



CITY OF DULUTH
PURCHASING DIVISION
Room 100 City Hall
411 West First Street
Duluth, Minnesota 55802-1199
218/730-5340 218/730-5922 FAX
purchasing@duluthmn.gov

Addendum #2
File # 15-0505
CONSTRUCTION MANAGER AT RISK SERVICES FOR THE AIRCRAFT
COMPLETION CENTER

This addendum serves to notify all bidders of the following changes to the solicitation documents:

- 1) **Section I-4, Type of Contract, is modified as follows:**
It is proposed that if the City enters into a contract as a result of this RFP, the initial contract covering the pre-construction services will be a Professional Services Agreement. At the point that the Guaranteed Maximum Price (GMP) is determined, the parties will enter into a Construction Manager at Risk contract.
- 2) **Section II-7, Standard Contract, is modified as follows:**
As stated in Part I-4, it is anticipated that a Professional Services agreement and a Construction Manager at Risk contract will be used for this project.
- 3) **Section II-9, Cost Submittal. Please add the following:**
C. Professional Services. Please provide a lump sum fee for pre-construction services. These services are identified in Section IV-4, Tasks, Part A – Pre-Construction Phase.
- 4) Copies of both the draft Professional Services Agreement and the draft Construction Manager at Risk contract are attached.

Please acknowledge receipt of this Addendum by signing, dating, and submitting a copy with your bid/proposal. Thank you.

Signature

Date

Posted July 31, 2015.

**AGREEMENT FOR PROFESSIONAL SERVICES
BY AND BETWEEN**

**CONSULTANT'S NAME
AND
CITY OF DULUTH**

THIS AGREEMENT, effective as of the date of attestation by the City Clerk (the "Effective Date"), by and between the City of Duluth, hereinafter referred to as City, and [insert consultant's name] located at [insert consultant's address], hereinafter referred to as Consultant for the purpose of rendering services to the City.

WHEREAS, the City has requested consulting services for [insert a description of the project] (the "Project"); and

WHEREAS, Consultant has represented itself as qualified and willing to perform the services required by the City; and

WHEREAS, Consultant submitted a Proposal to provide services for the Project (the "Proposal"). A copy of the Proposal is attached hereto as Exhibit A; and

WHEREAS, the City desires to utilize Consultant's professional services for the Project; NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

I. Services

Consultant will provide the following services related to the Project as described in Consultant's Proposal (the "Services"). Consultant agrees that it will provide its services at the direction of the [insert the title of the City Staff – such as "Director of Public Works"] ("Director"). In the event of a conflict between the Proposal and this Agreement, the terms and conditions of this Agreement shall be deemed controlling.

II. Fees.

It is agreed between the parties that Consultant's maximum fee for the Project and Services shall not exceed the sum of [insert written dollar amount of contract and 00/100th dollars (\$0.00)] inclusive of all travel and other expenses associated with the Project, payable from Fund ____-____-____. All invoices for services rendered shall be submitted monthly to the attention of Director. Payment of expenses is subject the City's receipt of reasonable substantiation/back-up supporting such expenses.

III. General Terms and Conditions

1. Amendments

Any alterations, variations, modifications or waivers of terms of this Agreement shall be binding upon the City and Consultant only upon being reduced to writing

and signed by a duly authorized representative of each party.

2. Assignment

Consultant represents that it will utilize only its own personnel in the performance of the services set forth herein; and further agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the City. The Primary Consultant(s) assigned to this project will be [insert key consultant's name or names] (the "Primary Consultant"). The Primary Consultant shall be responsible for the delivery of professional services required by this Agreement and, except as expressly agreed in writing by the City in its sole discretion, the City is not obligated to accept the services of any other employee or agent of Consultant in substitution of the Primary Consultant. The foregoing sentence shall not preclude other employees of Consultant from providing support to the Primary Consultant in connection with Consultant's obligations hereunder.

3. Data and Confidentiality, Records and Inspection

- a. The City agrees that it will make available all pertinent information, data and records under its control for Consultant to use in the performance of this Agreement, or to assist Consultant wherever possible to obtain such records, data and information.
- b. All reports, data, information, documentation and material given to or prepared by Consultant pursuant to this Agreement will be confidential and will not be released by Consultant without prior authorization from the City.
- c. Consultant agrees that all work created by Consultant for the City is a "work made for hire" and that the City shall own all right, title, and interest in and to the work, including the entire copyright in the work ("City Property"). Consultant further agrees that to the extent the work is not a "work made for hire" Consultant will assign to City ownership of all right, title and interest in and to the work, including ownership of the entire copyright in the work. Consultant agrees to execute, at no cost to City, all documents necessary for City to perfect its ownership of the entire copyright in the work. Consultant represents and warrants that the work created or prepared by Consultant will be original and will not infringe upon the rights of any third party, and Consultant further represents that the work will not have

- been previously assigned, licensed or otherwise encumbered.
- d. Records shall be maintained by Consultant in accordance with requirements prescribed by the City and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement.
 - e. Consultant will ensure that all costs shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
 - f. Consultant shall be responsible for furnishing to the City records, data and information as the City may require pertaining to matters covered by this Agreement.
 - g. Consultant shall ensure that at any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination, all of its records with respect to all matters covered by this Agreement Consultant will also permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

4. Consultant Representation and Warranties

Consultant represents and warrants that:

- a. Consultant and all personnel to be provided by it hereunder has sufficient training and experience to perform the duties set forth herein and are in good standing with all applicable licensing requirements.
- b. Consultant and all personnel provided by it hereunder shall perform their respective duties in a professional and diligent manner in the best interests of the City and in accordance with the then current generally accepted standards of the profession for the provisions of services of this type.
- c. Consultant has complied or will comply with all legal requirements applicable to it with respect to this Agreement. Consultant will observe all applicable laws, regulations, ordinances and orders of the United States, State of Minnesota and agencies and political subdivisions thereof.

- d. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the Consultant is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Consultant contrary to the terms of any instrument or agreement.
- e. There is no litigation pending or to the best of the Consultant's knowledge threatened against the Consultant affecting its ability to carry out the terms of this Agreement or to carry out the terms and conditions of any other matter materially affecting the ability of the Consultant to perform its obligations hereunder.
- f. The Consultant will not, without the prior written consent of the City, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties and/or covenants contained in this Agreement.

5. Agreement Period

The term of this Agreement shall commence on the Effective Date and performance shall be completed by Insert date, unless terminated earlier as provided for herein.

Either party may, by giving written notice, specifying the effective date thereof, terminate this Agreement in whole or in part without cause. In the event of termination, all property and finished or unfinished documents and other writings prepared by Consultant under this Agreement shall become the property of the City and Consultant shall promptly deliver the same to the City. Consultant shall be entitled to compensation for services properly performed by it to the date of termination of this Agreement. In the event of termination due to breach by Consultant, the City shall retain all other remedies available to it, and the City shall be relieved from payment of any fees in respect of the services of Consultant which gave rise to such breach.

6. Independent Contractor.

- a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting Consultant as an

agent, representative or employee of the City for any purpose or in any manner whatsoever. The parties do not intend to create any third party beneficiary of this Agreement. Consultant and its employees shall not be considered employees of the City, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Consultant's employees while so engaged, and any and all claims whatsoever on behalf of Consultant's employees arising out of employment shall in no way be the responsibility of City. Except for compensation provided in Section II of this Agreement, Consultant's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Worker's Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, City shall in no way be responsible to defend, indemnify or save harmless Consultant from liability or judgments arising out of Consultant's intentional or negligent acts or omissions of Consultant or its employees while performing the work specified by this Agreement.

- b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.
- c. Consultant expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

7. Indemnity.

To the extent allowed by law, Consultant shall defend, indemnify and hold City and its employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims resulting from the Consultant's a) breach of this agreement or b) its negligence or misconduct or that of its agents or contractors in performing the Services hereunder or c) any claims arising in connection with Consultant's employees or contractors, or d) the use of any materials supplied by the Consultant to the City unless such material was modified by City and such modification is the cause of such claim. This Section shall survive the termination of this Agreement for any reason.

8. Insurance.

Consultant shall obtain and maintain for the Term of this Agreement the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota.

- a. Public Liability and Automobile Liability Insurance with limits not less than **\$1,500,000** Single Limit, shall be in a company approved by the city of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, and Contractual Liability. **City of Duluth shall be named as Additional Insured by endorsement** under the Public Liability and Automobile Liability, or as an alternate, Consultant may provide Owners-Contractors Protective policy, naming himself and City of Duluth. **Upon execution of this Agreement**, Consultant shall provide Certificate of Insurance evidencing such coverage with 30-days' notice of cancellation, non-renewal or material change provisions included.
- b. Professional Liability Insurance in an amount not less than \$1,500,000 Single Limit; provided further that in the event the professional malpractice insurance is in the form of "claims made," insurance, 60 days' notice prior to any cancellation or modification shall be required; and in such event, Consultant agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the City, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.
- c. Consultant shall also provide evidence of Statutory Minnesota Workers' Compensation Insurance.
- d. A certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.
- e. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect the Engineer's interests and liabilities.

9. Notices

Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

City: City of Duluth
411 W First Street
City Hall Room
Duluth MN 55802
Attn: **Director**

Consultant: **Vendor**
Address
City State Zip
Attn:

10. Civil Rights Assurances

Consultant, as part of the consideration under this Agreement, does hereby covenant and agree that:

- a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
- b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

11. Laws, Rules and Regulations.

Consultant agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City with respect to their respective agencies which are applicable to its activities under this Agreement.

12. Applicable Law.

This Agreement, together with all of its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

13. Force Majeure.

Neither party shall be liable for any failure of or delay in performance of its obligations under his Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

14. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

15. Entire Agreement

It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

16. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in “portable document format” (“.pdf”), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

CITY OF DULUTH

[NAME OF CONSULTANT]

By: _____
Mayor

By: _____

Attest:

Its: _____

Title of Representative

Date: _____

By: _____
City Clerk
Date: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

EXHIBIT A
Consultant's Proposal

DRAFT

CONSTRUCTION MANAGEMENT AGREEMENT

CIRRUS PHASE IV CONSTRUCTION PROJECT

This AGREEMENT entered into this ____ day of August, 2015, by and between the CITY OF DULUTH, a municipal corporation created and existing under the laws of the State of Minnesota (the “City”), and

_____ (the “Construction Manager”)

WHEREAS, Cirrus Design Corporation (“Cirrus”) is a major manufacturer of general aviation aircraft with its main manufacturing facilities and related offices located on or near the hereinafter-defined DIAP in the City of Duluth; and

WHEREAS, Cirrus wishes to expand its manufacturing and assembly facilities at DIAP to include facilities to manufacture its new line of jet-powered general aviation aircraft (“the jet”) and develop needed research and development facilities adjacent thereto; and

WHEREAS, Cirrus is in need of new painting and finishing facilities which will allow it to repurpose its existing facilities for manufacture and assembly of the jet and establishment of its research and design operations therein; and

WHEREAS, City is the owner of the hereinafter-described Leased Premises on the south side of Airport Road adjacent to Cirrus’s other facilities and is willing to construct thereon and to lease to Cirrus, an approximately 60,000 square foot manufacturing facility suitable for painting and finishing Cirrus’s lines of general aviation aircraft, including the jet, hereinafter referred to as the “Building”, and is willing to lease said Building to Cirrus under the terms and conditions hereinafter set forth; and

The City has retained the services of Burns & McDonnell Engineering Company, Inc. (the "Architect") to provide design and other typical architectural services for proposed Project at the Airport pursuant to a contract dated July 7, 2015, (the "Architect Agreement") .

The City desires to secure the services of a construction manager who can advise the City and the Architect with regard to proposed materials and construction methods, the scope of contracts and other issues and to perform other construction services designed to expedite the construction of Project, improve their utility, and reduce the City's costs of construction.

The Construction Manager is knowledgeable, experienced and capable of providing construction management services which will benefit the construction Project as well as the City.

The Construction Manager desires to provide services to the City as specifically defined herein and in attachments hereto.

NOW, THEREFORE, for and in consideration of the promises and mutual covenants herein set forth, the receipt and sufficiency of which are hereby acknowledged, and in compliance with appendices and attachments attached to and made a part of the Agreement ,the parties agree as follows:

ARTICLE 1
CONSTRUCTION MANAGER'S
RESPONSIBILITIES

1.1 CONSTRUCTION MANAGER'S SERVICES

1.1.1 This Agreement is entered into between the parties for the purpose of the Construction Manager providing construction management services for the new Cirrus Completion Center at the Airport, which is hereinafter referred to as the "Project". The Construction Manager's services consist of Basic Services and Additional Services, both as defined below.

1.1.2 The Construction Manager's services shall be provided in conjunction with the services of the Architect pursuant to the Architect Agreement.

1.1.3 The Construction Manager shall provide sufficient organization, personnel and management to carry out the requirements of this Agreement in an expeditious and economical manner consistent with the interest of the City.

1.1.4 It is specifically agreed between the City and the Construction Manager that the Construction Manager shall not be allow to bid for or to provide, as a contractor, subcontractor or materialman of any kind whatsoever, any goods or services related to the Project except for the provision of services under this Agreement.

ARTICLE 2
SCOPE OF CONSTRUCTION MANAGER'S
BASIC SERVICES

2.1 DEFINITION

2.1.1 The Construction Manager's Basic Services consist of those described in Paragraphs 2.2 and 2.3 and in Exhibit A. To the extent the terms and conditions of Paragraphs 2.2 and 2.3 are inconsistent with the terms of Exhibit A, the terms of Paragraphs 2.2 and 2.3 shall be deemed to control.

2.2 PRE-CONSTRUCTION PHASE

2.2.1 The Construction Manager shall review the program furnished by the City to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the City.

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

2.2.3 Based on early schematic designs and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of Construction Cost for program

requirements using area, volume or similar conceptual estimating techniques. The Construction Manager shall provide cost evaluations of alternative materials and systems.

2.2.4 The Construction Manager shall expeditiously review, in its capacity as a construction manager, design documents during their development and advise on proposed site use and improvements, selection of materials, building systems and equipment, methods of Project delivery, and the susceptibility of the Project design to meeting intended Project completion dates. The Construction Manager shall provide recommendations on relative feasibility of construction methods availability of materials and labor, time requirements for procurement and construction, installation and construction and factors related to Construction Cost including, but not limited to, costs of alternative designs or materials, preliminary budgets and possible economics.

2.2.5 The Construction Manager shall prepare and periodically update a Project construction schedule for the Architect's review and the City's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the preliminary Project construction schedule relating to the performance of the Architect's services. In the Project construction schedule, the Construction Manager shall coordinate and integrate the Construction Manager's services, the Architect's services and the City's responsibilities with anticipated Project construction schedules, highlighting critical and long-lead-time items.

2.2.6 The "Drawings" are the graphic and pictorial portions of the contract documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams. The "Specifications" are that portion of the contract documents consisting of the written requirements for materials, construction systems, standards and workmanship for the Work, and performance of related services. Work means the construction and services required by the contract document, whether completed or partially completed, and include all other labor, materials, equipment and services provided or to be provided by the contractor to fulfill the contractor's obligations. As the Architect progresses with the preparation of the Drawings and Specifications, the Construction Manager shall prepare and update at appropriate intervals agreed to by the City, estimates of

Construction Cost of increasing detail and refinement. The estimated cost of each Contract shall be indicated with supporting detail. Such estimates shall be provided for the Architect's review and the City's approval. The Construction Manager shall advise the City and Architect if it appears that the Construction Cost may exceed the latest approved Project budget and make recommendations for corrective action.

2.2.7 The Construction Manager shall consult with the City and Architect regarding the construction documents and make recommendations, in its capacity as a construction manager, whenever design details adversely affect constructability, cost or Project construction schedules.

2.2.8 The Construction Manager shall provide recommendations and information to the City 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.

2.2.9 The Construction Manager shall provide recommendations and information to the City regarding the allocation of responsibilities for safety programs among the contractors.

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

2.2.11 The Construction Manager shall prepare a Project construction schedule providing for the components of the Work, including phasing of construction, times of commencement and completion of each contractor, ordering and deliver of products requiring long lead time, and the occupancy requirements of the City. The Construction Manager shall provide the current Project

construction schedule for each set of bidding documents. Working in conjunction with the City and the Architect, the Construction Manager may provide for the acceleration or fast-tracking of various elements of the procurement of materials or the phasing of the construction of elements of the construction. In proposing such fast-tracking, the Construction Manager shall take into consideration, cost reductions, cost information, constructability, provisions for temporary facilities, procurement and construction scheduling, impact on procurement and construction of the other phases of the project and impact on scheduling and completion of the Project.

2.2.12 The Construction Manager shall expedite and coordinate the ordering and delivery of materials requiring long lead time.

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

2.2.14 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.

2.2.15 The Construction Manager shall assist the City in obtaining information regarding applicable requirements for equal employment opportunity programs for inclusion in the Contract Documents.

2.2.16 Following the City's approval of the construction documents, the Construction Manager shall update and submit the latest estimate of Construction Cost and the Project construction schedule for the Architect's review and the City's approval.

2.2.17 The Construction Manager shall submit the list of prospective bidders for the Architect's review and the City's approval.

2.2.18 The Construction Manager shall develop bidders' interest in the Project and establish bidding schedules. The Construction Manager, with the assistance of the Architect, shall issue bidding documents to bidders and conduct prebid conferences with prospective bidders. The Construction Manager shall assist the Architect with regard to questions from bidders and with the issuance of addenda.

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

2.2.20 The Construction Manager shall assist the City in preparing Construction Contracts and advise the City on the acceptability of subcontractors and material suppliers proposed by contractors.

2.2.21 The Construction Manager shall obtain building permits and special permits for permanent improvements, except for permits required to be obtained directly by the various contractors. The Construction Manager shall verify that the City has paid applicable fees and assessments. The Construction Manager shall assist the City and Architect in connection with the City's responsibility for filing documents required for the approvals of governmental authorities having jurisdiction over the Project.

2.3. GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT

2.3.1 At a time to be mutually agreed upon by the City and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the City's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Construction Cost of the Work and the Construction Manager's Fee.

2.3.2 The Construction Manager's Guaranteed Maximum Price proposal shall be based upon the Construction Manager's most current cost estimate. The Guaranteed Maximum Price Proposal shall separately set forth the portion of the proposed Guaranteed Maximum Price that is allocated to contingency. The Construction Manager shall not include contingency amounts in other portions of the proposed Guaranteed Maximum Price, and the other portions of the proposed Guaranteed Maximum

Price shall be based on the cost of actual bids, proposals, and subcontracts for the Work where they exist, or if they do not exist, then on the Construction Manager's best good faith estimate of what the costs of those portions of the Work will be. The estimate of costs and proposed Guaranteed Maximum Price in the Guaranteed Maximum Price proposal shall separately identify the Construction Manager's Fee and shall be broken down into such reasonable additional detail as is requested by the City. The Construction Manager shall provide the City with such documentation as the City reasonably requests to substantiate the amount of the proposed Guaranteed Maximum Price. The City, at its option, may accept the Guaranteed Maximum Price proposal or reject the Guaranteed Maximum Price proposal. If the City rejects the Guaranteed Maximum Price proposal, the City may require the Construction Manager to proceed with the Work without a Guaranteed Maximum Price, to prepare a modified Guaranteed Maximum Price proposal, or both, or to terminate this Agreement pursuant to the terms of this Agreement.

2.3.3 In addition to the information set forth in Section 2.3.2, the Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

1. A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
2. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information provided by the City and contained in the Drawings and Specifications;
3. A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
4. The deadline for Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
5. A date by which the City must accept the Guaranteed Maximum Price, which shall, at a minimum, allow the City thirty (30) days from the date the City receives the Guaranteed Maximum Price proposal.

2.3.4 The Construction Manager shall meet with the City and Architect to review the Guaranteed Maximum Price proposal. In the event that the City and Architect discover any inconsistencies or inaccuracies in the information presented, or any conflicts with such information and the City's program, budget or schedule for the Project, they shall promptly

notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

2.3.5 If the City notifies the Construction Manager that the City has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the City and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the City shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based and the agreed upon deadline for Substantial Completion. The form of the Guaranteed Maximum Price Amendment is attached as Exhibit "___".

2.3.6 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the City provides prior written authorization for such costs.

2.3.7 The City shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The City shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the City and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

2.3.8 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

2.4 CONSTRUCTION PHASE-ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.4.1 The construction phase will commence with the award of the initial Construction Contract and together with the Construction Manager's obligation to provide basic services under this Agreement, will end 30 days after final payment to all contractors is due for the Project in question.

2.4.2 The Construction Manager shall provide administration of the contracts for Construction in cooperation with the Architect as set forth below.

2.4.3 The Construction Manager shall provide administrative management and related services to coordinate scheduled activities and responsibilities of the contractors with each other and with those of the Construction Manager, the City and the Architect to endeavor to manage the Project in accordance with the latest approved estimate of Construction Cost, the Project construction schedule and the contract documents.

2.4.4 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress and scheduling. The Construction Manager shall prepare and promptly distribute minutes to the City, the Architect and contractors.

2.4.5 "Shop Drawings" are drawings, diagrams, schedules and other data specially prepared for the Work by the contractor or subcontractor, sub-contractor, manufacturer, supplier or distributor to illustrate some portion of the Work. "Product Data" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the contractor to illustrate materials or equipment for some portion of the Work. "Samples" are physical examples which illustrate materials, equipment or workmanship and establish standards by which the work will be judged. Utilizing the schedules provided by the contractors, the Construction Manager shall update the Project construction schedule incorporating the activities of the contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Product Data and Samples, and delivery of products

requiring long lead time and procurement. The Project construction schedule shall include the City's occupancy requirements showing portions of the Project having occupancy priority. The Construction Manager shall update and reissue the Project construction schedule as required to show current conditions. If an update indicates that the previously approved Project construction schedule may not be met, the Construction Manager shall recommend corrective action to the City and the Architect.

2.4.6 Consistent with the various bidding documents, and utilizing information from the contractors, the Construction Manager shall coordinate the sequence of construction and assignment of space in areas where the contractors are performing Work.

2.4.7 The Construction Manager shall ensure satisfactory performance from each of the contractors. The Construction Manager shall immediately notify the City in writing of unsatisfactory contractor performance and shall recommend courses of action to the City when requirements of a contract are not being fulfilled.

2.4.8 The Construction Manager shall monitor the approved estimate of Construction Cost. The Construction Manager shall show actual costs for activities in progress and estimates for uncompleted tasks by way of comparison with such approved estimate.

2.4.9 The Construction Manager shall develop cash flow reports and forecasts for the Project and advise the City and Architect as to variances between actual and budgeted or estimated costs.

2.4.10 The Construction Manager shall assist, in its capacity as construction manager, the City in reviewing contractor's Project accounting records.

2.3.11 The Construction Manager shall develop and implement procedures for the review and processing of applications by contractors for progress and final payments.

2.4.11.1 Based on the Construction Manager's observations and evaluations of each contractor's application for payment, the Construction Manager shall review and confirm based on Architect's certificate of quantities the amounts due the respective contractors.

2.4.11.2 The Construction Manager shall prepare a Project application for payment based on the contractors' Certificates for Payment.

2.4.11.3 The Construction Manager's certification for payment shall constitute a representation to the City, based on the Construction Manager's determinations at the site as provided In Subparagraph 2.4.13 and on the date 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 minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Construction Manager. Substantial completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the contract documents so that the City can occupy or utilize the Work for its intended use. The issuance of a certificate for payment shall further constitute a representation that the contractor is entitled to payment in the amount certified.

2.4.11.4 The issuance of a certificate for payment shall be a representation that the Construction Manager has (1) made continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction 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 City to substantiate the contractor's right to payment and (4) ascertained how or for what purpose the contractor has used money previously paid on account of the contract sum.

2.4.12 The Construction Manager shall review the safety programs developed by each of the contractors for purposes of coordinating the safety programs with those of the other 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 contractors, 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.

2.4.13 The Construction Manager shall determine in general that the Work of each contractors is being performed in accordance with the requirements of the Contract Documents, endeavoring to guard the City against defects and deficiencies in the Work. As appropriate, the Construction Manager shall have City, upon written authorization from the City, require 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. The Construction Manager in consultation with the Architect, may reject Work which does not conform to the requirements of the Contract Documents.

2.4.14 The Construction Manager shall schedule and coordinate the sequence of construction in accordance with the Contract Documents and the latest approved Project construction schedule.

2.4.16 The Construction Manager shall transmit to the Architect requests for interpretations of the meaning and intent of the Drawings and Specifications, and assist in the resolution of questions that may arise.

2.4.17 The Construction Manager shall review requests for changes, assist in negotiating contractors' proposals, submit recommendations to the Architect and the City, and, if they are accepted, prepare change orders and Construction Change Directives which incorporate the Architect's modifications to the Drawings and Specifications.

2.4.18 The Construction Manager shall assist the Architect in the review, evaluation and documentation of claims.

2.4.19 The Construction Manager shall receive certificates of insurance from the contractors and forward them to the City with a copy to the Architect.

2.4.20 In collaboration with the Architect, the Construction Manager shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals. The Construction Manager shall review all Shop Drawings, Product Data, Samples and other submittals from the contractors. The Construction Manager shall coordinate submittals with information contained in related documents and transmit to the Architect those which have been approved by the Construction Manager. The Construction Manager's actions shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the City or contractors.

2.4.21 The Construction Manager shall record the progress of the Project. The Construction Manager shall submit written progress reports to the City and Architect including information on each contractor and each contractor's Work, as well as the entire Project, showing percentages of completion. 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 City may require.

2.4.22 The Construction Manager shall maintain at the Project site for the City one record copy of all Contracts, Drawings, Specifications, addenda, change orders and other modifications, in good order and marked currently to record 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 upon completion of the Project shall deliver them to the City.

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

2.4.24 With the Architect and the City's maintenance personnel, the Construction Manager shall observe the contractor's final testing and start-up of utilities, operational systems and equipment.

2.4.25 When the Construction Manager considers each contractor's Work or a designated portion thereof Substantially Complete, the Construction Manager shall, jointly with the contractors, 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.

2.4.26 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 contractors and make recommendations to the Architect when Work is ready for final inspection. The Construction Manager shall assist the Architect in conducting final inspections.

2.4.27 The Construction Manager shall secure and transmit to the Architect warranties and similar submittals required by the Contract Documents for delivery to the City and deliver all keys, manuals, record drawings and maintenance stocks to the City. The Construction Manager shall forward to the Architect a final Project application for payment upon compliance with the requirements of the Contract Documents.

ARTICLE 3 ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in this Article 3 are not included in Basic Services, and they shall be paid for by the City as provided in this Agreement, in addition to the compensation for Basic

Services. The Construction Manager shall provide prior written notification to the City of any circumstance or situation it deems gives rise to the need for Contingent or Optional Additional Services. The Additional and Optional Additional Services described under Paragraphs 3.2 and 3.3 shall only be provided upon the prior written consent of the City.

3.2 CONTINGENT ADDITIONAL SERVICES

3.2.1 Providing services required because of significant changes in the Project including, but not limited to, changes in size, quality, complexity or the Project construction schedule.

3.2.2 Providing consultation concerning replacement of Work damaged by fire or other cause during construction and furnishing services required in connection with the replacement of such Work.

3.2.3 Providing services made necessary by the termination or default of the Architect or a contractor, by major defects or deficiencies in the Work of a contractor under a Contract for Construction.

3.2.4 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the Construction Manager is party thereto.

3.3 OPTIONAL ADDITIONAL SERVICES

3.3.1 Providing services to investigate existing conditions or facilities or to provide measured drawings thereof.

3.3.2 Providing services to verify the accuracy of drawings or other information furnished by the City.

3.3.3 Providing any other services not otherwise included In this Agreement.

ARTICLE 4
CITY'S RESPONSIBILITIES

4.1 The City shall provide full information regarding requirements for the Project, including a program which shall set forth the City's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

4.2 The City shall establish and update an overall budget for the Project based on consultation with the Construction Manager and the Architect, which shall include the Construction Cost, the City's other costs and reasonable contingencies related to all of these costs.

4.3 The City shall designate a representative authorized to act on the City's behalf with respect to the Project. The City, or such authorized representative, shall render decisions in a timely manner pertaining to documents submitted by the Construction Manager in order to avoid unreasonable delay in the orderly and sequential progress of the Construction Manager's services.

4.4 The City shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents. The services, information and reports required by this paragraph shall be furnished at the City's expense and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.

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

4.6 Information or services under the City's control shall be furnished by the City with reasonable promptness to avoid delay in the orderly progress of the Construction Manager's services and the progress of the Work.

ARTICLE 5 CONSTRUCTION COST

5.1 DEFINITION

5.1.1 The "Construction Cost" shall be the total cost to the City of all elements of the Project bid by the Architect as part of the Project. Evaluations of the City's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost prepared by the Construction Manager represent the Construction Manager's best judgment as a person or entity familiar with the construction Industry

5.1.2 Construction Cost does not include the compensation of the Architect, the Architect's consultants, the Construction Manager, the Construction Manager's consultants, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the City.

5.2.1 If the bidding or negotiation phase has not commenced within 180 days after submittal of the construction documents to the City, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the construction documents to the City and the date on which proposals are sought.

ARTICLE 6 CONSTRUCTION SUPPORT ACTIVITIES

6.1 Construction support activities, if provided by the Construction Manager, shall be governed by separate contractual agreements.

6.2 Reimbursable expenses for construction support activities may be subject to trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment which shall accrue to the City, and the Construction Manager shall make provisions so that they can be secured.

ARTICLE 7
OWNERSHIP AND USE OF
ARCHITECT'S DRAWINGS, SPECIFICATIONS
AND OTHER DOCUMENTS

7.1 The Drawings, Specifications and other documents prepared by the Architect are instruments of the City through which the Work to be executed by the contractors is described. The Construction Manager may retain one record set. The Construction Manager shall not own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect, and unless otherwise indicated the City shall retain all common law, statutory and other reserved rights, in addition to the copyright. All copies of them, except the Construction Manager's record set, shall be returned or suitably accounted for to the City on request, upon completion of the Project. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Construction Manager are for use solely with respect to this Project. They are not to be used by the Construction Manager on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the City. The Construction Manager is granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect appropriate to and for use in the performance of the Construction Manager's services under this Agreement. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's copyright or other reserved rights.

ARTICLE 8
TERMINATION, SUSPENSION
OR ABANDONMENT

8.1 This Agreement may be terminated by either party upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

8.2 The City may terminate this Agreement or suspend this Agreement for any length of time without cause upon thirty (30) days' written notice to the Construction Manager. The City may also terminate any Project or suspend any Project for any length of time without cause upon thirty (30) day's written notice to the Construction Manager. In the event of such termination or suspension, the Construction Manager shall be compensated for services performed, including reimbursables, prior to notice of such termination or suspension. In no case, however, shall such payment or reimbursement exceed the agreed upon fee as set forth in this Agreement.

8.3 The Construction Manager hereby acknowledges and understands that Projects under this Agreement may have different funding sources including Federal, State and local funding sources. The Construction Manager hereby agrees to comply with all grant assurances whether Federal or State. Noncompliance with the City's grant assurances by the Construction Manager shall be cause for immediate termination of this Agreement. This paragraph shall not operate as a waiver of any other available remedies.

8.4 If a Project is suspended by the City for more than 30 consecutive days, the Construction Manager shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Construction Manager's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Construction Manager's services. If the City fails to make payment when due the Construction Manager for services and expenses, the Construction Manager may, upon thirty days' written notice to the City, suspend performance of services under this Agreement. Unless payment in full is received by the

Construction Manager within thirty days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Construction Manager shall have no liability to the City for delay or damage caused to the City because of such suspension of services. 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. Termination Expenses are those costs directly attributable to termination for which the Construction Manager is not otherwise compensated.

ARTICLE 9
MISCELLANEOUS PROVISIONS

9.1 Unless otherwise provided, this Agreement shall be governed by the law of the State of Minnesota.

9.2 Causes of action between the parties to this agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run as provided for in Minnesota Statutes Section 541.051 and as the same may, from time to time, be amended.

9.3 **Waivers of Subrogation.** The City and Construction Manger waive all rights against each other and against the contractors, consultants, agents and employees of any of them, for damages, but only to the extent covered by property insurance during construction, except such rights as the City and Construction Manager may have to the proceeds of such insurance held by the City as fiduciary. The City and the Construction Manager each shall require similar waivers from their contractors, consultants, agents and person or entities awarded separate contracts administered under the City's own forces.

9.4 The City and the Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the

partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.

9.5 This Agreement represents the entire and integrated agreement between the City 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 the City and the Construction Manager.

9.6 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 City or the Construction Manager.

9.7 Unless otherwise provided in this Agreement, the Construction Manager and the Construction Manager's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. Notwithstanding the above, in the event the Construction Manager discovers or becomes aware of the presence of or the exposure of persons to hazardous materials in any form at the Project site, the Construction Manager shall provide prompt written notice of the same to the City and the Architect.

9.8 The Construction Manager covenants that it presently has no interest and shall not acquire an interest, directly or indirectly, which would conflict in any manner or degree with its performance under this Agreement. The Construction Manager further covenants that in the performance of this Agreement, no person or company having such interest shall be employed by it or any of its subcontractors or subconsultants.

9.9 Any reports, documents, questionnaires, records, information or data given to or prepared or assembled by the Construction Manager under this Agreement which the City requests to be kept confidential shall not be made available by the Construction Manager to any individual or organization without prior written approval of the City. The provisions of this paragraph shall survive the expiration or earlier termination of this Agreement.

9.10 The Construction Manager agrees that all services to be provided to the City pursuant to this Agreement shall be in accordance with the generally accepted standards for construction managers providing substantially similar services in the State of Minnesota.

9.11 The Construction Manager agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota, the City of Duluth, the City and any agencies thereof, with respect to the Construction Manager's activities under this Agreement.

9.12 The Construction Manager represents that it will utilize only its own personnel in the performance of the services set forth herein-unless it obtains the prior written consent of the City's Chief Administrative Officer or his or her designee (the "CAO"); and further agrees that it will neither assign, transfer or subcontract any rights or obligations under this Agreement without prior written consent of the City.

9.13 The books, records, documents and accounting procedures and practices of the Construction Manager as they relate to this Agreement are subject to examination of the City, the City, and either the Legislative Auditor or the State Auditor, as appropriate, for a period of six (6) years following termination or expiration of this Agreement.

9.14 Any waiver by any party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

9.15 The following exhibits are attached hereto and incorporated in this Agreement:

Exhibit A – ("Proposal")

Exhibit B -

Exhibit C -

Exhibit D -

Exhibit E -

ARTICLE 10
INSURANCE AND INDEMNIFICATION

10.1 CONSTRUCTION MANAGER'S LIABILITY INSURANCE

10.1.1 During the term of this Agreement, the Construction Manager for itself, its agents, employees and contractors shall carry and maintain the following insurance in a company approved by the City:

1. Workers' Compensation Insurance as required by State law with an all States endorsement or specifically for the State of Minnesota.
2. Public Liability Insurance with a \$2,000,000 combined single limit for bodily injury and/or property damage per occurrence and an aggregate limit of \$2,000,000 and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance; and Automobile Liability Insurance covering all owned and non-owned automobiles or vehicles used by or in behalf of consultant with a \$2,000,000 combined single limit for bodily injury and/or property damage per occurrence and an aggregate limit of \$2,000,000.
3. Professional Liability Insurance providing coverage for acts, errors, or omissions committed or alleged to have been committed by consultant with a limit of \$2,000,000 per claim and an aggregate of \$2,000,000.

10.1.2 The City reserves the right to require the Construction Manager to increase the coverages set forth above and to provide evidence of such increased insurance coverage to the extent that the liability limits as provided in Minnesota Statute Section 466.04 are increased.

10.1.3. The City shall be named as an Additional Insured under the Public Liability Insurance. The City does not represent or guarantee that these types or limits of coverage are adequate to protect the Construction Manager's interests and liabilities.

10.1.4 The certificate of insurance indicating the above coverages shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to the City will render any such change or changes in said policy or coverages ineffective as against the City.

10.1.5 The use of an "Accord" form as a certificate of insurance shall be accompanied by two forms - 1) ISO Additional Insured Endorsement (CG-2010 or pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) or equivalent, as approved by the attorney for the City; provided further, that in the event that the insurance is in the form of "Claims Made" insurance, sixty (60) days' notice prior to any cancellation or modification shall be required; and in such event, the Construction Manager agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this Paragraph which will provide unbroken protection to the City or, in the alternative, to purchase, at its own cost, extended coverage under the old policy for the period of the state of repose runs; the protection to be provided by said "claims made" insurance shall remain in place until the running of the statute of repose for claims related to this Agreement.

10.2 Indemnification

10.2.1 The Construction Manager agrees to defend, save harmless and indemnify the City and its agents and employees from and against all claims, suits, liability, judgments, costs, damages and expenses, including reasonable attorneys' fees, by reason of or on account of any loss, damage, personal injuries or property damage to the extent caused by any act or omission, operation or work of the Construction Manager or its officers, agents, employees or consultants under this Agreement, and on ten (10) days' written notice from the City, the Construction Manager will appear and defend all claims and lawsuits against the City growing out of any such Injury or damage.

ARTICLE 11
PAYMENTS TO THE CONSTRUCTION MANAGER

11.1 MONTHLY INVOICES

11.1.1 The Consultant shall invoice the City monthly for services rendered and expenses incurred in the performance of services authorized by the City hereunder. The invoices shall be in a form approved by the CAO.

11.2 DIRECT PERSONNEL EXPENSE

11.3 REIMBURSABLE EXPENSES

11.3.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses Incurred by the Construction Manager and Construction Manager's employees and consultants in the interest of the Project, as identified in the following clauses.

11.3.1.1 If authorized in advance by the CAO, expense of transportation in connection with the Project, expenses in conjunction with authorized out-of-town travel, long-distance communications, and fees paid for securing approval of authorities having jurisdiction over the Project.

11.3.1.2 Expense of reproductions, postage, express deliveries, electronic facsimile, transmission and handling of Drawings, Specifications and other documents.

11.3.1.3 If authorized in advance by the Executive Director, expense of overtime work requiring higher than regular rates.

11.4 PAYMENTS ON ACCOUNT OF BASIC SERVICES

11.4.1 Payments for Basic Services shall be made monthly.

11.4.2 When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable only to the extent services are performed on those portions, in accordance with Subparagraph 13.1.1 based on (1) the lowest bona fide bids or negotiated proposals, or (2) if no such bids or proposals are received, the latest approved estimate of such portions of the Project.

11.5 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES

11.5.1 Payments on account of the Construction Manager's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Construction Manager's statement of services rendered or expenses incurred.

11.6 PAYMENTS WITHHELD

11.6.1 No deduction shall be made from the Construction Manager's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in Work other than those for which the Construction Manager is liable.

11.7 CONSTRUCTION MANAGER'S RECORDS

11.7.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense shall be provided monthly to the City. Records shall be maintained by the Construction Manager in accordance

with requirements prescribed by the City with respect to all matters covered by this Agreement for a period of six years (6) after receipt of final payment under this Agreement. The Construction Manager shall ensure that at any time during normal business hours and as often as the City shall deem necessary, there shall be made available to the City for examination all of Its records with respect to all matters covered by this Agreement. The Construction Manager shall also permit the City, upon reasonable notice, to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel and other data related to all matters covered by this Agreement.

ARTICLE 12 BASIS OF COMPENSATION

12.1 BASIC COMPENSATION

12.1.1 For the Construction Manager's performance of the Work as described in Sections 2.2 and 2.3 and elsewhere in the Contract Documents, the City shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 5.1 plus the Construction Manager's Fee.

12.1.2 The Construction Manager's Fee: The Construction Manager's Fee shall be _____ percent (____%). The Construction Manager's Fee shall be paid and accepted by the Construction Manager as full consideration for all overhead and profit of the Construction Manager applicable to the Work, including all expenses incurred by the Construction Manager with respect to the Work or the Project which do not qualify as a Cost of the Work as defined by the Contract Documents

12.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work: For net additive changes to the Cost of the Work in excess of five percent (5%) of the Guaranteed Maximum Price as initially established upon City's acceptance of a Guaranteed Maximum Price Amendment, the Construction Manager shall receive a fee of _____ percent (____%) of the Cost of the Work. The Construction Manager's Fee shall not be reduced by reason of Change Orders reducing the Cost of the Work. For the purposes of determining whether net additive changes have exceeded five percent (5%) of the Guaranteed Maximum Price, only the

Guaranteed Maximum Price in effect as of the date of the City's acceptance of a Guaranteed Maximum Price Amendment shall be considered.

12.2 COMPENSATION FOR ADDITIONAL SERVICES

12.2.1 For Project Additional Services of the Construction Manager as described In Article 3, compensation shall be authorized by subsequent agreement.

12.3 GUARANTEED MAXIMUM PRICE

12.3.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time in accordance with the Contract Documents. To the extent the Cost of the Work plus the Construction Manager's Fee thereon exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the City. All Project savings shall accrue to the City.

See attached Exhibit "___" - Guaranteed Maximum Price Amendment.

12.3.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

12.4 CHANGES IN THE WORK

12.4.1 The City may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The City shall issue such changes in writing. The Architect may make minor changes in the Work as approved by the City. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

12.4.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be agreed to by Construction Manager and City.

ARTICLE 13

TERM

13.1 TERM

13.1.1 The term of this Agreement shall be for one (1) five-year period commencing on _____ __, 2015 and ending on _____ __, 2016, unless otherwise terminated as set forth herein.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the Day and date first above shown.

CITY OF DULUTH, a Minnesota
Municipal Corporation

By: _____
Its Mayor

Attest:

City Clerk

Approved:

City Attorney

Countersigned:

City Auditor