

**CONSTRUCTION ADMINISTRATION AGREEMENT**  
**Executive Summary of Key Provisions Advancing the Concepts Set Forth in the**  
**Development Agreement**

The Construction Administration Agreement ("CAA"), between The County of Cuyahoga, Ohio (the "County") and MMPI Cleveland Development LLC ("Developer") and Merchandise Mart Properties Inc. ("MMPI"), provides a roadmap for the design, construction, furnishing and equipping of the Convention Center and Medical Mart (the "Project"). It clarifies the general concepts that were set forth in the Development Agreement, dated April 16, 2009 ("DA"), and creates processes and procedures for the timely and cost efficient completion of the Project. Below is a description of some of the key provisions that have been advanced and clarified in the CAA:

1. Bridging Design Build Project Delivery System (CAA §2.6)— The DA, at §6.1, permits design-build as a project delivery system, but it does not require "bridging" design-build or otherwise contain any specifics about how the design-build process will work.

Under the CAA, Developer hires a bridging consultant (sometimes known as the design architect) to prepare the preliminary drawings and to consult with Developer and the County throughout the design and construction of the Project. The Design-Builder hires an architect to complete the construction drawings and act as the architect-of-record. The Bridging Design-Build project delivery system will compress the Project schedule and permit the County and Developer, through the bridging consultant, to retain more control over the Project design. Finally, design and construction liability will rest with one party, the Design-Builder, thus greatly reducing the finger pointing that often occurs between the design team and the construction team on large construction projects.

2. County Approval Rights of Key Agreements (CAA §§2.5, 4.1, 5.4, 5.26)— Under §§2.2 and 6.4(a) of the DA, the County had the right to approve the architect and contractor (or design-builder), but did not have the right to approve the terms and conditions of their agreements with Developer.

Under the CAA, the County approves the (a) Design-Build Agreement between Developer and Design-Builder, (b) Bridging Consultant Agreement between Developer and Bridging Consultant, and (c) the Architect Agreement between the Design-Builder and Architect-of-Record. The CAA lists provisions that must be included in the key design and construction agreements, including third party beneficiary status for the County and indemnification in favor of the County. The key agreements may not be amended without County approval. By giving the County approval rights over the key design and construction agreements, there will be more transparency regarding the business deal struck between Developer and key design and construction parties. In addition, the County's approval rights over these documents ensure that the requirements set forth in the CAA are met in the key agreements.

3. Limitation on Reimbursable Expenses (§8.3, Exhibit F)— The DA did not have a limit on the amount of reimbursable expenses (as distinguished from construction costs) that Developer could incur in connection with the planning, development and construction of the Project.

The CAA limits Developer's reimbursable expenses to \$3,246,000 (which is less than 1% of the Project Budget). Anything greater than that amount must be paid by Developer without reimbursement from the County. The CAA also identifies the items that qualify for reimbursement and includes maximum reimbursement amounts for specific items, such as hotel and meals. The reimbursable expense limit and reimbursement policy provide the County with additional cost control and assures that costs will be devoted primarily to design and construction of the Project.

4. No Reimbursement To Developer For Its Staff (CAA §§2.7, 8.1)— While the DA, at §6.2, states the amount of the Developer Fee and how it is paid, it does not specify what costs or expenses are covered by the fee. The CAA clarifies that the Developer Fee (\$12M) is used for all MMPI (and affiliates) staff salaries, benefits, bonuses, and Developer/MMPI profit. The CAA also includes a list of key personnel and a staffing chart of the personnel that Developer will dedicate to the Project, all of whom are included as part of the Developer Fee and not separately reimbursed.

5. Design-Builder Competitively Procured (CAA §2.5)— Although the DA, at §6.4(a), provides that the contractor (or design-builder) was subject to the approval of the County, it did not require any competitive selection process.

The CAA requires Developer to select the design-builder using a competitive proposal process whereby Developer solicits at least 3 proposals from design-build firms with proven experience in projects of similar size, scope and complexity. Developer must select the design-build firm that provides the best value to the Project, and the County has approval rights over the selected Design-Builder. Such competitive selection process will generate better pricing for the Project and will ensure that the firm chosen as design-builder is qualified and experienced.

6. Competitive Bidding Of All Major Trades (CAA §5.8)— While the DA, at §6.1(b)(ii), requires Developer to "establish and implement appropriate administrative and financial controls for the design and construction of the Project...", there is no requirement that major trade contracts be competitively bid.

Developer must use commercially reasonable efforts to solicit (through Design-Builder) at least 3 competitive bids or proposals for Subcontracts estimated over \$100,000 in value. The County has the right to approve the proposed bidding process prior to its implementation. A competitive bidding process for major trades will provide transparency, more County control, better pricing and more accessibility to the Project for local trades.

7. Open Book GMP (CAA §2.6.4)— Under the DA, a final, guaranteed construction cost is not required until the final plans and specifications are issued.

Under the CAA, firm pricing is achieved much earlier in the design process. Once the design development documents are complete, Design-Builder will propose a guaranteed maximum price (GMP). The Project Team (including the County, Developer, Bridging Consultant, Design-Builder and Architect) will reconcile the GMP, conduct value engineering (if necessary) to get the GMP within the Project Budget, and revise the GMP accordingly. The facilitated GMP permits the County to review back-up pricing information from Design-Builder

and any subcontractors and engineers that supplied pricing information to produce the GMP. The pricing is vetted early and construction costs are guaranteed at a much earlier stage in the design process.

8. Approval Rights Of Use Of Project And Construction Contingencies (CAA §4.16)—Although the DA provided for a County Contingency Fund (DA §2.6(a)), and that is retained in the CAA, it did not address controls over the other contingency funds, such as Developer's project contingency or the construction contingency within the GMP.

The CAA requires Developer to notify the County of any proposed use of contingency funds, and the County may disapprove any use of contingency funds if such use (a) is not a verified Project Cost under the CAA or Cost of the Work under the Design-Builder's Agreement, or (b) Developer has not used good faith efforts to pursue contractual rights of recovery in lieu of using contingency funds. Such approval rights give the County more control over use of the Project funds and additional protections and assurances that the funds are being used in a manner that is beneficial to the Project.

9. Incorporation Of Diversity And Local Inclusion Programs (CAA §§4.21, 5.13)—The DA (§6.46(a)) required Developer to work to with the County to develop goals for diversity, local inclusion and regional employment. The CAA specifies those goals, which include (a) compliance with the County's Small Business Enterprise Program, and (b) use of good faith efforts to achieve (i) 25% in value of Subcontracts to small business enterprises certified by the County, (ii) 40% of the construction workers are to be Cuyahoga County residents, and (iii) 20% of the construction workers are to be City of Cleveland residents. These goals will offer economic development opportunities in Cuyahoga County and the City of Cleveland for residents and businesses.

10. Mutual Agreement On Add Alternates To Be Bid (CAA §5.25)—The DA did not address any specific construction bidding practices that might enhance pricing. The CAA, however, requires, Developer and the County to agree to a list of add alternates to be bid with the base construction Work. This will provide better pricing early on and will assist with value engineering throughout construction, while giving options for additional Project features if there are funds available later in the Project through construction buyout savings. Developer will propose the priority of implementing add alternates and the County will approve such priority list.

11. Phasing (CAA §2.4)—While the DA (§2.9) contemplated that the project may proceed in phases, it did not address this concept with any specificity. The CAA sets forth the parameters that will govern phased construction. For example, once a GMP is established for a particular phase (Convention Center or Medical Mart), neither party may terminate the Project as related to that phase. Construction may not start on any phase until a GMP for all phases and the Budget Cap for the full Project have been approved by the County. This shortens the time frame for either party to terminate a phase to the design development stage of that particular phase (rather than completion of final plans for the whole Project).

12. Expedited Dispute Resolution (CAA §15.3)—While the DA (§11.1) requires arbitration of certain disputes, the CAA, in order to assure that disputes will not affect construction progress,

provides for expedited resolution of disputes than involve significant decisions that affect the construction schedule (e.g., disagreements over interpretation of project requirements, design document revisions and change orders).

13. Construction Trust Fund (CAA §9.2)—The DA did not specifically address what happens to any funds that may be remaining in the Construction Trust Fund upon final completion of the Project. The CAA requires that any remaining funds be deposited into the Capital Reserve Fund established under the Operating Agreement. These funds will provide for future replacement of capital equipment benefitting the Project.