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Request for Proposals

Construction Management Support Services

Public Health Laboratory

*Issued Date: April 30, 2010
Proposal Due Date: May 25, 2010*

NOTE: The most up-to-date RFP documents are available from the web site listed herein. Please check website for latest version, updates and amendments concerning this RFP.

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I. Introduction

This RFP pertains to the development of a new approximately 225,000 GSF build-to-suit public health laboratory for the Maryland Department of Health & Mental Hygiene (the "Project") in East Baltimore. Forest City – New East Baltimore Partnership (FC-NEBP) is seeking proposals from qualified firms to provide specialized project and construction support services ("Construction Management Support Services") described herein is designated "CM Consultant". 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. We encourage offerors to thoroughly review and to be particularly responsive to the evaluation factors.

Offerors shall direct their attention to Exhibit 1 "Scope of Work" for information on the responsibilities of the CM Consultant on the Project. This SOW is one element that shall form the basis of the contract that will be executed with the awardee under this RFP. The proposal provided by the successful offeror shall obligate the offeror/awardee to provide the work described in Exhibit 1, plus reasonably anticipatable ancillary work necessary to deliver and support implementation of the Project.

The contract shall make use of the attached modified AIA contract forms. After conclusion of negotiations with the selected awardee, the Owner intends to make Owner-selected portions of awardee's proposal an exhibit to a contract that will obligate the CM Consultant to perform as promised in its proposal.

The project's business requirements and goals include building the capacity for local (LBE), small, women owned (WBE) and minority owned (MBE) businesses to grow and compete effectively with their mainstream counterparts. Offerors shall submit an Inclusion Plan; this plan should briefly describe how the bidder proposes to meet the stated inclusion goals, and outline roles and responsibilities for the team's MBE/WBE sub-consultant(s) and indicate the proposed MBE and WBE percentage participation for the Work. Contract shall include provisions obligating awardee to fulfill its approved MBE/WBE plan, which shall satisfy the inclusion goals and reporting obligations. Awardee shall coordinate its plan and its implementation with inclusion requirements in attached Exhibit 3. The services under this RFP are classified as "General Services" and, as indicated in the attached Exhibit, are a minimum of MBE's - 17% and WBE's - 9%.

II. Background Information

In 2004, East Baltimore Development, Inc. (EBDI) selected Forest City - New East Baltimore Partnership (FC-NEBP) as the master developer of the first phase of an initiative to provide economic development and community revitalization to an 80 acre portion of the East Baltimore Community (see Exhibit 1 – Current Master Site Plan). EBDI is a non-profit 501(c)(3) organization charged with leading and managing the revitalization effort of East Baltimore. EBDI works with support from a long list of partners including the City of Baltimore, the State of Maryland, and a number of local civic groups and charitable foundations. FC-NEBP has signed a Master Development agreement with EBDI.

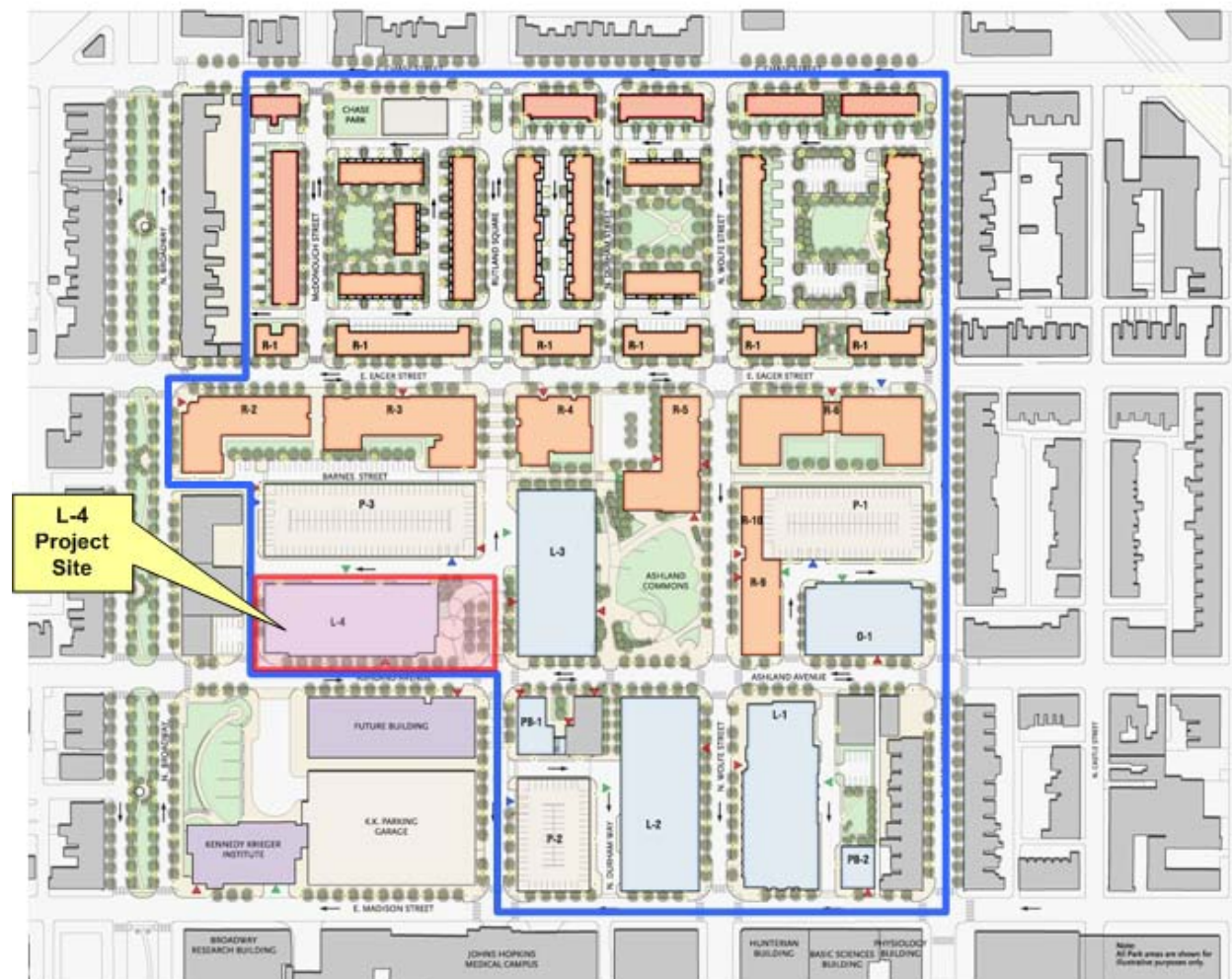
Forest City Science + Technology teamed with Presidential Partners, a group of locally experienced minority-owned developers and contractors, to form Forest City – New East Baltimore Partnership. This entity is responsible to develop the first 31 acres (of the 80 acres total), which is currently referred to as the Science + Technology Park at Johns Hopkins. Forest City Enterprises is NYSE-traded national real estate development company that owns and manages more than \$8.0 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 and 5 million square feet currently under development. For more information about Forest City,

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Presidential Partners or FC-NEBP visit www.forestcity.net, www.presidentialpartnersllc.com or www.forestcityscience.net.

I. PROJECT DESCRIPTION

The Maryland Department of Health and Mental Hygiene (DHMH) requires an approximately 225,000 gross square feet (GSF) fit-up laboratory building. Project is estimated to be an approximately 4-5 story building, with a floor plate of approximately 40,000-50,000. Summary programmatic information on this project is provided in the attached and includes a significant complement of BSL-3 space. Forest City –New East Baltimore Partnership (FC-NEBP) as the project developer shall manage design and construction of the project, and is the agent for “Owner” (MEDCO) identified herein.



The project will be located on the L-4 site within the 31 acre East Baltimore development area wherein FC-NEBP is the master developer.

The construction work, which will be the subject of a future separate RFP, shall be bid as one general contract, including fit-up, but there shall be several ancillary contracts and supply orders in support of the general contract. It is anticipated that most secondary contracts shall be assigned to the general contractor. The design process, which started in early April 2010, shall proceed as shown in the milestone schedule in the attached cost estimating scope of work. The design to construction cost budget amount is \$490/GSF. The construction process, including fit-up, is scheduled at 30 months.

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II. Proposal Information/Contents

This RFP shall be implemented as follows:

- Offerors satisfying the “threshold qualification criteria” defined below shall provide detailed information on their team including subconsultants, specific MBE/WBE proposal, fixed fee and unit priced cost proposal and other information listed below.
- By applying the process described below, Owner shall select an awardee.

Submit a proposal responding to the items listed below in sufficient detail to provide for meaningful evaluation and assessment. Please limit your proposal response to no more than **34 pages (excluding resumes)**.

Please Note: The awardee of the contract for CM Support Services shall not be considered as a potential awardee of the general contract for construction that is described herein. Therefore, any bid submitted for the general contract for construction by the awardee of the CM Support Services contract shall not be considered. However, unsuccessful offerors under this RFP may compete on said general contract for construction.

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

Among other items, provide an executive commitment regarding support for the success of the Project and a summary of reasons for selection of prime offeror.

2. Experience (14 pages)

The “threshold qualification criteria” for this RFP requires offeror’s proposed team members to have the following minimum qualifications:

- Have provided multi-disciplined project cost estimates in substantial accord with the attached exhibit (concerning Uniformat estimates) for at least three wet science laboratories, each with a construction value of at least \$30 million.
- Have experience in providing multi-disciplined design review services on at least five R&D laboratories, each with a construction value of at least \$30 million.
- Have experience in providing project/construction oversight and mechanical and electrical field inspection services on at least three laboratories, each with a size of at least 100,000 GSF, including at least one BSL-3 laboratory.
- Have experience in reviewing, negotiating, auditing and analyzing complex CPM schedules on at least five construction contracts, each with a value of at least \$20 million.

Any potential offeror that does not fully satisfy all the above qualifications requirements is discouraged from submitting a proposal.

By means of descriptions of projects and client references indicating relevant experience, demonstrate prime offeror’s satisfaction of “threshold qualification criteria” and ability to provide the services described herein for projects of similar type, size and scope to the subject state public health project (“Project”). Utilizing presentation structure shown below, provide examples, including photos, of the most relevant (per description of Project herein) projects with construction costs of \$35 million or more. Evaluators shall give particular weight to relatively recent fully-completed projects that are on-point with

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the Project scope 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.

Project Name		Size (AIA GSF)	
Owner / Client		Estimated Total Constr. Cost	
Contact Person/ Phone No/Email		Construction Cost (\$)/GSF	
Laboratory Type		(Forecast) Completion Date	
<p>For each project listed, provide the names of key personnel (e.g. project manager, design reviewer lead, cost estimator lead, CPM scheduler) proposed for the Project who participated in the listed project and provide information regarding each person's role on the listed project. Also, describe very specifically offeror's role on each project presented.</p>			

Divide above experience/reference information under two headings:

- Completed Projects
- Projects Currently Under Construction

3. Team Qualifications and Project Approach (8 pages, excluding resumes)

Describe qualifications of entire proposed team (with emphasis on key personnel), and approach and ability to provide described services for projects of similar type (i.e. laboratory/research facility), size and scope to the Project. Provide resumes of proposed key personnel that are correlated to the most relevant projects that involved such key personnel. Examples of key personnel are provided above under "Experience".

For estimating team, provide: (1) Description of estimating team and information on relevant experience, including projects with relevant scope, such as BSL, (2) Description of the cost database and library maintained by Consultant and how it is kept up-to-date and accurate, and (3) Summary-level resumes of proposed estimating team.

Provide description of Offeror's proposed comment (document review) management system.

Provide description of web-based construction management and document management system as described herein, including management of use and access by entire project team.

Provide description of action tracking system, which may be part of foregoing web-based system.

Provide description of proposed document management personnel.

4. Organization and MBE/WBE Participation Plan (4 pages)

Provide an organization chart, indicating proposed project team and primary subcontractors and for corporate overview of major entities on your Team.

If a joint venture (or functionally similar organization), indicate what work will be done by each primary-level firm. If offeror proposes a division of responsibility across a discipline (e.g. field inspection)

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between different entities on the proposed team, offeror shall clarify the specific responsibilities assigned to each such entity.

Provide a matrix for all key personnel that shows each individual's primary office location, firm name and the percentage of level of effort participation in the design and construction processes (i.e. 2 hours/day = 25%). For each proposed key individual, please provide an "availability date" for this project, once such personnel sufficiently complete its current workload.

Coordinate this chart with the project MBE/WBE requirements and inclusion requirements described herein by presenting specific information describing the work to be performed by MBE/WBE contractors, the estimated dollar value of each MBE/WBE contract, and the estimated percentage of MBE and WBE participation overall.

Please note: Very little weight will be given by evaluators to projects that were performed by the corporate entities on offerors' teams but that did not meaningfully involve individual team participants proposed by offerors for this project. Evaluators shall give particular weight to relatively recent and fully-completed projects that (a) are on-point with the Project scope and (b) meaningfully involve(d) key team members proposed by offeror to work on the Project. Therefore, it is mandatory that Offeror clearly demonstrate the involvement and role of each proposed key team member in the projects presented.

5. Scheduling (2 pages)

Provide summary-level description of the quantities of personnel by discipline necessary within each phase to support the project within the time frames described below and describe where such personnel will be located while working on the Project. Provide a proposed level of effort (i.e. hours per week or % of full-time) for each person for each time period that such person is proposed to work on the project. Provide a narrative describing the basis of the schedule including any assumptions.

6. Cost Proposal (2 pages)

Provide a fixed price fee proposal to provide the work described below as within fixed fee amounts.

Provide a unit price fee proposal to provide the work described below as within unit price fee amounts.

Support proposed fixed price and unit price costs with Offeror-proposed levels of effort (e.g. 20% level of effort = 8 hours per week), in coordination with the project schedule. Positions are not full-time throughout the design and construction processes; consequently, the level-of-effort shall be adjusted by Offeror in its proposal to the levels Offeror recommends for each phase for each proposed position. The unit priced cost estimate shall also indicate hourly rate(s).

Provide an estimated total cost proposal that combines the fixed price and unit priced scopes of work.

In approximate descending order of importance, the evaluation team shall value the following attributes in Offeror's pricing:

- Complete coverage of the scope of work items.
- Coverage of scope of work by well- and appropriately-qualified individuals, who are reasonably priced.
- Overall value of services provided in proportion to proposed cost of such services.

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- Thoughtful application of level-of-effort at each phase, which coordinates with the project goals stated in the scope of work.

Before award, Owner shall discuss and negotiate elements of Offerors' cost proposals, in an effort to equalize them for the purpose of analysis.

a. Fixed Price Elements:

- i. Lead single-point construction manager/coordinator.
- ii. Systems, including web-based system for action tracking, document management (per scope description herein) and other construction management purposes.
- iii. Document review at three formal stages (SD, DD and CD pre-bid).
- iv. Estimating and estimate reconciliation per attached scope of work.

b. Unit Price Elements:

- i. CPM schedule management and invoice/payment management.ⁱ
- ii. Inspection services, including video and photography.
- iii. Change order estimating, based on 3% change order level.
- iv. Other services recommended by Offeror to be necessary to fully and properly complete the scope of work and fulfill its described goals.

c. Total Estimated Cost of "a" and "b" above.

If Offeror's labor rates are listed in Federal GSA Schedule, federal contract or any other schedule appropriate for use by CM Consultant, provide cross-reference to the appropriate Schedule and utilize rates no higher than the lowest applicable rates therein.

Include all costs in price proposal, including subcontractors, Washington-Baltimore area travel expenses, reproduction services, shipping, etc.

Coordinate Offeror's plan to incorporate MBE/WBE/Local participation with price proposal.

7. Miscellaneous Requirements

Preceding award, the Owner may require offeror to provide information such as evidence of offeror's ability to obtain and maintain adequate insurance.

III. Proposal Evaluation

FC-NEBP will evaluate offerors' qualifications in accordance with pertinent evaluation factors. If the offeror with the best qualifications also offers the lowest fee proposal, that offeror shall be the apparent awardee. If the best qualified offeror does not offer the lowest fee proposal, the evaluation team will analyze whether the differential in fee is commensurate with the value of the differential in qualifications, and shall make a selection of awardee based on such business analysis.

ⁱ The cost of scheduling services shall include CM Consultant's supply of necessary computer equipment, Primavera (or approved equivalent) software, associated tools and auditing software such as "Claim Digger" (or approved equivalent).

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

Key Words	Evaluation Factors
Team Lab Experience	All key members of proposed team (including key subconsultants) have been meaningfully active participants in directly relevant quantity, size and type of laboratory projects. Offeror teams that have directly relevant experience in public health laboratories and/or BSL-3 laboratories will be given the highest level of preference.
Past Performance	Key team members (including key subconsultant team members) receive positive references from clients on directly relevant projects in which the team members actively participated.
MBE/WBE	MBE/WBE participation that meets goals and shows thoughtful allocation of roles and responsibilities.
Deliverable Personnel	Offeror's most qualified personnel (including key subconsultants) are demonstrated to be available and are proposed to be consistently involved throughout the project.
Local Capacity	Materially significant local office or proposed presence with meaningful capacity to timely execute the Project.
Miscellaneous	Evidence of timely and complete deliverables on projects and any other aspect deemed relevant by the evaluation team.

IV. RFP Contact List

Persons interested in responding to this RFP, or interested in receiving a list of interested firms, shall send their contact information (i.e. firm name, contact name, email address, firm website address, services to be provided (e.g. estimating, construction inspection, CPM scheduling, etc.) to Karen Brice at karenbrice@forestcity.net. 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.

V. Project Information and Outreach Meeting

Offerors shall make themselves familiar with the resources available in the local business community, including women and minority owned business, and take early steps to form business relationships that align with the goals stated in the above evaluation factors. To this end, FC-NEBP will host a "Project Information and Outreach Meeting" wherein the project will be presented and potential respondents will be given an opportunity to make contact with each other and with local MBE/WBE contractors and consultants. We hope that energetic contact between the various companies will result in business relationships that align with the goals of the RFP. FC-NEBP will also gather contact information and make it available to all attendees and interested parties. In particular, we seek inclusion of local, women and minority-owned businesses. The meeting will be held at 2:00 pm on Tuesday May 11, 2010 at 855 N. Wolfe Street, Baltimore, MD 21205. Please be prepared to arrive at least 10-15 minutes early to account for check-in and security screening. Parties interested in participating in the Project Information and Outreach Meeting" must RSVP with Karen Brice at 410-900-1006 or via email at karenbrice@forestcity.net. no later than 2:00 pm on May 7, 2010.

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VI. Web Site RFP Documents

The RFP documents are available on the FC-NEBP web site for this procurement, 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.

VII. Proposal Submission

Provide your proposal (10 copies and a PDF version) by **11:00 AM on May 25, 2010** to:

John Lecker
FC-NEBP Vice President, Development
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 or (410) 900-1012.

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

VIII. Exhibits (attached)

These exhibits shall be made part of CM Consultant's contract:

- Exhibit 1 – Scope of Work
- Exhibit 2 – Staff Nomination Form
- Exhibit 3 – MBE/WBE Requirements
- Exhibit 4 – Draft Estimating Scope of Work
- Exhibit 5 – Draft Section 01310
- Exhibit 6 – Draft Section 01110
- Exhibit 7 – Summary of Project Program.

Exhibit 1 - Construction Management Support Services - SCOPE OF WORK**IX. GENERAL SCOPE OF WORK ITEMS**

[Note: For the sake of brevity, this agreement utilizes the imperative voice. Wherever the imperative is used, read the imperative verbs concerned as being preceded by the words "The CM Consultant shall..."]

1. Provide support for the following general objectives of this scope of work:
 - a) High-quality design documents to reduce risk of construction period change orders, delays, claims and quality issues.
 - b) Accurate pre-construction cost estimates that will allow project to be designed, bid and awarded within budget, contingency considered.
 - c) Professionally managed construction processes, including field quality control and SIS/CPM scheduling.
 - d) Up to date physical and electronic project documentation readily and continuously available to all authorized members of the project team.
 - e) Timely completion of construction and activation of full-functioning laboratory.
 - f) Well-executed transition to operations.
2. Prepare an analysis that collects and documents project constraints for cost, schedule and quality. Support analysis with graphical drawings, charts and other presentation instruments. Obtain approval from Owner.
3. Provide off-site project management, administrative management and administrative support necessary for the work hereunder. Such support shall be provided at no cost to Owner, unless Owner specifically pre-approves assignment of personnel dedicated to such tasks.
4. Provide, and obtain approval for, a detailed project plan, that CM Consultant will be responsible to follow. The plan will show, item-by-item, how CM Consultant proposes to comply with the general and detailed scope of work items identified herein. Submit for approval a timeline schedule for performance of the work. The default format is MS Excel. Provide the baseline and updates of the schedule in electronic form. Continuously communicate status of the work relative to the approved schedule. Provide schedule status information to the Owner when requested.
5. Present an emailed report every week, throughout the performance of CM Consultant work, setting out current and upcoming activities, decisions required and issues of concern.
6. In coordination with the below requirement to keep Owner apprised of CM Consultant's forecast cost for CM Consultant's services, every two weeks provide an updated, statused schedule for CM Consultant's work.
7. In order to provide quality control of CM Consultant's work, develop and execute a quality control plan. Provide periodic quality control oversight supervision of the work in this contract, by senior management personnel and appropriate peers who are not involved in the day-to-day execution of the work hereunder.
8. Provide Owner timely information regarding possible problems and proposed action required to mitigate such problems.
9. Provide documentation in copies and form requested by Owner.
10. Throughout performance of the above items, coordinate with Owner employees, and other consultants and contractors employed by the Owner on the project.

Exhibit 1 - Construction Management Support Services - SCOPE OF WORK**X. DETAILED SCOPE OF WORK ITEMS:****General**

1. Provide perspective and expertise of multi-disciplined construction specialists.
2. Support pre-construction, construction (including site development, core-and-shell and interior/laboratory fit-up), commissioning, validation and activation processes.
3. Provide a seamless organizational addition to the Owner's project management team.
4. Provide a lead single-point construction manager/coordinator of the services provided hereunder.
5. Participate in meetings and communicate with project team members as required to accomplish this scope of work.
6. Using CM Consultant-provided action-tracking system, provide minutes of pre-construction and construction meetings next business day.
7. Provide contributions to monthly project-wide report.
8. Provide continuous support to the Commissioning Agent and other Owner-employed consultants.

Systems

9. Support development of project management procedures.
10. Host² web-based construction management multi-function tool to be used by entire project team. CM Consultant's work includes maintenance of system and management of passwords, etc, for up to 24 team members. Provide Primavera system or Owner-approved equivalent.
11. Provide, maintain and manage searchable web-based construction document management system for receipt and transmittal, document-holder lists, drawings, specifications, bid documents, addenda, insurance certificates, bonds, submittals including shop drawings and samples, RFPs, change notices, change order requests (CORs), directives, RFIs, change orders, payment applications, insurance documentation, waivers, daily reports (including any force account work), survey records, testing records, as-built and record documents, MBE/WBE conformance records, certified payrolls, schedule updates and narratives, product data, warranties, permits, punch lists and operation and maintenance manuals, and other project-related documents, utilizing above or other Owner-approved web-based tool. Provide archiving of project documents for use of operations personnel after activation. Maintain directories. Perform scanning and PDF archiving on on-site office machines provided by Owner.
12. At the end of the project, transfer control to Owner over the project document management system and provide training to Owner on its use on an Owner-furnished hosting system.
13. Coordinate action tracking system with the web-based system.
14. Provide assistance in developing monthly cost reports, including current obligations, disbursements, and cost projections for completing elements of the project.
15. Provide and manage cost forecasting system.

² The term "host" shall include provision of off-site equipment, software, licenses and services necessary to efficiently and effectively allow multiple project participants to simultaneously utilize the Internet to access the web-based systems provided by CM Consultant. The web server and other infrastructure may be located in CM Consultant's facilities or may be located in the facilities of a third-party hosting service, provided that system availability, performance and data reliability is maintained.

Exhibit 1 - Construction Management Support Services - SCOPE OF WORK

16. Provide and manage Change Notice system that gives Owner early notice of potential cost, schedule and other impacts of decisions under consideration. CM Consultant's work shall include providing preliminary estimates of potential cost and schedule impacts of proposed changes.

Pre-Construction Phase Services

17. Review geotechnical report and make recommendations thereon.
18. Provide system for initiating, aggregating and ultimately resolving document review comments from all reviewers involved with Project. Assist in expediting resolution of comments.
19. Using document review system provided by CM Consultant, advise the A/E of defects, conflicts, ambiguities, discrepancies, inconsistencies, constructability issues, or lack of clarity in construction documents, including the potentially improper use of proprietary materials or processes whereby price competition may be compromised. Provide these services at each formal A/E submission phase (SD, DD and pre-bid CD). Provide additional comments on an ad hoc basis on A/E-produced progress documents throughout the design period, but these occasional ad hoc comments may be communicated to A/E by CM Consultant in the form of marked-up documents and/or memoranda.
20. Provide multi-disciplined constructability and other specialized technical review of construction documents, including supply and management of a computerized document review database system. CM Consultant shall coordinate its design review work with Redichek consultant employed by A/E.
21. Apply experience in laboratory cost estimating (including experience in BSL labs) to provide multi-discipline laboratory cost estimating at SD, DD and pre-bid milestones. Provide cost estimates as described in the attached estimating scope of work.
22. Advise the Owner and A/E team on the availability and procurement of long-lead and specialty items.
23. Provide advice on cost-reducing alternatives that can be employed without impairing the overall quality level of the project.
24. Participate in a formal two-day value engineering session chaired by Owner's independent value engineering consultant.
25. Support Owner's processes and procedures for acquiring bids for the work as well as proposals for Owner-procured contracts.
26. Coordinate CM Consultant services with building information modeling (BIM) system utilized by design team.
27. During design and during construction, plan and coordinate the installation of construction mock-ups (both stand alone and in-situ), including mock-ups of fit-up elements and factory tests and other off-site mock-ups and test assemblies.

Construction Phase Services

28. Review construction documents, submittals and industry standards (made available by Owner on site) as necessary for CM Consultant's field team to maintain its familiarity with work requirements and manufacturer's recommended installation standards.
29. Provide oversight of and inspection in accordance with CM Consultant-approved Quality Control/Quality Assurance (QA/QC) plan furnished by the general construction contractor, to ensure work in place complies with contract requirements and approved submittals/shop drawings.

Exhibit 1 - Construction Management Support Services - SCOPE OF WORK

30. When CM Consultant personnel are on site, they shall prepare and submit daily observation reports. Content of such reports shall be entered with CPM activity numbers, issue numbers and other cross-references provided by Owner.
31. Manage site utilization in accordance with approved plan and support objective of minimizing impact of project on surrounding properties and public spaces.
32. In coordination with attached specification section 01310 (see Exhibit 5), which shall be made part of the General Contractor's Bid Documents, provide monthly construction invoice review to confirm invoiced amount is consistent with delivered/installed construction work.
33. Provide construction schedule management, per attached 01310 specification using Primavera P6 (or Owner-approved equivalent). Support project master scheduling. Monitor the construction schedule and notify Owner when potential impediments exist to achieving the schedule, and make recommendations for corrective action.
34. Review, analyze, negotiate and audit the schedule submissions provided by the general contractor.
35. Provide multi-disciplined construction change order estimating, in accordance with the attached change order specification section 01110 (see Exhibit 6), which shall be made part of the General Contractor's Bid Documents.
36. Provide oversight of any force account work and sign time sheets when such work is underway.
37. Provide coordination and oversight of material testing firm(s) and inspection/testing reports and results, including concrete, and request of special inspections (including code-required inspections) and any resulting corrective work.
38. Provide ongoing construction inspections (and phased punch lists), and mechanical, electrical and plumbing (MEP) on-site inspections on a part-time random basis.
39. Provide continuous digital and video recording of work in progress, with information keyed to a database that is searchable by floor and column lines, date, schedule activity number and other fields selected by Owner. Organize this information to be useable and searchable by Owner's operations personnel, in order to view concealed MEP conditions such as below grade and inside walls.
40. Utilize photography/video (with integrated database) in schedule analysis and for permanent operations record-keeping of hidden conditions and their locations.
41. CM Consultant's work includes supply and maintenance of digital camera equipment for the foregoing photography/video tasks.
42. Coordinate manufacturers' visits to site to validate that proprietary equipment and systems have been correctly installed and are operating properly. Manage resulting records.
43. Support close-out of general contract and ancillary contracts, including warranty, training, O&M manuals, etc.

XI. MISCELLANEOUS PROVISIONS:

44. Follow direction of single-point Owner's representative, unless the representative expressly assigns a designee.
45. Promptly implement directives from the Owner's authorized representative to make minor modifications, additions and/or deletions to any portion of this scope of work as directed by Owner. However, immediately advise the Owner in writing of any material cost or schedule impact that may

Exhibit 1 - Construction Management Support Services - SCOPE OF WORK

result from such Owner-issued directives. If CM Consultant determines that there is additional material cost resulting from the directive, CM Consultant shall not act upon the directive, and shall not deviate from the approved plan, until a written order is issued by the Owner. CM Consultant shall not act upon any oral directive that materially changes any aspect of this scope of work, irrespective of the source of such directive.

46. CM Consultant will follow the procedures that the Owner representative may direct from time-to-time.
47. Assign a senior manager as CM Consultant's chief representative for this project. This representative shall have the authority to make binding decisions between its organization and the Owner. Such single-point contact representative will be in charge of all members of the CM Consultant team assigned to the project and will be the main contact, although such chief representative does not have to be employed full-time on the project. All correspondence, conferences, meetings and questions concerning the project directed to the CM Consultant and its subcontractors will be through this person. Generally speaking, this representative will be personally accessible by phone and email (and on site, per approved work plan) during working hours from the beginning of the Project through its completion.
48. Under time-and-material work (either base contract or by Owner-directed amendments to base contract), (a) before any person on CM Consultant's staff may commence charging time to project or incurring reimbursable expenses, submit resume material to Owner and obtain Owner approval for assignment of such personnel. Utilize the attached "Staff Nomination" form for this purpose, (b) CM Consultant personnel, when working on a part-time or full-time basis, may not invoice for more than 176 hours per month per person, unless express authorization is received from Owner, (c) CM Consultant shall obtain signature from authorized Owner representative on weekly person-by-person time sheet for each CM Consultant person to be charged by the hour to this contract, in the form requested by Owner, (d) Upon request of Owner, CM Consultant shall provide certified accounting records indicating the actual quantity of hours and other costs charged to this contract and its individual subcomponents (e.g. task orders), and (e) provide a report every two weeks, indicating CM Consultant's estimated costs to date and CM Consultant's estimate of the cost of the work at completion. CM Consultant may incur reimbursable expenses under time-and-material work, provided CM Consultant follows the procedures set out on attached "Staff Nomination" form. Pre-approved expenses under time-and-material work (including subconsultants) are passed through at cost, with no mark-up. Processing costs for expenses are presumed to be covered by overhead portion of hourly service rates.
49. Neither the Staff Nomination form nor weekly time sheets are required for members of a team that are approved as part of a fixed price proposal.
50. The Owner may direct CM Consultant to remove any CM Consultant personnel that Owner finds unacceptable, and CM Consultant shall immediately remove (and replace with new individual(s) satisfactory to Owner, if requested) such personnel.
51. Prepare detailed agenda and minutes of meeting for all meetings called or chaired by CM Consultant. Such agendas shall identify in detail the specific items planned for discussion, and shall be distributed to proposed attendees in advance of affected meetings. Such minutes are to set out responsible parties for action items, particularly decisions required by the Owner, including deadlines therefor, and the minutes shall record decisions made and the basis for each such decision.
52. During performance of work and/or at completion of work, provide orderly hand-over of work products and deliverables to designated Owner representative.

Exhibit 1 - Construction Management Support Services - SCOPE OF WORK

53. Provide space, equipment, storage, personnel and systems in CM Consultant's offices as necessary to support the work hereunder. These items are deemed to be covered by the G&A and mark-up portions of hourly labor rates.
54. Any and all CM Consultant-produced work products and deliverables, including all documents, graphics and software that are produced by CM Consultant in connection with this scope of work become the exclusive property of the Owner. CM Consultant, by acceptance of this scope of work, provides an exclusive and indefeasible license and copyright for unlimited use, copy, distribution or other use by the Owner of subject work products and deliverables, in hard copy and/or soft copy (e.g. electronic, magnetic recording, etc.) form. CM Consultant shall deliver to the Owner hard copies and soft copies (on CD-ROM) of all such work products and deliverables.

XII. ITEMS PROVIDED BY OWNER

1. On-campus office space, furnishings, wireline telephone, Wi-Fi connection and office machines.

XIII. SCHEDULE (TIME OF PERFORMANCE)

This scope of work will be performed on an expedited basis, in accordance with the following timeline schedule. In addition to periodic activities and deliverables required by the above scope of work, each activity must be completed and approved by Owner within the following number of work days (measured from the initial Notice to Proceed for the work as a whole).

Activities	Estimated Work Days from NTP
Develop and submit initial plan (including level of effort analysis) and schedule, measured from Initial Contract NTP.	3
Develop and submit detailed plan and schedule that takes into account review and comments from Owner, measured from Initial Contract NTP.	8
Pre-Construction Services, measured from Initial Contract NTP. Coordinate with milestone schedule in attached exhibit pertaining to cost estimating services.	220
Construction Services, measured from date of NTP to construction contractor. Construction shall be estimated to last 30 months, including fit-up.	520
Fully Complete all work, except for minor post-contract support, measured from date of NTP to construction contractor.	540

Exhibit 2 - Construction Management Support Services – Staff Nomination Form

Authorization No.: _____
Rev No.: _____
Date Submitted: ____/____/____

STAFF NOMINATION

PROJECT: _____ CONTRACT No.: _____

FROM: _____
Name Firm

The following individual and associated expenses are proposed for addition to the project team, on an as-needed basis. In accordance with our contract, your review and approval is requested.

NOMINEE'S NAME: _____ TITLE OF POSITION: _____

DESCRIPTION OF NOMINEE'S RESPONSIBILITIES/DELIVERABLES: (Attach additional Sheets as Necessary)

PLANNED START DATE: _____ PLANNED END DATE: _____

\$ _____/HR (APPLICABLE CONTRACT BILLING RATE) x 1.00 (multiplier) x

ESTIMATED # OF HRS _____ = ESTIMATED LABOR COSTS: \$ _____

+ ESTIM. EXPENSES: \$ _____ X 1.00 (multiplier) = ESTIMATED TOTAL COSTS: \$ _____

TOTAL FACE VALUE OF STAFF NOMINATIONS TO DATE, INCLUDING THIS ONE: \$ _____

ESTIMATE OF REMAINING MONIES UNTIL DELIVERY ORDER CAP IS REACHED: \$ _____

APPROVED:

Authorized Owner Representative

Date

Notes:

- 1. This authorization limits costs to the above estimate. CM Consultant is working at his own risk in the event that the above-named individual works beyond either the total number of hours and/or the total amount of expenses authorized above.
2. The actual billing rate will be determined in accordance with the actual provisions of CM Consultant's contract. If labor rates are listed in Federal GSA Schedule, federal contract or any other schedule pre-approved by Owner as appropriate for use by CM Consultant, provide cross-reference to the appropriate Schedule and utilize rates no higher than the lowest applicable rates therein.
3. CM Consultant may request amendments to previous Staff Nominations, by re-submitting them with new Revision numbers, but no Staff Nominations will be considered in excess of the not-to-exceed value of the contract or portion thereof concerned.
4. CM Consultant must initiate this form for subconsultants as well as members of his own corporate organization. For subconsultants, indicate the name of the firm next to the nominee's name.
5. CM Consultant may be required to furnish resumes or other qualifying information, for approval, at the discretion of the Owner.

Exhibit 3 - Construction Management Support Services – MBE/WBE Requirements

This project is subject to the MBE/WBE/Local requirements established by East Baltimore Development Inc. (EBDI). The "Developer" herein is Forest City – New East Baltimore Partnership, Inc. (FC-NEBP), which is the agent of the Owner (MEDCO) on this project. 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 and, in turn, EBDI expects the Developer to make the same commitment. The Developer shall not, and furthermore, 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. 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, which includes the "L-4" site where the DHMH laboratory project shall be located.

Consequently, the successful Development Team shall be contractually required to 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%

In addition to complying, at a minimum, with the above-referenced contracting goals, the Developer shall use its best practical efforts to meet or exceed the minimum levels of MBE and/or WBE participation levels for specific segments of the construction industry which are included in the Minority Inclusion Agreement. The individual segments and corresponding goals, divided according to the three general categories listed above, are as follows:

Construction

Project Management 13.5%

Exhibit 3 - Construction Management Support Services – MBE/WBE Requirements

Demolition 30.5%
Rehabilitation 30.5%
New Construction 30.5%

Architectural and Engineering

Planning 13.5%
Design and Architecture 17%
Engineering 17%

General Services

Legal 13.5%
Accounting 13.5%
Real estate services 13.5%
Financing 13.5%
Investments/Capital 13.5%
Property and equipment financing 13.5%
Promotion 13.5%
Facilities Management/Maintenance 13.5%
Property Management 13.5%
Laboratory and office supplies 9%
Disposition Services 13.5%
Reprographics 13.5%
Delivery Services 13.5%
Light manufacturing 13.5%
Research and Development 13.5%

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 residing in the area of the project (East Baltimore). The Developer will be expected to 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.

The 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:

Exhibit 3 - Construction Management Support Services – MBE/WBE Requirements

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

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

All on-site contractors and subcontractors selected by the Developer to work on the Area A Project shall submit "certified" payrolls listing the following items for all on-site employees:

1. Full name
2. Social Security number
3. Full address
4. Trade classification (e.g., laborer, carpenter, apprentice, electrician, plumber, foreman)
5. Gender
6. Race
7. Hours worked
8. All withholding (e.g., laborer, local, state, PICA, etc.)
9. Name of Contractor and Indication of Prime for Subcontractors
10. Name of Project

Certified payroll reports shall be signed by an authorized company officer.

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);

Exhibit 3 - Construction Management Support Services – MBE/WBE Requirements

- C. A professional or personal services contract where the total dollar amount of the contract 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.

Every effort will be made to assure that small MBE/WBE/LBE firms in the Project Area and in the Middle East Baltimore Area are included in the soliciting 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, 21251, 21287.
- B. MBE/WBE/LBE certification shall not be determinative of Developer's financial or technical ability to perform specified work. EBDI reserves the right to evaluate the Developer's, and any of its proposed contractor's or subcontractor's, 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

Exhibit 3 - Construction Management Support Services – MBE/WBE Requirements

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.

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 the [FC-NEBP] 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) The 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, the Contractor will provide reports including all contract changes, revisions and payments to date, and will furnish signed lien waivers and/or relevant affidavits documenting payment to all M/W/LBE firms.

Exhibit 3 - Construction Management Support Services – MBE/WBE Requirements

- 4) The Contractor will furnish to GPUAC 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. Certified payrolls will be submitted on a monthly basis and will include the following
- Full name
 - Social Security number
 - Complete worker address (including city, state and zip code)
 - Trade classification (e.g., laborer, carpenter, apprentice, electrician, plumber, and foreman)
 - Gender
 - 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 4 - Construction Management Support Services – Draft Estimating Scope of Work

1. The contractor awarded this work (“CM Consultant”) shall provide multi-discipline cost estimating services at each of SD, DD and pre-bid phases of the design for the above described building.
2. Estimates shall be prepared using Unifomat and CSI.
3. At each phase:
 - a. Provide detailed cost estimate.
 - b. Reconcile Consultant’s Unifomat-sorted estimate against similarly-sorted estimate provided by the project architect’s estimator.
 - c. Provide a written narrative.

Details:

1. Estimated Timeline. Prepare one estimate at end of each of phase 5, 7 and 9. “Notice to proceed” below is the NTP issued to the Project AE.

	Design Phases / Activity	Duration (Cal Days)	Start Date	End Date	Day of Week	Notes
1	Notice to Proceed	0	5-Apr-10	5-Apr-10	Monday	Day 0 = Initial NTP.
2	Program Verification	49	5-Apr-10	24-May-10	Monday	
3	Owner Review and SD NTP	7	24-May-10	31-May-10	Thursday	
4	Ph 1 - SD Block Concept, BoD	28	31-May-10	28-Jun-10	Monday	Interim SD submittal
5	Ph 2 - Complete Schematic Design	42	28-Jun-10	9-Aug-10	Monday	Final SD submittal
6	Owner Review and DD NTP	21	9-Aug-10	30-Aug-10	Monday	
7	Design Development	70	30-Aug-10	8-Nov-10	Monday	
8	Owner Review and CD NTP	21	8-Nov-10	29-Nov-10	Monday	
9	CD – 90% QC Set with Cost Estimate	56	29-Nov-10	24-Jan-11	Monday	“Bid-Ready”
10	Owner Review and Final Cost Estimate	21	24-Jan-11	14-Feb-11	Monday	
11	CD – 100% Final Contract Documents	28	14-Feb-11	14-Mar-11	Monday	After receipt of QC comments

2. The specific timeline will be determined by mutual agreement at each phase, but it is understood that each phase’s process from estimator’s receipt of documents to completion of reconciliation will take approximately three weeks.
3. At SD Phase:
 - a. Site Visit: Consultant shall visit site and make note of any features that may affect project cost.
 - b. Provide support to assist the Owner, to the extent practical, to make all major costs-driver decisions such as selection of:
 - i. foundation system,
 - ii. either steel or concrete frame,
 - iii. general approach to condition air,
 - iv. exterior closure options that will be bid, and
 - v. strategies to reduce cost of contractor’s general conditions.

Exhibit 4 - Construction Management Support Services – Draft Estimating Scope of Work

4. At all three estimate phases:
 - a. Prepare AIA floor area tabulation by each floor and function within each floor (e.g. retail, common core and shell, etc).
 - b. Pre-Estimate Kick-Off Meeting: Attend a meeting with the Owner, the architect's design team and the architect's estimating team to:
 - i. confirm the level of LEED certification sought and the planned approach for securing such certification,
 - ii. obtain a copy of the project schedule,
 - iii. ensure that the Unifomat and CSI versions³, detail level and summarization are coordinated between estimates for all estimating disciplines,
 - iv. coordinate the application of estimating contingencies⁴,
 - v. coordinate the approach to overhead, profit, taxes and bonding,
 - vi. agree upon type of electronic version that will be used in reconciliation process,
 - vii. agree upon space tabulation methodology and level of detail⁵,
 - viii. confirm bidding approach⁶, and
 - ix. confirm contents and scope of contractor's general conditions.
 - c. Estimate Reconciliation:
 - i. At each phase, provide an electronic version of Consultant's completed estimates to the architect's estimator, in order to facilitate side-by-side comparison of the two estimates.
 - ii. Reconciliation shall consist of:
 1. A meeting at each phase with all of Consultant's estimating disciplines present and discussion of each "misalignment" line item where either:
 - a. the cost of such individual line item is more than 1% of the overall project cost and the cost varies 15% or more from estimate to estimate (using the architect's estimate as the "base"), or
 - b. any individual line item less than 1% of the overall project cost varies more than 20% from estimate to estimate.

³ Unless otherwise determined by Owner, SD will be at Unifomat Levels 1 and 2, DD will be at levels 2 and 3 and the pre-bid estimate will be organized by Unifomat Level 3 and by CSI item list and rates.

⁴ Unless modified by Owner, estimating contingencies of 12% at SD, 7% at DD and 3% at pre-bid.

⁵ The AIA standard methodology for space measurement shall apply. Tabulation will have 15-20 subcomponents, organized into mechanical and electrical (e.g. rooms and chases), primary circulation and access (e.g. stairwells and elevators), facility common area services (e.g. toilets and maintenance areas), leasable and other programmatic areas and other appropriate subcomponents.

⁶ Assume that the construction and fit-up work shall be bid to a prequalified list of 4-6 general contractors, and will be awarded as a single package. The project has MBE/WBE goal requirements that will be part of the award decision for construction contracts. The Owner may also elect to have a separate miscellaneous contracts. The estimates shall attempt to be equal to the second-lowest bid to be received.

Exhibit 4 - Construction Management Support Services – Draft Estimating Scope of Work

2. Request and document clarification of the scope of each misalignment line item from the architect, discuss the cost impact of the clarified scope with the architect's estimator, and revise Consultant's estimate as appropriate.
 3. Annotate the line items in the estimate with the results of the reconciliation exercise.
 4. Reconcile any differences between Consultant's area tabulation and the tabulation prepared by the architect or architect's estimator.
- d. Estimate Preparation:
- i. Review all available drawings, specifications, schedules and the basis of design document.⁷
 - ii. Prepare (or update the take-off from the previous phase, as appropriate) a quantity take-off and costs for material, labor, equipment and other items. However, the SD estimate may include allowances on a square foot, cubic foot or other appropriate basis.
 - iii. For equipment, list assumed sizes and capacities.
 - iv. Before estimate is finalized, present list of significant estimate assumptions and request confirmation or clarification from the architect's design team. Consultant may assume that this can be done by telephone and email.
 - v. Prepare estimate to allow sorting by either Unifomat or CSI.
 - vi. Provide information necessary to trace the identification of the estimator for each line item.
 - vii. Pre-bid estimate shall be sortable by planned contract.
 - viii. Provide break-out pricing for bid alternates (priced options) under consideration at each phase. At pre-bid phase, complete a draft bid form.
 - ix. Provide a summary of estimated labor hour by category. Describe and support any overtime assumed by the estimate.
 - x. Provide a written description of the method used to calculate the cost of each labor category, including worker's compensation, unemployment insurance, social security taxes and other fringes and burdens. Consultant shall assume that prevailing wages shall apply.
- e. Written Narrative:
- i. Cross-reference narrative points to Unifomat codes when appropriate.
 - ii. List the design documents that were provided by the architect's team to be the basis of the estimate.

⁷ The architect may also provide design criteria, programmatic information, sketches, renderings, diagrams, geotechnical information including preliminary foundation design, environmental assessment, utility requirements, and other information such as catalog cut sheets and data sheets.

Exhibit 4 - Construction Management Support Services – Draft Estimating Scope of Work

- iii. State percentage progress of the design, divided by discipline. For example, architecture may be 80% complete and mechanical only 50%.
 - iv. Compare the cost of the project to other similar projects built in the last 5 years. Assess whether the budget set for the project is reasonable. If the budget is beyond the normal range for costs of similar projects, provide an analysis of the likely causes.
 - v. Describe assumed construction sequence and duration.
 - vi. Provide list of manufacturers and specialty subcontractors contacted and summary of information gathered.
 - vii. Clarify the escalation index (or indices) used and how it was applied.
 - viii. Discuss cost highlights and make recommendations for Owner action regarding the main items that are driving the project costs. In particular, discuss any items where full-and-open competition is curtailed, such as specification of sole-source items.
 - ix. Discuss the cost premium, if any, that will be invested in obtaining LEED Silver certification.
 - x. Recommend any possible changes in design and product selection and possible bid options (alternates).
 - xi. Discuss regional cost effects, local labor market forces and any recent changes in key material prices.
 - xii. Focus discussion on major cost areas, such as general conditions, primary structural systems, exterior wall systems and HVAC systems.
 - xiii. At DD and pre-bid phases, provide estimate comparison sheet and discuss significant shifts in scope and design approach that occurred from the preceding phase.
- f. Miscellaneous Services:
- i. After each phase, provide minor support to Owner and architect's team by email and telephone, as necessary to clarify the basis of the estimate's pricing.
5. Clarifications:
- a. The architect is required by contract to design within a set budget for the described fit-up laboratory scope.
 - b. Consultant's estimate shall expressly break out the cost of:
 - i. Contractors':
 1. general conditions⁸,
 2. overhead and profit,

⁸ General conditions shall include site security, general clean-up, temporary utilities (including telephone/data), temporary protections and safety items, temporary facilities and site offices, and site vehicles.

Exhibit 4 - Construction Management Support Services – Draft Estimating Scope of Work

3. job overhead, general site costs and field overhead,
 4. insurance chargeable to project,
 5. bonds,
 6. fees and permits normally paid by builders.
- ii. Streetscape (sidewalks, street trees, street lights, alleys, etc),
 - iii. Street utility tie-ins,
 - iv. Building automation systems,
 - v. Security systems,
 - vi. Telecommunications systems,
 - vii. Escalation to mid-point of construction,
 - viii. Tenant fit-up work,
 - ix. FF&E,
- c. Consultant's estimate shall exclude:
- i. Design fees and associated costs,
 - ii. Site acquisition,
 - iii. City building and other permits obtained by Owner,
 - iv. Soil decontamination and treatment,
 - v. Unforeseen subsurface conditions,
 - vi. Legal fees,
 - vii. Commissioning costs (but the cost of contractors' participation in commissioning process shall be included),
 - viii. Financing,
 - ix. Development fees,
 - x. Initial land survey,
 - xi. Materials and soils testing provided by Owner,
 - xii. Owner's construction contingency for scope changes.

Exhibit 5 - Construction Management Support Services – Draft Section 01310

SECTION 01310

SCHEDULES, REPORTS AND PAYMENTS

PART 1 - GENERAL

1.01 DESCRIPTION

A. Summary of Work

1. Ensure timely execution of the Work using a critical path method schedule, because timely Contractor performance is essential to this contract.
2. Allow Owner to monitor Contractor's Contract Schedule continuously and cooperate such that Owner may audit Contractor's management of the Contract Schedule via comparison by Owner to a copy of the approved Contract Schedule under Owner's control.
3. Use approved Contract Schedule for management of the entire Work and make no change, modification, or updating of logic and/or durations in the Contract Schedule without prior written concurrence from Owner.

B. Purpose of this Specification

1. Assure adequate planning, scheduling, and reporting during execution of the Work so it may be executed in an orderly and expeditious manner within the specified time constraints.
2. Assure coordination of Contractor's self-performed work with work of a.) all of the elements of Contractor's organization, including subcontractors, if any, b.) between such subcontractors and vendors at all tiers, c.) Owner personnel and Owner consultants (if applicable) and d.) separate contractors.
3. Assist in processing of payments to Contractor.
4. Assist Contractor and Owner in monitoring the progress of the Work.
5. Assist Contractor and Owner in evaluating impact of proposed changes to the Work, if any. Coordinate such evaluation with applicable requirements of any change order Section that is part of this Contract.
6. Assist in detecting problems for the purpose of taking timely and effective corrective actions, to provide a mechanism for monitoring the effect of such corrective actions and to make adjustments in such corrective actions as necessary to ensure timely execution of the Work.
7. Assure the approved Contract Schedule is used to manage the entire Work.

C. Standard Software

1. Utilize Primavera Project Planner ("P3"), or approved equivalent.
2. Set adjustable settings, including those pertaining to float calculation and progress/logic override, in accordance with Owner's instructions, which shall require the most conservative available settings.

1.02 DEFINITIONS

1. Milestones: Milestones listed in the Contract Documents represent only the major items of work or interface dates. Milestones are considered essential to the satisfactory performance of this Contract and to the coordination of all work on the Project. Indicate Milestones (including the Work completion milestone, converted to working days) in the Contract Schedule as zero duration activities with "Finish-No-Later-Than" dates. Milestones represent the latest allowable completion durations, measured from the Contract's initial Owner-issued notice to proceed (NTP). Unless specifically excepted by Change Order, offer options, if any and if exercised by Owner, shall be performed by Contractor within the durations set out below. Coordinate the application of the following Milestones with the contents of this specification and the Work.

Exhibit 5 - Construction Management Support Services – Draft Section 01310**List of Milestones**

Code	Activities	Work Days from NTP
A	Complete all work necessary for Contractor to be ready to place all slabs on grade	87
B	Complete building structural frame	125
C	Complete final weathering-in of entire building	280
D	Complete setting of major mechanical equipment and complete all MEP hook-ups thereto	420
E	Complete Work in readiness for final IDW lists.	520

2. **Contract Schedule:** The Contract Schedule is the document that controls Contractor's timely execution of the Work. It is initially defined by the number of Work Days listed in the Contract Documents for completion of each Milestone and for completion (in calendar days) of the Work, until the Owner approves the Detailed CPM Schedule ("DCS"). Upon acceptance by Owner of the DCS, the DCS becomes the Contract Schedule. Upon approval by Owner of mutually agreed change orders that amend the DCS, the most current such approved amended version of the DCS becomes the Contract Schedule.
3. **Work Days** are defined as the days in the calendar during the period of Work performance, excluding Saturdays, Sundays and legally-mandated federal employee holidays (which apply to the area in which the Work is performed). The federal holidays are: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. If a holiday falls on Saturday, preceding Friday is taken as holiday, and if holiday falls on a Sunday, the following Monday is taken as holiday. All work days shall be considered fully available for Contractor to perform the work indicated in all pertinent activities in the Contract Schedule, unless, upon Contractor request, an authorized Owner's representative (a) contemporaneously annotates Contractor's daily report with an acknowledgement that the day reported upon was unavailable to Contractor for excusable causes, such as severe weather or the unmitigable effects thereof, (b) identifies the specific activities by activity number so affected, and (c) identifies the extent of such impact for each affected activity (i.e. percentage reduction of crew or equipment effectiveness and/or progress).
4. **Data Date:** The last Work Day of each month, for all months between NTP and Acceptance, in accordance with schedule update requirements of this specification.
5. **Extended Overhead Cost:** Cost incurred by Contractor in the event the Contract Time is extended beyond the completion date set for the entire Work, and Owner-caused time extension is the sole-and-controlling cause of such extension. Only costs incurred by Contractor on the project work site are eligible to be classified as Extended Overhead Costs, and only if Contractor satisfies all pertinent requirements set out in this specification. In coordination with the CSI Division 1 specification governing contract change orders, such costs shall be limited to direct daily costs associated with temporary facilities on the project site and supervision assigned full-time to the Project site. Any actual or alleged off-site costs associated with time extensions shall be deemed fully compensated by the percentage mark-ups in the Change Order Section that is part of this Contract, if any, or as negotiated between the parties.
6. **The Work:** The entirety of the work to be performed by Contractor under this Contract.

PART 2 - PROCEDURES AND REPORTS**2.01 DETAILED CPM SCHEDULE (DCS)**

- A. Submit to Owner within 21 calendar days following NTP 2 hard copies (and CD) of detailed time-scaled precedence format network graphics and reports of proposed DCS containing the following:
 1. Narrative of Contractor's proposed methodology, including a proposed general sequencing plan, with named areas of work to be identified with unique codes for selected activities.

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2. The activity number, description, duration, cost loading, resource loading, coding structure and total float for each activity.
 3. Analysis and narrative describing overall phasing and sequence of operations for the Work and the order and interdependencies of Work activities. Indicate the major points of interface or interrelation of such activities with the activities of Owner and/or other contractors.
 4. Conformance with and identification of the Milestone durations and/or dates specified.
 5. Delivery of Owner-furnished material and/or equipment, if applicable.
 6. Critical path (or paths).
- B. Special Constraints: Minimize special constraints and add none during the execution of the Work without Owner's express approval. Clearly identify and explain proposed special constraints including:
1. Finish-to-finish, start-to-start, start-to-finish, and finish-to-start leads and lags.
 2. Starts-on, starts-no-earlier, finishes-on and finishes-no-earlier date constraints.
 3. Special calendars, beyond Owner-approved standard five day and seven day calendars.
 4. Resource caps.
- C. Duration and Cost Limits: Ensure that the level of detail of the Contractor's DCS is a function of the complexity of the work involved. Ensure that all activities have duration of not more than fifteen Work Days and have a value less than \$10,000.00, unless Owner expressly authorizes an exception. Owner will take into account special attributes of the Work, such as long-lead equipment with extended engineering, fabrication and delivery schedules.
- D. Accompanying the initial contract schedule submittal, provide a Key Items Procurement Report for all "key" (major equipment and materials and long-lead (over 8 weeks, from order placement to delivery)) items fabricated or supplied for the Work. For each such key item, include in the DCS activities for submittal, submittals review, fabrication, in-plant testing, shipment and delivery, field installation, field testing, functional performance testing, acceptance and O&M manuals.
- E. Schedule reports indicating the activity numbers, description, estimated duration in Work Days, early start and finish dates, late start and finish dates, total and free float available for each and every activity and responsibility code for each activity.
- F. Cost reports including the following activity information, sorted by labor category:
1. Activity number and appropriate description.
 2. Total cost proposed for each activity, with the total at the Work level equal to the Contract Price.
 3. A computer-produced cash-flow analysis and graphics generated by both early start and late start activity dates.
- G. Labor and Equipment Allocation Report: A narrative report indicating anticipated allocation of labor and equipment resources and work shifts to be utilized on the Work. Identify with particularity equipment that is shared by activities such as hoisting and the level of need of each such item of equipment for all pertinent activities.
- H. Details of each calendar. Base schedule on standard workweek consisting of five 8-hour days (Monday through Friday), subject to holidays described above. Contractor may propose working outside of normal work hours, including multiple shifts, working holidays and weekends, and other non-standard calendars, provided Contractor obtains Owner approval a minimum of five work days in advance of the proposed occurrence of work outside of normal hours. All Contractor's schedule calendars shall indicate the holidays as non-working days, unless the Owner expressly approves otherwise.

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- I. Activity Details: Incorporate the following elements and requirements in proposed DCS:
1. Use clear and concise activity descriptions, designed to ensure that the beginning and end of each activity shall be readily observable and verifiable during execution of the Work.
 2. Restrict each activity to a single performing organization. Such organizations shall include Contractor self-performing work organization(s), subcontractors (if any), manufacturers, fabricators, and time-sensitive suppliers. Involve all such performing organizations in the development of the Contract Schedule and secure their individual and collective express commitment to satisfy the requirements of the Contract Schedule proposed by Contractor to Owner. Cause said commitment from the first tier of subcontractors to be represented in the form of a signed acceptance by all such parties, included with the DCS submittal.
 3. Code activities in the DCS that are Owner responsibility to execute as Owner responsibility activities. Include such activities as review and acceptance of documentation (including the DCS schedule), design submittals, issuance of NTP's and other Owner activities. Allow adequate duration for the Owner review activities and as noted in other sections of the Contract, but never less than seven working days unless Owner expressly approves otherwise.
 4. In addition to identification of responsible organization, each activity shall have codes identifying areas of work that coordinate with the above general sequencing plan. Ensure that areas of work are planned and scheduled in the DCS in manageable increments. Code such increments and assign an area code to each relevant activity.
 5. Distribute the Contract Price over activities (hereinafter "cost loading"). Mobilization, bond and insurance costs may be indicated separately on individual activities; however, prorate other general requirement costs, such as overhead and profit, throughout all activities. Divide each activity's cost loading into each of labor, material, and equipment where Contractor desires to receive payment for uninstalled material delivered to the project site separate from labor and/or equipment expenditure on the activities concerned.
 6. Provide schedule activities for each of permits, notices, tests and inspections for all pertinent activities and phases.
 7. Build schedule to reflect incremental completion of the project (e.g. by floor/by area/ by systems/equipment). Include appropriate time for Contractor and Owner for reviewing, listing, conducting, correcting and verification of incomplete and/or deficient work (IDW), organized by project area.
 8. Provide activities for key submittals, in coordination with the level of detail indicated in the key items procurement report.
- J. Resource Analyses:
1. Prepare a manpower leveling analysis, derived directly from the proposed DCS. Submit subject analysis with proposed DCS, in graphic format depicting manpower by principal trades. Analysis shall span the entire Work duration and shall include separate graphs for each of a) manpower by discipline per Work Day, and b) man-hour usage by discipline in the form of a cumulative "S" curve. Subject manpower leveling analysis shall include discipline-by-discipline manpower leveling using Contractor-imposed caps for each labor category, which coordinate with Milestone requirements, and which correlate with Contractor's and each subcontractors actually manning plans by trade for the Work. Through the use of such resource caps, identify and correct any peaks or troughs in each discipline manpower usage distribution. Present evidence of the leveling iterations to the Owner with DCS submission.
 2. Present evidence that Contractor's proposed DCS shall not (a) be controlled by the limitations in the quantities of labor or other resources, or alternatively, (b) propose a plan for selective management by Contractor of selected resource types to ensure that no resources may control the critical path or paths at any time during execution of the Work.
- 2.02 ACCEPTANCE OF DCS
- A. Owner's acceptance of the Contractor's DCS is a condition precedent to any progress payments to Contractor.

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- B. Upon Owner's acceptance of the cost-loaded values, such values will be used as a basis for determining progress payments.
- C. Owner's acceptance of proposed DCS signifies only that Owner's summary review of the DCS leads Owner to believe that Contractor has met the general requirements of this specification pertaining to DCS format and content. Acceptance by Owner of the DCS does not relieve Contractor of any of its responsibility whatsoever for the accuracy or feasibility of Contractor's plan for execution of the Work, or to perform the Work within specified time constraints. Such Owner acceptance does not expressly or impliedly warrant, acknowledge or admit the reasonableness of the activities, logic, durations, manpower, cost or equipment loading of the Contractor's proposed or accepted Contract Schedule.
- D. Owner's acceptance in no way makes Owner or its representatives insurers of success of Contractor's time performance or liable for time or cost overruns flowing from the shortcomings of Contractor-authored Contract Schedule. Owner disclaims and Contractor waives any Owner obligation or liability by reason of Owner's active or passive acceptance of or acquiescence to Contractor's schedule submissions.
- E. Should Contractor fail to properly define any element of Work, activity or logic and Owner review does not detect this omission or error, such omission or error, when discovered by Contractor or Owner, shall be corrected by Contractor before the next monthly schedule update and shall not be cause for delay of completion of the Work within the specified time constraints. Contractor acknowledges that Owner is not required or otherwise obligated to discover errors or omissions in Contractor's proposed Contract Schedule.

2.03 FLOAT TIME

- A. Float time is not for the exclusive benefit of either Contractor or Owner. Manage work according to early start dates, by commencing activities on the early start date (calculated by the latest approved Contract Schedule) or earlier if possible, unless constrained by a bona fide resource limitation. Owner may reserve and apportion float time according to the needs of the Project. Actual or projected Owner-caused delays that do not exceed available float time shall not have any effect upon Contractor's adherence to specified time constraints and shall not be a basis for any time extension or additional compensation.
- B. Contractor acknowledges that a) activity delays shall not automatically result in adjustment of specified time constraints, b) a Change Order (i.e. modification or amendment of the contract) or other Owner action or inaction may not affect existing critical activities or cause non-critical activities to become critical, c) a Change Order or delay may result in only consuming a part of the available total float that may exist within an activity chain of the network, thereby not causing any effect on specified time constraints.
- C. Pursuant to the above float sharing requirements, use of float released by elimination of float suppression techniques such as preferential sequencing, special lead/lag logic restraints, unreasonably extended activity durations, or imposed dates shall be distributed by Owner to the benefit of Owner and Contractor.
- D. In the event the Contractor wishes to complete the Work earlier than the time specified therefor:
 - 1. Continue to calculate float based on the Work completion date specified as of Contract execution, by maintaining the specified Work completion date as a "finish-no-later-than" constraint.
 - 2. The completion time for the Work shall not be amended by Owner's approval of, acceptance of or acquiescence to Contractor's proposed earlier completion date.
 - 3. Contractor shall not, under any circumstances, receive additional compensation for indirect, general, administrative or other forms of overhead costs, for the period between the time of earlier completion proposed by Contractor and the completion time for the Work specified as of NTP.

PART 3 - EXECUTION**3.01 UPDATES**

- A. Update the Contract Schedule every 2 weeks and in coordination with Contractor's requests for progress payments.

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- B. On a working day (designated data date) approximately five working days preceding time designated for monthly payment, meet with Owner for the purpose of reviewing Contractor's report of actual progress. Submit Contractor's up-to-date and accurate progress data as of Data Date.
- C. Submit computer reports and network graphics that reflect the progress of the Work with respect to both cost and time, in accordance with the requirements of the initial Contractor-proposed DCS. Adjust the selection and sort sequence, format and content of reports as directed by Owner.
- D. Contractor acknowledges that updating the Contract Schedule to reflect actual progress made as of the date of update is not a modification to the Contract Schedule's Milestone requirements.
- E. Submit progress report indicating the activities (and portions of activities by percentage) completed during the reporting period, the actual start dates for those activities currently in progress, the actual finish dates for those activities which were completed since the last update, and the progress along and deviations from the critical path in terms of days ahead or days behind each individual Milestone date.
- F. Submit a narrative report which shall include a description of the status of the schedule, problem areas if any, current and anticipated delaying factors and their known and/or forecast impact, and an explanation of corrective actions taken and planned.
- G. Submit list of actual number of personnel (or man-hours) by discipline by working day by activity actually engaged on the Work during the reporting period, with such total stated separately as to on-site office (project work location), administrative management personnel and on-site supervisory personnel. These man-hour reports shall directly correlate to Contractor's certified payroll presentations.
- H. Submit two updated copies of the network. The first copy shall be an updated version of the Contract Schedule, excluding Contractor-proposed changes. The second copy shall be an updated version of the Contract Schedule, including Contractor-proposed changes. Submit with the second copy a list of proposed modifications, additions, deletions and changes in activity logic and/or durations to approved Contract Schedule, including time-recovery steps and actions required by the "Responsibility for Completion" provisions of this specification. Include a written justification for each such proposal.
- I. If, as a result of the monthly update, it appears the Contract Schedule no longer represents the actual prosecution and progress of the Work, submit a revision to the Contract Schedule. Include proposed adjustments in activity durations, logic changes, and resource usage or cost loading. Any negative float indicated in Contractor's proposed updates must be presented to Owner by Contractor with a bona fide Contractor-authored plan for elimination of such negative float.
- J. Owner will respond in writing to each schedule update. Owner's response may include questions and/or requests for revisions. Respond in writing within seven calendar days, answering questions, and either agreeing with Owner's proposed revisions and submitting a modified update, or setting forth justification why such revisions should not be implemented. If Contractor's justification for not implementing the revision is acceptable, in Owner's sole judgment, such revision will be waived. If Owner does not accept the Contractor's justification, incorporate the Owner-directed revisions into the Contract Schedule.

3.02 PROGRESS PAYMENTS

- A. Contractor's submission and acceptance by Owner of monthly progress updates and the reports calculating the value of work done for any given pay period for each activity based on the percentage complete for that activity less the amount previously paid for past percentages complete and percent of retainage (if applicable) shall precede Owner's processing of payment to Contractor. Contractor shall be entitled to progress payments only as determined from cost reports directly derived from Contractor's updated Contract Schedule, approved by Owner in form and content. If, in the judgment of Owner, Contractor fails to provide full and complete Contract Schedule update as specified herein, Contractor shall be deemed to have not provided the required information upon which progress payments may be made.
- B. Monthly progress payments shall be based upon information provided in Contractor's monthly schedule update. A computer-produced cost report, derived from an updated DCS, will be utilized by Owner for calculation of the amounts due Contractor. The DCS resources pertaining to payment for materials shall govern payment of materials fully incorporated into the Work. In the event Contractor wishes to be paid for items stored on the project

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work site but not incorporated in the Work, or for items stored offsite, the Contractor shall comply with procedures for such payment established by the Owner.

3.03 REQUESTED TIME ADJUSTMENT SCHEDULE (RTAS)

- A. The updated Contract Schedule submitted by Contractor shall not indicate a completion date later than the specified time constraints, subject to time extensions approved by Owner. If Contractor believes it is entitled to a time extension, submit to Owner, within the deadlines set out herein and with each contemporaneous monthly update, a separate schedule analysis entitled Requested Time Adjustment Schedule ("RTAS"). Indicate, in said analysis, in addition to requirements of the General Conditions, proposed adjustments in the Contract Schedule which, in the opinion of Contractor, should be made due to changes, delays or conditions occurring during the past month or previously, or which are expected or contended by Contractor. Said analysis shall be time-scaled utilizing a computer generated and computer drawn network. This paragraph shall not relieve Contractor of its obligation to provide proper and timely separate written notice of impacts to schedule. Contractor acknowledges that its preparation of RTASs is not extra work to the Contract and that, therefore, preparation by Contractor of RTASs shall not be cause for Contractor to receive any additional time for performance of the Work or additional compensation.
- B. Subject to float sharing requirements defined herein, time extensions will be granted only to the extent of equitable and mutually acceptable time adjustments to the activity or activities affected by the Change Order(s), or where delay consumes the total (positive or zero) float of a critical activity (or path) and extends Milestone dates, using the approved update of the Owner-approved Contract Schedule that is current as of the issue of Owner's written request for Contractor proposal connected with a potential Change Order or other Owner-accountability potential schedule effect.
- C. Submit RTAS within twenty calendar days after the initiation of the thing(s) or event(s) which Contractor contends may lead to a potential Owner-accountability delay in the performance of the Work, or from the time of Owner's issuance of a written request for Contractor proposal connected with a potential change order (or documents of like effect), even if such issuance precedes notice to proceed for change order(s) concerned, whichever is later. Other Owner-caused potential impacts of any category shall be considered to have been initiated upon written initial Owner direction connected therewith, including direction provided through duly minuted meetings.
- D. Within 14 calendar days following submittal by Contractor to Owner of RTAS, in the proper format and including all specified content, Owner will meet with Contractor to review the submittal. Revise and resubmit RTAS within 3 working days of such meeting, adjusting RTAS to consider issues raised by Owner in above meeting. Owner will respond with written decision within 7 calendar days following Contractor resubmittal of RTAS. Upon approval, if approved, a copy of the RTAS signed by Owner shall be returned to Contractor and thereafter incorporated into the Contract via Change Order. Incorporate the results of each approved RTAS in the update of the Contract Schedule that immediately follows such approval.
- E. Contractor waives its right to submit requests for time extension and to receive a time extension unless it meets the above requirements for RTASs. Contractor waives any claim for acceleration due to refusal by Owner to grant time extensions should Contractor fail to comply with the submission and justification requirements described herein for RTASs. Contractor's submission of RTASs shall not constitute a basis for adjustment in specified time constraints unless and until approved by Owner. Actively pursue timely completion of all activities pending such approval.

3.05 RESPONSIBILITY FOR COMPLETION

Furnish sufficient forces, offices, materials, facilities, plant and equipment, to ensure the prosecution of the Work in accordance with the most current approved Contract Schedule update. Upon Owner's written notice that Contractor is behind schedule, as a result of inexcusable causes, immediately remediate such time loss by increasing the hours of work, the number of shifts, overtime operations and/or the amount of plant and equipment, without additional cost to Owner. Contractor acknowledges that such remedial action by Contractor is not compensable acceleration of the performance of the Work. The provisions of this paragraph shall not be construed as prohibiting work on Saturdays, Sundays, and holidays, if the Contractor so elects and gives written notice to Owner two working days in advance of it.

END OF SECTION

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SECTION 01110

CHANGE ORDER PROCEDURES

PART 1 - GENERAL

A. Work included:

Contractor activities and requirements pertaining to contract change orders and associated processes.

B. Definitions:

1. Change Order: A written order to the Contractor signed by Owner directing an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time issued after the effective date of the Contract. A Change Order may or may not also be signed by the Contractor. Change Orders shall state the dollar value of the change or establish method of payment, any adjustment in Contract Time, and, when negotiated prices and/or adjustment(s) in Contract Time and/or Milestones are involved, shall provide for the Contractor's signature indicating his acceptance.

C. Basis for Establishing Costs

1. General: The cost or credit to Owner resulting from Change Orders shall be determined in one or more of the following ways: (1) by the Contract parties' mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit Owner evaluation; or (2) by unit prices stated in the Contract Documents or subsequently agreed upon; or (3) by Force Account.

2. Mark-ups: Apply only allowable mark-ups to Contractor-proposed estimates of the direct cost of labor, materials, equipment and other approved categories of costs Contractor proposes to incur in the execution of work under Change Orders. Allowable overhead and profit percentage mark-ups are set out in the following. These percentages include full and final compensation to Contractor for the cost of additional bonding, estimating, field supervision above the level of working foremen including superintendents, assistant superintendents and general foremen, field engineers, accountants, timekeepers, office managers, and other on-site staff, office supplies, drinking water, temporary heat, light and power, safety equipment, general clean-up, small tools, field offices, tool trailers, field toilets, personnel vehicles including pick-up trucks, minor consumables, and other cost of labor, materials, equipment and incidental overhead or profit not incorporated in Work or Change Order work and directly or indirectly associated with Work or Change Order work, including home office costs, overhead costs of all sorts including general, administrative, corporate and legal overhead costs, preparation of cost proposals and schedule analyses connected with Change Orders (whether such Change Orders are contemplated or implemented), liability, property damage and other insurances, executives, managers, administrators, office managers, supervisors, assistants and other home office staff and other staff not located on the Project site. The following percentages shall be added to the net increases (or deducted from, for net credits) the Contractor's costs and shall constitute the markup for overhead and profits. The percentages for overhead and profit to be allowed by Owner on Contractor's self-performed Change Order work may vary according to the nature, extent, and complexity of work involved, but in no case shall exceed the following:

- Labor:.....8%
- Materials:6%
- Equipment rental:8%
- Owner -approved items and expenditures not listed above:6%

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3. Combined Increases and Decreases: On proposals involving both increases and decreases in the Contract Price, the overhead and profit mark-ups will be allowed on the net increases only. On net decreases, deduct corresponding overhead and profit.
4. Limit of Mark-Up on Subcontracted Change Order Work: Contractor may apply a mark-up fee of up to 5% on the approved cost of subcontracted Change Order work, however this percentage shall apply to the first Subcontractor tier only, which may be no higher than the mark-ups in item 2 above. Mark-up on multi-tier subcontracted work shall be subject to the following limitations. The aggregate arithmetic total of percentage mark-ups for overhead and profit and fee, expressed as whole integers, applied to the whole or any portion of subcontracted work at all tiers in the Contractor's Change Order proposals may not exceed a total of 25 based on the following formula: Contractor's mark-up on Subcontractors' proposals equals "a", Subcontractors' mark-up equals "b", and Sub-Subcontractors' mark-ups equal "c" through "n". The aggregate of these figures expressed as whole integers (a + b + (c through n)) shall be less than or equal to 25 for increased cost portions of Change Order proposals and shall be equal to 8% for reduced cost (credit to Owner) portions of Change Order proposals. The Owner shall not be responsible to allocate percentages between Contractor, Subcontractors and/or Sub-Subcontractors at any tier.
5. Force Account: When the price or other terms for work under a contemplated Change Order cannot be agreed upon, and the Owner directs the Contractor to proceed on a "Force Account" basis, the Contractor shall promptly execute such work in accordance with the Owner's written direction. Submit a separate daily report for each Change Order under Force Account to the Owner on forms furnished by Owner, together with applicable delivery tickets and material use information. Failure by Contractor to submit the daily report for Owner approval and signature before the close of the next working day shall extinguish Contractor's right to recover change order costs for that day. Contractor shall reconcile the report daily, and it shall be signed by the Owner and the Contractor. In the event of disagreement, pertinent notes may be entered by each party to explain points which cannot be resolved immediately. Each party shall retain a signed copy of the daily reports. Reports by Subcontractors to Contractor or other parties performing work under Change Orders shall be submitted through the Contractor and must use the same forms as used by Contractor.

The reports shall:

- a. Describe nature of work underway and locations of same.
 - b. Show names of workers, classifications, and hours worked.
 - c. Describe and list quantities of materials used.
 - d. Show type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable.
 - e. Describe other services and expenditures authorized by Owner in such detail as the Owner may require.
6. Allowable costs: Comply with the following requirements for proposals and record keeping for Change Order work, including under Force Account.
 - a. Labor: Report cost of Change Order labor by itemizing each craft involved, and indicating hourly rate for each and hours required, excluding premium pay, paid to employees proposed by Contractor to be directly engaged in Change Order work. The costs of labor will be the cost for wages prevailing for each craft or types of workers performing the work under Change Order at the time the Change Order is done or contemplated to be performed, plus employer payments of all applicable burdens including payroll taxes, Social Security, unemployment insurances, workers compensation insurance, health and welfare, pension, Social Security (FICA) tax, Federal unemployment insurance (FUTA), and other direct costs resulting from Federal, State or local laws, as well as assessments or benefits such as union dues, apprenticeship funds, subsistence and/or mileage, required by lawful collective bargaining agreements. The use of a labor classification which would increase the Change Order cost will not be permitted unless the Contractor establishes the necessity for such

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additional costs to the satisfaction of the Owner. Labor productivity assumed by Contractor in its lump sum Change Order cost proposals shall be the same as that assumed by Contractor for similar work included in the Contract Price as of execution of the Contract. By execution of this agreement, Contractor agrees that national estimating standards including R.S. Means, Mechanical Contractors Association (MCA) and National Electrical Contractors Association (NECA) indicate conservative productivity assumptions by the standards of the Work (and any associated Change Orders) and may not be used by Contractor in Change Order cost proposals. Propose productivity factors which are applicable to the work under the contemplated lump sum Change Order and provide data supporting their derivation and reasonableness to the Owner for its review and consideration. Report labor costs for equipment operators and helpers only when such costs are not included in invoices for equipment rental, if applicable. The labor cost for working foremen shall be apportioned to all of their assigned work and only that portion applicable to Change Order work shall be paid. In no case will a ratio higher than one foreman per six workers be allowed for Change Order work. In the event Owner directs Contractor to perform work on a basis which will result in costs for premium time, the premium portion of applicable wages for Change Order work which the Contractor was directed by Owner to be performed other than normal working hours may be allowed by Owner, including social security taxes, unemployment insurance, and union fringe benefits if required by lawful union agreements, but overhead and profit mark-ups shall not be applied to such premium time costs.

- b. **Materials:** The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available (whichever yields the lowest cost to Owner) and delivered to the job site in the quantities involved, plus sales tax, freight and delivery. Reduce proposal in proportion to any pertinent tax rebates which shall inure to Contractor's benefit. The Owner reserves the right to approve materials and sources of supply, or to supply materials to the Contractor if necessary for the progress of the Work. No markup shall be applied to any material provided by the Owner.
- c. **Equipment (Including Tools):** No payment will be made to Contractor for the use of equipment or tools which have a replacement value of \$500 or less. Regardless of ownership, the rates (including mark-up, if any) to be used in determining equipment rental costs shall not exceed rates listed in "Construction Equipment Ownership and Operating Expense Schedule", of the applicable Region, latest edition, published by Department of the Army, U.S. Army Corps of Engineers, Washington, D.C. The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals. If the equipment is not already on the Project site, necessary loading and transportation costs for equipment used on the Change Order work may be included in Contractor Change Order proposals. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to the Owner than holding it at the work site, it shall be returned, unless the Contractor elects to keep it at the work site at no expense to the Owner. All equipment shall be acceptable to the Owner, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and manufacturer's approved modifications shall be used to classify equipment and it shall be powered by a unit of at least the minimum rating recommended by the manufacturer. The reported rental time for equipment already at the job site shall be the duration of its use on the Change in the Work, commencing at the time it is first put into actual operation on the Change in the Work, plus the time required to move it from its previous site and back or to a closer site.
- d. **Other Items and Expenditures:** The Owner may authorize other items which may be required on the Change Order work. Such items include labor, services, material and equipment which are different in their nature from those required for the Work specified in the Contract and which are of a type not ordinarily available from the Contractor or any of his Subcontractors at any tier. Proposals or invoices covering all such items in detail shall be submitted with Contractor's Change Order proposals.

D. Methods Used In Determining Adjustments to Contract Time:

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Adjustments to the Contract Schedule which may or may not result in adjustments to Contract Time flowing from Change Orders are controlled by the provisions in Specification Section 01310. Extended overhead are costs which may be incurred by Contractor as a result of an extension of the Contract Time. The applicability of extended overhead costs for time extensions are governed by the requirements of Section 01310. Extended overhead costs, if allowed in accordance with the stipulations set out in Section 01310, may only include costs incurred on the Project site and shall exclude all cost categories included in overhead and profit mark-ups as set out in this Section.

E. Steps In Change Order Procedure:

1. Request for Proposal: Request for Proposal (RFP) defines proposed changes in the Work which are contemplated by Owner and which may or may not result in Change Order(s), and is prepared and given to Contractor by Owner.
2. Notice of Potential Impact: Upon receipt of a request for proposal (RFP), Contractor shall immediately review and evaluate the scope of such RFP's. Make an immediate determination of any potential impact on the Work. In the event any potential impact is determined, notify Owner immediately, but in no case more than 3 business days after Contractor's receipt of RFP. Owner may direct Contractor to stop work in the area affected by the change to minimize the cost impact, or may direct Contractor to immediately proceed with the change described in the RFP or some modification thereof, as the Owner deems fit.
3. Timing of Proposal Submission: Submit proposals and breakdown as promptly as possible, but no later than 12 working days following Contractor's receipt of Owner's RFP. Owner may, at its discretion, under a partnering arrangement with Contractor, elect to allow Contractor a negotiated incentive for timely submission by Contractor of Change Order proposals.
4. Content and Format of Proposal: Submit all proposals for contemplated Change Orders in the form of a lump sum fixed price proposal, unless otherwise requested by the Owner. Furnish the summaries and details of Change Order proposals in the format and on forms required by Owner. With each proposal for a change involving an increase or decrease in the Contract Price, submit an itemized breakdown that includes the following, and any other information requested by the Owner:
 - a. Labor costs (separated into trades), including all payroll burdens.
 - b. Material quantities and unit prices. (Separated into trades).
 - c. Construction Equipment (priced as herein described).
 - d. Subcontractor costs.
 - e. Other approved items and expenditures.
 - f. Mark-ups for overhead, profit and other costs as defined above.
5. Proposal Review: In considering proposals for changes in the Work involving added work, reduced or deleted work, or any combination thereof, Contractor proposals will be checked in detail by the Owner, utilizing unit prices where specified or agreed upon, with the objective of arriving at equitable adjustments.
6. Change Order Issuance: Change Order will be prepared by Owner if Contractor's proposal, or amended version thereof, is acceptable and agreed upon by Owner. Contractor is authorized to proceed after Owner issues notice to proceed with work in Change Order.
7. Procedure In Event of Non-Agreement: When the necessity to proceed with a change does not allow sufficient time to properly check a proposal, or the cost of the Change Order work cannot be agreed upon using lump sum, unit prices or other pricing method satisfactory to Owner, or because of failure to reach an agreement, or for other reason deemed by Owner to be in Owner's interest, Owner may, at its sole discretion, order the Contractor to proceed on the basis of price to be determined at the earliest practicable date (PDL Change Order).

Exhibit 6 - Construction Management Support Services – Draft Section 01110

Upon such written direction, perform the work directed and record all applicable costs in accordance with the Force Account procedure set out in this Section.

8. Miscellaneous Requirements:
 - a. Obligations of Surety Under Change Orders: Changes in the Work, or extensions of time, made pursuant to the Contract, shall in no way release the Contractor or Surety from their obligations. Notice of such changes or extensions shall be waived by the Surety.
 - b. Change Orders, supplemental agreements and Owner-approved revisions to Plans and Specifications will take precedence over the pertinent elements of the Contract Documents which are thereby amended or deleted.
 - c. No change in Work, whether by way of alteration, addition, clarification or interpretation, shall be the basis of adjustment to Contract Price or Contract Time unless and until authorized by Owner in a Change Order, executed in accordance with requirements of Contract Documents.
 - d. Agreement on any Change Order shall constitute a final settlement of all matters related thereto, including all direct and indirect costs associated with such change, and any and all adjustments to Contract Price and/or Contract Time.
 - e. Failure of Contractor and Owner to agree on an adjustment of Contract Sum or Contract Time shall not excuse Contractor from proceeding with prosecution and performance of Work not affected by Change Orders. Ensure that Contractor and Subcontractors, Sub-subcontractors and Suppliers handle all disputes in a manner which will permit Work to proceed on schedule while any matter in dispute is being resolved.
 - f. Invoices Under Force Account Work: Vendors' invoices for material, equipment rental, and other expenditures under Force Account Change Orders signed by Owner shall be submitted with the request for payment. If the request for payment is not substantiated by invoices or other documentation, the Owner may establish the cost of the item involved at the lowest price which was current at the time of the report.
 - g. Contractor can anticipate approximately fifty Change Orders being issued during its performance of the Work.
 - h. Change Order Requests (CORs): If the Contractor claims that additional cost or time is involved because of, (1) any written interpretation issued by Owner, (2) any order by the Owner to stop the Work where the Contractor was not at fault, (3) any written order for a change in the Work issued under an RFP or, (4) any other Contractor claims of any nature, the Contractor shall provide written notice of such claim within 20 calendars of the events or things giving rise to such claim. No such claim shall be valid and Contractor shall be deemed to have finally waived such claim unless so made. The above notice shall be given by the Contractor before proceeding to execute the work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Owner direction. Any change in the Contract Price or Contract Time resulting from such claim shall not be paid unless authorized by duly executed Change Order.
 - i. Disputed Work: If the Contractor and Owner are unable to reach agreement on disputed work, Owner may direct the Contractor to proceed with the work on a Force Account basis. Promptly execute such work when so directed. Payment shall be as later determined by the disputes provisions of the general conditions of contract. Although not to be construed as proceeding under Change Order provisions, the Contractor shall keep and furnish records of disputed work in accordance with paragraph herein entitled "Force Account". Applicability of this paragraph may be amended, if acceptable to both Contractor and Owner, by a Project-specific alternate disputes resolution agreement.

Exhibit 6 - Construction Management Support Services – Draft Section 01110

PART 2 - PRODUCTS - NOT USED

PART 3 - EXECUTION - NOT USED

END OF SECTION

Exhibit 7 - Construction Management Support Services – Summary of Project Program

NEW MARYLAND PUBLIC HEALTH LABORATORY OCCUPANCY AND AREA SUMMARY				Programmed Room Sizes
<i>Office & Office Support</i>				
<i>Total - Office & Office Support</i>				1,516
<i>Subtotal space Executive Suite</i>				1,516
<i>Regulatory and Administrative Programs</i>				
<i>Office & Office Support</i>				
<i>Total - Office & Office Support</i>				3,207
<i>Subtotal space Regulatory and Administrative Programs</i>				3,207
<i>Fiscal Administration</i>				
<i>Office & Office Support</i>				
<i>Total - Office & Office Support</i>				1,089
<i>Subtotal space Fiscal Administration</i>				1,089
<i>Emergency Preparedness and Response</i>				
<i>Office & Office Support</i>				
<i>Total - Office & Office Support</i>				315
<i>Subtotal space Emergency Preparedness and Response</i>				315
<i>Training Facilities and Library</i>				
<i>Office & Office Support</i>				
<i>Total - Office & Office Support</i>				6,806
<i>Subtotal space Training Facilities and Library</i>				6,806
<i>Total - Offices for Laboratory Divisions</i>				12,933
<i>Division of Newborn and Child Screening</i>				
<i>Office & Office Support</i>				
<i>Total - Office & Office Support</i>				2,542
<i>Total-DNA Laboratories</i>				660
<i>Subtotal - Division of Newborn and Childhood Screening</i>				9,442
<i>Total - Division of Newborn and Child Screening</i>				9,442
<i>Division of Molecular Biology, Virology, and Immunology</i>				

Exhibit 7 - Construction Management Support Services – Summary of Project Program

NEW MARYLAND PUBLIC HEALTH LABORATORY OCCUPANCY AND AREA SUMMARY				Programmed Room Sizes
Molecular Diagnostics				
<u>Office & Office Support</u>				
Total - Office & Office Support				126
<u>Lab & Lab Support</u>				
Total - Laboratory				4,480
Subtotal space Molecular Diagnostics				4,606
Molecular Disease Assessment				
<u>Office & Office Support</u>				
Total - Office & Office Support				126
<u>Lab & Lab Support</u>				
Total - Laboratory				3,518
Subtotal space Molecular Disease Assessment				3,644
Molecular Epidemiology				
<u>Office & Office Support</u>				
Total - Office & Office Support				126
<u>Lab & Lab Support</u>				
Total - Laboratory				2,830
Subtotal space Molecular Molecular Epidemiology				2,956
Sequencing Core Laboratory				
<u>Lab & Lab Support</u>				
Total - Laboratory				1,540
Subtotal space Molecular Sequencing Core Laboratory				1,540
Serology Laboratory				
<u>Office & Office Support</u>				
Total - Office & Office Support				378
<u>Lab & Lab Support</u>				
Total - Laboratory				5,280
Subtotal space Serology Laboratory				5,658
Virology Laboratory				
<u>Office & Office Support</u>				
Total - Office & Office Support				126
<u>Lab & Lab Support</u>				

Exhibit 7 - Construction Management Support Services – Summary of Project Program

NEW MARYLAND PUBLIC HEALTH LABORATORY OCCUPANCY AND AREA SUMMARY				Programmed Room Sizes
Total - Laboratory				5,775
Subtotal space Virology Laboratory				5,901
Animal Core Laboratory				
Office & Office Support				
Total - Office & Office Support				165
Lab & Lab Support (including BSL-2 space)				
Total - Laboratory				770
Subtotal space Animal Core Laboratory				935
Rabies Necropsy Laboratory				
Lab & Lab Support				
Total - Laboratory				2,040
Subtotal space Rabies Necropsy Laboratory				2,040
Division Wide Lab Support				
Office & Office Support				
Total - Office & Office Support				1,814
Lab & Lab Support				
Total - Laboratory				935
Subtotal space Division Wide Lab Support				2,749
Molecular Diagnostics/Virology BSL-3 Suite				
Lab & Lab Support				
Total - Laboratory				3,900
Subtotal space Molecular Diagnostics/Virology BSL-3 Suite				3,900
Bio Suite				
Lab & Lab Support				
Total - Laboratory				3,570
Subtotal space Bio Suite				3,570
Biowatch Suite				
Lab & Lab Support				
Total - Laboratory				660
Subtotal space Biowatch Suite				660

Exhibit 7 - Construction Management Support Services – Summary of Project Program

NEW MARYLAND PUBLIC HEALTH LABORATORY OCCUPANCY AND AREA SUMMARY				Programmed Room Sizes
BSL-3 Animal Testing Suite				
Office & Office Support				
Total - Office & Office Support				165
Lab & Lab Support (including BSL-3 space)				
Total - Laboratory				1,210
Subtotal space BSL-3 Animal Testing Suite				1,375
Total - Division of Molecular Biology, Virology, and Immunology				39,534
Division of Public Health Microbiology				
TB Mycobacteriology and Mycology				
Lab & Lab Support (including BSL-2 and BSL-3 space)				
Total - Laboratory				4,840
Subtotal space TB Mycobacteriology and Mycology				4,840
Public Health Microbiology				
Lab & Lab Support				
Total - Laboratory				5,390
Subtotal space Public Health Microbiology				5,390
Division Wide Support				
Office & Office Support				
Total - Office & Office Support				2,458
Lab & Lab Support				
Total - Laboratory				880
Subtotal space Division Wide Support				3,338
Total - Division of Public Health Microbiology				13,568
Division of Environmental Microbiology				
Water Microbiology				
Lab & Lab Support				
Total - Laboratory				1,210
Subtotal space Water Microbiology				1,210

Exhibit 7 - Construction Management Support Services – Summary of Project Program

NEW MARYLAND PUBLIC HEALTH LABORATORY OCCUPANCY AND AREA SUMMARY				Programmed Room Sizes
Dairy Chemistry and Microbiology				
<u>Lab & Lab Support</u>				
Total - Laboratory				1,870
Subtotal space Dairy Chemistry and Microbiology				1,870
Food Safety and Security				
<u>Lab & Lab Support</u>				
Total - Laboratory				2,200
Subtotal space Food Safety and Security				2,200
Division Wide Support				
Total- Lab Support				220
<u>Office & Office Support</u>				
Total - Office & Office Support				378
Subtotal space Division Wide Support				598
Total - Division of Environmental Public Health Micro				5,878
Division of Environmental Chemistry				
Inorganics Analytical Laboratory				
<u>Lab & Lab Support</u>				
Total - Laboratory				7,370
Subtotal space Inorganics Analytical Laboratory				7,370
Radiation Laboratory				
<u>Lab & Lab Support</u>				
Total - Laboratory				4,700
Subtotal space Radiation Laboratory				4,700
Air Quality Laboratory				
<u>Lab & Lab Support</u>				
Total - Laboratory				960
Subtotal space Air Quality Laboratory				960
Food Chemistry Laboratory				
<u>Lab & Lab Support</u>				

Exhibit 7 - Construction Management Support Services – Summary of Project Program

NEW MARYLAND PUBLIC HEALTH LABORATORY OCCUPANCY AND AREA SUMMARY				Programmed Room Sizes
Total - Laboratory				1,980
Subtotal space Food Chemistry Laboratory				1,980
Toxic Metals Laboratory				
Lab & Lab Support				
Total - Laboratory				4,400
Subtotal space Toxic Metals Laboratory				4,400
Semi-volatile Organics Laboratory				
Lab & Lab Support				
Total - Laboratory				4,840
Subtotal space Semi-Volatile Organics Laboratory				4,840
Volatile Organics Laboratory				
Lab & Lab Support				
Total - Laboratory				1,320
Subtotal space Volatile Organics Laboratory				1,320
Analytical Toxicology Laboratory				
Lab & Lab Support				
Total - Laboratory				2,500
Subtotal space Analytical Toxicology Laboratory				2,500
Division Wide Support				
Office & Office Support				
Total - Office & Office Support				1,368
Lab & Lab Support				
Total - Laboratory				2,530
Subtotal space Division Wide Support				3,898
Total - Division of Environmental Chemistry				31,968
Building Support Facilities				
Warehouse				
Office & Office Support				
Total - Office & Office Support				175
Building Support				

Exhibit 7 - Construction Management Support Services – Summary of Project Program

NEW MARYLAND PUBLIC HEALTH LABORATORY OCCUPANCY AND AREA SUMMARY				Programmed Room Sizes
Total - Laboratory				2,750
Subtotal- Warehouse				2,925
Outfits				
Office & Office Support				
Total - Office & Office Support				126
Lab Support				
Total - Lab Support				550
Subtotal space Outfits				676
Glassware Washing				
Office & Office Support				
Total - Office & Office Support				63
Lab & Lab Support				
Total - Laboratory Support				1,320
Subtotal space Glassware Washing				1,383
Archival Storage				
Building Support				
Total				770
Subtotal space Archival Storage				770
Chemical Storage				
Total - Chemical Storage				220
Subtotal space Chemical Storage				220
Gas Tank Storage/Manifold Area				
Total - Laboratory				190
Subtotal space Gas Tank Storage/Manifold Area				190
Waste Facilities				
Total				330
Subtotal space Waste Facilities				330
Maintenance				
Office & Office Support				

Exhibit 7 - Construction Management Support Services – Summary of Project Program

NEW MARYLAND PUBLIC HEALTH LABORATORY OCCUPANCY AND AREA SUMMARY				Programmed Room Sizes
Total - Office & Office Support				126
<u>Lab & Lab Support</u>				
Total - Laboratory				550
Subtotal space Maintenance				676
Security				
<u>Office & Office Support</u>				
Total - Office & Office Support				301
Subtotal space Security				301
Housekeeping				
<u>Office & Office Support</u>				
Total - Office & Office Support				126
Total				220
Subtotal space Housekeeping				346
Mailroom				
Total				110
Subtotal space Mailroom				110
Total				110
Subtotal space Shredding Area				110
Total				550
Subtotal space Staff Lockers/Toilet Rooms				550
Freezer Farm Room				
<u>Lab & Lab Support</u>				
Total - Laboratory Support				990
Subtotal space Freezer Farm Room				990
Receipt Facility				
<u>Lab & Lab Support</u>				
Total - Laboratory				1,210
Subtotal space All Hazards Receipt Facility				1,210

Exhibit 7 - Construction Management Support Services – Summary of Project Program

NEW MARYLAND PUBLIC HEALTH LABORATORY OCCUPANCY AND AREA SUMMARY				Programmed Room Sizes
Loading Dock				
Loading Dock				
<i>Total - Loading Dock</i>				2,200
Total - Building Support Facilities				12,987
Public Access Rooms				
Office & Office Support				
<i>Total - Office & Office Support</i>				204
Total				715
Subtotal space Public Access Rooms				919
Central Registration and Reporting Unit				
Courier Drop-Off				
Total				220
Subtotal space Courier Drop-Off				220
Accessioning				
Lab & Lab Support				
Total - Laboratory				1,100
Subtotal space Accessioning				1,100
Total				674
Subtotal space Data Entry				674
STAT Lab				
Total				110
Subtotal space STAT Lab				110
Storage				
Total				110
Subtotal space Storage				110
Cold Storage				

Exhibit 7 - Construction Management Support Services – Summary of Project Program

NEW MARYLAND PUBLIC HEALTH LABORATORY OCCUPANCY AND AREA SUMMARY				Programmed Room Sizes
<i>Lab & Lab Support</i>				
<i>Total - Laboratory Support</i>				165
<i>Subtotal space Cold Storage</i>				165
Total - Central Registration and Reporting Unit				2,379
TOTAL - NASF				129,608
TOTAL BUILDING GROSS SQUARE FEET (GSF) 65% Net-to-Gross				199,596

Construction Management Support Services – AIA C132-209 (Modified)

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Maryland Economic Development Corporation (MEDCO), a Maryland corporation and instrumentality
100 N. Charles St, Suite 630
Baltimore, MD 21201« »

and the Construction Manager:
(Name, legal status, address and other information)

« »« »
« »
« »
« »

for the following Project:
(Name, location and detailed description)

State of Maryland Public Health Laboratory Project

The Architect:
(Name, legal status, address and other information)

HDR Architecture, Inc.
7200 Wisconsin Avenue, Suite 501
Bethesda, MD 20814-3409

Third-Party Beneficiaries. The State of Maryland Department of Health and Mental Hygiene (DHMH) and Department of General Services (DGS) shall be third-party beneficiaries of this Agreement and, subject to any rights of the Trustee for the bonds issued by the Owner for the Project, shall have the right to enforce the Owner's rights under this Agreement against the Architect.

Owner's Agent. The Owner delegates powers to Forest City – New East Baltimore Partnership (FC-NEBP) that are necessary and appropriate for FC-NEBP's efficient and effective management of Construction Manager's Contract with Owner, including powers to modify said Contract, accept or reject performance, and provide initial approval or denial of payments to Construction Manager.

The Owner and Construction Manager agree as follows.

Construction Management Support Services – AIA C132-209 (Modified)

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	CONSTRUCTION MANAGER’S RESPONSIBILITIES
3	SCOPE OF CONSTRUCTION MANAGER’S BASIC SERVICES
4	ADDITIONAL SERVICES
5	OWNER’S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as “not applicable,” “unknown at time of execution” or “to be determined later by mutual agreement.”)

§ 1.1.1 The Owner’s program for the Project:

(Identify documentation or state the manner in which the program will be developed.)

Per documentation provided to CM or made available to CM before execution of this contract.

§ 1.1.2 The Project’s physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

In accordance with scope of work.

§ 1.1.3 The Owner’s budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

As directed by Owner.

§ 1.1.4 The Owner’s anticipated design and construction schedule:

- .1 Design phase milestone dates, if any:

In accordance with cost estimating schedule milestones.

Construction Management Support Services – AIA C132-209 (Modified)

.2 Commencement of construction:

Approximately February 1, 2011.

.3 Substantial Completion date or milestone dates:

Approximately 28 months after NTP to construction contractor.

.4 Other:

NA.

§ 1.1.5 The Owner intends the following procurement method for the Project:
(Identify method such as competitive bid, negotiated Contract or multiple Prime Contracts.)

Single general construction contract (including fit-up), based on 100% CDs.

§ 1.1.6 The Owner’s requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:
(List number and type of bid/procurement packages.)

Selected contracts for specialty items shall be procured by Owner and assigned to the GC.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

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§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.5:
(List name, address and other information.)

The Owner designates Forest City East Baltimore Partnership, LLC (FC-NEBP) as its Owner's Representative to act on the Owner's behalf with respect to the Project.

§ 1.1.9 The persons or entities, in addition to the Owner’s representative, who are required to review the Construction Manager’s submittals to the Owner are as follows:
(List name, address and other information.)

Not applicable.

§ 1.1.10 Unless provided by the Construction Manager, the Owner will retain the other consultants and contractors required for execution of the project.

§ 1.1.11 The Construction Manager identifies the following representative in accordance with Section 2.4:
(List name, address and other information.)

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§ 1.1.12 The Construction Manager’s staffing plan as required under Section 3.3.2 shall include:
(List any specific requirements and personnel to be included in the staffing plan, if known.)

Construction Management Support Services – AIA C132-209 (Modified)

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§ 1.1.13 The Construction Manager’s consultants retained under Basic Services, if any:

- .1 Cost Estimator:
(List name, legal status, address and other information.)

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- .2 Other consultants:

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§ 1.1.14 The Construction Manager’s consultants retained under Additional Services:

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§ 1.1.15 Other Initial Information on which the Agreement is based:

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§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the schedules, the Construction Manager’s services and the Construction Manager’s compensation.

ARTICLE 2 CONSTRUCTION MANAGER’S RESPONSIBILITIES

§ 2.1 The Construction Manager shall provide the services as set forth in this Agreement.

§ 2.2 The Construction Manager shall perform its services consistent with the skill and care ordinarily provided by construction managers practicing in the same or similar locality under the same or similar circumstances. The Construction Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project.

§ 2.3 The Construction Manager shall provide its services in conjunction with the services of an Architect. The Construction Manager shall not be responsible for actions taken by the Architect.

§ 2.4 The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.5 Except with the Owner’s knowledge and consent, the Construction Manager shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Construction Manager’s judgment with respect to this Project.

§ 2.6 The Construction Manager shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 2.6.1 Comprehensive General Liability with policy limits of not less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate for bodily injury and property damage.

Construction Management Support Services – AIA C132-209 (Modified)

§ 2.6.2 Automobile Liability covering owned and rented vehicles operated by the Architect with policy limits of not less than \$2,000,000 combined single limit and \$2,000,000 in the aggregate for bodily injury and property damage.

§ 2.6.3 The Construction Manager may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

§ 2.6.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than \$1,000,000 where individual Employers Liability occurrence is "each accident" and/or "disease – each employee", as applicable.

§ 2.6.5 Professional Liability covering the Construction Manager's negligent acts, errors and omissions in its performance of services with policy limits of not less than \$3,000,000 per claim and \$5,000,000 in the aggregate.

§ 2.6.6 The Construction Manager shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.6. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies.

ARTICLE 3 SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

§ 3.1 Definition

The Construction Manager's Basic Services consist of those described in the attached "scope of work" document and in Sections 3.2 and 3.3 and include usual and customary construction coordination and scheduling, constructability review, cost estimating, and allocation of construction activities among the contractors and vendors selected by Owner.

§ 3.2 Preconstruction Phase

§ 3.2.1 The Construction Manager shall review the program furnished by the Owner and any evaluation of the Owner's program provided by the Architect, to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner and Architect.

§ 3.2.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.2.3 NOT USED.

§ 3.2.4 In coordination with the estimating scope of work contained in attached "scope of work" document, based on preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems and may also provide its own suggestions.

§ 3.2.5 The Construction Manager shall expeditiously review design documents during their development and advise the Owner and Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect on constructability, availability of materials and labor, sequencing for phased construction, time requirements for procurement, installation and construction, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 3.2.6 The Construction Manager shall support preparation and periodic updates of the Project schedule included in the Construction Management Plan for the Owner's review and acceptance. The Project

Construction Management Support Services – AIA C132-209 (Modified)

schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and highlight items that could affect the Project's timely completion.

§ 3.2.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement. The Construction Manager shall include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in the estimates of the Cost of the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall advise the Owner and Architect if it appears that the Cost of the Work may exceed the Owner's budget and make recommendations for corrective action.

§ 3.2.8 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations whenever the Construction Manager determines that design details adversely affect constructability, cost or schedules.

§ 3.2.9 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding the assignment of responsibilities for temporary Project facilities and equipment, materials and services for common use of the Contractors. The Construction Manager shall verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

§ 3.2.10 The Construction Manager shall provide recommendations and information to the Owner regarding the allocation of responsibilities for safety programs among the Contractors.

§ 3.2.11 The Construction Manager shall provide recommendations to the Owner on the division of the Project into individual Contracts for the construction of various categories of Work, including the method to be used for selecting Contractors and awarding Contracts. If multiple Contracts are to be awarded, the Construction Manager shall review the Drawings and Specifications and make recommendations as required to provide that (1) the Work of the Contractors is coordinated, (2) all requirements for the Project are assigned to the appropriate Contract, (3) the likelihood of jurisdictional disputes is minimized, and (4) proper coordination is provided for phased construction.

§ 3.2.12 The Construction Manager shall support updating of the Project schedule to include the components of the Work, including phasing of construction, times of commencement and completion required of each Contractor, ordering and delivery of products, including those that must be ordered well in advance of construction, and the occupancy requirements of the Owner.

§ 3.2.13 The Construction Manager shall assist Owner to expedite and coordinate the ordering and delivery of materials, including those that must be ordered well in advance of construction.

§ 3.2.14 The Construction Manager shall assist the Owner in selecting, retaining and coordinating the professional services of surveyors, special consultants and testing laboratories required for the Project.

§ 3.2.15 The Construction Manager shall provide an analysis of the types and quantities of labor required for the Project and review the availability of appropriate categories of labor required for critical phases. The Construction Manager shall make recommendations for actions designed to minimize adverse effects of labor shortages.

§ 3.2.16 NOT USED.

§ 3.2.17 In coordination with the estimating scope of work contained in the attached 'scope of work', following the Owner's approval of the Drawings and Specifications, the Construction Manager shall update and submit the latest estimate of the Cost of the Work and the Project schedule for the Architect's review and the Owner's approval.

Construction Management Support Services – AIA C132-209 (Modified)

§ 3.2.18 The Construction Manager shall assist Owner in the development of lists of prospective bidders.

§ 3.2.19 The Construction Manager shall support development of bidders' interest in the Project and establish bidding schedules. The Construction Manager shall support Owner's issuance of bidding documents to bidders and the conduct of pre-bid conferences with prospective bidders. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.

§ 3.2.20 The Construction Manager shall assist Owner to receive bids, prepare bid analyses and make recommendations for the Owner's award of Contracts or rejection of bids.

§ 3.2.21 The Construction Manager shall assist the Owner in preparing Construction Contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by Contractors.

§ 3.2.22 The Construction Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the various Multiple Prime Contractors. The Construction Manager shall assist the Owner and Architect in connection with the Owner's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

§ 3.3 Construction Phase Administration of the Construction Contract

§ 3.3.1 Subject to Section 4.3 and the attached "scope of work", the Construction Manager's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.3.2 The Construction Manager shall provide a staffing plan indicating which representatives shall be in attendance at the Project site during the progress of construction. Such attendance may be full-time for certain periods, but is generally anticipated to be part-time for Construction Manager's personnel.

§ 3.3.3 The Construction Manager shall support Owner's on-site administration of the Contracts for Construction in cooperation with the Architect as set forth below and in AIA Document A232™-2009, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition. If the Owner and Contractor modify AIA Document A232-2009, those modifications shall not affect the Construction Manager's services under this Agreement unless the Owner and the Construction Manager amend this Agreement.

§ 3.3.4 NOT USED.

§ 3.3.5 Utilizing the construction schedules provided by the Contractors, the Construction Manager shall assist the Owner to update the Project schedule, incorporating the activities of the Owner, Architect, and Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery and procurement of products, including those that must be ordered well in advance of construction. The Project schedule shall include the Owner's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall assist the Owner to update and reissue the Project schedule as required to show current conditions. If an update indicates that the previously approved Project schedule may not be met, the Construction Manager shall recommend corrective action, if any, to the Owner and Architect.

§ 3.3.6 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner, Architect and Multiple Prime Contractors.

§ 3.3.7 Utilizing information from the Contractors, the Construction Manager shall schedule and coordinate the sequence of construction and assignment of space in areas where Contractors are performing Work, in accordance with the Contract Documents and the latest approved Project schedule.

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§ 3.3.8 The Construction Manager shall schedule all tests and inspections required by the Contract Documents or governmental authorities, and arrange for the delivery of test and inspection reports to the Owner and Architect.

§ 3.3.9 The Construction Manager shall endeavor to obtain satisfactory performance from each Contractor. The Construction Manager shall recommend courses of action to the Owner when requirements of a Contract are not being fulfilled.

§ 3.3.10 The Construction Manager shall monitor and evaluate actual costs for activities in progress and estimates for uncompleted tasks and advise the Owner and Architect as to variances between actual and budgeted or estimated costs. The Construction Manager shall promptly notify the Contractor if there are any inconsistencies or inaccuracies in the information presented. The Construction Manager shall also report the Contractor's cost control information to the Owner.

§ 3.3.11 The Construction Manager shall assist the Owner to develop cash flow reports and forecasts for the Project.

§ 3.3.12 The Construction Manager shall maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.

§ 3.3.12.1 The Construction Manager shall develop and implement procedures for the review and processing of Applications for Payment by Contractors for progress and final payments.

§ 3.3.12.2 Not more frequently than monthly, the Construction Manager shall review and certify the amounts due the respective Contractors as follows:

- .1 Where there is only one Contractor responsible for performing the Work, the Construction Manager shall, within seven days after the Construction Manager receives the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect.
- .2 Where there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall, within seven days after the Construction Manager receives each Contractor's Application for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each Contractor, (2) prepare a Summary of Contractors' Applications for Payment by summarizing information from each Contractor's Application for Payment, (3) prepare a Project Application and Certificate for Payment, (4) certify the total amount the Construction Manager determines is due all Multiple Prime Contractors collectively, and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 3.3.12.3 The Construction Manager's certification for payment shall constitute a representation to the Owner, based on the Construction Manager's evaluations of the Work and on the data comprising the Contractors' Applications for Payment, that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Construction Manager. The issuance of a Certificate for Payment shall further constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

§ 3.3.12.4 The certification of an Application for Payment or a Project Application for Payment by the Construction Manager shall not be a representation that the Construction Manager has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction

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means, methods, techniques, sequences for the Contractor's own Work, or procedures; (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.3.13 The Construction Manager shall review the safety programs developed by the Contractors solely and exclusively for purposes of coordinating the safety programs with those of the other Contractors and for making recommendations to the Owner for any safety programs not included in the Work of the Contractors. The Construction Manager's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractor, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 3.3.14 The Construction Manager shall determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work. The Construction Manager shall have the authority to reject Work that does not conform to the Contract Documents and shall notify the Architect about the rejection. The failure of the Construction Manager to reject Work shall not constitute the acceptance of the Work. The Construction Manager shall record any rejection of Work in its daily log and include information regarding the rejected Work in its progress reports to the Architect and Owner pursuant to Section 3.3.20.1. The Construction Manager may require and make arrangements for additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed, and the Construction Manager shall give timely notice to the Architect of when and where the tests and inspections are to be made so that the Architect may be present for such procedures.

§ 3.3.15 The Construction Manager shall advise and consult with the Owner and Architect during the performance of its Construction Phase Services. The Construction Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Construction Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work of each of the Contractors, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Construction Manager shall not be responsible for a Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall be responsible for the Construction Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or any other persons or entities performing portions of the Work.

§ 3.3.16 The Construction Manager shall transmit to the Architect requests for interpretations and requests for information of the meaning and intent of the Drawings and Specifications with its written recommendation, and assist in the resolution of questions that may arise.

§ 3.3.17 The Construction Manager shall review requests for changes, assist in negotiating Contractors' proposals, submit recommendations to the Architect and Owner, and, if they are accepted, prepare Change Orders and Construction Change Directives that incorporate the Architect's modifications to the Contract Documents.

§ 3.3.18 The Construction Manager shall assist the Initial Decision Maker in the review, evaluation and documentation of Claims, subject to Section 4.3.1.7.

§ 3.3.19 Utilizing the submittal schedules provided by each Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from the Owner, Owner's consultants, Owner's separate contractors and vendors, governmental agencies, and all other participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval. The Construction Manager shall promptly review all Shop Drawings, Product Data, Samples and other submittals from the Contractors

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for compliance with the submittal requirements of the Contract, coordinate submittals with information contained in related documents, and transmit to the Architect those that the Construction Manager recommends for approval. The Construction Manager's actions shall be taken in accordance with the Project submittal schedule approved by the Architect, or in the absence of an approved Project submittal schedule, with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractors, the Owner, or the Architect.

§ 3.3.20 When on site, the Construction Manager shall keep a daily log containing a record of weather, each Contractor's Work on the site, number of workers, identification of equipment, Work accomplished, problems encountered, and other similar relevant data as the Owner may require.

§ 3.3.20.1 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of remaining and outstanding Submittals;
- .4 Request for information, Change Order, and Construction Change Directive status reports;
- .5 Tests and inspection reports;
- .6 Status report of nonconforming and rejected Work;
- .7 Daily logs;
- .8 Summary of all Multiple Prime Contractors' Applications for Payment;
- .9 Cumulative total of the Cost of the Work to date including the Construction Manager's compensation and reimbursable expenses at the job site, if any;
- .10 Cash-flow and forecast reports; and

§ 3.3.20.2 In addition, for Projects or work constructed on the basis of the Cost of the Work, the Construction Manager shall include the following additional information in its progress reports:

- .1 Contractor's work force report;
- .2 Equipment utilization report;
- .3 Cost summary, comparing actual costs to updated cost estimates; and

§ 3.3.21 Utilizing the documents provided by the Contractor, Architect and Owner, the Construction Manager shall maintain at the site one copy of all Contracts, Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record all changes and selections made during construction, and in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. The Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations certified by a qualified surveyor or professional engineer. The Construction Manager shall make all such records available to the Architect and the Contractor, and upon completion of the Project, shall deliver them to the Owner.

§ 3.3.22 The Construction Manager shall arrange for the delivery, storage, protection and security of Owner-purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Work.

§ 3.3.23 With the Architect and the Owner's maintenance personnel, the Construction Manager shall observe the Contractor's final testing and start-up of utilities, operational systems and equipment and observe any commissioning as the Contract Documents may require.

§ 3.3.24 When the Construction Manager considers each Contractor's Work or a designated portion thereof is substantially complete, the Construction Manager shall, jointly with the Contractor, prepare for the Architect a list of incomplete or unsatisfactory items and a schedule for their completion. The Construction Manager shall assist the Architect in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

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§ 3.3.25 When the Work or designated portion thereof is substantially complete, the Construction Manager shall prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion. The Construction Manager shall submit the executed Certificate to the Owner and Contractor. The Construction Manager shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Construction Manager shall evaluate the completion of the Work of the Contractor and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.

§ 3.3.26 The Construction Manager shall forward to the Owner, with a copy to the Architect, the following information received from the Contractor: (1) certificates of insurance received from the Contractor; (2) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (3) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (4) any other documentation required of the Contractor under the Contract Documents, including warranties and similar submittals.

§ 3.3.27 The Construction Manager shall deliver all keys, manuals, record drawings and maintenance stocks to the Owner. The Construction Manager shall forward to the Architect a final Project Application for Payment and Project Certificate for Payment or final Application for Payment and final Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 3.3.28 Duties, responsibilities and limitations of authority of the Construction Manager as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Construction Manager, Architect, Contractor and Multiple Prime Contractors. Consent shall not be unreasonably withheld.

§ 3.3.29 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Construction Manager shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 NOT USED.

§ 4.2 NOT USED.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating this Agreement. Except for services required due to the fault of the Construction Manager, any Additional Services provided in accordance with this Section 4.3 shall entitle the Construction Manager to compensation pursuant to Section 11.3.

§ 4.3.1 NOT USED.

§ 4.3.2 NOT USED.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including the Owner's program, other objectives, schedule, constraints and criteria, special equipment, systems, and site requirements. Within 15 days after receipt of a written request from the Construction Manager, the Owner shall furnish the requested information as necessary and relevant for the Construction Manager to evaluate, give notice of, or enforce any lien rights, if any.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the

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Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 5.3 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it the risk of additional costs. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall retain an Architect to provide services, duties and responsibilities as described in a contract between Owner and Architect. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and Architect, and any further modifications to the agreement.

§ 5.5 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions pertaining to documents the Construction Manager submits in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services.

§ 5.6 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.7 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Construction Manager. Upon the Construction Manager's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Construction Manager to furnish them as an Additional Service, when the Construction Manager requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Construction Manager and Architect if the Owner becomes aware of any fault or defect in Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service or any fault or defect in the Construction Manager's services.

§ 5.12 The Owner reserves the right to perform construction and operations related to the Project with the Owner's own forces, and to award contracts in connection with the Project which are not part of the Construction Manager's responsibilities under this Agreement. The Construction Manager shall notify the Owner if any such independent action will interfere with the Construction Manager's ability to perform the Construction Manager's responsibilities under this Agreement. When performing construction or

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operations related to the Project, the Owner agrees to be subject to the same obligations and to have the same rights as the Contractors.

§ 5.13 NOT USED.

§ 5.14 Before executing the Contract for Construction, the Owner shall coordinate the Construction Manager's duties and responsibilities set forth in the Contract for Construction with the Construction Manager's services set forth in this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreements between the Owner and Contractors, including the General Conditions of the Contracts for Construction.

§ 5.15 The Owner shall provide the Construction Manager access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Construction Manager access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the contractors' general conditions costs, overhead and profit. The Cost of the Work includes the compensation of the Construction Manager and Construction Manager's Consultants, including compensation for reimbursable expenses at the job site, if any. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2 and 6.4. Evaluations of the Owner's budget, preliminary estimates for the Cost of the Work and detailed estimates of the Cost of the Work prepared by the Construction Manager represent the Construction Manager's judgment as a person or entity familiar with the construction industry. It is recognized, however, that neither the Construction Manager nor the Owner has control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Construction Manager cannot and does not warrant or represent that bids or negotiated prices will not vary from the budget proposed, established or approved by the Owner, or from any cost estimate or evaluation prepared by the Construction Manager.

§ 6.3 When the Architect provides cost estimating services, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Architect and the Construction Manager shall work cooperatively to conform the cost estimates to one another.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Construction Manager, in consultation with the Architect, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Construction Manager and Architect in making such adjustments.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 in consultation with the Construction Manager and Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .3 implement any other mutually acceptable alternative.

ARTICLE 7 COPYRIGHTS AND LICENSES

The Construction Manager and the Construction Manager's consultants, if any, shall not own or claim a copyright in the Instruments of Service. The Construction Manager, the Construction Manager's

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consultants, if any, and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Construction Manager intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Construction Manager shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Construction Manager waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Construction Manager waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A232–2009, General Conditions of the Contract for Construction. The Owner or the Construction Manager, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 Additional Requirements Due to Trustee. To the extent applicable, Owner may have to comply with Trustee requirements, and the parties acknowledge that Owner's approvals and other actions regarding Construction Manager's services may be affected by Trustee requirements. Construction Manager shall comply with all reasonable requests by Owner or lender for reports, certificates, statements and further services which are not inconsistent with the terms and conditions of this Agreement. However, in the event any such request requires Construction Manager to provide services not already part of the scope of services hereunder, Construction Manager shall be entitled to compensation as an Additional Service.

§ 8.1.4 Indemnification. To the fullest extent permitted by law, the Construction Manager shall indemnify and hold Owner, Owner's Representative, State of Maryland Department of Health and Mental Hygiene (DHMH) and State of Maryland Department of General Services (DGS), their respective consultants, trustees, officers, employees and agents, harmless from any and all loss, lawsuit, liability, damage, cost and expense (including reasonable attorneys' fees) to the extent caused by (i) the negligent acts, errors or omissions and willful misconduct of the Construction Manager, its consultants, agents or employees in connection with the Agreement; or (ii) any breach or default in the performance of the obligations of Construction Manager hereunder. The provisions of this Section shall survive termination of the Agreement.

§ 8.1.5 The Construction Manager and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Dispute Resolution. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within fifteen (15) days after delivery of this notice, executives of both parties shall meet at a mutually acceptable time and place in Baltimore to exchange relevant information and to attempt to resolve the dispute. All negotiations pursuant to this subsection are confidential and shall be treated as compromise and settlement negotiations for purposes of rules of evidence. All claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or reach thereof shall be subject to and decided by litigation. The parties agree that prior to proceeding with

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litigation, they shall participate in nonbinding mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association and shall make reasonable efforts to have all affected parties participate in such mediation. This covenant shall not prevent a party from filing the appropriate litigation as otherwise required by any applicable requirement at law or in equity. However, it is the intention of the parties to attempt to resolve their disputes by mediation as soon as possible without the necessity of engaging in litigation discovery procedures and each party will cooperate with the other in providing information factual or otherwise, which might reasonably be necessary for an effective early mediation of the dispute.

§ 8.2.2 Governing Law/Forum. This Agreement shall be governed by the laws of the State of Maryland, without giving effect to principles of conflicts of law thereof. If the above efforts to resolve the dispute are unsuccessful, either party may then commence litigation as provided in this Section. Each of the parties to this Agreement hereby irrevocably and unconditionally: (i) consents to submit to the exclusive jurisdiction of the courts of Baltimore City, Maryland for any proceeding arising out of or in connection with this Agreement and each such party agrees not to commence any such proceeding except in such courts, and (ii) waives any objection to the laying of venue of any such proceeding in the courts of Baltimore City, Maryland.

§ 8.2.3 NOT USED.

§ 8.2.4 NOT USED.

§ 8.1.9 Non-Recourse. Construction Manager acknowledges, agrees and accepts that any obligation of Owner hereunder is solely on a limited recourse basis and that Owner has no taxing power. Notwithstanding anything to the contrary contained in this Agreement or in any other agreement or contract executed and delivered by Owner in connection with the Project, neither this Agreement nor any such other contract or agreement shall (a) constitute a debt of the State of Maryland or any political subdivision, agency or instrumentality thereof other than Owner, (b) constitute a debt to which the faith and credit or taxing power of the State of Maryland or any political subdivision, agency or instrumentality thereof is pledged, or (c) obligate the State of Maryland or any political subdivision, agency or instrumentality thereof to make any appropriation for payment. Construction Manager agrees that it shall not have any recourse against the officers, directors or employees of Owner, and that the officers, directors and employees of Owner shall not be personally liable for, or have any personal obligation in any respect for, any claim based on or in respect of any liability of Owner for the performance of any covenant, agreement, obligation, term or condition contained in this Agreement. Construction Manager further agrees that, for payment hereunder or for the performance of any other covenant, agreement, obligation, term or condition contained in this Agreement, Construction Manager shall have recourse solely and exclusively against (i) prior to the issuance of the bonds by the Owner for the Project, funds paid to the Owner by DHMH or DGS and collectively with DHMH, "the "State," pursuant to the Interagency Agreement for payment by Owner to Construction Manager, (ii) the proceeds of the bonds issued by Owner for the Project, to the extent that such proceeds remain available for such use, and (iii) Owner's interest in the Project, including revenues from the Project available for such use. Construction Manager further agrees that for payment hereunder or for the performance of any other covenant, agreement, obligation, term or condition contained in this Agreement, Construction Manager shall have no recourse against any other assets, properties or funds of Owner or the State of Maryland or any political subdivision, agency or instrumentality thereof, and that in no event shall Owner be obligated to use any of its other assets, properties or funds to make any payment or discharge any covenant, agreement, term or condition under this Agreement. Construction Manager further agrees that, other than as stated herein, it shall have no recourse against Owner and shall not seek to assert any claim or to enforce any award or judgment against Owner for any liability or other obligation of Owner in connection with this Agreement or the transactions contemplated by this Agreement, whether such claim, award, judgment, liability or obligation be asserted or based in contract or in tort or otherwise. This provision shall survive the termination or expiration of this Agreement.

§ 8.1.10 No Liens. Construction Manager acknowledges that no lien of any kind or nature may be filed against the real property owned by MEDCO and/or the improvements constituting the Project, owned by Owner, a public entity.

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§ 8.1.11 Books and Records. Construction Manager shall maintain, in accordance with such reasonable accounting systems and procedures as may be reasonably requested by Owner, accurate and complete books and records in respect of the Project, including general ledgers and journals reflecting all costs and expenses incurred with respect to the Project, all bills received and paid and any and all other disbursements made by the Construction Manager with respect to the Project, including all payments requested on behalf of the Owner during the Construction Phase and all sums disbursed by the Trustee. Construction Manager shall retain the originals if available, or photocopies of all material notices, requests or other communications or documents received by Construction Manager on behalf of the Owner relating to the Project, the Contractor, the Trustee, any other creditor of the Owner, the issuer of the Owner's insurance policies, and any governmental, regulatory or supervisory entity. Such records shall be maintained on a current basis and shall be available for periodic examination by representatives of the Owner during the Construction Manager's normal business hours upon reasonable prior notice. Construction Manager shall maintain such records for a minimum period of three (3) years after Final Completion of the Project and shall deliver them to the Owner if the Owner so requires.

§ 8.1.12 Audit Rights. Owner and/or DHMH and DGS may, upon reasonable notice, audit the records of Construction Manager and its subconsultants and suppliers during regular business hours, during the term of this Agreement and for a period of three (3) years after Final Completion is made under this Agreement or longer, if required by law. Such audits may be performed by an Owner, DHMH and/or DGS representative or an outside representative engaged by Owner, DHMH and/or DGS.

For purposes hereof, "records" means any and all information, materials and data of every kind and character, whether hard copy or in electronic form, which may, in Owner, DHMH and/or DGS's judgment have any bearing on or pertain to this Agreement, including, without limitation, books, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, written policies and procedures, time sheets, payroll registers, payroll records, cancelled payroll checks, subcontract files (e.g., including proposals of successful and unsuccessful bidders, bid recap), original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), back-charge logs and supporting documentation, invoices and related payment documentation, general ledgers, records detailing cash and trade discounts earned, insurance rebates and dividends, superintendent reports, drawings, receipts, vouchers and memoranda.

Owner, DHMH and/or DGS's authorized representative shall have reasonable access to Construction Manager and Construction Manager's subconsultants' and suppliers' facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to this Agreement, may count employees at the Project site, may be present for the distribution of payroll and shall have such other rights of access as may be reasonably necessary to carry out an audit.

If an audit discloses overpricing or overcharges, Construction Manager shall refund the overpayment, if an audit discloses overpricing or overcharges in excess of \$200,000 in addition to making adjustments for the overcharges, the reasonable actual cost of DHMH and DGS's audit shall be reimbursed to Owner, DHMH and/or DGS by Construction Manager. Any adjustments and/or payments that must be made as a result of any such audit or inspection of Construction Manager's invoices and/or records shall be made within ninety (90) calendar days from presentation of Owner, DHMH and/or DGS's findings to Construction Manager.

Construction Manager shall ensure notice of Owner, DHMH and/or DGS's audit rights is provided to its subconsultants, suppliers and any other vendor providing services or materials for the Project and shall ensure that each agreement it enters into pursuant hereto includes the provisions of this Section.

§ 8.1.13.No Privity with State Parties. There is no privity of contract created by this Agreement between Construction Manager, its subconsultant(s), contractor(s) and/or subcontractor(s) and DGS, DHMH and the State of Maryland, and their respective affiliates, officers, directors, employees, agents, successors and assigns,

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§ 8.1.14. No Liability of State Parties. Neither DGS nor DHMH will incur any liability by virtue of any act, omission, negligence, or obligation of the Construction Manager, its subconsultant(s), contractor(s) and/or subcontractors pursuant to this Agreement,

§ 8.1.15 Compliance with Agreement. All work performed by Construction Manager, its subconsultant(s), contractor(s) and subcontractor(s), its agents and employees under any contract or subcontract shall strictly comply with the provisions of this Agreement.

§ 8.3 Arbitration NOT USED.

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Construction Manager grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Construction Manager under this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Construction Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Construction Manager's option, cause for suspension of performance of services under this Agreement. If the Construction Manager elects to suspend services, the Construction Manager shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Construction Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Construction Manager shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager shall be compensated for expenses incurred in the interruption and resumption of the Construction Manager's services. The Construction Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Construction Manager, the Construction Manager may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Termination. This Agreement may be terminated by either party upon not less than seven (7) days written notice should the other party materially breach this Agreement through no fault of the party initiating the termination; and the lapse of all applicable cure periods. Either party shall be given written notice by the other party of any default, and shall have a period of fifteen (15) days within which to cure the default (or such longer period as may be reasonably necessary to complete the cure so long as the party

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has commenced to cure and diligently and in good faith pursues the cure to completion), before the non-breaching party shall have any right to suspend its services or terminate this Agreement, in addition to its other rights and remedies as allowed by law or equity.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Construction Manager, the Construction Manager shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Construction Manager's services and include expenses directly attributable to termination for which the Construction Manager is not otherwise compensated, plus an amount for the Construction Manager's anticipated profit on the value of the services not performed by the Construction Manager, as set forth below.

§ 9.7.1 In the event of termination for the Owner's convenience prior to commencement of construction, the Construction Manager shall be entitled to receive payment for services performed, costs incurred by reason of such termination and reasonable overhead and profit on Preconstruction services not completed during the Preconstruction Phase.

§ 9.7.2 In the event of termination for the Owner's convenience after commencement of construction, the Construction Manager shall be entitled to receive payment for services performed and costs incurred by reason of such termination, along with reasonable overhead and profit on services not completed during the Construction Phase.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 NOT USED.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2009, General Conditions of the Contract for Construction, except for purposes of this Agreement, the term "Work" shall include the work of all Contractors under the administration of the Construction Manager.

§ 10.3 The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Construction Manager to execute certificates, the proposed language of such certificates shall be submitted to the Construction Manager for review at least 14 days prior to the requested dates of execution. If the Owner requests the Construction Manager to execute consents reasonably required to facilitate assignment to a lender, the Construction Manager shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Construction Manager for review at least 14 days prior to execution. The Construction Manager shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Construction Manager.

§ 10.6 Unless otherwise required in this Agreement, the Construction Manager shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

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§ 10.7 The Construction Manager shall have the right to include photographic or artistic representations of the design of the Project among the Construction Manager's promotional and professional materials. The Construction Manager shall be given reasonable access to the completed Project to make such representations. However, the Construction Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Construction Manager in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Construction Manager in the Owner's promotional materials for the Project.

§ 10.8 Confidentiality of Information. Construction Manager acknowledges that it or its employees may, in the course of performing its responsibilities under this Agreement, be exposed to or acquire information which is proprietary to or confidential to the Owner, DHMH, DGS and/or the State of Maryland. Any and all non-public information of any form so marked by the Owner, DHMH, DGS and/or the State of Maryland and obtained by Construction Manager in the performance of this Agreement will be deemed to be confidential and proprietary information. Construction Manager agrees to hold such information in strict confidence and not to disclose such information to third parties or to use such information for any purpose whatsoever during the Project and for a period of two (2) years thereafter without the written consent of Owner, DHMH and/or DGS, except as necessary for (a) the performance of its services under this Agreement; (b) to advise each of its employees who may be exposed to such proprietary and confidential information of their obligations to keep such information confidential; (c) compliance with professional standards of conduct for the performance of the services and/or related matters; (d) compliance with any law, regulation, ordinance, court order or governmental directive or other legal mandate; and/or (e) protection of Construction Manager against any claims or liabilities arising from performance of services under this Agreement. In the event of any disclosure by Construction Manager under subparagraphs (c), (d) or (e), Construction Manager will give Owner fourteen (14) days advance courtesy notice of such disclosure. This obligation will not apply to information previously in Construction Manager's possession or in the public domain, or information lawfully acquired on a non-confidential basis from others. This provision will survive termination of this Agreement.

§ 10.10 Non-Discrimination. Construction Manager may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Construction Manager retaliate against any person for reporting instances of such discrimination. Construction Manager shall provide equal opportunity for subconsultants, subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Construction Manager understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement or other sanctions. This clause is not enforceable by Construction Manager for the benefit of, and creates no obligation to, any third party. As a condition of entering into this Agreement, Construction Manager represents and warrants that every contract or subcontract it has entered into or will enter into for the performance of any of the work under this Agreement shall include a clause identical of paragraph above and shall post conspicuously a notice that sets forth this nondiscrimination policy in a place that is available to employees and applicants for employment.

§ 10.11 Time of the Essence. Time is of the essence with respect to Construction Manager's performance of services under this Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Construction Manager's Basic Services described under Article 3, the Owner shall compensate the Construction Manager as follows:

§ 11.1.1 For Preconstruction Phase Services in Section 3.2:

(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

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« »

§ 11.1.2 For Construction Phase Services in Section 3.3:
(Insert amount of, or basis for, compensation, including stipulated sums, multiples or percentages.)

« »

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

« »

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Construction Manager as follows:
(Insert amount of, or basis for, compensation.)

« »

§ 11.4 NOT USED:

« »

§ 11.5 The hourly billing rates for services of the Construction Manager and the Construction Manager’s consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Construction Manager’s and Construction Manager’s consultants’ normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

« »

Employee or Category	Rate (\$0.00)

§ 11.6 Compensation for Reimbursable Expenses

§ 11.6.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Construction Manager and the Construction Manager’s consultants directly related to the Project, as follows:

- .1 As pre-approved by Owner on Staff Nomination form.

§ 11.6.2 NOT USED.

§ 11.7 Payments to the Construction Manager

§ 11.7.1 An initial payment of « » (\$ « ») shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner’s account in the final invoice.

§ 11.7.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Construction Manager’s invoice. Amounts unpaid « » (« ») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

(Insert rate of monthly or annual interest agreed upon.)

« » % « »

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§ 11.7.3 NOT USED.

§ 11.7.4 NOT USED.

§ 11.7.5 Owner's Right to Dispute Invoices. Promptly upon receipt, Owner shall review Construction Manager's invoice. If Owner disputes in good faith all or any portion of any invoice, Owner shall notify Construction Manager within fifteen (15) days of receipt of the disputed invoice. Such notification shall clearly indicate that portion of the invoice which Owner disputes or for which Owner claims a setoff and shall include a reasonably detailed explanation of the reasons for disputing such portion or for the setoff, respectively. Any invoice or part of invoice not disputed by Owner in the manner and within the time period set forth above shall be paid by Owner within 30 days of receipt; provided, that such payment shall not act as Owner's waiver of any claims that may be asserted against Construction Manager for the performance of defective or deficient services. Owner shall not be required to make payment to Construction Manager on account of any amount disputed in good faith by Owner in the manner and within the time period set forth above until the matter in dispute has been resolved by the parties. Any amount so disputed shall not be deemed to be an amount due Construction Manager under this Agreement until the matter is so resolved by the parties. If the resolution of the matter indicates that Construction Manager is entitled to be paid any portion of such disputed amount, then such amount to be paid to Construction Manager shall be due and payable within 20 days after resolution of the matter.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

« »

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document C132™–2009, Standard Form Agreement Between Owner and Construction Manager as Adviser
- .2 Other documents:
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

- Exhibit 1 – Scope of Work
- Exhibit 2 – Staff Nomination Form
- Exhibit 3 – MBE/WBE Requirements
- Exhibit 4 – Draft Estimating Scope of Work
- Exhibit 5 – Draft Section 01310
- Exhibit 6 – Draft Section 01110
- Exhibit 7 – Summary of Project Program.

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

OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

« »« »

(Printed name and title)

« »« »

(Printed name and title)