed \$100,000. The A/E, by submitting cost or price information, including

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wage rates or other factual unit costs, certifies to the best of its knowledge, information and belief, that:

1. The wage rates and other factual unit costs supporting the firm's compensation, as set forth in the proposal, are accurate, complete and current as of the Agreement date;
2. If any of the items of compensation were increased due to the furnishing of inaccurate, incomplete or noncurrent wage rates or other units of costs, the State is entitled to an adjustment in all appropriate items of compensation, including profit or fee, to exclude any significant sum by which the price was increased because of the defective data. The State's right to adjustment includes the right to a price adjustment for defects in costs or pricing data submitted by a prospective or actual subcontractor; and
3. If additions are made to the original price of the Agreement, such additions may be adjusted to exclude any significant sums where it is determined the price has been increased due to inaccurate, incomplete or noncurrent wage rates and other factual costs. COMAR 21.07.01.24.

R. **Multi Year Agreements Contingent Upon Appropriations:** If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Agreement succeeding the first fiscal period, this Agreement shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the A/E's rights under any termination clause in this Agreement. The effect of termination of the Agreement hereunder will be to discharge both the A/E and the State from future performance of the Agreement, but not from their rights and obligations existing at the time of termination. The A/E shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Agreement. The State shall notify the A/E as soon as it has knowledge that funds may not be available for the continuation of this Agreement for each succeeding fiscal period beyond the first. COMAR 21.07.01.10.

S. **Liquidated Damages:** In the event, the A/E fails to comply in good faith with the requirements of the MBE program. COMAR 21.07.01.14 Liquidated damages will be assessed as follows:

1. Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$153.00 per day until the monthly report is submitted as required.
2. Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$76.00 per MBE subcontractor.
3. Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of an Agreement with an MBE subcontractor and/or amendment of the MBE participation schedule; the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Agreement.
4. Failure to meet the A/E's total MBE participation goal and sub-goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually received.

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5. Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of the Agreement: \$153.00 per day until the undisputed amount due to the subcontractor is paid.
- T. **Financial Disclosure:** The A/E 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 Agreements, 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 Agreements, 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. COMAR 21.07.01.19.
- U. **Political Contribution Disclosure:** The A/E shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement Agreement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives an Agreement with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contribution in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of an Agreement by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when an Agreement was awarded; and (b) if the contribution is made after the execution of an Agreement, then twice a year, throughout the Agreement term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Election website: http://www.elections.state.md.us/campaign_finance/index.html. COMAR 21.07.01.20.
- V. **Non-Hiring of Officials and Employees:** No official or employee of the State of Maryland, 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 Agreement, shall during the pendency and term of this Agreement and while serving as an official or employee of the State become or be an employee of the A/E or any entity that is a subcontractor on this Agreement. COMAR 21.07.07.05.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

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IN WITNESS WHEREOF, the parties have executed this Agreement by causing the same to be signed on the day and year first above written.

A/E

STATE OF MARYLAND
DEPARTMENT OF GENERAL SERVICES

By:

By: Procurement Officer

Date

Date

PARENT COMPANY (GUARANTOR) (if applicable)

By:

Date

Approved for form and legal sufficiency
this ____ day of _____, 20__.

Assistant Attorney General

Approved by:

Board of Public Works

DGS Procurement Review Board

Date _____ ITEM NO.