

**DRAFT DEVELOPMENT AGREEMENT**

This Development Agreement (this "Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between The Maryland-National Capital Park and Planning Commission (the "Commission"), a body corporate and politic, and \_\_\_\_\_, for the development and construction of certain \_\_\_\_\_ improvements located at \_\_\_\_\_, Montgomery County, Maryland (the "Park").

R E C I T A L S:

- A. The Commission is the owner of \_\_\_\_\_ located in the Park.
- B. The \_\_\_\_\_ is and governed by the terms of the Lease.
- C. The parties are now prepared to construct \_\_\_\_\_ at the Park, identified in the Lease \_\_\_\_\_, as approved by the Montgomery County Planning Board of the Commission (the "Planning Board"), and as specifically set forth in \_\_\_\_\_, which improvements will constitute, \_\_\_\_\_.
- D. When the requirements under the Lease have been met for construction of \_\_\_\_\_ at the Park identified in the Lease as \_\_\_\_\_, the parties intend that this Agreement will also cover the terms under which such improvements shall be constructed, subject to the issuance of a park permit authorizing \_\_\_\_\_ to proceed with such construction.
- E. In order for Commission and \_\_\_\_\_ to most effectively coordinate their respective obligations with respect to \_\_\_\_\_, the parties enter into this Agreement to set forth the terms under which the \_\_\_\_\_ will construct \_\_\_\_\_.
- F. The Planning Board has approved the \_\_\_\_\_, subject to issuance of the Park Permit.
- G. The Montgomery County Council has approved funding for \_\_\_\_\_ pursuant to \_\_\_\_\_.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions.

"Commission Funds" means the \$\_\_\_\_\_ to be paid by the Commission as \_\_\_\_\_ (if applicable).

“Construction Plans” means the plans, drawings, and specifications developed by the \_\_\_\_\_ and approved by the Commission through its issuance of the Park Permit, to construct the \_\_\_\_\_s.

“Contract Documents” means this Agreement, the Lease, the Construction Plans, the Project Schedule, the Project Budget, the Procurement and the Anti-Discrimination Procedures.

“Contractor” means an individual, firm, corporation or other entity awarded a contract by the \_\_\_\_\_ to construct and/or install \_\_\_\_\_.

“Laws” mean any and all applicable laws, orders, ordinances, codes and regulations of any and all courts and governmental bodies, agencies and authorities having jurisdiction over the Park including, without limitation, all zoning, subdivision, building and land use laws.

“Park Permit” means the permit issued by the Commission authorizing the Construction Plans in accordance with this Agreement and the Lease.

“Procurement and Anti-Discrimination Procedures” means the Procurement and Anti-Discrimination Procedures set forth in Exhibit \_\_ attached.

“Progress Payments” means the installment payments of the Commission Funds made pursuant to Section \_\_.

“Project Budget” means the budget developed by the \_\_\_\_\_ and approved by the Commission by its issuance of the Park Permit, to complete the \_\_\_\_\_, including but not limited to the costs for design of the \_\_\_\_\_, all hard and soft costs of construction, all permit fees and costs of approvals as required by Laws, contingency, site work, costs of installation, and oversight and management fees for the Project Manager.

“Project Completion” means the time when the Punch List has been completed, all conditions of the Park Permit have been met, including closure of all outstanding permits issued by any governmental authority for construction of the \_\_\_\_\_, “as-built” plans of the \_\_\_\_\_ certified by the engineer of record have been submitted to the Commission, and releases of liens have been received from all Contractors who have furnished labor, materials and/or services in the construction of the \_\_\_\_\_, covering work performed, materials supplied and services rendered.

“Project Manager” means the person or Firm retained by the \_\_\_\_\_ responsible for overseeing the design, construction and installation of the \_\_\_\_\_, experienced in project management for similar type construction projects.

“Project Schedule” means the schedule developed by the \_\_\_\_\_ and approved by the Commission through its issuance of the Park Permit to complete the \_\_\_\_\_

\_\_\_\_\_, which includes dates for periodic inspections by the Commission \_\_\_\_\_ and an estimated date for completion of the Project, assuming timely Progress Payments and inspections.

“Punch List” means the list of construction and clean-up items for the \_\_\_\_\_ to reach Project Completion, which list will be developed by the Commission and the \_\_\_\_\_ as a result of the Commission’s inspection of the \_\_\_\_\_ in accordance with Section \_\_\_\_ herein.

“Substantial Completion” means that the \_\_\_\_\_ have been constructed and completed in a good and workmanlike manner, in accordance with applicable requirements of Law and in accordance with the Construction Plans, as certified in writing by the Project Manager, and accepted by the Commission.

## 2. Obligations.

(a) \_\_\_\_\_ shall design, construct and equip the \_\_\_\_\_ subject to the terms of this Agreement, and shall engage the services of contractors, subcontractors, professionals, consultants and suppliers for the purposes of: (1) planning the design and construction of the \_\_\_\_\_, (2) creating and preparing the drawings, plans and specifications, (3) obtaining any necessary permits required by law to construct the \_\_\_\_\_, and (4) constructing the \_\_\_\_\_, as provided herein. \_\_\_\_\_ shall design and construct the \_\_\_\_\_ with contracts, subcontracts and agreements which do not require Commission approval, provided however, such contracts, subcontracts and agreements shall be subject to the Procurement and Anti-Discrimination Procedures.

(b) The design and construction of the \_\_\_\_\_ shall be done in accordance with the Contract Documents and in accordance with all applicable approval and permitting processes, including those required by law to construct the \_\_\_\_\_, any applicable County CIP process and the process for issuance of the Park Permit. As a condition of its application for a Park Permit, the \_\_\_\_\_ shall, (1) prepare and submit for approval by the Commission the Construction Plans, the Project Schedule and the Project Budget; and (2) provide written certification to the Commission in accordance with \_\_\_\_\_ Section \_\_\_\_ herein.

(c) \_\_\_\_\_ shall retain the Project Manager, who will (i) oversee and coordinate all aspects of design and construction of the \_\_\_\_\_, (ii) be responsible for monitoring the Contractors’ day-to-day work (including but not limited to those issues related to public safety and trash disposal), (iii) when the \_\_\_\_\_ are Substantially Complete, certify to the Commission that the \_\_\_\_\_ have been constructed and completed in accordance with the Construction Plans, (iv) close all outstanding permits issued by any governmental authority for construction of the \_\_\_\_\_, and (v), submit to the Commission “as-built” plans of the \_\_\_\_\_ certified by the engineer of record. The Project Manager will also serve as the central point of contact on all required Commission inspections and approvals.

(d) The Project Budget will provide a breakdown by line item of the anticipated costs of the construction of the \_\_\_\_\_. The Project Budget will also identify a Contingency Reserve equal to 10% of the total hard costs of the \_\_\_\_\_ as shown on the Project Budget.

(e) As part of its submission for the Park Permit, the \_\_\_\_\_ shall provide written certification to the Commission, accompanied by supporting documentation evidencing that all funds as set forth in the Project Budget (except for the Commission Funds) are available for use by the \_\_\_\_\_. As a condition of the Commission granting to the \_\_\_\_\_ the Park Permit, the Commission's Secretary-Treasurer must approve such certification, together with the Project Budget for purposes of determining that the \_\_\_\_\_ has sufficient funds to complete the \_\_\_\_\_. The Secretary-Treasurer may review the \_\_\_\_\_'s financial books and records solely for the purpose of confirming the \_\_\_\_\_'s certification and may require additional supporting documentation from the \_\_\_\_\_ prior to making a decision. The Secretary-Treasurer's access to such books and records, for the purposes of this Agreement, is limited for the purposes stated herein, and the Commission represents that it shall not otherwise utilize or disclose the information contained therein.

### 3. Commission Obligations.

Commission shall:

(a) issue the Park Permit in accordance with this Agreement, which shall be subject to:

- i. Commission approval of the Construction Plans;
- ii. Commission approval of the Project Schedule;
- iii. Commission approval of the Project Budget and certification of funds in accordance with paragraph 2(e);
- iv. All construction and other permits necessary or required in connection with the start of construction of the \_\_\_\_\_ have been validly issued and all fees, bonds and any other security required in connection therewith have been paid or posted;
- v. Commission has received copies of all construction contracts with performance and payment bonds for the Contractor; and
- vi. All other conditions that the \_\_\_\_\_ must meet to begin construction of the \_\_\_\_\_ as required in accordance with this Agreement have been met.

(b) inspect the \_\_\_\_\_ pursuant to the Project Schedule (i) for compliance with the Park Permit and this Agreement, and (ii) to verify that the \_\_\_\_\_ have reached Substantial Completion;

(c) upon Substantial Completion, develop the Punch List with the \_\_\_\_\_; and

(d) make Progress Payments in accordance with this Agreement.

Commencement \_\_\_\_\_ may commence construction of the \_\_\_\_\_ when (i) this Agreement is fully executed; (ii) all permits and approvals, including the Park Permit, necessary to begin construction have been obtained; (iii) and (if applicable) the Montgomery County Council has appropriated public funding through approval of \_\_\_\_\_. The Commission shall use commercially reasonable efforts to assist the \_\_\_\_\_ in satisfying the above conditions and meeting all deadlines.

4. Commission Funds (if applicable).

The Commission shall pay the \_\_\_\_\_ the Commission Funds in current funds for the \_\_\_\_\_'s design and construction of the \_\_\_\_\_ Progress Payments pursuant to Section \_\_\_\_\_. The Commission is responsible for costs associated with the \_\_\_\_\_ up to an amount equal to the Commission Funds, and the \_\_\_\_\_ is responsible for all other costs associated with the \_\_\_\_\_.

5. Change Orders.

\_\_\_\_\_ shall not make or permit any material changes in the Construction Plans, including any such changes that alter, diminish or add to the work to be performed or change the design of the \_\_\_\_\_, without the prior written consent of the Commission. Commission's prior written consent shall not be required, however, as to any such change order which (a) individually (or taken together with another or multiple change order(s) for related work) does not result in a material change to the design of the \_\_\_\_\_, and (b) there remains sufficient proceeds in the contingency reserve line item of the Project Budget to cover such change order. \_\_\_\_\_ shall submit to Commission copies of all change orders. \_\_\_\_\_ and Commission acknowledge that the ability of the Commission to approve change orders may be limited by the amount appropriated for the \_\_\_\_\_.

6. Accounting Records.

The \_\_\_\_\_ shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement, and the accounting and control systems shall be reasonably satisfactory to the Commission. The Commission and the Commission's accountants shall be afforded all reasonable access to, and shall be permitted to audit and copy, at its sole cost and expense, the \_\_\_\_\_'s records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data solely relating to this Agreement as it pertains to the \_\_\_\_\_, both during construction and after completion of the \_\_\_\_\_.

7. Progress Payments.

(a) The Commission shall make Progress Payments to the \_\_\_\_\_ of Commission Funds pursuant to this section. Progress Payments shall be made within 20 days of the receipt by Commission of an invoice from the \_\_\_\_\_ (which shall include all back-up documentation required by the Commission for review), provided however, the parties agree to make reasonable timing adjustments if necessary to meet the requirements of a Contractor. Each invoice shall be supported by such information as Commission may reasonably require.

(b) (if applicable) The first Progress Payment in the amount of \$\_\_\_\_\_ for mobilization of construction of the \_\_\_\_\_ shall be made after:

(i) The conditions for commencement in accordance with Section \_\_\_\_ have been satisfied; and,

ii) \_\_\_\_\_ has obtained all construction permits necessary to begin construction.

(c) Upon Substantial Completion and after the Commission inspects the \_\_\_\_\_ to assure compliance with the Construction Plans, the second Progress Payment in the amount of \$\_\_\_\_\_ shall be made.

(d) The third and final Progress Payment in the amount of \$\_\_\_\_\_ shall be made upon Project Completion, provided that the \_\_\_\_\_ shall have met all other terms and conditions of this Agreement.

8. Inspections; Cooperation.

\_\_\_\_\_ shall permit representatives of Commission to enter upon the Property from time to time during and as otherwise provided herein, to inspect the construction of the \_\_\_\_\_. Commission shall be permitted to photograph portions of the \_\_\_\_\_. \_\_\_\_\_ shall at all times cooperate and employ its commercially reasonable efforts, acting diligently and in good faith, to cause the Contractor and each and every one of its subcontractors and material suppliers to cooperate with the representatives of the Commission in connection with or in aid of the performance of Commission's functions under this Agreement.

9. Warranties.

The \_\_\_\_\_ shall include in all contracts agreements and require in all subcontracts the following language:

“\_\_\_\_\_ (Name of subcontractor) agrees that all warranties that run to the \_\_\_\_\_ shall also run to the Commission at the time of completion of this contract. As a result, \_\_\_\_\_ (Name of subcontractor) agrees to honor all

warranties, and further agrees to enforce those warranties to the benefit of both the \_\_\_\_\_ and the Commission.”

10. Insurance; Indemnification.

The \_\_\_\_\_ shall maintain, at its own expense, during the life of the Agreement, insurance of the types and limits required under the Lease or as is otherwise commercially reasonable for similarly situated parties, to protect the Commission, the \_\_\_\_\_, and Contractors and subcontractors performing work under this Agreement from claims for damages from bodily injury, including death, or property damage, which may arise from the \_\_\_\_\_’s performance under this Agreement. To the extent that it is commercially reasonable for the \_\_\_\_\_’s contractors, rather than the \_\_\_\_\_, to maintain certain insurance, the \_\_\_\_\_ shall be responsible only for causing such contractors to maintain such insurance (rather than to maintain such insurance itself).

Insurance described in the above paragraph shall name the Commission as an additional insured and all coverage described herein shall provide for at least 30 days’ advance notice to the Commission of any cancellation or non-renewal of coverage. Certificates evidencing valid, current coverage for each type of insurance required shall be provided to the Construction Manager prior to commencement of any work under this Agreement.

11. Liens and Mortgages.

Provided that Progress Payments and inspections are made timely, the \_\_\_\_\_ shall not permit any liens to stand against the Park or any \_\_\_\_\_, including liens for any labor or material furnished to the \_\_\_\_\_ in connection with any construction or work performed by or at the direction of the \_\_\_\_\_, or any other costs associated with the construction of the \_\_\_\_\_. Provided that Progress Payments and inspections are made timely the \_\_\_\_\_ agrees that if, because of any action or omission (or alleged act or omission) of the \_\_\_\_\_, any mechanic’s or other lien, charge, or order for payment of money or other encumbrance shall be filed in connection with any of the \_\_\_\_\_, the \_\_\_\_\_ shall at the \_\_\_\_\_’s own cost and expense, cause the same to be discharged of record or bonded within thirty (30) days’ notice to the \_\_\_\_\_ of the filing thereof. The provisions of this Section 13 shall survive expiration or termination of this Agreement.

12. Default; Remedies.

(a) Any one or more of the following events shall constitute an event of default under this Agreement:

- i) If the \_\_\_\_\_ or the Commission fail to comply in any material aspect with any of the terms and conditions of this Agreement; or

ii) If the \_\_\_\_\_ fails to reach Project Completion within \_\_\_ days of the date on which \_\_\_\_\_ commences construction in accordance with this Agreement, provided that Progress Payments and inspections are made timely.

(b) If an event of default occurs, the Commission shall serve upon \_\_\_\_\_ a notice of default, and if within 30 days of such notice the \_\_\_\_\_ fails to cure the specified event of default, then (1) Commission may (but shall not be obligated to) make such payment or do such act as may be reasonably necessary to cure such event, and charge the amount of the expense thereof to \_\_\_\_\_, which amount shall be due and payable by \_\_\_\_\_, as Additional Rent, upon demand, or (2) Commission may, without terminating the Lease or this Agreement, bring an action in a court of law for injunctive relief and/or monetary damages suffered as a result of such event.

### 13. Budget Appropriation.

Commission cannot be in default in the performance of or compliance with any of the financial terms contained in this Agreement if funds are not specifically budgeted and appropriated therefore at the time of the alleged default. Certification by the Secretary-Treasurer of the Commission that funds are not specifically budgeted and appropriated therefore shall be conclusive as to that issue. Commission shall, in accordance with its normal budgetary procedures make timely application for, and use reasonable efforts to obtain, budget appropriations reasonably calculated to provide all funds necessary for Commission's performance of and compliance with all of the material terms, conditions and covenants contained in this Agreement.

### 14. Notices.

Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

If to the Commission:                   The Maryland-National Capital  
Park & Planning Commission  
9500 Brunett Avenue  
Silver Spring, Maryland 20901  
Attention: Director of Parks

with a copy to:

The Maryland-National Capital  
Park & Planning Commission  
6611 Kenilworth Avenue  
Riverdale, Maryland 20737  
Attention: General Counsel

If to the \_\_\_\_\_:  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

15. Miscellaneous Provisions.

15.1 Governing Law. This Agreement shall be governed by, construed, interpreted and enforced according to the laws of the State of Maryland, and is to take effect as a sealed instrument. Any and all suits for any and every breach of this Agreement shall be instituted and maintained in a court of competent jurisdiction in Montgomery County, Maryland.

15.2 Waiver of Jury Trial. The \_\_\_\_\_ and the Commission hereby waive all right to a jury trial in the event any term, provision or covenant of this Agreement is under dispute, including but not limited to disputes relating to possession, termination, or monetary claims.

15.3 Approvals. Unless otherwise expressly provided in this Agreement, wherever in this Agreement the approval, certification, or consent of any party is required, such approval shall not be unreasonably withheld, conditioned or delayed.

15.4 Waiver. No failure on the part of the Commission or the \_\_\_\_\_ to enforce any covenant or provision contained in this Agreement nor any waiver of any right under this Agreement shall discharge or invalidate such covenant or provision or affect the right of the other party to enforce the same in the event of any subsequent default.

15.5 Agent of Commission. Neither the \_\_\_\_\_ nor any of its employees are or shall be considered or shall represent themselves to be agents or employees of the Commission for any purpose. The \_\_\_\_\_ shall perform all of its duties and obligations under this Agreement as an independent contractor.

15.6 Compliance with Rules, Regulations and Laws. The \_\_\_\_\_ shall comply with all applicable Federal, State and Local Laws.

15.7 Transfer. Neither party to this Agreement shall assign or transfer any interest in, or duty or obligation under this Agreement without the prior written consent of both parties hereto.

15.8 Entire Agreement. This Agreement contains the entire agreement made by and between the parties hereto and may not be modified except by written agreement signed by the parties and attached hereto. All attachments, exhibits and recitals form a part of this Agreement.

15.9 Validity of Agreement. The invalidity or illegality of any provision of this Agreement shall not affect the remainder of this Agreement or any other provision of it.

15.10 Indemnity. Each party hereto shall indemnify and save harmless the other party and shall require that each Contractor, or, as applicable, representative of such party, indemnify and save harmless the other party from and against all actions, liability, claims, suits, damages cost or expense of any kind, including attorney's fees, which may be brought or made against the other party of which the other party must pay and incur by reason of or in any manner resulting from injury, loss, damage to persons or property resulting from the subcontractor or representative's negligent performance or failure to perform any of the indemnifying party's or its subcontractor's or representative's obligations under the terms of this Agreement.

15.11 Counterpart Copies. This Agreement may be executed in two or more counterpart copies, all of which counterparts shall have the same force and effect as if all parties hereto had executed a single copy of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

This Agreement is entered into as of the day and year first written above and is executed in at least two original copies, of which one is to be delivered to the \_\_\_\_\_ and one to the Commission.

Attest:

COMMISSION:

The Maryland-National Capital Park and Planning Commission

\_\_\_\_\_  
Patricia Colihan Barney  
Secretary-Treasurer

By: \_\_\_\_\_(SEAL)  
Oscar S. Rodriguez  
Executive Director

WITNESS/ATTEST:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_(SEAL)  
\_\_\_\_\_, President

**EXHIBIT A**  
**to**  
**Development Agreement between The Maryland-National Capital Park and Planning**  
**Commission**  
**and**

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**EXHIBIT B**  
**to**  
**Development Agreement between The Maryland-National Capital Park and Planning**  
**Commission**  
**and**

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**PROCUREMENT and ANTI-DISCRIMINATION PROCEDURES**

The following Procurement Procedures apply to all purchases of goods and services on behalf of The Maryland-National Capital Park and Planning Commission (“Commission”) relating to the Park Infrastructure Improvements.

I. **PROCUREMENT PROCEDURES**

A. The \_\_\_\_\_ will use the formal sealed invitation for bid or request for proposal methods for procurement estimated to exceed \$25,000. These solicitations will be advertised in two newspapers of general circulation plus one minority newspaper. Advertisements will be placed no more than 90 days before issuance of bids.

B. The \_\_\_\_\_ will seek at least 5 solicitations (or as many firms available if less than 5) and make its best efforts to obtain three written responses for all procurement estimated to be over \$5,000 but less than \$25,000. Competition is encouraged for purchases \$5,000 and less, but documentation is not required. The above applies to procurement of supplies, services and revenue producing contracts, except the following excluded purchases: regulated utilities, where service and rates are not negotiable; supplies for resale to public; works of art for public display; publications; conferences/seminars/training fees; visiting memberships/dues; training courses/materials provided by accredited institutes of learning; and employment contracts. If circumstances require purchases to be made outside the above procedure, a waiver from the Executive Director, or his/her designee, must be obtained prior to purchase, as defined in Commission Practice 4-10, Section 8, excerpted below;

An emergency exists when sudden and unexpected occurrences or conditions which could not be foreseen, or which pose an actual or immediate threat to the continuation of an essential normal operation of the Commission, or which are a threat to public health, welfare or safety, or when the interest in meeting time constrains overrides the general rule requiring competitive bidding. An example of an emergency purchase is replacement matting installed at the Cabin John Ice Rink. A number of skaters had tripped on the buckled, damaged matting and rink management feared that serious injuries could occur.

C. The \_\_\_\_\_ is permitted to ride competitively awarded contracts of the Commission.

D. The \_\_\_\_\_ will not enter into cost plus a percentage of cost contracts without the prior express written approval of the Executive Director or his/her designee.

E. The \_\_\_\_\_ will prepare a monthly report showing the last month and total amount of procurement for the project or on an annual basis, the amount of procurement awarded directly to MFDs and amount of MFD subcontracting awarded by non-MFD prime contractors. The report will be delivered to the Commission's Project Manager and Purchasing Manager within 14 days after the end of the month. On a quarterly basis, the \_\_\_\_\_ will submit to the Commission a photocopy of the front and back of all canceled checks reflecting payment to all prime contractors on the \_\_\_\_\_ project, along with a summary sheet reflecting the names of the contractors and total amount paid that quarter as reflected by the canceled checks. Quarterly the \_\_\_\_\_ also will forward to the Commission the canceled checks required for subcontractors pursuant to paragraph III.C.3, below.

F. The \_\_\_\_\_ is responsible for the payment of any applicable sales tax on purchases made under the provisions of this contract, as required by the State of Maryland.

G. The \_\_\_\_\_ will submit in advance for approval of Executive Director or designee sections of bid documents describing minimum qualifications of bidders, submit complete bid document other than drawings no later than seven days after bid is issued. The Commission will review and return its comments to the \_\_\_\_\_ within five business days of receipt of the bid documents.

H. The Commission reserves the right to review and approve or reject all bids, bid evaluations, and bid awards.

## II. Conflicts of Procurement

### A. Definition of Employee

1. As used in this Exhibit C, "employee" means any officer, or full-time, part-time, seasonal or contract employee of the \_\_\_\_\_ or its assigns.

### B. Conflict of Interest

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

- a. any business entity in which he has a direct financial interest of which he may reasonably be expected to know;

- b. any business entity of which he is an officer, director, trustee, partner, or employee, or in which he knows any of the above listed relatives has such interest;
- c. any business entity with which he or, to his knowledge, any of the above listed relatives is negotiating or has any arrangement concerning prospective employment;
- d. any business entity which is a party to an existing contract with the official or employee, or which the official or employee knows is a party to a contract with any of the above named relatives, if the contract could reasonably be expected to result in a conflict between the private interests of the official or employee and his official duties;
- e. any entity, either engaged in a transaction with the \_\_\_\_\_ or subject to regulation by the \_\_\_\_\_, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if he may be reasonably expected to know of both direct financial interest;
- f. any business entity which the official or employee knows is his creditor or obligee, or that of any of the above named relatives, with respect to a thing of economic value and which, by reason thereof, is in a position to affect directly and substantially the interest of the official or employee or any of the above named relatives.

2. Participation in procurement.

- a. In general, an individual who assists a Commission unit or the \_\_\_\_\_ in the drafting of specifications, an Invitation for Bids, or a Request for Proposals for a procurement, or a firm that employs that individual, may not:
  - (i) submit a bid or proposal for that procurement; or
  - (ii) assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement.
- b. Assisting in the drafting of specifications, an Invitation for Bids, or a Request for Proposals for a procurement does not include:
  - (i) providing descriptive literature such as catalogue sheets, brochures, technical data sheets, or standard specification “samples”, whether requested by an employee or provided on an unsolicited basis;

- (ii) submitting written comments on a specification prepared by an employee or on a solicitation for a bid or proposal when comments are solicited from two or more persons as part of a request for information or a pre-bid or pre-proposal process;
- (iii) providing specifications for a sole source procurement made in accordance with the rules for use of waivers; or
- (iv) providing architectural and engineering services for programming, master planning, or other project planning services.

C. Use of Confidential Information

1. Any employee or former employee must not use confidential information of the Commission acquired by reason of the employee's position and not available to the public, for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

D. Use of Prestige of Office

1. An employee may not intentionally use the prestige of office or position with the \_\_\_\_\_ at the \_\_\_\_\_ for that employee's private gain or that of another. The performance of usual and customary constituent services by a business entity, doing business with the \_\_\_\_\_ or the Commission, without additional compensation, is not prohibited.

E. Gratuities and Kickbacks

1. Gratuities. It shall be unethical for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore.

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

F. Prohibition Against Contingent Fees

1. It shall be unethical for a person to be retained, or to retain a person, to solicit or secure a Commission or \_\_\_\_\_ contract upon an agreement or understanding

for any fee or other compensation, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

### III. Anti-Discrimination Program

A. The \_\_\_\_\_ shall be required to take all reasonable actions to ensure that any bidder seeking to contract shall not discriminate against Minority, Female or Disabled owned firms (MFDs) in the selection of subcontractors and/or material suppliers on this project. The Commission's Anti-Discrimination Program seeks to ensure MFDs have the same opportunities to succeed or fail in pursuing contracts for this project as any other potential vendor absent the effects of discrimination. On any construction or professional service contract exceeding \$25,000 that includes substantial subcontracting opportunities, the \_\_\_\_\_ shall follow the following procedures to ensure that the offerors have not discriminated against MFDs.

B. The \_\_\_\_\_ is presumed to have not discriminated against MFD subcontractors if the participation of MFDs as subcontractors and/or material suppliers for this Project meets or exceeds a participation level of 18 percent. If this participation level is not achieved, the \_\_\_\_\_ will provide the Executive Director or his/her designee documentation of good faith efforts to obtain MFD participation.

C. The \_\_\_\_\_ will include the following language in all bid documents:

By submitting a bid, a Bidder shall understand and agree to:

1. Not discriminate against minority, female and disabled-owned firms (MFDs) in the selection of subcontractors on this project.

2. Not discriminate against MFDs in their performance of work as subcontractors if bidder is awarded a contract.

3. On a quarterly basis submit to the \_\_\_\_\_ a photocopy of the front and back of all canceled checks reflecting payment to all MFD subcontractors on the \_\_\_\_\_ project, along with a summary sheet reflecting the names of the contractors and total amount paid that quarter as reflected by the canceled checks.

4. Immediately notify the \_\_\_\_\_ of any change in the status of MFD contracts.

5. Not discriminate against any employee or applicant for employment because of age, sex, race, creed, disability or national origin. If a firm is determined by a final order of an administrative agency or a court to be in violation of federal, state or county non-discrimination laws, any agreement entered into with a firm may be terminated or suspended in whole or in part.

D. The \_\_\_\_\_ will require prime contractors to submit payment verification forms throughout the course of the contract verifying payments to all MFD subcontractors and material suppliers. The prime contractor shall be allowed to substitute, for

cause, new MFD subcontractors for any MFD subcontractors that could not perform their assigned tasks. For contracts with subcontracting opportunities, prime contractors are required to provide MFDs the opportunity to submit bids as subcontractors and to award those MFDs submitting low bids the subcontracts unless there are legitimate reasons to not do so. If the \_\_\_\_\_ determines that the prime contractor is not utilizing the MFD subcontractors specified in order to comply with the non-discrimination in subcontracting requirements, or if the prime contractor submits false documentation of its compliance with such a plan, The \_\_\_\_\_ will notify the Executive Director immediately in order for the Commission to undertake a debarment investigation. Any violation of the Commission's Anti-Discrimination Program may result in suspension or debarment of the violator as well as other civil or administrative remedies. The \_\_\_\_\_ will immediately notify the Commission of any change in the status of MFD contracts with the \_\_\_\_\_ as well as forward any notification received from subcontractors regarding the change in contract status of any MFD subcontracts.

E. The subcontracting non-discrimination program shall apply not only to the initial contract award, but also to certain major change orders and amendments that serve to increase the dollar value of the initial contract.

F. A minority-owned business is an entity that engages in commercial transactions and is at least 51 percent owned and controlled by one or more individuals from the following groups: African-Americans (all persons having origins in and of the Black racial groups of Africa), Hispanics (all persons of Mexican, Puerto Rican, Cuban, Central or South America, or other Spanish culture or origin, regardless of race), Asians or Pacific Islanders (all persons having origins in any of the Far East, Southeast Asia, the Indian Subcontinent, or the background). A female-owned business is an entity that engages in commercial transactions and is at least 51 percent owned and controlled by one or more women. A disabled-owned business is an entity that engages in commercial transactions and is at least 51 percent owned and controlled by persons with physical or mental impairment that substantially limits one or more of the major life activities of the individual, as defined in the Americans with Disability Act of 1990.

G. All firms awarded contracts by the \_\_\_\_\_ or this project shall agree not to discriminate against any employee or applicant for employment because of age, gender, race, creed, national origin or disability. If a firm is determined by a final order of an administrative order of an administrative agency or a court to be in violation of Federal, State or County Anti-discrimination laws, any agreement entered into by the \_\_\_\_\_ with the firm may be terminated or suspended in whole or in part by the \_\_\_\_\_ and then from future procurement for this project.