

INTERIM AGREEMENT

THIS INTERIM AGREEMENT (this "Agreement") is entered into as of March 23, 2023 between **HISTORIC TRIANGLE RECREATIONAL FACILITIES AUTHORITY** ("Owner" or "HTRFA"), a political subdivision of the Commonwealth of Virginia, and **MEB GENERAL CONTRACTORS, INC.** ("Design-Builder"). Owner and Design-Builder are referred to individually as a "Party" and collectively as "the Parties".

Recitals

1. Virginia's Historic Triangle area is located in Coastal Virginia between the James and York rivers and is composed of all of the City of Williamsburg and the Counties of James City and York (the "Localities").
2. HTRFA was created as a political subdivision of the Commonwealth of Virginia by concurrent resolutions adopted in 2021 by the Williamsburg City Council and the Boards of Supervisors of James City County and York County pursuant to the Public Recreational Facilities Authorities Act, Virginia Code § 15.2-5600 (the "Act").
3. HTRFA's purpose is to acquire, construct and operate one or more public recreational facilities to not only serve the citizens of the Localities, but also to promote and enhance recreation, sports and tourism activities in the geographic area of the Localities.
4. HTRFA held its inaugural meeting on January 12, 2022.
5. On February 9, 2022, HTRFA adopted Guidelines for Implementation of the Public-Private Education Facilities and Infrastructure Act of 2002 (the "PPEA Guidelines"), establishing procedures for the development of public facilities through public-private partnerships, which procedures satisfy the requirements of the Public-Private Education Facilities and Infrastructure Act of 2002, Virginia Code § 56-575.1 et seq. (the "PPEA").
6. HTRFA received and accepted two unsolicited proposals for the construction of a regional indoor sports and event facilities, in various phases (the "Regional Sports and Events Facilities"), to be located at an appropriate site on the property at 100 Visitor Center Drive in the City of Williamsburg, Virginia (the "City").
7. The non-confidential portions of the proposals were posted on HTRFA website.
8. In accordance with HTRFA's PPEA Guidelines, HTRFA publicly advertised for and invited interested private entities to submit competing conceptual phase proposals for the Regional Sports and Events Facilities with the requirement that the proposals provide for the Regional Sports and Events Facilities to be at least 160,000 square feet and include 12 basketball courts that can be converted to 24 volleyball courts and 36 pickleball courts (the "Initial Project").
9. No viable bids resulted from the solicitation process.

10. HTRFA created a review team advisory panel composed of regional stakeholders in the banking, tourism, and economic development industries to review and provide analysis and advice to HTRFA regarding the proposals.

11. Following the review and analysis of the proposals, HTRFA selected Design-Builder for negotiation of an Interim Agreement for preliminary design of the Initial Project.

12. HTRFA has determined that, among other considerations, it would be advantageous to proceed with the Initial Project pursuant to Design-Builder's proposal (the "Proposal") using procedures for competitive negotiation, rather than using sealed, competitive bids, given the probable scope, complexity and urgency of the Initial Project; the merits of risk-sharing and the potential for added value; and the economic benefit from the Initial Project that might otherwise not be available.

13. The Parties have negotiated this Agreement relating to the Initial Project consistent with the PPEA, other applicable law, the PPEA Guidelines, the Proposal, and discussions between representatives of HTRFA and Design-Builder.

14. The Parties acknowledge and agree that this Agreement will function as the Interim Agreement for purposes of the Initial Project.

15. Having considered this Agreement and other information, Owner has determined that the Initial Project to be designed and constructed pursuant to this Agreement serves the public purpose of the PPEA under the criteria Virginia Code § 56-575.4(C) and posted this Agreement for public inspection in accordance with the PPEA and the PPEA Guidelines.

16. In accordance with Virginia Code § 56-575.16(5), and the PPEA Guidelines, HTRFA held a public hearing on October 12, 2022 relating to the approval of the Agreement.

NOW, THEREFORE, in consideration of the Recitals set forth above, and good and valuable consideration as set forth below, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. SCOPE OF SERVICE

Design-Builder agrees to provide, or cause to be provided, professional architectural and engineering services and related services as described in the Proposal, which is incorporated herein as if fully set forth, necessary to develop 35% Design Development drawings for the Initial Project. The 35% Design Development submission shall include details regarding structural and mechanical, electrical and plumbing (MEP) components of the design and a Contract Cost Limit (CCL) for the construction of the Initial Project (the "Services"). The CCL will be the maximum amount payable to Design-Builder and will serve as a cap on Design-Builder's compensation.

The Initial Project is described in more detail in **Exhibit 1**.

Design-Builder will submit 10% Schematic Design Drawings to Owner for approval before performing additional design work. Design-Builder agrees to meet with the appropriate individual or committee in the City Department of Planning and Codes Compliance and Owner before the Schematic Design submission to determine any necessary approvals from the City for planning and land use.

At an appropriate point, as determined by Owner, Design-Builder commits to holding at least two meetings with Owner's internal design committee and, when appropriate, two public design workshops where members of the public will be allowed to view and make comments on the Initial Project in accordance with the timeline, attached as **Exhibit 2** (the "Timeline") which reflects the various milestones and schedule for each milestone (each a "Milestone").

The architectural and engineering firm of Clark Nexsen ("Lead Architect") will lead the planning and design effort for the Initial Project. If Lead Architect is or becomes unavailable to provide such leadership, Design-Builder shall assign another Lead Architect acceptable to Owner. Design-Builder Managing Principal for the Initial Project is Mark Olmstead, and the Initial Project Executive shall be Trip Smith. If Mr. Smith is or becomes unavailable to provide leadership for the Initial Project, Design-Builder shall assign another Project Executive. Owner's decisions on design shall be made by the Board of Owner; provided, however, Owner intends to engage an Owner's Representative to assist Owner on design decisions and to act on its behalf.

The Scope of Work includes a Phase I environmental site assessment, geotechnical investigation and engineering analysis, traffic engineering analysis, and a boundary line survey of the Site. All work shall be designed in a manner that complies with general design standards required for similar sports facilities described in the Scope of Work to conform to marketable use of such facilities.

2. COST

In consideration of the provision of Services by Design-Builder with respect to this Agreement, Owner shall pay to Design-Builder the total amount of **TWO MILLION THREE HUNDRED TWELVE THOUSAND THREE HUNDRED AND 00/100 DOLLARS** (\$2,312,300.00) (the "Contract Amount").

Following the completion of each Milestone as more fully described in detail at **Exhibit 2**, Design-Builder shall submit invoices based on the amount to be paid for each Milestone as agreed to by the parties and memorialized at **Exhibit 2**. HTRFA will remit payment within 45 days of receipt of a correct invoice. Incorrect invoices shall be subject to correction and/or rejection by HTRFA.

HTRFA shall pay interest to the Design-Builder on any amount correctly invoiced that remain unpaid after 45 days of receipt of a correct invoice. Such interest shall accrue at the rate of one percent (1%) per month.

Design-Builder agrees that HTRFA has the unilateral right to offset any bill submitted to HTRFA by Design-Builder, or any payment owed to Design-Builder by HTRFA, by any amount due to

HTRFA from Design-Builder pursuant to this Agreement, or any other agreement, contract or transaction between HTRFA and Design-Builder.

If funds are sufficient and the Parties agree, this Agreement may be amended to include the development of 65% Design Documents at additional cost to Owner, prior to execution of the Comprehensive Agreement.

3. TERM AND TERMINATION

This Agreement shall commence on the Effective Date first written above and shall continue until terminated pursuant to the terms of this Agreement. Design-Builder estimates that the 35% Design Development documents will be completed within six months after the date of this Agreement, all as further set forth in the Schedule of Milestones attached as **Exhibit 2. THE TIME TO COMPLETE DESIGN OF THE INITIAL PROJECT IS OF THE ESSENCE.**

Upon fourteen days' written notice to Design-Builder, HTRFA has the right to cancel and terminate any contract with Design-Builder, in whole or in part, without penalty, merely out of convenience, and shall require no breach of contract by Design-Builder as a condition of termination. This right of termination for convenience may be exercised at the sole unconditional discretion of HTRFA. If a contract is terminated in whole or in part for the convenience of HTRFA, Design-Builder shall be paid for the work performed up to the date of the termination of the contract. For any Milestone on which the Design-Builder has commenced work, but not completed work by the date of termination, Design-Builder shall be compensated *pro rata* based on a percentage completion of the work of that Milestone. Design-Builder shall not be paid any other fees or lost profits for the Services rendered under this Agreement.

Upon execution of a Comprehensive Agreement, this Agreement shall be terminated and shall be of no further effect.

4. COMPREHENSIVE AGREEMENT

Should the parties both conclude that the Initial Project is feasible, the Parties may proceed to negotiate a Comprehensive Agreement under the PPEA to address the completion of design, construction and commissioning of the Initial Project without further procurement with the CCL included within such Comprehensive Agreement. Owner's participation in negotiation of a Comprehensive Agreement, however, shall not constitute an obligation of or commitment by either Party to execute such Comprehensive Agreement.

5. STANDARD OF CARE

Design-Builder agrees that the standard of care for all professional design services performed under this Agreement shall be the care and skill ordinarily used by members of the design profession in the Commonwealth of Virginia practicing on similar projects at the time and that the work, at a minimum shall be consistent with Design-Builder's best work. Additionally, Design-Builder represents and warrants that all persons performing any work on the Initial Project under

this Agreement shall be licensed and in good standing with any applicable regulatory agency for the full duration of their work on the Initial Project under this Agreement.

6. OWNERSHIP OF WORK PRODUCT

Unique elements of designs contained in the Drawings and Specifications, including electronic copies of them, furnished by Design-Builder to Owner under this Agreement and the copyrights thereto ("Work Product") shall become the property of Owner upon payment for such items and all amounts due hereunder for the Work Product. Owner may use the Work Product in connection with Owner's occupancy and use of the Initial Project, including for maintenance and repairs, future renovations and expansions, and for any other purpose Owner deems appropriate. Such Work Product is not intended or expected to be suitable for use on other projects. Owner shall not provide Work Product to any other entity for use on other projects, subject to State law, except for renovations or expansions to this Initial Project. Such use of Work Product by Owner or any other person to whom Owner has furnished such Work Product shall be at the Owner's and/or user's sole risk of liability and without liability or legal exposure to Design-Builder, designer, or any of their subcontractors, consultants, or officers or employees.

7. CONTRACTUAL CLAIMS

The Parties shall first endeavor to resolve any disputes, claims and other matters in question between the Parties. Contractual claims or disputes by Design-Builder against Owner shall be submitted in writing no later than sixty (60) days after final payment; provided, however, that Design-Builder shall give Owner written notice of its intention to file a claim or dispute within fifteen (15) days after the occurrence upon which the claim or dispute shall be based. Any written notice of Design-Builder's intention to file such a claim or dispute shall state the facts and/or issues relating to the claim in sufficient detail to identify the claim, together with its character and scope. If Design-Builder fails to make its claim or dispute or fails to give notice of its intention to do so as provided herein, then such claim or dispute shall be deemed forfeited.

Owner's decision on contractual claims shall be final and conclusive unless Design-Builder appeals within six months of the date of the final decision of HTRFA on the claim by instituting legal action in the Williamsburg James City County Circuit Court.

8. INSURANCE

Design-Builder will maintain a general liability policy with \$4,000,000 combined single limits. Coverage is to be on an occurrence basis with an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. The endorsement must be issued by the insurance company. Design-Builder will maintain an umbrella insurance policy of \$10 million subject to similar requirements.

Design-Builder will maintain workers' compensation coverage in compliance with the laws of the Commonwealth of Virginia. The coverage must have statutory limits and be with an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M.

Best rating of A- or better. As an alternative, it is acceptable for Design-Builder to be insured by a group self-insurance association that is licensed by the Virginia Bureau of Insurance. Design-Builder will also carry employers' liability insurance with a limit of at least \$100,000 bodily injury by accident/\$500,000 bodily injury by disease policy limit/\$100,000 bodily injury by disease each employee.

Design-Builder will maintain automobile liability insurance with limits of at least \$1,000,000. The insurer must be licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better.

Design-Builder will maintain professional liability insurance with a limit of at least \$4,000,000. It is preferred that the coverage be on an occurrence basis. If the policy is on a *claims made* basis, this should be noted. If Design-Builder has professional liability insurance on a *claims made* basis, agreement must be made that coverage will be maintained for at least three years beyond the expiration date of the policy in force at the time of this contract. Coverage is to be with a company licensed to conduct business in the Commonwealth of Virginia and have an A. M. Best rating of A- or better. Professional liability insurance coverage required by this provision may be provided by the Clark Nexsen, the subcontracted designer for the Initial Project subject to the same requirements set forth above.

With all policies listed above, the insurer or agent of the insurer must issue a certificate of insurance to show evidence of coverage and provide copies of applicable policies along with applicable endorsements, including but not limited to an endorsement listing Owner as additional insured. All wording limiting the insurer responsibility to notify Owner of any cancellation or non-renewal of the coverage must be removed.

9. INDEPENDENT CONTRACTOR

The Parties understand and agree that Design-Builder, in performing its obligations under this Agreement, shall be deemed an independent contractor and not an agent, employee or partner of Owner.

10. NOTICES

All requests, notices and other communications required or permitted to be given under this Agreement shall be in writing. Delivery of a notice shall be deemed to have been made when such notice is either: duly mailed by first-class mail, postage prepaid, return receipt requested, or any comparable or superior postal or courier service then in effect; or transmitted by hand delivery, telegram, telex, telecopy or facsimile transmission, to the party entitled to receive the same at the address indicated below or at such other address as such party shall have specified by written notice to the other party.

Notices to HTRFA shall be sent to:
Andrew Omer Trivette, Chair
Historic Triangle Recreational Facilities Authority
401 Lafayette Street
Williamsburg, Virginia 23185
Email: atrivette@williamsburgva.gov

With a copy to:
Daniel M. Siegel, Esq.
Robyn H. Hansen, Esq.
Sands Anderson, P.C.
P.O. Box 1998
Richmond, VA 23218-1998
Email: dsiegel@sandsanderson.com
Email: rhansen@sandsanderson.com

Notices to Design-Builder shall be sent to:
Mark Olmstead, Executive Vice President
MEB General Contractors, Inc.
4016 Holland Boulevard
Chesapeake, Virginia 23323
Email: molmstead@meb.group

With a Copy to:
Trip Smith, Project Executive
MEB General Contractors, Inc.
4016 Holland Boulevard
Chesapeake, Virginia 23323
Email: tsmith@meb.group

Any party may, upon prior notice to the others, specify a different address for the giving of notice. Notices shall be effective one (1) day after sending if sent by overnight courier or three (3) days after sending if sent by certified mail, return receipt requested.

11. MISCELLANEOUS

11.1. Assignment. This Agreement may not be assigned, sublet, or transferred, in whole or in part, without the written consent of HTRFA.

11.2. Attorneys' Fees. Should either party employ an attorney to (i) institute and maintain a suit against the other party arising out of this Agreement or the other party's obligations (ii) assist in enforcing or defending any of its rights under the Agreement, (iii) protect its interest in any matter arising under a contract with the other party, or (iv) collect damages for the breach of a contract or any other amounts owed to it;

then, the prevailing party shall be entitled to recover from the other party its attorneys' fees, costs, charges, and expenses expended or incurred therein.

- 11.3. Audit.** Design-Builder hereby agrees to retain all books, records, and other documents relative to Design-Builder's Services and this Agreement for five (5) years after final payment or after all other pending matters are closed, whichever is longer. HTRFA and its authorized agents, state auditors, the grantor of the funds to HTRFA, the Comptroller of Virginia or of the United States, or any of their duly authorized representatives shall have access to any such books, documents, papers and records of Design-Builder for the purpose of making audits, examinations, excerpts or transcriptions.
- 11.4. Authorization to Conduct Business in Virginia.** The provisions of Virginia Code § 2.2-4311.2 are incorporated by reference. If Design-Builder, is a business entity described in Virginia Code § 2.2.4311.2.A, Design-Builder must be authorized to transact business in Virginia if required by law to be so authorized and shall not allow its existence or certificate authority or registration to transact business to lapse or be revoked or cancelled during the term of this Agreement.
- 11.5. Availability of Funds.** It is understood and agreed between the parties herein that HTRFA shall be bound hereunder only to the extent of the funds available and duly appropriated or which may hereafter become available and duly appropriated for the purpose of fulfilling HTRFA's obligations with respect to this Agreement.
- 11.6. Compliance With Laws.** All work performed shall be in accordance with all local, state and federal codes, laws and regulations, including but not limited to: Virginia Conflict of Interest Act, Virginia Fair Employment Contracting Act, Virginia Freedom of Information Act, Virginia Human Rights Act, Virginia Prompt Payment Act, the Virginia Public Procurement Act, and HTRFA policies.
- 11.7. Confidential Information.** Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Initial Project.
- 11.8. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but both of such counterparts together shall be deemed to be one and the same instrument. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for the other counterpart. The Parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature

for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature or electronically scanned and transmitted versions (e.g., via pdf) of an original signature.

11.9. Drug-Free Workplace

- a. During the performance of this Agreement, Design-Builder agrees to (i) provide a drug-free workplace for Design-Builder's employees; (ii) post in conspicuous places, available to employees and applicants for employment, statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Design-Builder's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Design-Builder that Design-Builder maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order exceeding \$10,000 in value, so that the provisions will be binding upon each Subcontractor or vendor.
- b. For the purposes of this paragraph, "*drug-free workplace*" means a site for the performance of work done in connection with this Agreement by Design-Builder where its employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Agreement.
- c. Design-Builder shall post a copy of the policy in a conspicuous place at the jobsite and assure that all Design-Builder, subcontractor, and supplier personnel entering the jobsite are informed of the policy.

11.10. Equal Opportunity Employment. During the performance of this Agreement, Design-Builder agrees as follows:

- a. Design-Builder will not discriminate against any subcontractor, employee, or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by State law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Design-Builder. Design-Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. Design-Builder, in all solicitations or advertisements for employees placed by or on behalf of Design-Builder, will state that Design-Builder is an Equal Employment Opportunity Employer.

- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d. Design-Builder will include the provisions of the foregoing Subsections a(1),(2), and (3) in every subcontract or purchase order of over \$10,000, including but not limited to any agreement with Design-Builder, so that the provisions will be binding upon each subcontractor or vendor.

11.11. Ethics in Public Contracting. The provisions, requirements, and prohibitions as contained in Virginia Code §§ 2.2-4367 through 2.2-4377, pertaining to bidders, offerors, contractors, and subcontractors are applicable to this Agreement.

11.12. Governing Law and Forum Selection. This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia without regard for Virginia's conflicts of laws rules. Venue for any litigation arising from this Agreement shall only be proper in the Williamsburg James City County Circuit Court or in the General District Court of Williamsburg James City County if the amount in controversy is within the jurisdictional limit of each court, regardless of the actual location of such parties. The provisions of this Agreement shall not be construed in favor of or against either party but shall be construed according to their fair meaning as if both parties jointly prepared this Agreement.

11.13. Headings. The headings used in this Agreement are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

11.14. Immigration Reform and Control Act of 1986. Design-Builder does not, and shall not during the performance of this Agreement for goods and services in the Commonwealth of Virginia, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

11.15. Indemnification. Design-Builder, to the fullest extent permitted by law, shall indemnify, defend and hold harmless HTRFA and its officers, agents, and employees from and against any claims, losses, damages, liabilities, including attorneys' fees and expenses, and actions of any kind or nature, for bodily injury, sickness or death, and property damage or destruction (other than to the Initial Project itself) to the extent resulting from the negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of Design-Builder, Designer, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

If an employee of Design-Builder, Designer, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against the Localities, the Owner and their Councils, Council Members, Boards, Board Members, officers, directors, employees, or agents, Design-Builder's indemnity

obligation set forth above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

11.16. Minority and Women-Owned Business Enterprise and Small Business Certification.

Design-Builder shall use reasonable efforts to use minority and women-owned business enterprises and small businesses for Work on the Initial Project. Design-Builder shall complete and submit the "Minority and Women-Owned Business and Small Business Certification" form from time to time as requested by Owner's Representative. Failure to complete and sign this statement is considered a material violation of this Agreement.

11.17. Modifications. This Agreement shall not be amended, altered, or modified unless such amendment, modification or alteration is reduced to writing signed by both parties and attached hereto.

11.18. No Waiver. Any failure of a Party to demand rigid adherence to one or more of the terms of this Agreement, on one or more occasions, shall not deprive such Party and shall not be construed as a waiver of any provision hereof or of any such right, option or remedy or as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. of the right to insist upon strict compliance with the terms of this Agreement. The consent or approval by HTRFA of any act by Design-Builder requiring HTRFA's consent or approval shall not be construed to waive or render unnecessary the requirement for HTRFA's consent or approval of any subsequent similar act by Design-Builder. Any waiver of a term of this Agreement, in whole or in part, must be in writing and signed by the party granting the waiver to be effective.

11.19. Non-Discrimination pursuant to Virginia Code § 2.2-4343.1. Owner does not discriminate against faith-based organizations. Design-Builder shall not discriminate against faith-based organizations during the performance of this Agreement.

11.20. Required Payment Provisions Under Virginia Code § 2.2-4354

a. Design-Builder shall take one of the two following actions within seven (7) days after receipt of amounts paid to Design-Builder by Owner for work performed by a subcontractor under this Agreement:

(1) Pay the subcontractor for the proportionate share of the total payment received from Owner attributable to the work performed by the subcontractor under this Agreement; or

(2) Notify Owner and the subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

- b. Design-Builder shall provide its federal employer identification number to Owner.
- c. Design-Builder shall pay interest to the subcontractor on all amounts owed by Design-Builder that remain unpaid after seven (7) days following receipt by Design-Builder of payment from Owner for work performed by the subcontractor under this Agreement, except for amounts withheld as allowed in subdivision a(2), above.
- d. Unless otherwise provided under the terms of this Agreement, such interest shall accrue at the rate of one percent (1%) per month.
- e. Design-Builder shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements to each lower-tier subcontractor.
- f. Design-Builder's obligation to pay an interest charge to a subcontractor pursuant to the payment clause above may not be construed to be an obligation of Owner.

11.21. Severability. If any provision or any part of a provision of this Agreement shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of this Agreement, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

11.22. Successors and Assigns. Except as expressly otherwise provided, all of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

11.23. Tax Exemption. HTRFA, as a political subdivision of the Commonwealth of Virginia, is exempt from any Federal excise tax and Virginia sales and use tax.

11.24. Tax ID Number. The provisions of Virginia Code § 2.2-4308.2 are incorporated by reference. In accord with Virginia Code § 2.2-4308.2 registration and participation in the E-Verify program (electronic verification of work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C, Title IV, § 403(a), as amended) is required. Design-Builder agrees to provide its federal tax identification number to HTRFA.

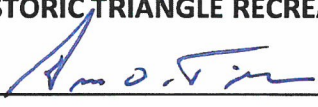
11.25. Time of the Essence. The time to complete the construction of the Initial Project is of the essence. Design-Builder shall proceed expeditiously with adequate forces and make diligent efforts to keep the Initial Project on schedule in accordance with the Timeline. HTRFA will cooperate reasonably with Design-Builder's efforts to keep the Initial Project on schedule in accordance with the Timeline.

12. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the Parties, and all prior communications, oral or written, are without any force and effect as it is the specific intent of the Parties that this Agreement alone sets forth the terms on which the Parties have mutually agreed.


IN WITNESS WHEREOF the undersigned have executed this Agreement.

HISTORIC TRIANGLE RECREATIONAL FACILITIES AUTHORITY

By 

Title Chair

MEB GENERAL CONTRACTORS, INC.

By 

Title Mark F. Olmstead, Executive Vice President

Exhibit 1 – INITIAL PROJECT

Design-Builder will work with Owner to test and develop, harmonize, validate, or adjust the following goals through the design work.

Required Design Elements

HTRFA desires to build a regional sports center (the “Sports Center”) that is large enough to meet the needs for regional recreational space expansion demands and be successful in competing for large sports tourism opportunities. HTRFA has spent considerable time developing the following list of required design elements to satisfy these two demands:

- (1) An approximately 200,000 square foot indoor Sports Center will be developed on an appropriate site in the Historic Triangle Area. The Sports Center will include hardcourt space sufficient to support at least 12 basketball courts that can be converted to 24 volleyball courts, 36 pickleball courts, and other large sports and events activities. The Sports Center shall include dedicated space intended to serve as an arrival/connecting plaza providing access to the court facility and opportunity for access to two other facilities as yet to be determined. Space within the arrival/connecting plaza shall include opportunities for food and beverage, administration, and registration.
- (2) There shall be space for teams to change clothes and store equipment and restrooms for the sole use of athletes and dedicated changing rooms and restrooms reserved for the use of individuals officiating the athletic contests.
- (3) There shall be dedicated spectator viewing areas such as bleachers or other areas specifically delineated as observation areas. The Sports Center will also include public restroom facilities.
- (4) There shall be space that can be allocated to athletic training spaces, treatment space for sport medicine/medical service, storage areas, meeting rooms, flexible multi-purpose event space and office space for the Sports Center operations.
- (5) Additionally, there shall be equipment, including fixed mounted basketball goals, volleyball nets, court dividers, score boards and shot clocks. All of which shall be mechanically installed.
- (6) Adequate drop-off parking facilities are required but visitor parking will be on existing lots.
- (7) Provide a conceptual parcel/development pad site plan depicting the general footprint and location of the Initial Project, traffic flow and connectivity and respective parcel/development area, along with depicting other potential parcel/development pads to include the 5 building sites.

Operational Design Elements

In the coming months the HTRFA will evaluate the operating model for the Sports Center, but in any event, the Sports Center must contain office space for an operations staff.

Additional Design Elements

1. HTRFA recognizes that there are a myriad of opportunities to expand on the above required design elements. These additional design elements may make the Sports Center more competitive for sports tourism. HTRFA has engaged Victus Advisors to evaluate 11 additional design elements for potential inclusion in the project. This evaluation includes (1) providing a comparison of demand and feasibility for each of the 11 additional design elements and (2) preparing a market analysis and recommendation for a short list of four as approved by HTRFA. HTRFA may choose to include any mix of these four additional design elements in the project to enhance the Sports Center.
2. Non-competitive walk/run track (for community use), if the Sports Center does not include a competitive track.
3. Space for indoor simulator and e-gaming.
4. Interactive play areas and gathering spaces with comfortable furnishings.
5. A floating rollout turf floor to overlay the court facility completely.
6. The design has not considered requirements for compliance with the High Performance Buildings Act, Va. Code §15.2-1804.1. If HTRFA determines that the Project must comply with the requirements of this Act, they will so direct the Design-Builder in writing within 30 days of the execution of this Agreement. Compliance with this Act will increase design features, schedule for design and construction, and cost for the design and construction of the Project.

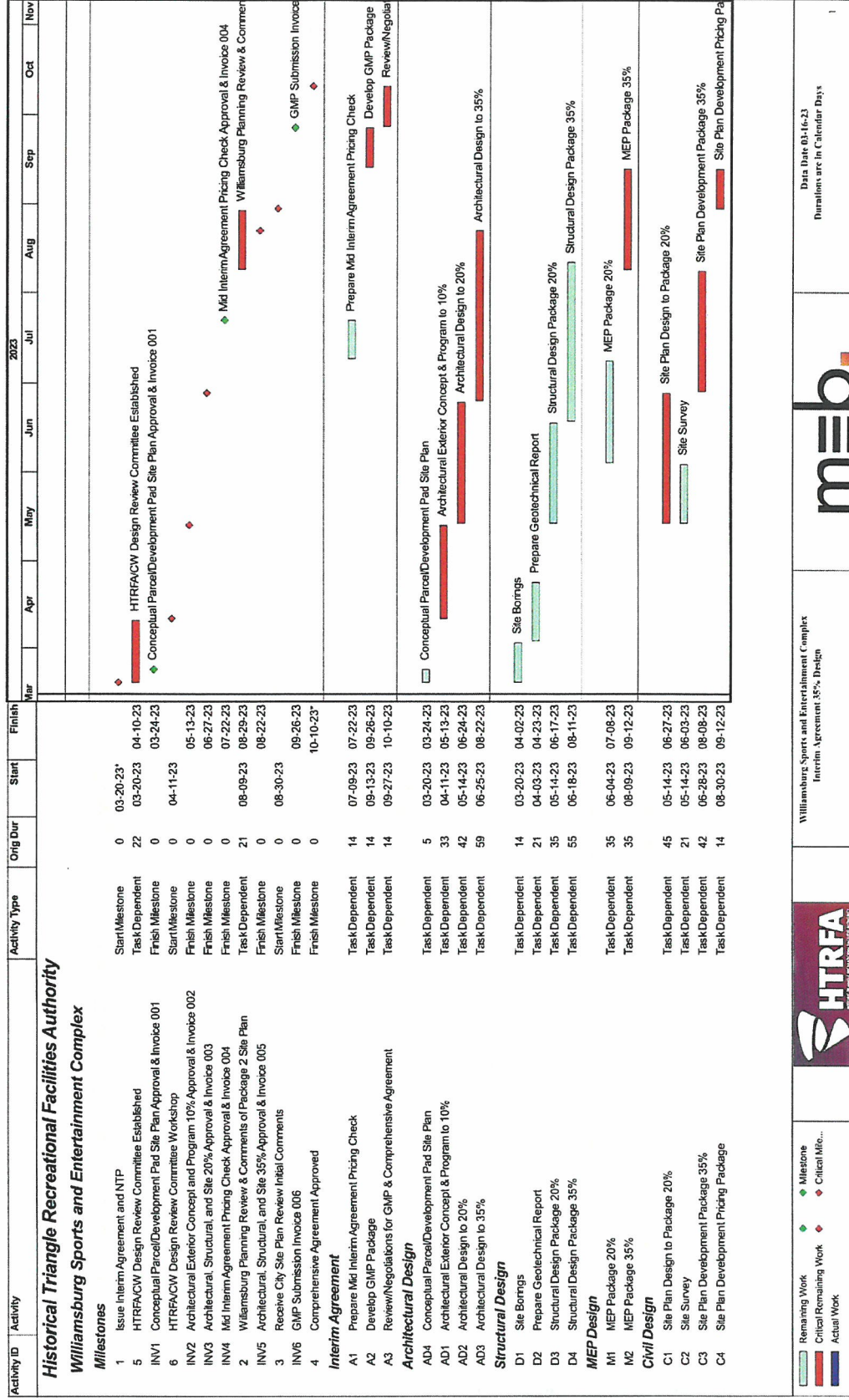
Other Considerations

The goal for the construction of the Sports Center is:

1. Ensure Sports Center and its accompanying recreational facilities are open to use by the community.

Promote regional and statewide tourism by creation of a world-class Sports Center that can host state, regional and national athletic tournaments.
2. Height: 30 foot eave height in court area.
3. Parking: Share facilities for parking and access with the Colonial Williamsburg Visitors Center.

Exhibit 2 – Schedule - HTRFA IA



(part of Exhibit 2)

MILESTONES FOR INVOICING	% of Contract Amount Due
INV1 Conceptual Parcel/Development Pad Site Plan – Invoice 001 Finish Milestone 0 03-24-23	10%
INV2 Architectural Exterior Concept and Program 10% - Invoice 002 Finish Milestone 0 05-13-23	20%
INV3 Architectural, Structural, and Site 20% - Invoice 003 Finish Milestone 0 06-27-23	20%
INV4 Mid Interim Agreement Pricing Check - Invoice 004 Finish Milestone 0 07-22-23	20%
INV5 Architectural, Structural, and Site 35% - Invoice 005 Finish Milestone 0 08-22-23	20%
INV6 GMP Submission - Invoice 006 Finish Milestone 0 09-26-23	10%