## SHORT FORM CONSTRUCTION AGREEMENT BETWEEN OWNER AND CONTRACTOR

**THIS AGREEMENT** is made as of the

day of

in the year of 2018.

|  |  |
| --- | --- |
| **BETWEEN** the Owner: | Illinois Sports Facilities Authority 333 West 35th StreetChicago, Illinois 60616Attn: Chief Executive Officer |
| and the Contractor:*(Name and address)* | Contractor name and address |
| The Project is:*(Name and location)* | Project Name Guaranteed Rate Field 333 West 35th Street Chicago, Illinois 60616 |

For and in consideration of the mutual promises and covenants hereinafter set forth, the Owner and Contractor hereby agree as follows:

## ARTICLE 1

**THE WORK OF THIS AGREEMENT**

**1.1** As used in this Agreement, the term “Work” shall mean the following construction and services, and shall include all labor, materials, equipment and other items necessary to complete such construction and services described in Exhibit A attached hereto. The Contractor shall execute all of the Work described above, as well as that which is reasonably inferable by the Contractor as being necessary to provide the results intended thereby.

## ARTICLE 2

**DATE OF COMMENCEMENT, SUBSTANTIAL COMPLETION & CONTRACT SUM**

* 1. The date of commencement is the date from which the “Contract Time” of Paragraph 2.2 is measured, and shall be the date of this Agreement.

The Contractor shall achieve Substantial Completion of the entire Work not later than:

 , subject to authorized adjustments of the Contract Time as provided in this Agreement. The contractor shall deliver to the owner a schedule of completion and attach as Exhibit B.

* 1. The Owner shall pay the Contractor in current funds for the Contractor’s proper performance of this Agreement the Contract Sum of Thousand and 00/100 Dollars ($000.00), subject to additions and deductions as provided herein.

## ARTICLE 3

**PROGRESS PAYMENTS & FINAL PAYMENT**

* 1. Based upon properly completed Applications for Payment submitted to the Owner by the Contractor, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in this Agreement. The Contractor shall adhere to the Payment Procedures set forth in Exhibit C attached hereto.
	2. Each Application for Payment must be accompanied by: (i) sworn statements identifying all subcontractors, sub-subcontractors and suppliers (ii) lien waivers from the Contractor and all subcontractors, sub-subcontractors and suppliers in the forms attached hereto as Exhibit D; and

(iii) all and any other information or documentation required by Exhibit D or otherwise reasonably requested by the Owner. Applications for Payment not properly completed and accompanied by all supporting documentation will not be processed by the Owner. Furthermore, failure to submit a complete Application for Payment (accompanied by all necessary documentation) in sufficient time to make payments to subcontractors and suppliers, shall be considered a breach of this Agreement by the Contractor.

* 1. Applications for Payment shall indicate the percentage of completion of the Work as of the end of the period covered by the Application for Payment. The Contractor hereby warrants that title to all Work covered by an Application for Payment will pass to Owner no later than the time of payment for such Work.
	2. Subject to other terms and provisions of this Agreement, the amount of each progress payment shall be computed as follows:
		1. Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of the Work by the total Contract Sum, less retainage of ten percent (10%);
		2. Subtract the aggregate of previous payments made by the Owner; and
		3. Subtract amounts, if any, which the Owner has withheld as provided in Paragraph 7.2.
	3. Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when the Work has been completed and the Agreement fully performed. Final payment shall not be made until the Owner has received a final sworn statement and final lien waivers from all subcontracts, sub-subcontractors and suppliers in the forms attached hereto as Exhibit D, the MBE/WBE Utilization Affidavit described in Section 10.6, certified payrolls as required by Section 10.9 and any other information or documentation required by Exhibit D or otherwise reasonably requested by the Owner. Acceptance of final payment by the Contractor, a subcontractor, or material supplier shall constitute a waiver of claims by that payee.

## ARTICLE 4 CONTRACTOR

* 1. The Contractor shall provide and pay for labor, materials, equipment, tools, machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor shall be solely responsible for and shall have control over all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work.
	2. The Contractor shall enforce strict discipline and good order among the Contractor’s employees and other persons carrying out the Work. The Contractor shall submit a daily log, which delineates all subcontractors and sub-subcontractors, and employees who work on site daily. The daily log shall be submitted to the Owner’s construction manager or other designated representative. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall be responsible to the Owner for the acts and omissions of the Contractor, subcontractors, and others performing portions of the Work, and their respective employees and agents. Prior to commencing the Work, the Contractor shall submit its safety program to the Owner.
	3. The Contractor warrants to the Owner that materials and equipment furnished under this Agreement will be of good quality and new, that the Work will be of good and workmanlike quality and free from defects and deficiencies, and that the Work will conform to the requirements of this Agreement. Work not conforming to these requirements shall be considered defective.
	4. The Contractor shall pay all sales, consumer, use and other taxes relating to the performance of the Work, to the extent applicable, and shall secure and pay for all permits, licenses and inspections necessary for proper execution and completion of the Work.
	5. The Contractor shall comply with (and give notices required by) all laws, ordinances, rules, regulations, permits, licenses, approvals and lawful orders of public authorities bearing on performance of the Work.
	6. The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Agreement. At completion of the Work, the Contractor shall remove from and about the Project site its waste materials, rubbish, tools, construction equipment, machinery and surplus materials.
	7. The Contractor shall not subcontract any Work, nor substitute any subcontractor previously approved by the Owner, without first securing the Owner’s approval.
	8. To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, the Owner’s architect, the Owner’s construction manager, City of Chicago, State of Illinois, Chicago White Sox, Ltd., Chisox Corp., Chicago White Sox Charities, Inc., At Your Service, LLC, At Your Service Management Corp., Illinois Sportservice, Inc., CWS Maintenance Company, Roclab Athletic Instruction LLC, Jerry Reinsdorf, Jerry M. Reinsdorf trusts, Levy Premium Foodservice Limited Partnership, GRG – U.S. Cellular Field Management Company LLC, Standard Parking Corporation, Silver Chalice Ventures, LLC, Baseball Buffet, Inc. and each of their respective directors, owners, partners, members, employees and agents, and

any subsidiaries or affiliates, or thereof, or any under their control or supervision of any of the foregoing from and against any and all claims, demands, suits, liabilities, injuries (personal or bodily), property damage, causes of action, losses, expenses, damages or penalties, including, without limitation, court costs and reasonable attorneys’ fees, arising or resulting from, or occasioned by or in connection with (i) the performance by the Contractor of its services, duties and obligations under this Agreement, (ii) the inaccuracy of any warranty or representation of the Contractor contained in this Agreement, (iii) any act or omission to act by the Contractor, a subcontractor, a sub-subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, and/or (iv) any breach, default, violation or nonperformance by the Contractor of any term, covenant, condition, duty or obligation provided in this Agreement. This indemnification, defense and hold harmless obligation shall survive the termination or expiration of this Agreement, whether by lapse of time or otherwise. This indemnification obligation shall not be limited (i) by a limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor, a subcontractor or any other party under workers’ or workmen’s compensation acts, disability benefit acts or other employee benefits acts, or (ii) pursuant to any common law or case law.

* 1. The Contractor represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general, local and site conditions which can affect the Work, the Project site and/or the performance of the Work. Therefore, the Contractor shall not be entitled to any adjustment to the Contract Sum or Contract Time based on any general, local or site conditions, including, but not limited to, concealed or unknown site conditions.
	2. The Contractor shall be responsible for labor peace on the Project Site, shall at all times exert its best efforts and judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes or strikes where reasonably possible and practical under the circumstances, and shall at all times exert its best efforts to maintain Project-wide labor harmony.

## ARTICLE 5 CHANGES IN THE WORK

**5.1** The Owner, without invalidating this Agreement, may order changes in the Work consisting of additions, deletions or modifications, the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by a written “Change Order” signed by the Owner and Contractor. The cost or credit to the Owner from a change in the Work, and any resulting effect on the Contract Time, shall be determined by mutual agreement of the parties hereto. Notwithstanding anything to the contrary contained in this Agreement, the Contract Sum and Contract Time may only be adjusted by a Change Order.

Mark-ups on Change Orders for overhead and profit will in no event exceed a total of 15% of the cost of the Work covered by the Change Order. The subcontractor(s) performing extra Work is entitled to a 10% mark-up and the Contractor is entitled to a 5% mark-up on Work that is not self- performed, and a 15% mark-up on self-performed Work.

## ARTICLE 6 TIME

* 1. Time limits stated in this Agreement are of the essence of this Agreement. The date of Substantial Completion is the date certified by the Owner in accordance with Paragraph 7.3.
	2. If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, by labor disputes which are not caused by (or within the reasonable control of) the Contractor, fire, abnormal adverse weather conditions which cannot be reasonably anticipated, unavoidable casualties or any causes beyond the Contractor’s reasonable control, then the Contract Time may be extended by Change Order for such reasonable time as the Owner may determine. The Contractor’s sole and exclusive remedy for any such delay shall be an extension of the Contract Time.

## ARTICLE 7 PAYMENTS AND COMPLETION

* 1. The Contractor shall pay all subcontractors and suppliers the amounts requested to pay such parties in any Application for Payment promptly upon receipt of the corresponding payment from the Owner (and in no event more than 7 days after receipt of such payment). The Contractor hereby agrees (in relation to payments made by the Owner to the Contractor) to indemnify, defend and hold harmless the Owner from and against any liens, claims, security interests or encumbrances filed by the Contractor, any subcontractor, any sub-subcontractor or anyone claiming by, through or under any of them.
	2. Payments to the Contractor may be withheld by the Owner on account of (1) defective Work not remedied, (2) claims filed by third parties, (3) failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment, (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum, (5) damage to the Owner,

(6) reasonable evidence that the Work will not be completed within the Contract Time or that the unpaid balance would not be adequate to cover actual damages for the anticipated delay, (7) failure to carry out the Work in accordance with this Agreement, or (8) failure to adhere to the payment procedures described in Exhibit C. In addition, the Owner may at its discretion pay amounts due to subcontractors or suppliers if it reasonably believes that the Contractor has not timely paid such parties, and the Owner may deduct any such amounts paid from the next payment due to the Contractor under this Agreement.

* 1. When the Owner agrees that the Work is substantially complete, the Owner or its designee will issue a Certificate of Substantial Completion. Substantial Completion is the stage in the progress of the Work when the Work is sufficiently complete in accordance with this Agreement so the Owner can utilize the Work for its intended use.

## ARTICLE 8 INSURANCE AND BONDS

* 1. The Contractor shall procure, at its sole cost and expense, the insurance coverages set forth below, and shall maintain such coverages in full force and effect as specified in this Paragraph. Contractor shall deliver to the Owner a certificate of certificates of insurance evidencing ownership of the insurance coverages identified below as Exhibit E. The Contractor shall include the Illinois Sports Facilities Authority, the Owner’s architect, the Owner’s construction manager, City of Chicago, State of Illinois, Chicago White Sox, Ltd., Chisox Corp., Chicago White Sox Charities, Inc., At Your Service, LLC, At Your Service Management Corp., Illinois Sportservice, Inc., CWS

Maintenance Company, Roclab Athletic Instruction LLC, Jerry Reinsdorf, Jerry M. Reinsdorf Revocable Trust, Levy Premium Foodservice Limited Partnership, GRG – U.S. Cellular Field Management Company LLC, Standard Parking Corporation, Silver Chalice Ventures, LLC, Baseball Buffet, Inc. and each of their respective directors, owners, partners, members, employees and agents; and any subsidiaries or affiliates, or thereof, or any under their control or supervision of any of the foregoing and such other parties as the Owner may designate as additional insureds to the insurance policies described below (excluding the Workers’ Compensation Policy and the Professional Liability insurance, if required). The insurance coverage afforded under the policies described herein shall be primary and non-contributing with respect to any insurance carried independently by the additional insureds. All such insurance policies shall indicate that as respects the insureds (whether named or otherwise), cross-liability and severability of interests shall exist for all coverages provided thereunder. All policies of insurance required under this Paragraph 8.1 shall be written on an “occurrence” basis (excluding Professional Liability insurance, if required), shall be placed with insurance companies reasonably acceptable to the Owner, and shall include endorsements providing for the giving of notice to the additional insureds at least sixty (60) days prior to the cancellation, non-renewal or material modification of any such policies. Such insurance companies shall have at a minimum an A- rating or better with a minimum Class VIII financial size as rated by A.M. Best. The Contractor shall promptly furnish the Owner with certificates of insurance evidencing the coverages hereunder, and shall not commence any services under this Agreement until such insurance is obtained. Furthermore, no payments will be made to the Contractor after the expiration date of the latest Certificate of Insurance on file with the Owner.

* + 1. Commercial General Liability Insurance. A broad form Commercial General Liability Insurance Policy in form and substance reasonably acceptable to the Owner and including, without limitation, a waiver of subrogation endorsement in favor of the additional insureds, and appropriate endorsements adding the following coverages: Premises and Operations Liability; Explosion, Collapse and Underground Damage Liability; Personal Injury Liability (with employee and contractual exclusions deleted); Broad Form Property Damage Liability; Broad Form Contractual Liability supporting the Contractor’s indemnification agreements in favor of the additional insureds; Independent Contractor’s Protective Liability; Completed Operations and Products Liability for a period of not less than two (2) years following the date of final payment for all services provided under this Agreement. The Commercial General Liability Insurance Policy must be written with a combined single limit of liability of not less than $1,000,000 for each occurrence of bodily injury and/or property damage and an annual aggregate of liability of not less than $2,000,000 for bodily injury and/or property damage, and an annual aggregate of liability of not less than $2,000,000 for Completed Operations and Products Liability and include a per project aggregate.
		2. Comprehensive Automobile Liability Insurance. A Comprehensive Automobile Insurance Policy in form and substance reasonably acceptable to the Owner and including, without limitation, a waiver of subrogation endorsement in favor of the additional insureds. The Comprehensive Automobile Liability Insurance Policy must provide coverage for all owned, hired, rented and non-owned automobiles, and must be written with a combined single limit of liability of not less than $1,000,000 for each occurrence of bodily injury and/or property damage. If work involves pollutants, then form CA 99 48 10/01 or equivalent shall be included.
		3. Workers, Compensation Insurance. A Workers’ Compensation Insurance Policy in form and substance reasonably acceptable to the Owner and in an amount not less than the statutory limits (as may be amended from time to time), including Employer’s Liability Insurance with

limits of liability of not less than (i) $1,000,000 for bodily injury by accident, each accident, (ii)

$1,000,000 for bodily injury by disease, each employee, and (iii) $1,000,000 aggregate liability for disease. The Workers’ Compensation & Employer’s Liability Insurance Policies must each include a waiver of subrogation endorsement in favor of the additional insureds.

* + 1. Umbrella Liability Insurance. A Follow Form Umbrella Liability Insurance Policy written in excess of the coverages provided by the insurance policies described in Paragraphs 8.1(i), 8.1(ii) and the Employer’s Liability in 8.1(iii), in form and substance reasonably acceptable to Owner and including, without limitation, a waiver of subrogation endorsement in favor of the additional insureds. The Umbrella Liability Insurance Policy must be written with a combined single limit not less than ***$5,000,000*** for each occurrence of bodily injury and/or property damage, and an annual aggregate of liability of not less than ***$5,000,000*** for bodily injury and/or property damage.
		2. Professional Liability Insurance. A Professional Liability Insurance Policy written with a limit of liability of not less than$1,000,000 for each claim, and not less than$1,000,000in the aggregate, for errors, omissions or negligent acts arising out of the performance of (or the failure to perform) professional services hereunder as an architect, engineer or construction manager. Such insurance shall cover work and services performed by any architects, engineers, construction management personnel and structural, mechanical, electrical, plumbing or other consultants, and shall include contractual liability coverage in support of the Contractor’s indemnification agreements contained herein. All coverages provided in said policy shall be retroactive to the earlier of the date of the Agreement or the commencement of the services in relation to this Project (including, without limitation, design services). The Professional Liability Insurance Policy must be maintained for a period of not less than three (3) years following the date of final payment to the Contractor for all Work provided under this Agreement.

If the Contractor fails to furnish and maintain insurance as required by this Subparagraph 8.1, the Owner may, at its sole option, purchase such insurance on behalf of the Contractor, and the Contractor shall pay the cost thereof to the Owner upon demand. Except as otherwise expressly provided herein, all insurance policies required by the terms of this Paragraph 8.1 shall be kept in full force and effect until the date of final payment to Contractor for the services designated hereunder.

* 1. The Owner shall not insure nor be responsible for any loss or damage to tools, equipment or other property or materials of any kind purchased, owned, rented or leased by the Contractor, subcontractors, or their respective employees or agents.
	2. The Contractor, upon execution of this Agreement, shall furnish and deliver to the Owner a payment bond and a performance bond (executed on AIA Document A312 or reasonably comparable forms approved by the Owner in advance) covering the faithful performance and completion of this Agreement and the payment of all obligations arising hereunder. Such bonds shall be issued by a surety licensed and authorized to do business in Illinois. The surety shall also be listed on the latest “United States Department of the Treasury Federal Register of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds” and shall have a rating of A(X) or better by A.M. Best Company. Such bonds shall be issued in amounts equal to the Contract Sum, shall be written on a form acceptable to Owner and shall be issued by a surety satisfactory to the Owner. If the Contractor fails to furnish such bonds, the Owner may, at its sole option, purchase such bonds on behalf of the Contractor and the Contractor shall pay the cost

thereof to the Owner upon demand. Such bonds shall be submitted to the Owner with a letter from the surety, specifying the percentage change in the Contract Sum such surety will cover without notice. The Contractor shall be responsible for providing updated bonds as necessary in order to ensure that the bonds secure the obligations of the Contractor up to the full Contract Sum at all times.

## ARTICLE 9 TERMINATION OF THE AGREEMENT

* 1. If the Owner, through no fault of the Contractor, fails to make any payment required hereunder when the same is due and payable, or otherwise fails to perform any other obligation or duty hereunder, and such failure continues for thirty (30) days after the Owner’s receipt of written notice thereof from the Contractor, the Contractor may, upon fourteen (14) days prior written notice to the Owner, terminate this Agreement. If this Agreement is so terminated, the Contractor, as its sole and exclusive remedy hereunder, shall be entitled to receive payment for Work properly performed to the date of termination.
	2. If the Contractor fails to observe or perform any covenant, agreement, obligation, duty or provision of this Agreement, the Owner, after seven (7) days prior written notice to the Contractor and without prejudice to any other right or remedy the Owner may have at law and/or in equity, may terminate this Agreement. The Owner may, without prejudice to any other right or remedy, take possession of the Project site and of all materials, equipment, tools and machinery thereon owned by the Contractor, and may finish the Work by whatever method the Owner may deem expedient. In addition, if the Contractor fails to observe or perform any covenant, agreement, obligation, duty or provision of this Agreement, the Owner may, at its sole discretion and without prejudice to any other right or remedy, disqualify the Contractor from any or all future contracts with the Owner.
	3. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be Chicago, Illinois. The prevailing party shall be entitled to an award of reasonable attorney fees.

**9.3** Any notice, demand or communication required or permitted to be given hereunder shall be given in writing at the addresses set forth below by any of the following means: (a) personal service; (b) email, provided that receipt of such email is electronically confirmed by non- automated reply mail; (c) overnight courier; or (d) registered or certified first class mail, postage prepaid, return receipt requested:

If to the Owner: Illinois Sports Facilities Authority

Attn: Maureen Gorski – email: Maureen@isfauthority.com 333 West 35th Street

Chicago, IL 60616 If to the Contractor: Contractor

Attn: Name – email: .com Address

## ARTICLE 10 MISCELLANEOUS PROVISIONS

* 1. The Contractor may not transfer, convey or assign this Agreement, or any interest therein, without the prior written consent of the Owner. This Agreement shall be binding upon, and inure to the benefit of, the successors and permitted assigns of the parties hereto.
	2. This Agreement represents the entire agreement between the Owner and Contractor with respect to the subject matter hereof, and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement may be amended or modified only by a written instrument executed by both the Owner and Contractor.
	3. In case any provision in this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.
	4. All notices required hereunder shall be in writing and shall be deemed properly served if delivered in person or if sent by registered or certified mail, with postage prepaid and return receipt requested, to the addresses specified on the first page of this Agreement (or to such other addresses as either party may subsequently designate). All notices required hereunder shall be deemed received on the date of delivery, or attempted delivery, if delivered in person, or if mailed, on the date which is two (2) days after the date such notice is deposited in the mail. All notices delivered to the Authority shall be addressed to the Chief Executive Officer.
	5. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Illinois. The Contractor shall pay, if applicable, not less than the prevailing rate of wages as established, to all laborers, workmen, and mechanics in the performance of Work under this Contract pursuant to an act of the General Assembly of the State of Illinois entitled, “An Act regulating wages of laborers, mechanics, and other workmen employed under contracts for public works,” 820 ILCS 130/0.01 et seq.” In addition, in performing the Work, the Contractor shall comply with the following:
		1. “An Act to give preference to veterans of the United States military and naval service in appointments and employment upon public works by, or for the use of, the State or its political subdivisions,” 330 ILCS 55/0.01 et seq., as amended.
		2. “An Act regulating wages of laborers, mechanics and other workmen employed in any public works by the State, County, City or any political subdivision or by anyone under contract for public works,” regarding “Wages of Employees on Public Works,” 820 ILCS 130/0.01 et seq., as amended.
		3. “Illinois Preference Act,” 30 ILCS 570/0.01 et seq., as amended, relating to the employment of Illinois residents.
		4. “Steel Products Procurement Act,” 30 ILCS 565/1 et seq., as amended.
		5. All applicable provisions of laws pertaining to nondiscrimination and equal employment opportunity including, but not limited to:
			1. The Illinois Human Rights Act, 775 ILCS 5/1-101 et seq., as amended.
			2. Article VI of the regulations of the Illinois Department of Human Rights, which article is hereby incorporated herein by reference; and
			3. An Act to prohibit discrimination and intimidation on account of race, creed, color, sex, religion, physical or mental handicap unrelated to ability, or national origin in employment under contracts for public buildings or public works, 775 ILCS 10/0.01 et seq., as amended.
	6. The Contractor acknowledges that the Owner is committed to maximizing the participation on its projects of minority and women-owned businesses and of businesses certified by the approved certifying agencies cited below and to maximizing employment opportunities for minorities and women. The Contractor shall use its best efforts to expend at least the following percentages of the dollar value of all subcontracts or purchase orders it enters into for the Work (including all change order Work) on subcontracts or purchase orders with certified Minority Business Enterprises (“MBEs”) and Women Business Enterprises (“WBEs):
* MBE Participation: 25% of total contract amount as may be adjusted
* WBE Participation: 5% of total contract amount as may be adjusted

The total dollar value of a contract with a firm owned and controlled by minority women may be counted toward either the MBE or WBE goal, but not both. A contractor employing a subcontractor owned and controlled by minority women may choose whether the contract value(s) of all work performed by that subcontractor on the Project shall be applied to the MBE or the WBE goal.

As evidence of MBE or WBE status, as applicable, the Owner shall accept current certifications from the following certifying agencies and authorities: the City of Chicago, the State of Illinois (Central Management Services), County of Cook, the Chicago Minority Supplier Development Council, the Women’s Business Development Center, and other entities and certifications approved in advance by the Owner.

Attached hereto as Exhibit F is the Contractor’s MBE/WBE Participation Plan, describing the MBE and/or WBE entities it has retained or intends to retain in performing the Work. Such MBE/WBE Participation Plan includes copies of current MBE or WBE certification letters for all entities identified on such MBE/WBE Participation Plan. With each Application for Payment, and at other times during the term of this Agreement upon reasonable advance notice from the Owner, the Contractor shall submit a completed original MBE/WBE Utilization Affidavit, in the form attached hereto as part of Exhibit F-1. Such MBE/WBE Utilization Affidavit shall describe the actual MBE/WBE entities retained and performing the Work and receiving payments. Such MBE/WBE Utilization Affidavit must also be accompanied by copies of current MBE or WBE certifications and partial or final waivers of lien for all entities identified on such MBE/WBE Utilization Affidavit (except for the certifications previously submitted to the Owner so long as such certifications remain current and in effect).

The Contractor shall also use its best efforts to ensure that at least the following percentages of minorities and women are employed under this Agreement to perform the Work:

* Minorities (skilled and unskilled labor, or any combination thereof): 25% of the total on site work hours
* Women (skilled and unskilled labor, or any combination thereof): 5% of the total on site work hours

During the course of performing Work, relative to filling vacant positions, Contractor agrees to hire and sponsor into the union, whenever practicable and if applicable, a mutually-agreed upon number of full time equivalent (FTE) minorities and women on the job site.

After all reasonable efforts have been exhausted to hire and sponsor into the union, if applicable, minorities and women, Contractor may, upon approval from the Owner, undertake hiring consideration of the minimum number of full time equivalent (FTE) minorities and women in non- trade areas including, but not limited to, technical assistants, clerical workers, security guards, and custodial workers for the purposes of meeting the minorities and women workforce goals.

All hires under these initiatives will be subject to the Contractor’s customary and ordinary work rules and to applicable legal requirements. The minorities and women workforce goal is in addition to the MBE/WBE participation goals described above in this Section 10.6.

* 1. Rights and remedies available to the Owner as provided in this Agreement shall be cumulative with and in addition to, and not in limitation of, any other rights or remedies available to Owner at law and/or in equity.
	2. No course of dealing or failure of the Owner to enforce strictly any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition.
	3. In accordance with the requirements of the Illinois Prevailing Wage Act (the “Prevailing Wage Act”), 820 ILCS 130/1 et seq., as amended in 2005 by Illinois House Bill 188, and as amended thereafter, the Contractor shall submit each month a certified payroll in hardcopy and/or electronic format as requested by the Owner, of all laborers, mechanics and other workers employed by the Contractor on the Project in the prior one month period, including each worker’s name, address, telephone number if available, social security number, classification(s), hourly wages paid to each such worker in all pay periods in the prior one month period, the number of hours worked on each day in such one month period, and the start and end times of each such work day. To the extent the Contractor wishes to receive credit toward the minority and women participation goals outlined in Section 10.6 for particular workers, their gender and/or ethnicity, as applicable, shall also be identified on the certified payroll. The certified payroll should be accompanied with apprentice certificates as applicable. The certified payroll must be signed by an authorized officer of the Contractor, certifying that (i) the records are true and accurate, (ii) the hourly wage paid to each such worker is not less than that required by the Prevailing Wage Act, and (iii) the Contractor is aware that filing a certified payroll that he or she knows to be false is a Class B misdemeanor under Illinois law. Current prevailing wages and classifications under the Prevailing Wage Act are available on the “Prevailing Rate” page of the Illinois Department of Labor’s website which is located at [www.state.il.us/agency/idol/rates/rates.HTM.](http://www.state.il.us/agency/idol/rates/rates.HTM)

This Project Name Agreement is made as of the day and year first written above month day, 2018.

|  |  |
| --- | --- |
| OWNER: Illinois Sports Facilities AuthorityName: By: *Signature*Its: *Title* | CONTRACTOR: NameName: By: *Signature*Its: *Title* |

Date: Date:

**EXHIBIT A**

# SCOPE OF WORK

**EXHIBIT B**

# SCHEDULE OF COMPLETION

## EXHIBIT C

**ILLINOIS SPORTS FACILITIES AUTHORITY (ISFA)**

**Payment Procedures**

## Preparing an Application for Payment

In addition to complying with the provisions of the Agreement, the following describes the requirements for submitting each Application for Payment.

If you do not submit the required documents accurately and on time, your payment will likely be delayed. If payment submission is incomplete, the entire payment may be deferred until the next payment application.

Prior to the start of Work on the Project site and prior to the initial Application for Payment, the following must be submitted:

1. List of subcontractors and consultants.
2. Contractor’s Daily Logs
3. Schedule of Values
4. MBE/WBE Subcontract Awards and all Certification Letters.
5. Subcontractor’s Construction Schedule (preliminary, if not final).
6. List your company’s commodity codes, as identified in the North America Industry Classification System (NAICS), which can be found at [http://www.census.gov/eos/www/naics/.](http://www.census.gov/eos/www/naics/)
7. Schedule of Unit Prices.
8. Submittals Schedule.
9. Executed Contract.
10. Certificate of Insurance.
11. Performance and Payment Bonds.
12. Surety Letter.
13. W-9 Form.
14. In the event a company seal is not utilized, a letter on company letterhead must be provided stating such.

The period covered by each Application for Payment shall be one calendar month ending on the last day of the month immediately preceding the month in which an Application for Payment is received by the Owner. If an Application for Payment is received by the Owner not later than the fifth (5th) day of a month, the Owner shall make payment to the Contractor not later than the last day of the same month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment. If the Owner has questions regarding an Application for Payment or needs additional information, they will use reasonable efforts to communicate any such requests to the Contractor within two (2) weeks following receipt of the relevant Application for Payment. The Contractor shall respond and provide any such additional information no later than five (5) days following any such request, or payment may be delayed.

**Pencil Copy (Draft Copy)**

Prior to your first payment application, a detailed Schedule of Values shall be submitted to the Owner for approval. This Schedule of Values should itemize your contract amount into various parts, separating material, equipment, labor, and subcontractors where applicable. Furthermore, the schedule must be in sufficient detail to allow accurate monthly reviews of completed work. You will need to submit this schedule immediately upon notice of award to the Owner.

The Owner and Architect following receipt of the pencil draft will review Contractor’s payment application. The Contractor will be contacted prior to the application deadline with any changes that may be required. If the Contractor does not receive instructions from the Owner or Architect for required revisions to the submitted application, the Contractor will forward **one (1) original** notarized payment applications to:

## Maureen Gorski Director of Accounting

**Illinois Sports Facilities Authority 333 West 35th Street Chicago, IL 60616**

The actual Payment Request Packet documents shall incorporate all changes agreed to on the draft copy.

## Payment Request Packet

A complete Payment Request Package shall contain **one (1) original** of the following documents with the exception of the certified payroll only **one set of (1) original** is required.

Include partial and/or final waivers of lien as applicable and similar attachments as required.

|  |  |
| --- | --- |
| Page 1: | **AlA Document G702/CMa**. "Application & Certificate for Payment" (latest version).This form must be completely filled out, signed, and notarized.***NOTE****:* Ten percent (10%) retainage shall be shown until otherwise authorized.***NOTE****:* Only change orders that have been fully executed within the month are allowed for inclusion on such payment request.***NOTE****:* Documents shall be executed in blue ink and be for work actually (not projected) completed within the prior month. |
| Page 2: | **AlA Document G703**. "Continuation Sheet" (latest version). This form must be completely filled out. Computerized versions of this document are acceptable. |
| Page 3: | **Waiver Submittal Summary Sheet**. This sheet should contain a list of all waivers, which are actually enclosed with the Payment Application. |
| Page 4: | **Partial/Final Waivers and Subcontractor supporting waivers:** Completed for all subcontractors and suppliers. The phrase “All Materials Taken From Fully Paid Stock” will not be accepted. Waivers must be provided from the Contractor and all subcontractors and sub-subcontractors on the forms included in Exhibit D. |
| Page 5: | **Certified Payroll:** In accordance with the requirements of the Illinois Prevailing Wage Act (the “Prevailing Wage Act”), 820 ILCS 130/1 et seq., as amended in 2005 by Illinois House Bill 188, the Contractor shall submit each month a certified payroll in hardcopy and/or electronic format as requested by the Owner of all laborers, mechanicsand other workers employed by the Contractor on the Project in the prior one month period, including each workers name, gender, |

|  |  |
| --- | --- |
|  | ethnicity, address, telephone number if available, social security number, classification(s), hourly wages paid to each such worker in all pay periods in the prior one month period, the number of hours worked on each day in such one month period, and the start and end times of each such work day. The certified payroll should be accompanied with apprentice certificates as applicable. The certified payroll must be signed by an authorized officer of the Contractor, certifying that (i) the records are true and accurate, (ii) the hourly wage paid to each such worker is not less than that required by the Prevailing Wage Act, and(iii) the Contractor is aware that filing a certified payroll that he or she knows to be false is a Class B misdemeanor under Illinois law. |
| Page 6: | **Updated MBE/WBE Utilization Affidavit:** Showing actual subcontractor dollar amounts and percentages in accordance with current Schedule of Values and Payment Application. |
| Page 7: | **Updated Performance and Payment Bonds**. If the amount of the original contract value and fully executed change orders exceeds the capacity of the surety on the original Performance and PaymentBond, an updated Performance and Payment Bond must be submitted to match the current contract value. |

***Partial Payment Waivers****:* All Waivers of Lien, including waivers from your subcontractors, sub-subcontractors and suppliers and subcontractors' suppliers, shall be on the Partial Lien Waiver forms attached to the contract as Exhibit

D. These waivers shall reflect the amounts from the prior application for payment. Waivers must be for the actual (net) amount received, not the gross amount before retainage.

***Final Payment Waivers:*** All Final Waivers of Lien, including waivers from your subcontractors, sub-subcontractors and suppliers and subcontractors' shall be on the forms attached to the contract as Exhibit D. Final waivers of lien from all parties must be exchanged for your final payment.

***PLEASE NOTE:*** Late or incomplete payment applications will be held until the following month for processing.

You will be contacted by the Owner if there are missing or incorrect documents included in your application. It is ISFA’s intent to release checks to the General Contractor on the date denoted in the above schedule. Checks will not be released without **two (2**) original notarized lien waivers with a company seal (or letter on company letterhead indicating no company seal is used by the entity) for the full amount of the check. Waivers should be sent in with the final copies and must identify all subcontractors and suppliers; and contain all supporting waivers. You must include waivers from all subcontractors, sub-subcontractors and suppliers and subcontractors' suppliers.

All documentation must be submitted for the preparation of a formal Change Order, issued by the Owner, before the work can be included in your monthly payment application. A Change Order must be issued by the Owner and executed by the Contractor, the Architect and the Owner before payment for extra work can be included in your payment application.

Any reduction in Contractor's retention requires prior approval from the Owner, the Construction Manager, and the Architect. Requests for retention reductions should be submitted in writing to the Construction Manager's prior to being included on the General Contractor’s payment application. The General Contractor must submit an Affidavit listing all monies due or to become due to other parties entering into the work.

## Final Payment

The Request for Final Payment shall include all the documents listed above and **one (1) original** of the following:

`

1. Final sworn statement and all Final Waivers of Lien, on forms attached to the contract as Exhibit D.
2. Contractor's Affidavit of Payment of Debts & Claims, AlA Document G706.
3. Contractor's Affidavit of Release of Liens, AlA Document G706A.
4. Consent of Surety to Final Payment, AlA Document G707 (if applicable).
5. Final Certified Payroll (accompanied by apprentice certificates as applicable).
6. Final MBE/WBE Utilization Affidavit.

The Illinois Sports Facilities Authority is not obligated to make final payment until the Owner, Construction Manager and Architect agree that the work is complete.

## Forms

**Provide the requested information on the following forms and/or in a format as approved in advance by the Owner.** The AIA forms cited below can be found at <http://www.aia.org/contractdocs/aiab078909>.

* + AIA A312-2010, Performance Bond and Payment Bond
	+ AlA G702/G702/CMa (G732-2009) - Application and Certification for Payment
	+ AlA G703 - Continuation Sheet aka Schedule of Values
	+ Partial Lien Waiver (see Exhibit D)
	+ Final Waiver of Lien (see Exhibit D)
	+ MBE/WBE Utilization Affidavit (see Exhibit F-1)
	+ Certified Payrolls
	+ W-9

## EXHIBIT D

**SWORN STATEMENT AND LIEN WAIVERS**



**WAIVER OF LIEN TO DATE**

STATE OF ILLINOIS Gty #

COUNTY OF COOK

Escrow #

TO WHOM IT MAY CONCERN:

WHEREAS the undersigned has been employed by to furnish

for the premises known as of which is the owner. THE undersigned, for and in consideration of $ )

Dollars, and other good and valuable considerations, the receipt whereof is hereby acknowledged, dotes) hereby waive and release any and all lien or claim of, or right to, lien, under the statutes of the State of Illinois, relating to mechanics' liens, with respect to and on said above- described premises, and the improvements thereon, and on the material, fixtures, apparatus or machinery furnished, and on the moneys, funds or other considerations due or to become due from the owner, on account of all labor, services, material, fixtures, apparatus or machinery, heretofore furnished, or which may be furnished at any time hereafter, by the undersigned for the above described premises, INCLUDING EXTRAS.\*

DATE COMPANY NAME

ADDRESS

**SIGNATURE AND TITLE**

\*EXTRAS INCLUDE BUT ARE NOT LIMITED TO CHANGE ORDERS, BOTH ORAL AND WRITTEN, TO THE CONTRACT

STATE OF ILLINOIS **CONTRACTOR'S AFFIDAVIT**

COUNTY OF COOK

TO WHOM IT MAY CONCERN:

THE Undersigned, being duly sworn, deposes

and says that he or she is of (COMPANY NAME) who is the contractor furnishing work on the building located at

owned by That the total amount of the contract including extras\* is $ on which he or she has received payment of $ prior to this payment. That all waivers are true, correct and genuine and delivered unconditionally and that there is no claim either legal or equitable to defeat the validity of said waivers. That the following are the names and addresses of all parties who have furnished material or labor, or both, for said work and all parties having contracts or sub contracts for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each, and that the items mentioned include all labor and material required to complete said work according to plans and specifications:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| NAMES AND ADDRESSES | Contract Amount | AMOUNT PAID | THIS PAYMENT | BALANCE DUE |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |

That there are no other contracts for said work outstanding, and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with said work other than above stated.

**DATE SIGNATURE:**

SUBSCRIBED AND SWORN TO BEFORE ME THIS DAY OF ,20

EXTRAS INCLUDE BUT ARE NOT LIMITED TO CHANGE ORDERS, BOTH ORAL AND WRITTEN, TO THE CONTRACT.

NOTARY PUBLIC

## FINAL WAIVER OF LIEN

STATE OF ILLINOIS **SS** Gty #

COUNTY OF Cook

Escrow #

TO WHOM IT MAY CONCERN:

WHEREAS the undersigned has been employed by to furnish for the premises known as of which is the owner. THE undersigned, for and in consideration of ($ ) Dollars, and other

good and valuable considerations, the receipt whereof is hereby acknowledged, dotes) hereby waive and release any and all lien or claim of, or right to, lien, under the statutes of the State of Illinois, relating to mechanics' liens, with respect to and on said above-described premises, and the improvements thereon, and on the material, fixtures, apparatus or machinery furnished, and on the moneys, funds or other considerations due or to become due from the owner, on account of all labor, services, material, fixtures, apparatus or machinery, heretofore furnished, or which may be furnished at any time hereafter, by the undersigned for the above described premises, INCLUDING EXTRAS.\*

**DATE: COMPANY NAME** :

**ADDRESS**:

**SIGNATURE AND TITLE**

\*EXTRAS INCLUDE BUT ARE NOT LIMITED TO CHANGE ORDERS, BOTH ORAL AND WRITTEN, TO THE CONTRACT

STATE OF ILLINOIS **CONTRACTOR'S AFFIDAVIT**

COUNTY OF

TO WHOM IT MAY CONCERN:

The undersigned, , Being duly sworn, deposes and says that he or she is

of who is the contractor furnishing work on the building located at owned by .

That the total amount of the contract including extras\* is **$** on which he or she has received payment of

$ prior to this payment. That all waivers are true, correct and genuine and delivered unconditionally and that there is no claim either legal or equitable to defeat the validity of said waivers. That the following are the names and addresses of all parties who have furnished material or labor, or both, for said work and all parties having contracts or sub contracts for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each, and that the items mentioned include all labor and material required to complete said work according to plans and specifications:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| NAMES AND ADDRESSES | AMOUNT |  | Contract Amount | Amount Paid | THIS PAYMENT | BALANCE DUE |
|  | THIS |  |  |  |  |  |
|  |  | BALANCE |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |
| TOTAL LABOR AND MATERIAL INCLUDING EXTRAS\* TO COMPLETE. |  |  |  |  |

That there are no other contracts for said work outstanding, and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with said work other than above stated.

**DATE SIGNATURE:** , Owner

SUBSCRIBED AND SWORN TO BEFORE ME THIS DAY OF ,20

EXTRAS INCLUDE BUT ARE NOT LIMITED TO CHANGE ORDERS, BOTH ORAL AND WRITTEN, TO THE CONTRACT.

NOTARY PUBLIC

# Exhibit E

**CERTIFICATE OF INSURANCE**

# EXHIBIT F

**MBE/WBE PARTICIPATION PLAN**

# EXHIBIT F-1

## MBE/WBE UTILIZATION AFFIDAVIT