

Step 2 - Request for Proposals (RFP)

Construction Services for P-1 Structured Parking Facility

Issued May 2011

NOTE: The most up-to-date RFP documents are available from the web site listed herein.

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I. Introduction

Forest City-New East Baltimore Partnership (FC-NEBP) is the “Owner” on this project and shall manage the project described below. This RFP pertains to the construction of a new structured parking facility with ground floor retail and related street side improvements (the “Project”) in East Baltimore.

FC-NEBP is seeking detailed technical and price proposals (under the Step 2 process described below in the ‘Proposal Information’) from 5 shortlisted contractors previously selected under the Step 1 – RFQ process to provide pre-construction and construction services for the Project.

We are providing information and attachments herein to assist in offerors’ proposal preparation and to help ensure such proposals are responsive to the submission requirements. The “evaluation factors” listed herein shall be considered by the evaluators as well as price. We encourage offerors to thoroughly review and to be particularly responsive to the evaluation factors.

FC-NEBP is committed to creating meaningful opportunities for participation by local, minority- and women-owned businesses as well as short-term and long-term jobs for Baltimore City residents, especially those who reside in communities/zip codes within east Baltimore that are most directly impacted by the Project.

II. Program Description

Forest City Science + Technology Group teamed with Presidential Partners, a group of locally experienced and minority-owned developers and contractors, to form Forest City – New East Baltimore Partnership, LLC (FC-NEBP). This entity is responsible for developing the first 31 acres, which is known as “Area A” and referred to as the Science + Technology Park at Johns Hopkins. Forest City Enterprises is a national, publicly traded real estate development and management company (NYSE: FCE.A) that owns and manages several \$billion of commercial, retail, residential and mixed use developments throughout the United States. Forest City’s Science + Technology group is a premier developer of bio-parks in the United States with 2 million square feet of existing wet-lab and office facilities. For more information about Forest City, Presidential Partners or FC-NEBP please refer to the marketing material attachments and visit www.forestcity.net, www.presidentialpartnersllc.com or www.forestcityscience.net .

The Science + Technology Park at Johns Hopkins and The New East Baltimore Community is a life science and residential campus located immediately north of the Johns Hopkins Medical Campus. It offers state-of-the art laboratory facilities that support the sophisticated research requirements of today’s most cutting-edge corporations and institutions. The 31 acre Phase 1 development site is bounded north-south by E Chase Street and E Madison St and bounded east-west by N. Broadway and N. Washington Street. It consists of 1.3 million square feet of life sciences/office space, 850 residential units, up to 80,000 square feet of retail space, two parking garages with 2,300+ spaces, three acres of parks and open space and other amenities. See Exhibit 1 – “Current Master Site Plan” for details on the development mix and layout for the 31 acres. The life sciences buildings are labeled as “L-#”, the residential buildings/units are labeled as “R-#” and the parking garages are labeled as “P-#”.

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In accordance with Exhibit 1, the structured parking facility that is the subject of this RFP will be developed on Site P-1 in coordination with the above-described initial 31 acres of the Science + Technology Park at Johns Hopkins.

III. Campus Schedule and Ongoing Activities

Although market conditions will dictate the final completion date, it is anticipated that the first 31 acres of the New East Baltimore Community will be completed in approximately 8 years (2019). The project is already well underway with site work, infrastructure (i.e. underground utilities, curb & gutter, roads, paving, etc.) and building construction. The necessary demolition, debris removal and backfill in support of the Project are complete. Utility and infrastructure work was installed along Eager St., Ashland Ave., Wolfe St., Washington St and other streets/alleys in support of the initial phase of commercial and residential buildings including the P-1 garage. This work was performed by the City and completed in early 2009.

While not complete, the campus is an active community with commercial and residential buildings, parks and streetscape. 220 residential units are completed and more units are planned to start construction in 2012. The first life sciences building located at 855 N. Wolfe Street (totaling 279,000 gross square feet, including 18,000 GSF of retail space) was completed in April 2008, and is over 75% committed to tenants. Additional residential units will be delivered by summer 2012 in the form of a 324 unit (575-bed) graduate student housing building (R-9/R-10). Further, we anticipate opening an approximately 160 – 180 key hotel in 2013 and a new lab for the State of Maryland Department of Health and Mental Hygiene (L-4) in 2013.

IV. Project Information

1. The Project shall be a 10-level, above grade parking structure, with at least 1425 spaces, ground floor retail totaling 10,000 – 12,500 GSF and related street side improvements. The bid form contains an option for additional structure and parking spaces.
2. The Architect - Engineering (A/E) Team for the Project is Sulton, Campbell, Britt and Associates, Baltimore. Partially completed construction documents, including documents for an early grading and foundation package, are the basis for pricing by the competitive range offerors. The offerors shall solicit firm fixed prices for the elements of the design that are sufficiently complete.
3. The structure is an "open garage" per the applicable codes.
4. The lower floors will contain retail, the lobby and other service spaces. The Project scope includes the construction of street-facing retail consistent with the overall retail/pedestrian-focused program for the project and campus.
5. The Project incorporates meaningful sustainable design and construction methods and will be energy sustainable to the extent required by the City of Baltimore.
6. The Project Team submitted documents/application for a grading and foundation permit in late April.

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V. Site Information

1. As shown on Exhibit 1, the Project site ("Site") shall be located within the development area on Site P-1.
2. The Site is located along Ashland Avenue and Washington Streets. The site totals approximately 63,260 SF (213' X 298') as depicted in Exhibit 1 – Subdivision Plat & Conceptual Site Plan. The site grade changes from south to north approximately 15'-0", and east to west approximately 6'-0".
3. The Contractor shall coordinate the construction of the P-1 garage with the activities (including construction) within adjacent properties/projects/buildings (e.g. R-9/10).
4. A geotechnical report was prepared for the P-1 site and is available for viewing by offerors. However, before submitting an offer, Offeror is responsible to conduct any additional site investigation that may have a bearing on its offer.
5. Offerors shall perform due diligence investigations, including visiting the site and the campus. Offerors shall timely and ask questions on any matters that require clarification.

VI. Project Inclusion Goals/Objectives

1. Involve local, small, women owned and minority owned businesses in the work as necessary to satisfy the project's business requirements and goals (see Exhibit attached), which include building capacity for such firms to grow and compete effectively with their mainstream counterparts.
2. During the proposal evaluation process, favorable consideration will be given to offerors that demonstrate that they propose to exceed minimum participation requirements, by inclusion of firms that are MDOT and/or MWBOO certified as well as local firms located within Baltimore City.
 - a. MDOT and MWBOO web sites: www.mdot.state.md.us and <http://cityservices.baltimorecity.gov/mwboo/>
 - b. Additionally, EBDI and its third-party inclusion monitoring firm (DPN) have been meeting with local vendors to determine their capabilities, qualifications and area of expertise (i.e. trade). Information about these firms can be found at: http://www.ebdi.org/local_vendor_directory. The Local Vendor Directory is a resource to be used by offerors. In addition, Offerors shall conduct their own due diligence to assess the qualifications of such firms, and to confirm whether such firms meet the Project goals and requirements. The listing of a subcontractor's information on the Local Vendor Directory does not imply that the subcontractor meets the necessary responsibility requirements.
3. Recruit and hire minorities, women and local residents to work on the Project. EBDI has developed Workforce Development Pipeline program. This Pipeline is a coordinated approach to prepare jobseekers for the workplace. This program assesses residents' readiness for work and helps them take the next step to become work-ready and better trained. EBDI's Workforce Pipeline is the Contractor's first source for recruiting and hiring program for all employment opportunities associated with the Project. More information regarding EBDI's Workforce Pipeline is at: http://www.ebdi.org/workforce_pipeline.

The Workforce Pipeline is EBDI's mechanism to identify and develop a qualified and competitive local workforce. EBDI works in partnership with the Mayor's Office of Employment Development (MOED)

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and other community-based workforce training providers to train residents for career-oriented jobs in a variety of industries.

To identify qualified local employees in the construction trades, Contractors can receive the Pipeline's Construction Talent Scout Report, which showcases the most qualified local candidates; their skills sets for the respective trades; and the geographical area in which they reside – a) within or relocated from the EBDI project area (EBDI); b) East Baltimore zip codes (EB); and Baltimore City. Contractors are required to prioritize hiring local residents in this order. The Talent Scout Report is updated weekly.

Upon Offeror review of the Construction Talent Scout Report, if Offeror would like to get more information about a specific candidate(s) or set up an interview with them, Offeror shall contact Dan Baldwin, the EBDI-MOED Business Services Representative, at (410) 396-9030, or dbaldwin@oedworks.com

For more information on the Workforce Development Pipeline, or to get a copy of the most recent Construction Talent Scout Report, Offeror shall contact Alicia Schuller, EBDI's Economic Opportunity Associate, at (410) 234-0660, ext. 205, or alicia.schuller@ebdi.org.

Inclusionary local hiring requirements for the project are discussed further herein.

VII. Design Development Construction Documents

'Design Development' (i.e. partially completed) drawings, specifications and other documents shall provide the basis for offerors' cost proposals. The underground work, including foundations and subsurface utility structures, piping, and other below-grade construction are considered adequately designed to obtain firm fixed pricing. Portions of the above grade drawings are not complete and shall be the subject of a GMP proposal.

VIII. Scope of Work and Contract

1. The "Scope of Work" is defined in the Division 1 specification entitled "Summary of Work".
2. The contract shall make use of the attached modified AIA contract forms. After conclusion of negotiations with the selected awardee, the Owner, at its option, may make Owner-selected portions of awardee's proposal an exhibit to a contract that will obligate the Contractor to perform as promised in its proposal.
3. Contract shall include provisions obligating awardee to fulfill its approved LBE/MBE/WBE plan, which shall satisfy the minimum inclusion requirements, work force development commitments, and reporting obligations. Awardee shall coordinate its plan and its implementation with inclusion requirements in the attached Exhibit.
4. Offerors shall provide GMP with fixed fees (which may not be adjusted unless Owner approves changes that increase Contractor's contract value beyond the cap described on the bid form) and fixed general conditions. The "evaluation factors" listed below shall be considered by the evaluators as well as price.

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IX. Proposal Information/Contents

This RFP shall be implemented as the second step in the two-step source selection process that commenced with the issuance of the RFQ.

1. First Step – Qualifications and Selection of Competitive Range:

- a. In this first step, interested prime-level offerors submitted offeror qualifications information.
- b. On the basis of information provided and references contacted, Owner team has selected a competitive range of 5 offerors. Below are names and contact information for subject firms:
 - i. Whiting Turner – Contact: David M. McGinnis (410) 337-5709 / David.McGinnis@Whiting-Turner.com
 - ii. Turner Construction – Contact: Kim Boone (410) 715-7260 / kboone@tcco.com
 - iii. Skanska / RAM – Contact: Paul White (301) 795-3116 / paul.white@skanska.com
 - iv. Suffolk / Banks – Contact: Bud Grove : (410) 355-0860 / bgrove@suffolkconstruction.com
 - v. Clark Construction – Contact: Dave Tacchetti (301) 272-8389 / dave.tacchetti@clarkconstruction.com
- c. On April 12th, the competitive range offerors participated in a local and minority business outreach session, wherein interested parties interacted with the offerors and the Owner. This session was administered to announce the construction opportunity to the local and minority business community, and also to underline the importance of local and minority business participation to the Owner.

2. Second Step – Detailed Offers, Including Fee Proposals :

In accordance with this RFP document, drawings and specifications, offerors placed in the competitive range shall provide detailed information on their team including subcontractors, specific LBE/MBE/WBE proposal including specific roles assigned to each subcontractor and supplier, and contract amount(s) to be awarded to each subcontractor/supplier, plan for and estimated number of local hiring, price proposal and other information listed below under “Step 2 - Detailed Project Team and Priced Proposal”.

Step 2 – Detailed Project Team and Priced Proposal:

Submit a proposal responding to the items listed below in sufficient detail to provide for meaningful evaluation and assessment. Please limit your Step 2 proposal response to no more than 31 **pages plus the completely filled out cost proposal (and attachments)**.

1. Letter of Introduction / Executive Summary (2 pages)

At a minimum, provide an executive commitment regarding support for the success of the Project and a summary of differentiation reasons for selection of offeror as Contractor. Provide a statement of bonding capacity.

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2. Threshold Qualification Criteria and Experience (10 pages)

The “threshold qualification criteria” for this RFP requires the prime offeror to have the following minimum experience:

- Experience in providing construction services on at least three multi-level parking structures, each with (i) a construction value of at least \$10 million, and (ii) at least 650 parking spaces.

Offeror shall provide information in its proposal demonstrating that it satisfies the above threshold criteria, and that its corporate team has the depth of resources to back up the primary team members.

By means of descriptions of projects and client references indicating relevant experience, demonstrate Offeror and Offeror team qualifications and ability to provide preconstruction and construction services for stand-alone structured parking facility projects of similar type, size and scope to the Project. Provide examples, including photos, of the most relevant (per description of Project herein) projects with construction costs of \$10 million or more, with at least 650 parking spaces completed by Offeror. Use the format indicated below. When selecting projects for presentation, Offeror shall be mindful of the proposal evaluation factors. Evaluators shall give particular weight to relatively recent fully-completed projects that are on-point with the Project scope, that involved Offeror (and proposed Offeror personnel) in role(s) similar to that described for Contractor herein, and that align with the evaluation factors listed below. Offerors are encouraged to verify that references are currently available at the listed telephone numbers and email addresses. “Delivery Method” below refers to one of: lump sum GC bid, GMP, multi-trade (under CM), etc.

Project Name		Estimated Total Project Cost	
Owner / Client with contact name/phone #/email		Estimated Total Constr. Cost	
		Construction Cost (\$)/Space	
A/E with contact name/phone #/email		(Forecast) Completion Date	
Size (# of spaces)		Delivery Method	
Size (AIA GSF)		Project Inclusion Goals (Yes or No)	
For each project listed, provide the names of key personnel (e.g. project manager, superintendent) being proposed by Offeror for the Project who participated in the listed project and describe each such person's role on each listed project.			

Divide above experience/reference information under two headings:

- Completed Projects within last 10 years
- Projects Currently Under Construction

3. Inclusion Experience & Inclusion/Work Force Development Plan (8 pages)

By means of descriptions of projects and references (from LBE/MBE/WBE firms and previous clients) indicating relevant experience, demonstrate Offeror experience in managing inclusion and work force development requirements similar to those described herein.

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Describe at least three tested and proven methods/programs that Offeror has utilized on past projects to (i) ensure meaningful engagement of and participation by LBE/MBE/WBE firms at the prime level and subcontracting level, and (ii) provide substantial employment of newly employed local workers, under a work force development program. These methods may include firm mentorship, sharing of technical/business knowledge/methods, professional development and/or workforce training, bonding/insurance assistance, and trade-level training/apprenticeship programs, etc. Describe the relevance of these and how you propose to apply these and other methods to the Project. Offeror may also suggest additional innovative approaches that Offeror proposes to utilize on the Project.

Please indicate how Offeror proposes to reach out to LBE, MBE, WBE and work force development organizations during the bid process and what steps Offeror shall take to maximize such participation (e.g. creating smaller bid packages, assistance with insurance/bonding, outreach/pre-bid meetings, advertisement plan, etc.). Provide the names and addresses of L/M/WBE subcontractors that shall be awarded subcontracts in the initial below-grade scope of work, and provide a firm commitment regarding the contract value of each of these subcontractors.

Obtain and submit a written statement from each such subcontractor that it shall self-perform a minimum of 90% of the scope of work in its subcontract. Offeror shall discuss specific LBE/MBE/WBE firms that it plans to partner with. In the event Offeror elects to propose a co-prime, partnership, joint-venture or other like arrangement with an L/M/WBE firm, Offeror shall provide a copy of a legally valid contract underlying the agreement between the proposed co-prime entities. This contract shall be fully executed by the parties involved and shall set out the obligations of each party, the decision-making power of each entity, their roles in the execution of the Project work, their equity participation levels, their division of work, costs and profits/losses (the latter three expressed in dollar amounts) and any other documentation necessary to prove that the co-prime agreement is substantial and meaningful.

Offeror shall also propose a firm commitment of a number of local hire personnel that it (and its subcontractors at all levels) shall employ utilizing the EBDI pipeline. The minimum quantity of local hires shall be 20 and Offeror is encouraged to improve upon this goal. Each such hire shall be for a minimum of 3 months and a project average of no less than 6 months. Offeror shall indicate percentage of work hours it estimates will be performed by local minorities and women on the project.

4. Schedule (4 pages)

Assuming an NTP date of June 20, provide a schedule for major activities, including critical design completion milestones, bidding, buy-out, long-lead ordering, permitting, construction, approval by City agencies and authorities having jurisdiction, use-and-occupancy permit and activation to satisfy the required construction duration. Provide a narrative describing the basis of the schedule including any assumptions. In particular, set out any dates and durations that require Owner action.

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5. Resume of Proposed Key Personnel (6 pages)

Provide resume of propose key personnel, specifically the Project Manager and Superintendent.

6. Cost-Cutting Proposals (No limit)

Offeror shall submit its ideas for cost-cutting, to make the Project more cost-effective. The Contractor shall not share in any cost savings, but an innovative approach in this area may provide the differentiator that Offeror requires to make its proposal outstanding.

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7. Cost Proposal

The undersigned (1) proposes to furnish all labor, materials, equipment, tools, construction equipment and machinery, temporary facilities and utilities, and other services necessary for the construction, accomplishment and timely completion in a workmanlike manner of the Work, in accordance with the Contract Documents, (2) has examined the Bidding Requirements, Contract Forms, Conditions of the Contract, Specifications and Drawings, all other Contract Documents referred to herein, as well as the Project Site and conditions affecting the Work, (3) if notified of the acceptance of this Bid within 20 days after the time set for delivery of proposals, agrees to execute a contract with the Owner, on the prescribed form, for the Work, in the amounts set out below, furnish the 100% Performance and Payment Bond and other documentation on the prescribed forms and commence Work immediately after notification of award and Owner's issuance of a written Notice to Proceed (NTP) and to complete all work within 250 working days (350 calendar days) from the NTP date, and (4) has received the following Addenda and has included their provisions in this Offer.

Addendum 1 Date _____ through Addendum Date _____

Pricing Breakdown:

Items	Description	Bid Prices
1	Guaranteed Maximum Price for the Work, including a breakout price for all add-alternates of \$_____ (Offeror shall attach detailed cost estimate in CSI, indicating thereon those elements for which Offeror has received firm fixed prices and those elements that are estimates of cost. In particular, Offeror shall provide a detailed breakdown of caisson costs, and shall obligate caisson sub-bidders to allow increases and decreases in caisson length to be made at the same unit prices as the base scope of work, irrespective of the equipment, procedures or bits used, or variations in soil type.)	\$
2	Contingency (_____% of Item 1). (Offeror shall attach detailed narrative explaining inclusions/exclusions and assumptions)	\$
3	General Conditions/Requirements (Offeror shall attach detailed narrative explaining inclusions/exclusions and assumptions)	\$
4	Contractor's Fixed Fee (Not subject to adjustment unless Owner approves increase in Contract cost beyond 105% of the total of above items 1, 2 and 3)	\$
----	TOTAL:	\$

The undersigned certifies that (a) the amounts contained in this proposal have been carefully checked, and (b) are submitted as correct and final, and (b) all documents provided with this bid (including the attached _____ pages of pricing support) are accurate and true.

Respectfully Submitted:

Name of Contractor: _____

By (Print Name): _____

Title: _____

Signature: _____

Date: _____

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X. Proposal Evaluation

Owner’s evaluation team will evaluate offerors’ proposals in accordance with pertinent evaluation factors in order to identify an awardee contractor to perform the Work.

The evaluation factors, in descending order of importance shall be:

Key Words	Evaluation Factors
Team Garage Experience	Key members of proposed team were meaningfully active participants in directly relevant quantity, size and type of parking structure projects, and the roles of such key personnel on previous projects are directly relevant to key personnel’s proposed roles on this project.
Past Performance	Key team members receive positive references from clients on directly relevant projects in which the team members directly and actively participated.
LBE/MBE/WBE	LBE/MBE/WBE participation that meets goals and shows thoughtful allocation of roles and responsibilities. Offeror also demonstrates a track record on previous projects of successfully implementing the techniques proposed by Offeror for this project, and ideally, the same personnel who previously successfully applied such techniques are proposed for this project.
Economic Design and Cost Consciousness / Effectiveness	Demonstrated ability to deliver projects that achieve high quality on a limited budget and tight time frame. Offeror shall be evaluated on concrete elements of its plan to timely and cost-effectively complete the Project (including ground floor retail and site improvements).
Deliverable Personnel	Offeror’s most qualified key personnel proposed to be consistently involved throughout the project, and have a track record of working on relevant projects in the Baltimore/Washington area.
Local	Materially significant (and ideally, long-term) local office/facilities with meaningful capacity to timely execute the Project.
Miscellaneous	Consensus within previous clients that Offeror’s staff has been creative and innovative. Evidence of timely and complete deliverables on projects. Demonstrated capacity of organization to respond to more than one large project at a time.

XI. Interested Bidders List

Persons interested in responding to this RFP, and/or receiving a list of interested firms and sub-firms, shall complete Interested Bidder Information Sheet (see Exhibit attached), and email the completed form to Karen Brice at karenbrice@forestcity.net . Use the following convention for your email subject line: “[Firm Name] – P-1 Structured Parking Facility Project Interested Bidder”. Distribution of the contact list information is intended to encourage interaction between various interested entities. From time to time, the updated contact list will be posted to the below web page.

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The list shall continuously be made available on the bid web site. Offeror shall carefully review the interested bidder's list and ensure that it timely opens appropriate communication lines with entities and persons listed in the interested bidder's list.

XII. Plan Rooms

The following plan rooms have been authorized by Owner to display or sell Bid Documents for examination by sub-bidders during the Step 2 process. Copies of the bid documents may be obtained from the below listed companies and plan rooms. However, offerors are cautioned that Addenda shall only be issued through the bidding web site referenced herein.

1) For Review:

- a) Maryland Washington Minority Contractor Association
Phone: (443) 759-8580, (410) 282-6101
Fax: (888) 609-8318, (410) 282-6102
Email: wrf@mwmca.org
3229 Powhatan Avenue, Baltimore, MD 21216
1107 North Point Blvd, Suite 227, Baltimore, MD 21224
<http://www.mwmca.org>
- b) Maryland Minority Contractors Association, Inc.
Phone: (410) 235-8305
Fax: (410) 235-8304
Email: shirley.thompson@mmca-inc.net
2423 Maryland Avenue, Suite 300
Baltimore, MD 21218
www.mmcainc.org
- c) Building Congress & Exchange
The Building Congress & Exchange of Metropolitan Baltimore, Inc.
1050 Cromwell Bridge Road
Baltimore, Maryland 21286
Phone: 410.823.7200. Fax: 410.823.7400.
E-Mail: info@bcebaltimore.org

2) For Sale:

- a) Maryland Reprographics Incorporated
2217 North Charles St.
Baltimore, MD 21218
410-467-8000 www.mdrepro.com

XIII. Procurement Documents Web Site

The RFP documents are available on the FC-NEBP procurement web site, which is:

http://www.forestcityscience.net/hopkins/business_opportunities.shtml

Offerors shall regularly check the above web site to ensure that they have the most up-to-date documents and information.

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XIV. Proposal Submission

1. Step 2 Submission:

Provide your “**Step 2**” proposals statement (10 hard copies and a PDF version) by **10:00 AM on May 27, 2011** to:

John Lecker
Vice President - Development
FC-NEBP
Suite 102, 855 North Wolfe Street
Baltimore, MD 21205

Please direct any questions or requests for clarification of this RFP to John Lecker, Vice-President - Development at johnlecker@forestcity.net (410) 900-1012 no later than 4:00pm on May 10, 2011. Use the following convention for your email subject line: “[Firm Name] – P-1 Structured Parking Facility Project Bid Question”.

Note: This RFP does not obligate FC-NEBP to award a Contract nor will FC-NEBP reimburse firms for any costs to prepare a proposal and/or respond to this RFP.

XV. Exhibits (attached)

- Exhibit 1 – Master Site Plan
- Exhibit 2 – EBDI Economic Inclusion Compliance Plan & Addendum
- Exhibit 3 – RFP Bid Question Sheet
- Exhibit 4 – Interested Bidder Information Sheet
- Exhibit 5 – Form of Contract.

Exhibit 1 – Master Site Plan, Subdivision Plat & Conceptual Site Plan



The above circumscribed area (in blue) is designated "Area A" within the campus master plan. The project will be located on site P-1 within Area A.

Exhibit 2 – EBDI Economic Inclusion Compliance Plan & Addendum

Contractor shall support and fulfill the requirements herein ascribed below to the "Developer" and to "contractor" and "subcontractor", as applicable.

EBDI is committed to provide fair and representative opportunities for Minority-Owned, Women-Owned, and Locally-Based Business Enterprises on its Vending, Professional Services and Construction Projects. Developer shall ensure that its Contractors and Subcontractors shall not discriminate on the basis of race, color, religion, sex or natural origin in the award and performance of contracts to be utilized in constructing the Area A Project (the 30 acres within which the project is located). Furthermore, affirmative action will be taken, consistent with sound procurement policies and applicable laws, to ensure that MBE/WBE/LBE firms are afforded a fair and representative opportunity to participate in the contracts relating to the Area A Project.

Consequently, Developer shall meet or exceed the City of Baltimore's programmatic goals for creating opportunities for minority-owned (African American, Asian American, Hispanic American, or Native American) and women-owned (51% ownership) businesses in compliance with City Council Ordinance 211 and the Mayor's Executive Order 610, which were incorporated by reference in the Agreement For Minority Inclusion in the East Baltimore Housing/Biotech Park Development Project dated April 15, 2002 (the "Minority Inclusion Agreement"). Those goals, developed in conjunction with an annual disparity study, ensure that appropriate levels of contracting is conducted with minority-owned and women-owned businesses, based on the diversity, depth of talent and entrepreneurial capabilities of the population of the City of Baltimore, the City has adopted the following participation levels for certified minority-owned business enterprises ("MBE's") and women-owned business enterprises ("WBE's") which developers on City-assisted projects are required to meet or exceed in terms of overall contracting dollars:

Construction

MBE's - 27%

WBE's - 8%

Architectural and Engineering

MBE's - 21%

WBE's - 13%

General Services

MBE's - 17%

WBE's - 9%

These goals are percentages of the total dollar amounts of all contracts let by the Developer for the construction and/or purchase of goods and services for the Area A Project. As such, all change orders shall be included in the final contract amount against which these goals will be measured.

EBDI is further committed to ensuring compliance with the training and employment requirements of Section 3 of the Housing and Urban Development Act of 1968 ("Section 3"), which governs much of the federal funding expected to be used in this project. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment generated by a Section 3 covered contract (i.e., a contract funded with federal funds) be given to public housing and other low income persons residing in the metro area, and that subcontracts be awarded to businesses located in or substantially owned by persons

Exhibit 2 – EBDI Economic Inclusion Compliance Plan & Addendum

residing in the area of the project (East Baltimore). The Developer shall use its best practical efforts to locate and contract with locally-owned business enterprises ("LBE's"), i.e. businesses based within the Project area, and/or businesses which count as employees a substantial number of local residents.

Developer shall not be required to engage MBEs, WBEs, or LBEs that are not the lowest responsible and qualified bidder, or that otherwise are not competitive with respect to quality, service, delivery time or price.

EBDI requirements relative to monitoring good faith efforts of Developer shall include the following:

The Developer shall submit copies of signed contracts and purchase orders with MBE/WBE/LBE contractors and subcontractors.

Monthly and at the conclusion of work, the Developer shall provide evidence of the actual dollar amounts paid to MBE/WBE/LBE contractors and subcontractors.

The Developer shall ensure that each contractor and subcontractor selected to work on the Area A Project shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the contractor's and/or subcontractor's commitments under this subparagraph and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Developer shall comply with all applicable requirements of any federal, state or local law ordinance or regulation relating to affirmative action equal opportunity and nondiscrimination in employment, and shall use its best efforts to meet all local goals relating thereto.

EXEMPTIONS

Exempted Contracts

EBDI recognizes that in certain limited circumstances, compliance with this Equal Employment Opportunity MBE/WBE/LBE Compliance Program will not be feasible, nor in the best interest of EBDI. With the approval of EBDI, the following contracts may be exempted:

- A. A vending contract, for equipment, materials, services and supplies where the total dollar amount of the contract- is less than Ten Thousand Dollars (\$10,000.00);
- B. A construction contract where the total dollar amount of the contract is less than Ten Thousand Dollars (\$10,000.00);
- C. A professional or personal services contract where the total dollar amount of the contract is less than Ten Thousand Dollars (\$10,000.00);
- D. Any public exigency or emergency contract for which the nature of the emergency will not allow for a delay which would occur from competitive solicitation.

Exhibit 2 – EBDI Economic Inclusion Compliance Plan & Addendum

Developer shall make every reasonable effort to ensure that small MBE/WBE/LBE firms in the Project Area and in the Middle East Baltimore Area are included in the solicitation and award of contracts under Ten Thousand Dollars (\$10,000), in the areas referred.

Certification - Legitimate MBE/WBE/LBE

- A. To ensure that only businesses which are owned, managed and controlled in both form and substance by MBE/WBE/LBE's participating in the Area A Project, all MBE/WBE/LBE businesses, including joint ventures and nonprofit organizations, must be certified under the Minority Business Enterprise Program of the Maryland Department of Transportation, pursuant to Title 14, Subtitle 3 of the State Finance and Procurement Article of the Annotated Code of Maryland or by the City of Baltimore's Minority and Women's Business Opportunity Office pursuant to Section 28 of Article 5 of the Baltimore City Code (2000 Edition). LBEs shall be defined as businesses which maintain offices and/or facilities with street addresses in the following zip codes: 21202, 21205, 21206, 21213, 21214, 21218, 21224, 21231, 21237, 21251, 21287.
- B. MBE/WBE/LBE certification shall not be determinative of a contractor's financial or technical ability to perform specified work. EBDI reserves the right to evaluate Developer's proposed contractors' or subcontractors' ability to satisfy financial, technical, or other criteria separate and apart from certification before or after bid opening
- C. EBDI recognizes that certified MBE/WBE/LBE's may be de-certified by the certifying governmental entity. Any business which has been de-certified shall not be eligible to participate in EBDI's MBE/WBE/LBE inclusion plan.
- D. EBDI reserves the right, if there is cause to do so, to refuse a certification provided by a certifying agency.

Good Faith Non-Compliance

- A. In cases where EBDI has cause to believe that Developer, acting in good faith, has failed to comply with the provisions of the plan, EBDI shall attempt to resolve the noncompliance through conciliation and persuasion.
- B. In conciliation, the Developer must satisfy EBDI that they have made their "Best Efforts" to achieve the agreed upon participation goals by certified MBE/WBE/LBE's. "Best Efforts" on the part of the Developer include:
 - 1. Entering into a contractual relationship with the designated MBE/WBE/LBE in a timely manner, and fulfilling all contractual requirements.
 - 2. Notifying both the certified MBE/WBE/LBE contractor and EBDI of any problem in a timely manner.
 - 3. Requesting assistance from EBDI in resolving any problems with certified MBE/WBE/LBE's.
 - 4. Making every reasonable effort to assist the certified MBE/WBE/LBE in the performance of its contract with the Developer.

Exhibit 2 – EBDI Economic Inclusion Compliance Plan & Addendum

Willful Non-Compliance

- A. In cases where EBDI has cause to believe that the Developer, or any contractor or subcontractor hired by the Developer, has failed to comply with the provisions of the plan, they shall be empowered to conduct an investigation.

STANDARD OPERATING PROCEDURES FOR EFFECTIVE COMPLIANCE

In an effort to facilitate communications between the "Project Team" (Developer and/or Sub-Developer, and Contractor and/or Sub-Contractor) and the "EBDI Inclusion Team" (Senior Director of Community and Human Services, Workforce Program Associate, and EBDI's Third Party Monitoring Contractor), the following Standard Operating Procedures for Effective Compliance (SOP) are established. These procedures outline the meetings and information needed to report the inclusion activities as required by the EBDI Economic Inclusion Compliance Plan attached as Schedule E to Developer's Master Development Agreement. The Project Team will inform the EBDI Inclusion Team (via mail, email or fax) of all bid packages /solicitations, prior to their mailing, with inclusion language, due dates and the anticipated list of firms that will receive the solicitation at least one week prior to distribution. The EBDI Inclusion team may provide a list of additional certified M/W/LBE firms which can be included in the bid solicitations.

- 1) The Contractor will inform the EBDI Inclusion Team via mail, email or fax of all bid addenda and or revisions.
- 2) The Contractor shall set up meetings with the EBDI Inclusion Team and prospective first tier subcontractors(s) to discuss the bidders' approach to inclusion on the project. At the discretion of the Project Team, this meeting may be dedicated to the topic of inclusion or the EBDI Inclusion Team may attend a portion of a meeting with a broader agenda during the time inclusion would be discussed. In addition, the EBDI Inclusion Team will verify the certification status of any and all M/W/LBE firms that the bidders will use to achieve their inclusion goals
- 3) Contractor will provide to the EBDI Inclusion Team, within fifteen days of execution, copies of signed subcontracts and purchase orders with M/W/LBE contractors and subcontractors (or such lesser documentation as the EBDI Inclusion Team may deem satisfactory). On a monthly basis, Contractor shall provide reports including all contract changes, revisions and payments to date, and furnish signed lien waivers and/or relevant affidavits documenting payment to all M/W/LBE firms.
- 4) Contractor shall furnish in a controlled and confidential manner, certified payroll records for all hourly employees working on the project site. These certified payrolls and the contents therein, will be kept confidential and stored in a secured area. Contractor shall submit certified payrolls (signed by a responsible officer of Contractor's organization) on a monthly basis, including the following:
 - o Full name
 - o Social Security number
 - o Complete worker address (including city, state and zip code)
 - o Trade classification (e.g., laborer, carpenter, apprentice, electrician, plumber, and foreman)
 - o Gender

Exhibit 2 – EBDI Economic Inclusion Compliance Plan & Addendum

- Race
- Hours worked
- All withholding deductions (e.g., laborer, local, state, FICA, etc.)
- Name of Contractor and Indication of Prime or Subcontractors
- Name of Project
- Rate of pay
- Gross pay
- Net pay

Adherence to these Standard Operating Procedures will allow the EBDI Inclusion Team to monitor the good faith efforts of the Project Team and report the East Baltimore Project's Economic Inclusion activities to the project's stakeholders on a monthly basis.

Exhibit 2 – EBDI Economic Inclusion Compliance Plan & Addendum

Supplement to EBDI Economic Inclusion Compliance Plan

FC-NEBP and EBDI (collectively referred to herein as “the Team”) are committed to increasing contracting and procurement dollars spent with minority businesses in all aspects of the East Baltimore Project, spurring greater involvement of minority businesses in identified growth sectors of the City’s economy, including, but not limited to retail, technology, and real estate development and radically increasing the number, magnitude and success rate of minority businesses in Baltimore City, at all levels of the Development Project.

To that end the Team has developed a comprehensive Economic Opportunity Strategy for the P-1 project that promotes: 1) the involvement of Minority-Owned (MBE), Women-Owned (WBE), and Locally-Owned Businesses (LBE) (collectively referred to herein as Targeted Business Enterprises); and 2) the training and employment of local residents, in the ongoing economic transformation of the East Baltimore Revitalization Area. This Addendum, along with the EBDI Economic Inclusion Plan (hereinafter collectively referred to as “the Plan”) outlines the policies and protocols that have been developed to ensure the achievement of the goals of the Team’s Economic Opportunity Initiative and the aforementioned Agreement for Minority Inclusion.

Note: In instances of conflicting direction/language between this Supplement and the EBDI Economic Inclusion Compliance Plan, the stricter application shall take precedence.

Definitions

For the purposes of the Plan, the Team uses the following definitions:

Minority Business Enterprise (MBE) means a business enterprise that is owned, operated, and controlled by one or more minority group members (African American, Hispanic American, Asian American, or Native American), who have at least 51% ownership, and in which the minority group members have operational and managerial control, interest in capital, and earnings commensurate with their percentage of ownership.

Women’s Business Enterprise (WBE) means a business enterprise that is owned, operated, and controlled by one or more women who have at least 51% ownership, and in which the women have operational and managerial control, interest in capital, and earnings commensurate with their percentage of ownership.

Local Business Enterprise (LBE) means a business enterprise whose principal office is physically located in Baltimore City, is licensed by the City, and is subject to Baltimore City taxes. Special preference shall be given to businesses that maintain offices and/or facilities with street addresses in the following zip codes: 21202, 21205, 21206, 21213, 21214, 21218, 21224, 21231, 21237, 21251 and 21287. FC-NEBP reserves the right to evaluate the LBE’s ability to satisfy financial, technical, or other criteria before or after bid opening. It shall be the Contractor’s choice to employ the LBE’s in an effort to meet the Inclusion goals

Local Resident means a resident living in Baltimore City, with special preference going to East Baltimore residents residing in the following zip codes: 21202, 21205, 21206, 21213, 21214, 21218, 21224, 21231, 21237, 21251 and 21287. As appropriate and applicable, Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or

Exhibit 2 – EBDI Economic Inclusion Compliance Plan & Addendum

understanding, a notice to be provided advising the said labor union or workers' representative of the contractor's commitments under this Plan and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

Workforce Development Pipeline is the mechanism developed by EBDI, via a partnership with the Baltimore City Mayor's Office of Employment Development (MOED), that provides: (1) a pathway for East Baltimore residents to get assessed, obtain job readiness skills, industry-specific customized training, career coaching, job placement, and retention services; and (2) a pathway that assists businesses with meeting local hiring requirements in their contracts by helping them to identify emerging job opportunities, develop customized training programs for the jobs, and then identify appropriate residents to enroll in the customized training ultimately get placed in the job.

Bidder is an entity who has submitted a proposal in response to a Request for Proposal (RFP) or Request for Qualifications (RFQ) that Developer has announced.

Contractor is an entity that is a party to a contract with Developer.

Independent Third-Party Monitoring/Economic Inclusion Evaluators

Developer shall utilize an Independent Third-Party Monitoring Contractor to act as its representative on matters regarding the development, implementation and monitoring of this Plan in an effort to objectively report the outcomes of Developer's economic inclusion activities. The Third-Party Monitoring Contractor that is managed by Developer Vice President for Development or a designee.

The Economic Inclusion Evaluators will analyze inclusion documentation and submit its findings to Developer in a monthly report. The report will show the progress toward attaining the established goals. If the report shows that the project is not achieving the goals, the findings will be further reviewed to determine if a more suitable course of action is warranted.

Contractors, suppliers and service providers shall work with and cooperate fully with the efforts of the Economic Inclusion Evaluators.

The two aforementioned parties along with EBDI's Workforce Development Associate, who is responsible for the day-to-day coordination of Economic Inclusion and the Workforce Pipeline are collectively referred to as the "Economic Inclusion Evaluators".

Economic Inclusion Goals

The Team encourages MBE/WBE/LBE participation at the prime contractor level, especially in instances where subcontracting opportunities are not available.

- **Contracting Goals:** The Team has adopted the following goals for its contracting and procurement activities in the construction of the P-1 Structured Parking Facility in East Baltimore:
 - **Construction-related contracts:** 27% MBE + 8% WBE = 35%; 20% LBE (goal may be inclusive of contracted MBE/WBE firms)
 - **Architecture, and Engineering-related contracts:** 21% MBE + 13% WBE = 34%;
 - **Professional Service-related Contracts:** 17% MBE + 9% WBE = 26%

Exhibit 2 – EBDI Economic Inclusion Compliance Plan & Addendum

- **Workforce Inclusion Goals:** The Team has adopted the following workforce inclusion goal for construction-related projects:
 - For all Contractors performing **commercial** construction trades work and labor under contracts authorized by Developer or their designee(s), Contractors shall ensure that at least **fifteen percent (15%) of the work hours** are performed by minorities, women and local residents, with particular emphasis on local residents.

Maximizing Inclusion in Contracting Opportunities

The Team will take the following actions to ensure that Contracts let for the construction of the P-1 Project shall be awarded and administered in accordance with the following standards and procedures to ensure the effectiveness of this Plan:

- EBDI's website, www.ebdi.org, shall serve as the -official medium to notify the public of all opportunities and all bids shall be posted to its website 10 business days in advance of the bid due date.
- The Team will incorporate language in all RFQs/RFPs related to the P-1 project that will encourage bidders to provide meaningful opportunities for participation by targeted businesses at all levels, including the Prime level.
- Developer shall ensure that compliance with the goals/requirements set forth in the Plan is an evaluation factor for all RFQs/RFPs related to the P-1 project.
- In partnership with the Governor's Office of Minority Affairs, Developer shall hold information and outreach sessions to inform targeted businesses about opportunities, policies and procedures to effectively perform on the project.
- Advertisements for bids shall appear in minority-owned media and non-minority-owned media no less than 10 business days before bids are due for publicized contracting opportunities;
- Developer shall send notification to the Governor's Office of Minority Affairs, minority and women-oriented trade associations and contractors' associations (see attachment for detailed list of recipients) about the availability of contracting opportunities no less than 10 business days before bids are due;
- Contractors will use the State's Department of Transportation and/or Baltimore City's directory of certified minority business enterprises, women's business enterprises, and local business enterprises to identify qualified Targeted Business Enterprises for various projects;
- To ensure that targeted businesses have access to all plans, drawings, specifications, blueprints and pertinent documentation in order to properly bid, Contractor shall make bid documents available for purchase at a local (Baltimore City) reprographics firm. In

Exhibit 2 – EBDI Economic Inclusion Compliance Plan & Addendum

addition, Developer shall ensure that plans are available for viewing at a location, to be determined, that will act as a local plan holder.

- The Economic Inclusion Evaluators will provide Bidders, as needed, with lists of Targeted Business Enterprises, who are qualified to provide the services, materials, equipment or supplies required for the project.
 - In cases of a Prime Majority/Minority partnership (or functionally similar organization), the contractor will receive credit for the MBE/WBE/LBE self-performed work on the project.
 - Contractor shall make every effort to unbundle large projects whenever possible, provided no significant increase in cost results.
 - All contracting opportunities shall be evaluated in an effort to divide the total requirements of a contract in a manner that will provide reasonable opportunities for minority and women business enterprises;
 - Contractor will utilize best practical efforts to ensure that all subcontractors submitting proper invoices are paid within 30 days upon receipt of such; and
- **Best Practical Efforts To Achieve Contracting and Employment Goals** –The Team will utilize the following strategy to ensure Bidders/Contractors employ best practical efforts to meet the established inclusion goals:
 - **Documentation of Best Practical Efforts and Compliance** – Bidders will be required to include detailed documentation outlining their plans for achieving the established participation levels with their bid proposals.
 - **Establishing Good Faith Best Practical Efforts** – If the Bidder does not meet or exceed the established goals, the Bidder must submit a report showing how it has made a good faith "best effort" to achieve the project goals. This report shall include, but not be limited to, the following:
 - Written request for assistance to the Economic Inclusion Evaluators three (3) business days prior to the bid due date;
 - Solicitation through newspapers, advertisements, job fairs, etc.;
 - Telephone logs;
 - Bid results and reasons why no awards were made;
 - Use of City/State-certified business firms via their directory;
 - Correspondence between your firm and any MBE/WBE/LBE.
 - **Good Faith Non-Compliance Finding** - In cases where the Economic Inclusion Evaluators have cause to believe that a Bidder or Contractor, acting in good faith, has failed to comply with the provisions of the plan, the Economic Inclusion Evaluators shall attempt to resolve the noncompliance through conciliation and persuasion. In conciliation, the Bidder or Contractor must demonstrate they have made their "Best Efforts" to achieve the agreed upon participation goals.

Exhibit 2 – EBDI Economic Inclusion Compliance Plan & Addendum

- **Waiver of Inclusion Participation** – Developer recognizes that in certain limited circumstances, compliance with this Plan will not be feasible, nor in the best interest of the project. Therefore, the Economic Inclusion Evaluators will evaluate each situation on a contract-by-contract basis. Every effort will be made to assure that Targeted Business Enterprises are included in the solicitation and award of all contracts.

Increasing Workforce Opportunities for Baltimore Residents

The following process shall be followed by Contractors to maximize employment opportunities for Baltimore City residents:

- Contractor shall use EBDI's Workforce Pipeline as the first source for recruiting and hiring local residents for any new job opportunities. Contractor shall give EBDI five (5) business days to identify and refer candidates for the job before using other sources to recruit locally. In addition, the Contractor shall:
 - Submit all job postings for new jobs, with relevant qualifications and skills, needed to the Economic Inclusion Evaluators;
 - Obligate all subcontractors working on this project to use EBDI's Workforce Development Pipeline for new hires;
 - Refer all residents who walk up seeking employment with the Contractors/- Subcontractors directly, to EBDI to get them engaged in the Workforce Development Pipeline;
 - To the extent that Contractor was not able to hire East Baltimore residents to fulfill their local hiring goals, Contractor shall hire Baltimore City residents.

Exhibit 4 – Interested Bidder Information Sheet

Before a person or entity may be listed on the Interested Bidder's List, that person or entity shall provide below the contact information for the "Contact Person" that said person or entity designates as its contact for the issuance of addenda and other bid-related communication.

Please ensure that this is completed in full and submitted immediately following issuance of this solicitation.

Provide this sheet in completed form to Karen Brice at (410) 900-1006 or karenbrice@forestcity.net

Company Name	
Contact Person Name	
Contact Person Shipping Address	
Contact Person Voice Telephone Number	
Contact Person Voice Telephone Number (Alt.)	
Contact Person email address	
Services Provided (e.g. prime, mechanical, electrical, plumbing, flooring, etc.)	

Company MBE/WBE Status:

MBE WBE LBE N/A

MDOT Cert. # _____ MWBOO Cert # _____ N/A

Form completed by: _____

Print Name

Signed: _____

Date: _____

Exhibit 5 – Performance and Payment Bond Requirements

With its offer, Offeror shall provide a letter of bondability from a qualified surety that states that, before commencing Work and within 3 business days following Owner-issued notice to proceed, proposed qualifying surety shall provide Owner a 100% performance and payment bond satisfying the following requirements.

(a) Definitions:

“Attorney-in-fact” means an agent, independent agent, underwriter, or any other company or individual holding a power of attorney granted by a surety.

“Bid” means any response to a solicitation, including a proposal or offer.

“Bidder” means any entity that is responding or has responded to an RFP.

“Bond” means a written instrument executed by a bidder or contractor (the “principal”), and a second party (the “surety” or “sureties”), to assure fulfillment of the principal’s obligations to a third party (the “obligee” or “Owner”), identified in the bond. If the principal’s obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the obligee. The types of bonds and related documents applicable to the Work hereunder are as follows:

(1) A payment bond assuring payments as required by law to all persons supplying labor or material in the prosecution of the work provided for in the contract.

(2) A performance bond securing performance and fulfillment of the contractor’s obligations under the contract.

“Consent of surety” means an acknowledgment by a surety that its bond given in connection with a contract continues to apply to the contract as modified.

“Original contract price” means the award price of the contract. Original contract price includes the price of any bid options exercised by Owner at the time of contract award.

“Penal sum” or “penal amount” means the amount of money specified in a bond (or a percentage of the bid price in a bid bond) as the maximum payment for which the surety is obligated or the amount of security required to be pledged to Owner in lieu of a corporate or individual surety for the bond.

(b) Amount of required bonds. The successful offeror shall furnish performance and payment bonds to Owner as follows:

(1) Performance bonds. The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) Payment Bonds. The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) Additional bond protection.

(i) Owner may require additional performance and payment bond protection if the contract price is increased. However, the Owner shall not, under any circumstances, be obligated to increase bond penal amount(s) merely because of an increase in contract price.

(ii) Owner may, at its sole discretion, secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond. In such event, Owner shall compensate Contractor at the rate set out in Contractor’s original offer.

(c) Furnishing executed bonds. Within 2 business days of receiving Owner’s notice to proceed with the Work, and before starting Work, Contractor shall furnish all executed bonds to Owner.

Exhibit 5 – Performance and Payment Bond

(d) Surety for bonds. The bonds shall be in the form of firm written commitment executed on industry-standard forms (AIA A312-2010 Performance Bond and Payment Bond form), executed by corporate sureties authorized to do business in the State where the Project is located and whose names appear on the list contained in Treasury Department Circular 570 (<http://www.fms.treas.gov/c570/>), and that are listed in the Circular as capable of supporting bond penal amounts that are equal to or higher than the Contract's original contract price.

Exhibit 6 – Form of Contract

AGREEMENT made as of the _____ day of _____ in the year 20____ (but shall be effective with respect to, and shall govern, all Work performed prior to such date)

BETWEEN the Owner:

Forest City – New east Baltimore Partnership
Suite 102, 855 North Wolfe Street
Baltimore, MD 21205

and the Contractor:

Contractor Name:	
Contact Person:	
Street Address:	
City, State, ZIP:	
Email Address:	

the Project is:

P-1 Structured Parking Facility Project

the Architect is:

Sulton, Campbell, Britt and Associates
Baltimore, MD

Exhibit 6 – Form of Contract

TABLE OF ARTICLES

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

Exhibit 6 – Form of Contract

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

Not Applicable.

If, prior to commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

Not Applicable.

§ 4.2 The Contract Time shall be measured from the date of Owner's issuance to Contractor of a notice to proceed. Notice to proceed was or shall be issued on _____. Consequently, Contractor shall substantially complete the Work within 350 calendar days thereafter (i.e. by ____ [date] _____).

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work (which shall provide Owner's beneficial use and occupancy of the facility, and a certificate of use and occupancy from the City of Baltimore).

Liquidated damages for contractor-caused delay are not applicable to this agreement. Owner reserves its rights to recover actual damages as applicable.

ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.1.1 The Contractor's Fee:

Based on estimated project cost contracted through Contractor under this agreement of up to \$_____, a Fixed Fee of \$_____ shall be paid to Contractor as follows:

- (i) Preconstruction Support: \$_____
- (ii) Bidding/Buy-Out: \$_____
- (iii) Construction and Activation: \$_____

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work:

In the event project costs contracted through Contractor under this agreement exceed the project cap of \$_____, Contractor shall receive a fee of 3% on the amount over said project cap. The project cap shall be the Owner approved amount derived from the Owner-approved bid form.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

In accordance with Owner-approved change order specifications. Such specifications may be wholly or partly authored by Owner. The Owner shall decide whether change order work shall be self-performed by Contractor or subcontracted. Contractor shall obligate its subcontractors under this clause by means of appropriate flow-down clauses. Since Contractor is collecting a fixed fee for its obligations under this agreement, Contractor shall not be entitled to payment of mark-up on subcontractor change orders, even for self-performed work. The cost or credit to the Owner from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive, by the applicable subcontractor's cost of labor, material, equipment, and reasonable overhead and profit, not to exceed a total of six percent (6%). Contractor shall obligate subcontractors to provide a credit of 3% on credit change orders. The cumulative numerical total of change order mark-ups at all tiers, including first-tier subcontractors, shall not exceed 8%, and Contractor shall allocate such multi-tier mark-up among the applicable subcontractors in an equitable manner.

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed the rates set out on the US Army Corps of Engineers Construction Equipment Ownership and Operating Expense Schedule for the Region in which the Project is located.

Exhibit 6 – Form of Contract

§ 5.1.5 Unit prices, if any:

Item	Units and Limitations	Price Per Unit (\$0.00)
NA	NA	NA

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 In accordance with the procedure set out in the “scope of work”, the Contract Sum is guaranteed by the Contractor not to exceed the amount approved by Owner, subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price (GMP). Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

§ 5.2.2 The Guaranteed Maximum Price shall be based on the alternates, if any, which are described in the Contract Documents and accepted by the Owner:

§ 5.2.3 Allowances may be included in the Guaranteed Maximum Price, if approved by the Owner.

§ 5.2.4 Assumptions, if any, on which the Guaranteed Maximum Price is based are not incorporated in the GMP unless and until the Owner approves such assumptions, and Owner’s approval thereon shall not be unreasonably withheld, delayed or conditioned.

§ 5.2.4.1 Items of work that are approved by Owner for incorporation in the Contract under the heading of “General Conditions” may not be delegated to subcontractors’ scopes of work without Owner’s express advance authorization.

§ 5.2.5 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 While giving precedence to the requirements contained in the “scope of work” herein, adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 6.2 In calculating adjustments to subcontracts (except those awarded with the Owner’s prior consent on the basis of cost plus a fee), the terms “cost” and “fee” as used in Section 7.3.3.3 of AIA Document A201–2007 and the term “costs” as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 as modified by Articles 5 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 When calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Contractor’s Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Article 5 will cause substantial inequity to the Owner or Contractor, the Contractor’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with

Exhibit 6 – Form of Contract

prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7, and may include bid options (or “alternates”) and allowances if such costs are expressly approved in advance by Owner.

§ 7.1.2 Where any cost is subject to the Owner’s prior approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this Agreement. Contractor’s processes and documentation pertaining to bidding of work are subject to Owner’s review and approval.

§ 7.2 LABOR COSTS

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops.

§ 7.2.2 Wages and salaries of the Contractor’s supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.3 SUBCONTRACT COSTS

Payments made by the Contractor to Subcontractors in accordance with the Owner-reviewed and Owner-approved requirements of the subcontracts.

§ 7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ 7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner’s property at the completion of the Work or, at the Owner’s option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

§ 7.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner’s prior approval.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner’s prior approval.

§ 7.6 MISCELLANEOUS COSTS

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner’s prior approval.

§ 7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable.

§ 7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

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§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner’s consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor’s Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 Not used.

§ 7.6.7 Deposits lost for causes other than the Contractor’s negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.8 Legal, mediation and arbitration costs, including attorneys’ fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner’s prior approval, which shall not be unreasonably withheld.

§ 7.7 OTHER COSTS AND EMERGENCIES

§ 7.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.8 RELATED PARTY TRANSACTIONS

§ 7.8.1 For purposes of Section 7.8, the term “related party” shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term “related party” includes any member of the immediate family of any person identified above.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article 10.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor’s personnel stationed at the Contractor’s principal office or offices other than the site office, except as specifically provided in Section 7.2. or as may be provided in Article 15;
- .2 Expenses of the Contractor’s principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Article 7;

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- .4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .5 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Article 7; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids.

§ 10.1.1 Procedure: The Contractor shall market the project to the general market and to the L/M/WBE community. Contractor shall manage the bidding process and shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. Contractor shall coordinate with Owner to allow Owner to be present when bids are received and opened. Owner reserves the right to review all bids received. After receipt of bids, Contractor shall submit to Owner for review: a.) bid analysis and list of proposed subcontractors, b.) scope of work, c.) comparison of bid vs. figure in GMP for same scope of work, d.) inclusion and work force participation, and e.) recommendation for award with supporting narrative. Contractor shall recommend whether a performance bond is advisable for each award. Contractor shall consult with Owner before awarding Subcontracts and shall provide Owner with above mentioned information for Owner's review and approval prior to execution. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection. Contractor may only draw from contingency in the GMP with Owner's express advance authorization.

§ 10.2 When a specific bidder (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11, below.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's

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auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

§ 12.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

Not applicable.

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the last Tuesday of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than 45 days after the Architect receives the Application for Payment.

§ 12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 12.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Contractor's Fee, less retainage of five percent (5 %). The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

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- .4 Subtract retainage of five percent (5 %) from that portion of the Work that the Contractor self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 12.1.8 The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 12.1.9 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 12.2 FINAL PAYMENT

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

§ 12.2.2 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section 12.2.2 supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 12.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

§ 12.2.4 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

Not Applicable.

§ 12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

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ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to the Agreement, to serve as Initial Decision Maker.

§ 13.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

Litigation in a court of competent jurisdiction

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Subject to the provisions of Section 14.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 14.2 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2007, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201–2007 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner.

§ 14.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 14.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.1 and Section 6.4 of this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the annual rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

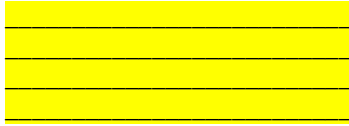
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§ 15.3 The Owner's representative:

_____, Forest City – New East Baltimore Partnership (FC-NEBP)
Suite 102, 855 North Wolfe Street, Baltimore, MD 21205
410-900-xxxx _____

§ 15.4 The Contractor's representative:

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§ 15.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

§ 15.6 Other provisions:

Not Applicable.

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 16.1.1 The Agreement is this executed AIA Document A102–2007, Standard Form of Agreement Between Owner and Contractor.

§ 16.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 16.1.3 The Supplementary and other Conditions of the Contract: Not Applicable.

§ 16.1.4 The Specifications that form the basis of the final approved GMP.

§ 16.1.5 The Drawings that form the basis of the final approved GMP.

§ 16.1.6 The Addenda, if any:

§ 16.1.7 Additional documents, if any, forming part of the Contract Documents:

- .1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

Not Applicable.

- .2 Other documents, if any, listed below:

Contractor's proposal documents _____, only to the extent that they provide supplementary and clarifying information.

ARTICLE 17 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance as follows (which is excerpted from AIA document A201-207):

17.1 Contractor's Liability Insurance Requirements.

17.1.1 Coverages Generally

The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located the insurance required pursuant to this Section 17.1 and such other insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Construction Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

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- (i) claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- (ii) claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- (iii) claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- (iv) claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person;
- (v) claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- (vi) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
- (vii) claims involving contractual liability insurance applicable to the Contractor's obligations under contract requirements pertaining to Contractor's indemnification of Owner.

17.1.2 Limits to Liabilities

The insurance required by this Section 17.1.1 shall be written for not less than limits of liability specified in Section 17.1.3 or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment or later if and as so provided in this Construction Contract

17.1.3 Type and Scope of Coverage

All insurance coverages carried by Contractor required hereunder, except Worker's Compensation and Employer's Liability, shall extend to and protect Owner, its representatives, employees, agents, co-owners and joint ventures (if any), and each of their respective executive officers, and other persons acting in the course of their duties as such, in the Project covered hereby or in connection with which the Work or operations covered or contemplated by the Construction Contract are to be performed, to the full amount of such coverage. Not less than the following insurance coverages and amounts shall be provided:

- (a) Worker's Compensation and Occupational Disease insurance applicable to any work to be performed under the Construction Contract;
- (b) Employer's Liability insurance of not less than Five Million Dollars (\$5,000,000.00) per occurrence;
- (c) Commercial General Liability insurance provided by a carrier, which is classified as Best Rated A10 or better and which is an admitted insurer in the state where the Project is being executed, covering all services performed under the Construction Contract, including, without limitation, coverage for liability assumed in the indemnification provisions of the Construction Contract in the following amounts: not less than ten Million Dollars (\$10,000,000) per occurrence, protected by a Twenty Million Dollar (\$20,000,000) umbrella (having the effect, from the loss payee's standpoint, of providing Twenty Million Dollars (\$20,000,000) of insurance on a per occurrence and aggregate basis for the Project). The \$20 million may be achieved with a base policy of no less than \$5,000,000 combined single limit and an umbrella policy for balance. Insurance shall include Broad Form Comprehensive Liability Enhancement, Contractual Liability assumed by the Contractor. The Commercial General Liability insurance shall not contain a known or continuous loss exclusion endorsement if policies without this exclusion are available at commercially reasonable rates;
- (d) Automobile Liability insurance covering all owned, non-owned, and hired motor vehicles used in connection with services and Work under the Construction Contract, in the amount of not less than Three Million Dollars (\$3,000,000); and

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- (e) The liability of Contractor under any indemnity and hold harmless provisions hereof shall not be limited to or by the insurance which Contractor is required to provide (which shall be primary and any insurance carried by Owner is excess and non-contributing)

17.1.4 Self-Insurance

The Contractor shall not self-insure without prior written approval of the Owner. The Contractor shall be deemed to self-insure and thereby require the Owner's prior written approval to the extent that its policy deductibles are appreciably greater than the usual and customary deductibles for contractors engaged in projects of similar scope to this Project. There shall be no reimbursement for self-insurance, except to the extent premiums are actually paid to other entities, and no self-insurance costs shall be included in the Cost of the Work for calculating the Contractor's Fee.

17.1.5 Insurance from an Affiliate

The Contractor shall not obtain insurance through a parent, subsidiary or other Affiliate without prior written approval of the Owner. Premiums or other insurance costs in connection with insurance placed with an Affiliate shall not be higher than the rates that could be obtained from third parties.

17.1.6 Additional Requirements

Contractor shall also provide:

- (a) Waiver of Subrogation. Unless prohibited by law, all policies of insurance pertaining to work performed under the Construction Contract held or obtained by Contractor and each Subcontractor, whether required by the Construction Contract or not, shall state that the underwriters of insurance waive any and all claims against Owner, its parent and subsidiary corporations and other affiliates, and any of Owner's co-owners and joint venturers, and Owner's and their respective officers, directors, members, agents, employees and invitees for injuries, deaths, losses, or damages covered by such policies.
- (b) Certification. Concurrently with the execution and delivery of this Agreement by the parties hereto, Contractor shall furnish Owner with policies, certificates and endorsements to evidence the above insurance which shall also provide that the insurance will not be materially changed or canceled before Owner has been given at least thirty (30) days prior written notice of such change or cancellation.
- (c) Additional Named Insured. Contractor shall cause each insurance company to name Owner and its agents and representatives as additional insured on all of the above insurance, by way of an Additional Insured endorsement using the CG 2010 11/85 Form (or its equivalent) to the policies, pertaining to Work performed under the Construction Contract, except for Worker's Compensation and Employer's Liability.
- (d) Other Insurance. Contractor shall cause each insurance company which provides insurance required to be carried or provided by Contractor pursuant to the Construction Contract to agree with respect to such insurance that such insurance is primary and that any insurance carried by Owner is excess and non-contributing.
- (e) Project Dedicated Insurance. All insurance required of Contractor for the Project, including, but not limited to, commercial general liability and excess liability insurance, but excluding Workers' Compensation and Automobile Liability insurance which shall not be Project-dedicated, shall be for Project-dedicated policies and shall be charged at the rates approved by the Owner in writing.
- (f) Evidence of Completed Operations Coverage. Contractor shall provide evidence of Completed Operations Coverage, which evidence shall be provided annually for up to ten (10) years, as elected from time to time by Owner, after Final Completion by delivery of CG 2010 11/85 Form (or its equivalent) to the Owner.
- (g) Certificates of Insurance. Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These Certificates and the insurance policies required of the Contractor by this Section 17.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner. If any of the foregoing

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insurance coverages are required to remain in force after final payment and are reasonably available, all additional certificates evidencing continuation of such coverage shall be submitted with the final Application for Payment Information concerning reduction of coverage limits shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

17.1.7 Contractor's Failure to Purchase or Maintain Liability Insurance

If the Contractor fails to purchase or maintain or require to be purchased and maintained the liability insurance required pursuant to the Construction Contract, including, without limitation, the insurance required by Section 17.1.3, the Owner may (but shall not be obligated to) purchase such insurance on the Contractor's behalf and shall be entitled to be repaid by the Contractor for any premiums paid therefore by applying such costs against payments due to Contractor or by receiving a direct reimbursement from Contractor or both.

17.2 Property Insurance.

17.2.1 Owner's Property Insurance

Unless otherwise provided, the Owner shall maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, required property insurance: Such property insurance shall be maintained, unless otherwise provided in the Construction Contract or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as or until no person or entity other than the Owner has an insurable interest in the property required by this Section 17.2 to be covered, whichever is earlier. This insurance shall cover the interests of the Owner as the named insured and the Contractor, Subcontractors, and Sub-subcontractors (as additional insured) in the Work. Notwithstanding the foregoing, Owner will either insure, or assume the risk of loss resulting from the perils of earthquake and flood and Contractor's liability for such perils will be limited to the deductible obligations as defined in Sections 17.2.4 and 17.2.6 below, regardless of the deductible limits actually obtained by the Owner or insured or whether or not Owner assumes the risk of loss for such perils.

17.2.2 All-Risk Policy Form

Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, false-work, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's services and expenses required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Construction Contract. Owner shall have no obligation to insure or be responsible for any equipment or other property of the Contractor or its Subcontractors or Sub-subcontractors.

17.2.3 Contractor's Insurance

If the Owner does not intend to purchase such property insurance required by the Construction Contract to be purchased by the Owner and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor, then the Owner shall bear all reasonable costs properly attributable thereto.

17.2.4 Deductibles

To the extent a loss is due to the negligence of the Contractor or any of its Subcontractors or others for whom Contractor is responsible, the Contractor shall pay costs not covered because of such deductibles, provided that such deductibles do not exceed One Hundred Thousand Dollars (\$100,000.00). If the Owner or insurer increases the required deductibles above such maximum amount or if the Owner elects to purchase this insurance with voluntary deductible amounts in excess of such maximum deductible amount, the Owner shall be responsible for payment of the additional costs or losses not covered by reason of the deductible in excess of the maximum

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deductible allowed even though the loss is attributable in whole or in part to the negligence of the Contractor, Subcontractors, or Sub-subcontractors.

17.2.5 Scope of Property Insurance

Unless otherwise provided in the Construction Contract, this property insurance shall cover portions of the Work stored off the Project Site after written approval of the Owner at the value established in the approval, and also portions of the Work in transit.

17.2.6 Loss of Use Insurance

The Owner shall purchase and maintain insurance for the Work which will insure the Owner against loss of use thereof due to fire or other hazards, however caused, which insurance shall contain a wait period of not more than thirty (30) days. Notwithstanding the foregoing or anything contained in the Construction Contract to the contrary, Contractor shall be liable for Owner's loss of use of the Owner's property arising out of the negligence or other tortious conduct of Contractor or Contractor's Subcontractors, Sub-subcontractors or suppliers or any other person or firm performing Work under the Construction Contract or for which Contractor is responsible. However, such liability shall be subject to the waiver and waiver of subrogation set forth in Section 17.2.10, with the understanding that damages incurred during the wait period shall be treated like a deductible and for which Contractor shall be liable subject to all of the other provisions of this Construction Contract.

17.2.7 Other Risks or Special Hazards

If the Contractor requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

17.2.8 Adjoining or Adjacent Properties

If, during the Project construction period, the Owner insures properties, real or personal or both, adjoining or adjacent to the Project Site by property insurance under policies separate from those insuring the Project, or if, after final payment, property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 17.2.10 [Waiver of Subrogation] for damages caused by fire or other perils covered by this separate property insurance, but only to the extent of such coverage. The foregoing waiver shall apply only after Contractor's insurance, to the extent applicable, has been exhausted and is conditioned upon Contractor's compliance with its obligations to maintain insurance set forth in this Construction Contract. All separate policies of Owner shall provide this waiver of subrogation by endorsement or otherwise.

17.2.9 Evidence of Owner's Insurance

Before an exposure to loss may occur, the Owner shall file with the Contractor appropriate evidence of all insurance coverages maintained by Owner in accordance with this Section 17.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled, materially changed or allowed to expire until at least thirty (30) days' prior written notice has been given to the Contractor.

17.2.10 Waiver of Subrogation

The Owner and Contractor waive all rights against each other and against the Architect, the Owner's other contractors and own forces, and the subcontractors, consultants, agents and employees of any of them, for damages caused by fire or other perils to the extent the damage is covered by property insurance and loss of use or business interruption insurance obtained pursuant to this Section 17.2, or other property insurance applicable to the Work, or to the extent Owner has assumed risk of loss in lieu of obtaining insurance in accordance with Section 17.2.1 herein, provided that in no event shall such waiver by Owner or Contractor apply to the gross negligence or intentional torts of the other party or by those for whom such other party is responsible, including without limitation the gross negligence or intentional torts of Subcontractors or Sub-

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Subcontractors. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, Owner's separate contractors, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

17.2.11 Insured Loss

A loss insured under Owner's property insurance shall be adjusted by the Owner and made payable to the Owner for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 17.2.13 below. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

17.2.12 Insurance Proceeds

The Owner shall deposit in a separate account proceeds received from insurance required to be carried under Section 17.2, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or by dispute resolution means permitted under the Construction Contract (including judicial determination). If after such loss no other special agreement is made, replacement of damaged property shall be covered by appropriate Change Order, provided, however, that in the event insurance proceeds are insufficient to cover such loss, Owner may terminate the Agreement for convenience (unless the loss arose out of the breach, negligence, or willful misconduct of the Contractor or its Subcontractors or Sub-subcontractors or suppliers or any other party for whom Contractor is responsible or out of any defective or nonconforming work, in which case Owner may terminate the Construction Contract for cause under Article 14 of the Agreement).

17.2.13 Adjustment and Settlement of Losses

The Owner shall have the power to adjust and settle a loss with insurers. Owner will hold all proceeds from insurance in trust for the benefit of the parties in interest.

17.2.14 Partial Occupancy or Use

Partial occupancy or use in accordance with the Construction Contract shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall not, without mutual consent, take action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

The Contractor shall provide performance and payment bonds as set out in Contractor-proposed and Owner-approved plan, and in accordance with the Specification section governing bond requirements.

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

Contractor (Signature)

(Printed name and title)

(Printed name and title)

Exhibit 6 – Form of Contract

Exhibits to Form of Contract

Exhibit A – Addenda

Exhibit B – Alternates/Bid Options

Exhibit C – Specifications per index therein

Exhibit D – Drawings per index therein