



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 #3
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) Please replace the Professional Services Agreement with the attached Construction Manager Agreement for Pre-Construction Services.

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

Signature

Date

Posted August 5, 2015.

CONSTRUCTION MANAGEMENT AGREEMENT
PRE-CONSTRUCTION SERVICES

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 June __, 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 pre-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 design and bidding of the Project for the benefit of the City.

The Construction Manager desires to provide such pre-construction 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 PRE-CONSTRUCTION SERVICES

1.1.1 This Agreement is entered into between the parties for the purpose of the Construction Manager providing pre-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 allowed 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 Paragraph 2.2 and in Exhibit A. To the extent the terms and conditions of Paragraphs 2.2 are inconsistent with the terms of Exhibit A, the terms of Paragraphs 2.2 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 delivery 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. Bids shall be prepared, solicited, advertised, received and processed in conformance with standard City of Duluth public bidding processes.

2.2.19 The Construction Manager shall receive bids, prepare bid analyses, and make recommendations to the City for the City's approval of the 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 GUARANTIED MAXIMUM PRICE PROPOSAL AND CONTRACT (INTENTIONALLY OMITTED)

2.4 CONSTRUCTION PHASE-ADMINISTRATION OF THE CONSTRUCTION
CONTRACT
(INTENTIONALLY OMITTED)

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 Manager 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 discover, 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 sub consultants.

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, 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 11

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 12

PAYMENTS TO THE CONSTRUCTION MANAGER

12.1 For the Construction Manager's Preconstruction Phase services, the City shall compensate the Construction Manager based upon the hourly rates of the Construction Manager's personnel (as set forth in Exhibit X multiplied by the actual, reasonable number of hours (or portions thereof) spent by such personnel in the proper performance of the Preconstruction Phase services, provided, however, that such amount shall not exceed the total aggregate sum of \$XXXXXX without the prior written consent of the City. Upon payment of such amount by the City to the Construction Manager, additional Preconstruction Phase services required for the Project shall be provided by the Construction Manager at its sole cost.

12.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

12.3 Payments are due and payable within thirty (30) days of the City's receipt of the Construction Manager's invoice.

12.4 The Construction Manager's invoices for its Preconstruction Phase services shall be supported by such data substantiating the Construction Manager's right to payment as the City may reasonably require. In exchange for each payment on the Construction Manager's Preconstruction Phase invoices and as a precondition to the Construction Manager's right to receive payment, Construction Manager shall submit lien waivers in the form of Exhibit G from the Construction Manager through the last date of the period covered by the Application for Payment and from all Subcontractors, Sub-subcontractors, and suppliers through the last date of the period covered by the most recent Application for Payment for which the City has made payment. Unless otherwise requested by the City, the Construction Manager is not required to provide lien waivers for Subcontractors, Sub-subcontractors, and suppliers whose total compensation for the Work will not exceed \$5,000; however, the City has the right to require the Construction Manager to provide such lien waivers at any time.

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

(INTENTIONALLY OMITTED)

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.

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

DRAFT