

CITY OF FAYETTEVILLE REQUEST FOR QUALIFICATIONS



Request for Qualifications for Construction Manager at Risk Services for Fire Station No. 16

COF1516965

ISSUED: JULY 8, 2025

DUE: AUGUST 8, 2025

The City of Fayetteville is issuing this Request for Qualifications ("RFQ") for Construction Manager at Risk (CMAR) to provide Pre-Construction Services and Construction Services for the Fire Station #16 project,

ISSUED BY:
CITY OF FAYETTEVILLE

PRIMARY CONTACT:
KIMBERLY TOON,
PURCHASING MANAGER
kimberlytoon@fayettevillenc.gov
(910) 433-1942

OFFERORS ARE NOT REQUIRED TO RETURN THIS FORM.



A message from the City of Fayetteville City Manager, Douglas J. Hewett, ICMA-CM

The City of Fayetteville is fully committed to provide Small Local Business Enterprises (SLBE's) an equal opportunity to participate in all aspects of City contracting including, but not limited to participation in the procurement of contracts relating to the construction of and improvements to facilities throughout the City. It is also the policy of the City to prohibit discrimination against any person or business in pursuit of these opportunities on the basis of race, sex, color, religion or national origin and to conduct its contracting and purchasing programs so as to prevent such discrimination. The City is also committed to follow all applicable State and Federal law as they relate to procurement practices.

The City will actively seek and identify qualified SLBE's and offer them the opportunity to participate in the procurement of contracts for all City purchasing and service contracts as well as construction and repair contracts.

The City aspires to spend 40% of its eligible contract dollars with small local suppliers and contractors. Towards this end the City's Charter has been amended by the General Assembly (H.B. 198) to allow the City to establish a race and gender neutral small business enterprise program to promote the development of small local businesses. The City is authorized to establish bid and proposal specifications that include subcontracting goals and good-faith effort requirements to enhance participation by small business enterprises located in Cumberland and Hoke Counties.

For more information or questions about the SLBE policy, please contact the Purchasing Division at 910-433-1942.

CITY OF FAYETTEVILLE


Douglas J. Hewett, ICMA-CM
City Manager

NOTICE TO BIDDERS

Pursuant to N.C.G.S. 143-129 sealed proposals will be received by the City of Fayetteville, until **2:00 p.m., August 8, 2025**, at City Hall, 433 Hay Street, Fayetteville, North Carolina, at which time they will be considered for the purchase of the following:

Construction Manager at Risk Services for Fire Station No.16

Bids may be mailed to the City Purchasing Office, Attn: Kimberly Toon, 433 Hay Street Fayetteville, NC 28301, or may be delivered in person or by express mail to 433 Hay Street, Fayetteville, NC 28301.

The bid opening will be held at **2:00 p.m. on August 8, 2025**, at City Hall, 433 Hay Street, Fayetteville, NC 28301, for the project entitled, “**Request for Qualifications for Construction Manager at Risk Services for Fire Station No. 16**”

Plans, specifications and bid documents may be obtained in the Purchasing Office of the City of Fayetteville, 2nd floor, City Hall, 433 Hay Street, Fayetteville, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday or by email request to kimberlytoon@fayettevillenc.gov

The City reserves the right to reject any or all bids and to waive all informalities concerning bid or award bid to the lowest, responsive, responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract.

City of Fayetteville

Kimberly Toon, CLGPO
Purchasing Manager

General Information

Project Summary

City of Fayetteville is issuing this Request for Qualifications (“RFQ”) for Construction Manager at Risk (CMAR) to provide Pre-Construction Services and Construction Services for the Fire Station #16 project, including site work, infrastructure, potential associated park construction, collaboration with the project team during the construction document phases, development of a guaranteed maximum price (GMP) proposal, and, construction, assuming successful negotiation of a GMP with the owner. The purpose of this solicitation is to provide a timely, cost-effective, and efficient project delivery method as authorized under N.C. General Statutes Section 143-64.31.

Project Background

The Fayetteville Fire Department (FFD) will relocate Fire Station 16 from its temporary facility to a permanent facility at the corner of Cedar Creek Rd. and Fields Rd (REID: 0445898657000). This property was evaluated and determined to be an optimal site. The property is currently owned by the City of Fayetteville (COF). This facility is expected to be approximately 11,000 square feet which will encompass firefighter living/working quarters, two (2) drive-thru apparatus bays, turnout gear storage room, decontamination room, tool storage room, electrical room, mezzanine / mechanical room, information technology room, fitness room, meditation room, public / private bathrooms, dorm rooms, day room, kitchen, offices, and a training / community meeting space room. The fire station non-bay area will be constructed with brick veneer overload bearing metal studs and the bays will be load-bearing masonry clad with brick. The roof system shall be constructed with light gauge metal trusses and standing seam metal roofing.

Selection Criteria

The acquisition of CMAR services will adhere to N.C. General Statutes 143-64.31, which requires that firms be selected to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee.

A committee comprised of City staff and the project team will assess the RFQ submissions and rank them based on the criteria outlined herein. Each RFQ will undergo evaluation, considering the proposer's qualifications and their alignment with the requirements of this RFQ. After the initial review, the Selection Committee may opt to interview proposers or seek further clarification on any aspects of the RFQ submissions.

The owner retains the discretion to choose the firm that offers the most advantageous benefits to the City. Furthermore, the owners may seek additional details or clarifications from any proposer regarding their RFQ submission. All proposers participating in this RFQ will receive notification of the final decision.

After the review of the proposals by the selection committee, the selection of the top firm will be made, and fee negotiations will commence. Final recommendations and approval of the contract and fee will be taken to the City Council once the fee negotiations have been completed.

RFQ Selection Criteria

The RFQ selection process for the CMAR will be based on several factors, including the respondent's relevant experience, knowledge of the local market, forward-thinking approach, strength, and relevant project experience of staff designated for this Project, presence in the Fayetteville area, HUB utilization history and demonstrated level of interest, as described in greater detail below.

Firms will not be considered unless the following minimum qualifications are met:

- The firm must have bonding capacity to provide a payment and performance bond for the total cost of the work. A letter from a surety stating that the firm has sufficient bonding capacity must be submitted with the cover letter. The letter should also indicate the grade of the bonding agency.
- The firm must be properly registered with the Office of Secretary of the State of North Carolina.
- The firm shall hold a valid North Carolina General Construction License.
- The firm shall not have any recent or pending litigation.
- The firm shall comply with NCGS 133-1.

In evaluating the proposals, the following criteria will be used:

- Expertise in CMAR work:
 - List examples of similar public safety projects completed or started within the last 5 years with a construction budget of at least \$5,000,000.
 - Demonstrated understanding of the CMAR delivery method, ability to meet schedules and budgets, and knowledge of relevant North Carolina laws. Provide a description and contact information for each project.
 - Provide change order percentage relative to the original construction amount and a description of any litigation, mediation, arbitration, or open claims for each project.
 - Provide initial and final GMP and substantial completion dates for example projects.
- Public Safety Project Experience:
 - Firm's experience and knowledge in the construction of public safety facilities.
 - Any recent public safety CMAR projects (Last 5 years)
 - Experience in pre-qualifying contractors and subcontractors with public safety construction experience.
 - Firms approach to cost and quality management in design phase.
- Personnel and Team Qualifications:
 - Qualifications of key personnel, along with tenure at the firm, and the proposed team (project team).
 - Availability and projected workload of the project team (Describe your current workload in terms of project size, percent complete, and completion dates. Indicate the percentage of time that will be devoted to this project by each staff member.)
 - Experience in collaborative relationships with designers with contact information.
 - Project experience and comparison of estimates with the range of bids for the three most recent CM at Risk projects with a budget of at least \$5,000,000.
 - Approach to maximize contractor and subcontractor participation.
- Business Qualifications:
 - HUB Certification.
 - Construction Manager's outreach program to encourage participation by HUB contractors and subcontractors (particularly local contractors and subcontractors), and HUB participation for the construction management of these projects. (City of Fayetteville carries a goal 16% HUB participation.)
 - Actual MBE participation on the 3 most recent CM at Risk projects at least \$5,000,000.
 - Location of office and familiarity with the local area.
 - Knowledge of local codes and ordinances.
- Project Quality, Safety, and Timeliness:
 - Approach to ensuring a safe project site.

- Current Safety performance record
- Example of safety plan to be implemented
- Approach to ensuring timeliness in project delivery.
- Record of meeting substantial completion contract requirements for CMAR projects for the 3 most recent project completions of at least \$5,000,00.
- Quality control philosophy
- Project closeout and punch list approach.

Scope of Services

The City is looking for a Construction Manager at Risk (CMAR) with the necessary resources, experience, and qualifications for Fire Station #16. The following is for illustrative purposes only and is not intended to be exhaustive or exclusive.

General

The CMAR shall provide consulting, scheduling, estimating, and cost control services. The CMAR will collaborate with all members of the Project Team. As part of its duties as a general contractor, the CMAR will be responsible for:

- Developing an initial GMP to construct the Project and related work, and amending the GMP during the Preconstruction Phase;
- Performing and delivering the Project to the Project Team within the approved GMP;
- Scheduling, estimating, and performing portions of the Work;
- Recommending optimal construction phasing, if applicable, and sequences; and
- Coordinating and sequencing with all owner-provided vendors.

Pre-Construction Services Overview

During the initial phase, our focus is on delivering comprehensive pre-construction services throughout the design and bidding stages. This encompasses, but is not restricted to, the following:

1. Engaging with the City and the project team to shape the project's direction.
2. Attend regularly scheduled and impromptu meetings with the project team to advise on matters related to material selection, building methods, construction details, phasing, sequencing, quality risks, and other applicable matters.
3. Review design documents and cost estimates
4. Prepare cost estimates at specific phases of design (30% (SD), 60% (DD) and 90% (CD)) and Final Construction Documents (100%). The CMAR cost model shall be independent of the project team statement of probable construction costs and any other cost estimates provided to the Owner.
5. Attend and participate in cost reconciliation meetings with third party estimators.

6. Conduct a constructability assessment during the Pre-Construction phase, suggesting cost efficient or value-enhancing strategies, and/or identify conflicts or deficiencies in design plans.
7. Formulate a Critical Path Method schedule that outlines procurement methods, approvals, regulatory clearances, staging, construction, and project conclusion.
8. Continuously revise and oversee project schedules to ensure alignment with the project's timeline.
9. Collaborate with the project team to compile and forward all requisite permits and endorsements.
10. Develop the schedule and manage the bidding process, prepare bid packages, prequalify subcontractors, advertise, and coordinate the review and analysis of bids for subcontractor packages. All steps of the bidding process must be conducted in compliance with applicable local, state, and federal laws.
11. Deliver a Guaranteed Maximum Price (GMP) that includes the cost of the work based on the sum of bid amounts and the construction manager's fee, general conditions, contingency, and all project related costs, i.e. bonds.

Construction Management Services Overview

In this phase, our focus is on delivering construction management services throughout the project's implementation. This includes:

1. Working closely with the owners and project team to ensure adherence to quality standards, safety protocols, and alignment with plans.
2. Deploying on-site personnel for construction oversight, organizing regular weekly meetings, and participating in monthly sessions with the project team.
3. Developing and updating a comprehensive construction timeline, detailing sequencing, phases, traffic management, delivery schedules, inspections, tests, and occupancy plans.
4. Developing and maintaining weekly/monthly project schedule updates.
5. Developing and implementing a quality control plan.
6. Developing and maintaining a site safety plan.
7. Generating and submitting payment applications as required.
8. Evaluating shop drawings, coordinating their approval with the project team, and ensuring the collection of as-built drawings during construction.
9. Facilitating site walkthroughs, addressing and resolving punch list items, and overseeing the final inspection.
10. Manage project close-out tasks, including commissioning of the building systems, assembly of guarantees, manuals, closeout documents, release of liens, record drawings, training sessions, regulatory approvals, and operations and maintenance (O&M) manuals. The CMAR will also review O&M to make sure it is complete with correct information.

11. Receive, record, and satisfactorily address all warranty issues.

All work performed by the CMAR shall be consistent with applicable federal, state, and local laws and Regulations.

Submittal Instructions & Guidelines

Required Content

The following forms and responses should be provided in the RFQ:

1. **Cover Letter:** A cover letter that states clearly why you feel your team is best suited to provide CMAR services.
 - a. Provide a letter from a surety company confirming the Firm's ability to provide bonding for the estimated amount for the Project.
2. **Company General Profile:** details about the firm, firm history, corporate structure (LLC, corporation, etc.), corporate officers, years in business, office locations, number of staff, services offered, expertise areas, and the office location handling the project. Provide contact info for the key executive on the project. Include details on the firm's licenses for services in North Carolina and confirm its authorization to do business there.
 - a. Describe any claims, disputes, and/or litigation resolved/settled within the past five (5) years. State the type of project delivery method for each project that resulted in a claim.
3. **Company CMAR Experience:** Provide previous experience and examples of similar CMAR projects completed in the last five years by the office where the work will be performed. Do not include projects in which members of the applicant firm worked on while employed by another firm.
 - a. List projects in date order with newest projects listed first and include the following:
 - Brief project description;
 - Owner's representative having knowledge of the firm's work, include the contact name, organization, phone, email, and address;
 - Contract dollar amount and total time period involved;
 - GMP vs. Actual cost history;
 - HUB goals vs. Final utilization;
 - Discuss methods, approach and controls used on the project;
 - Discuss approach and methodology for preconstruction cost estimating efforts and value engineering; and
 - Discuss approach for successful incorporation of phased construction with multiple owner-provided vendors and yearlong ongoing events during construction. Owner-provided vendors include, but is not limited to utilities, designers, and inspections.

4. **Company Public Safety Facility Experience:** Provide previous experience and examples of 5 or more public safety projects completed by the company, from the office where the work will be performed, listing the name of the client and brief description of the project, dates work was started and completed, construction method, cost, etc. Include a current client contact with a phone number for each project. Only list projects completed in the last five years. Do not include projects in which members of the applicant firm worked on while employed by another firm.
5. **Proposed Team:** Names, roles, and tenure with the company of key personnel assigned to the project, including the Project Lead, Project Manager, and Project Superintendent. Indicate the staff availability or current projects commitments. Indicate their involvement in any of the projects featured in #3 and #4. Provide an organizational chart of the team including any subconsultants to be assigned to the project along with their respective assignments/responsibilities. A maximum one-page resume for each team member is allowed. Include projects each member has worked on within the past five years that are similar to this project.
6. **HUB Certification:** Construction Manager's outreach program to encourage participation by local HUB contractors and subcontractors, and HUB participation for the construction management of these projects (City of Fayetteville carries a goal of 16% HUB participation) and actual MBE participation.
7. **Project Quality:** Current safety performance record and example of safety plan to be implemented. Timeliness in product delivery and records meeting requirements.
 - a. Describe the firm's Project Management and Quality Control procedures, processes for performance, and past involvement of these types of projects.
 - b. Discuss the firm's management and quality control procedures related to subcontractors.

8. **Format**

- All proposals must be submitted on 8 ½" x 11" size paper, minimum font size 11, table of contents, and reference tabs for key sections.
- Package not to exceed 30 pages (front and back counts as 2 pages)
- Cover letter, Table of Contents, tabs, and one-page resumes are excluded from the page count total.
- Statement of Qualifications must include a minimum of five (5) hard copies printed on postconsumer recycled paper (at least 30%) and one (1) electronic media copy in a sealed envelope/package, clearly marked on the outside with the following: "City of Fayetteville RFQ for Fire Station #16 CMAR". To be considered, Statements of Qualifications must be received by August 7, 2025, at 2:00 PM EST to the following address:

Kimberly Toon, Procurement Manager

City of Fayetteville
City Hall
433 Hay Street
Fayetteville, NC 28301

1. City Conditions:

- All proposing firms or individuals shall comply with all conditions, requirements, and specifications contained herein, with any departure constituting sufficient cause for rejection of the submittal. However, City of Fayetteville reserves the right to change the conditions, requirements, and specifications as it deems necessary.
- No RFQs will be accepted from any person or organization that is in arrears for any obligation to the City of Fayetteville, or that otherwise may be deemed irresponsible or unresponsive by City staff or the City of Fayetteville City Council.
- The City of Fayetteville is not obligated to enter into any contract as a result of the RFQ.
- The City of Fayetteville reserves the right to reject any and all bids or any part thereof and to select the most responsive firm that is deemed in the best interest of the City of Fayetteville.
- The City of Fayetteville may approve or disapprove the use of specific proposed subcontractors in any bid.
- The City of Fayetteville reserves the right to enter into an agreement with another proposing vendor in the event that the originally selected vendor fails to execute a contract with the City or defaults on their contract.
- The City of Fayetteville reserves the right to negotiate with any, none or all of the proposing companies.
- All costs, including travel and expenses, incurred in the preparation of this proposal will be borne solely by the proposing company. The City will not return RFQ materials to those submitting proposals.
- No agreements with any selected vendor shall be binding until a contract is signed and executed by the City Council and/or City Manager and authorized representatives of the vendor.

2. City General Terms and Conditions:

ASSIGNMENT

It is the intent of this Agreement to secure the personal services of Vendor and failure of Vendor for any reason to make the personal services available to the City of Fayetteville

for the purposes described in this Agreement shall be cause for termination of this Agreement. Vendor shall not assign this Agreement without prior written consent of the City of Fayetteville.

GOVERNING LAW

The validity, interpretation, and execution of this Agreement and the performance of and rights accruing under this Agreement are all to be governed by the laws of North Carolina.

COMPLIANCE WITH LAWS

Vendor agrees to comply with all applicable statutes, ordinances, and regulations of the United States, the State of North Carolina, the City and units of local government.

SEVERABILITY

The Parties agree that if any provision of this Agreement shall be held invalid for any reason, the remaining provisions shall not be affected if they may continue to conform with the purposes of this Agreement and the requirements of applicable law.

DEFAULT

In the event of substantial failure by Vendor to perform in accordance with the terms of this Agreement, City of Fayetteville shall have the right to terminate Vendor upon ten (10) days written notice in which event Vendor shall have neither the obligation nor the right to perform further services under this Agreement nor shall the City of Fayetteville be obligated to make any further payment for work that has not been performed.

DIVESTMENT OF COMPANIES BOYCOTTING ISRAEL OR INVESTING IN IRAN CERTIFICATION

Vendor certifies that: (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58; (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. 147-86.81 as a company engaged in the boycott of Israel ((i) and (ii) to be collectively referred to as "FD Lists"); and (iii) it will not take any action causing it to appear on the Treasurer's FD Lists created by the NC State Treasurer during the term of this Agreement. By signing this Agreement, Vendor further agrees, as an independent obligation, separate and apart from this Agreement, to reimburse the City for any and all damages, costs and attorneys' fees incurred by the City in connection with any claim that this Agreement or any part thereof is void due to Vendor appearing on the Treasurer's FD Lists at any time before or during the term of this Agreement.

E-VERIFY

Vendor hereby acknowledges that “E-Verify” is the federal E-Verify program operated by the US Department of Homeland Security and other federal agencies which is used to verify the work authorization of newly hired employees pursuant to federal law and in accordance with Article 2, Chapter 64 of the North Carolina General Statutes. Vendor further acknowledges that all employers, as defined by Article 2, Chapter 64 of the North Carolina General Statutes, must use E-verify and after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). Vendor hereby pledges, attests and warrants through execution of this Agreement that Vendor complies with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any subcontractors currently employed by or subsequently hired by Vendor shall comply with any and all E-Verify requirements. Failure to comply with the above requirements shall be considered a breach of this Agreement.

FORCE MAJEURE

Neither Party shall be deemed to be in default of its obligations hereunder if and *so long as* it is prevented from performing such obligations by an act of war, hostile foreign actions, adverse governmental actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

MORALITY CLAUSE

If, in the sole opinion of the City, at any time Vendor any of its owner(s) or employee(s) or agent(s) (collectively referenced as an “Actor”) engages in any one or more of the actions below, the City may immediately upon written notice to Vendor, terminate this Agreement, in addition to any other rights and remedies that the City may have hereunder or at law or in equity:

1. bring disrepute, contempt, scandal, or public ridicule to the Actor;
2. subject the Actor to prosecution;
3. offend the community or public morals/decency;
4. denigrate individuals or groups in the community served by the City;
5. is scandalous or inconsistent with community standards or good citizenship;
6. adversely affect the City’s finances, public standing, image, or reputation;
7. is embarrassing or offensive to the City or may reflect unfavorably on the City; and,
8. is derogatory or offensive to one or more employee(s) or customer(s) of the City.

NON APPROPRIATION

Notwithstanding any other provisions of this Agreement, the Parties agree that payments due hereunder from the City are from appropriations and monies from the City Council and any other governmental entities. In the event sufficient

appropriations or monies are not made available to the City to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of City.

INDEMNIFICATION

To the extent permitted by law, the Vendor agrees to defend, indemnify and hold harmless the City, its elected officials, employees, agents, successors, and assigns, from any and all liability and claims for any injury or damage caused by any act, omission or negligence of the Vendor, its agents, servants, employees, Vendors, licensees, or invitees. Indemnification of the City by the Vendor does not constitute a waiver of the City's governmental immunity in any respects under North Carolina law. Vendor assumes entire responsibility and liability for losses, expenses, demands and claims in connection with or arising out of any injury, or alleged injury (including death) to any person, or damage, or alleged damage, to property of the City or others sustained or alleged to have been sustained in connection with or to have arisen out of or resulting from the negligence of the Vendor, his subcontractor, agents, and employees, in the performance of the work/service set forth in the Standard Specifications and Special Provisions, and any changes, addenda, or modifications including losses, expenses or damages sustained by the City, and agrees to indemnify and hold harmless the City, its officials, employees or volunteers from any and all such losses, expenses, damages, demands and claims and agrees to defend any suit or action brought against them, or any of them, based on any such alleged injury or damage, and to pay all damages, cost and expenses in connection therewith or resulting therefrom. As an integral part of this Agreement, Vendor agrees to purchase and maintain during the life of this Agreement contractual liability insurance in the amount required in the general liability insurance requirements and to furnish proper evidence thereof. Indemnification by the Vendor does not constitute a waiver of the City's governmental immunity in any respect under North Carolina law.

INSURANCE

1. INSURANCE FOR PRE-CONSTRUCTION SERVICES.

The CMAR, in its performance of Pre-Construction Services, shall provide documentation evidencing that it maintains insurance in strict accordance with the requirements of this Section.

- a. The Owner shall not be required under this Master Agreement to procure or maintain any insurance for the Project or for the benefit of the Project Team and/or other Project participants. It is the intent of this Master Agreement that the CMAR will implement insurance and purchase insurance policies to protect the Work and to insure against liabilities of the CMAR and its Subcontractors and suppliers of any tier. Such insurance shall be of the kinds and have limits of

liability and coverage not less than the minimum limits specified in this Section or required by law, whichever is greater. The Owner's separate contractors that may be working at the Project site contemporaneously with the CMAR will include the CMAR as an additional insured.

- b. The CMAR shall, without limiting its obligations or liabilities, procure, pay for, and maintain such insurance as is required by law and as is required by this Master Agreement and/or the other Contract Documents to protect the CMAR, the Owner, and the Project Designer from claims for damages for bodily injury, including without limitation death, and from claims for property damage, including the loss of use resulting therefrom, which may arise out of or result from the CMAR's or its representatives', consultants', Subcontractors', agents', or employees' operations under this Master Agreement. Such insurance shall be of the kinds and have limits of liability and coverage not less than the minimum limits specified in this Section or required by law, whichever is greater. The Owner makes no representation as to the adequacy or sufficiency of such coverage. The requirements of this Section shall in no way be construed to limit or eliminate the liability of the CMAR that arises from performance of Work under this Master Agreement. The CMAR is strictly responsible for any losses, claims, and costs of any kind which exceed the CMAR's limits of liability, or which may be outside the coverage scope of the policies.
 - (1). The obligations of the CMAR under this Section shall not extend to liability arising out of the negligence of the Owner or the Project Designer or their respective representatives, consultants, Subcontractors, agents, and/or employees. The obligations of the CMAR under this Section shall not extend to liability arising out of professional services unless performed by the CMAR, including defects in design performed by the Owner or the Project Designer or their respective representatives, consultants, subcontractors, agents, and /or employees.
- c. The insurance required by this Section shall be provided by an insurer approved by the Owner, authorized to do such business in the State of North Carolina, and on terms approved by the Owner. All insurance companies utilized by the CMAR shall have a minimum rating of A- and Class VII as evaluated by the most current A.M. Best Rating Guide. All agents and brokers of the CMAR's insurers shall hold valid licenses from the State of North Carolina. The CMAR shall furnish to the Owner a certificate or certificates of insurance for its Subcontractors in a form satisfactory to the Owner contemporaneously with the executed contracts with the Subcontractors. Upon request of the Owner, the CMAR shall provide the Owner with redacted copies of the insurance policies required by this Section, including without limitation declaration pages, conditions, exclusions, and additional insured endorsements, and shall confirm that each policy premium has been paid for the required term of this Master Agreement. Certificates of insurance shall be signed by a person authorized by that insurer to bind coverage on its behalf.

- d. All insurance policies required by this Section shall provide that the insurance carrier shall not initiate cancellation, non-renewal, or material limitation of coverage without at least thirty (30) days prior written notice to the Owner (or 10 days in the case of cancellation due to non-payment of premium). A Direct Notice of Cancellation endorsement is to be attached to corresponding certificates of insurance. In the event of any such cancellation, non-renewal, or material limitation, the CMAR is obligated to replace such insurance within seven (7) days without a gap in coverage and file accordingly such notice with the Owner and other interested parties. Failing immediate receipt of evidence of such replacement of insurance, the Owner reserves the right to procure such insurance as the Owner considers desirable, and the CMAR shall pay or reimburse the cost of the premium arising therefrom without any rights to seek subsequent reimbursements from the Owner.
- e. No action or inaction on the part of the Owner shall in any way change or reduce the CMAR's responsibilities and liabilities under this Master Agreement. Self-funded, policy fronting, or other non-risk transfer insurance programs or mechanisms are not acceptable without prior written approval of the Owner. Full disclosure of such a program must be made prior to the CMAR's commencing mobilization to the Project site. Failure to make a full disclosure constitutes a material breach of this Master Agreement.
- f. The CMAR shall ensure that it and all its Subcontractors name the Owner as additional insured under all insurance policies required by this Master Agreement to be procured and maintained during the pre-construction phase of the Project (except workers' compensation, employers liability, and professional liability) with respect to and including liability for bodily injury and property damage caused, in whole or in part, by the willful misconduct, negligent act, or omission of the CMAR or those acting on the CMAR's behalf (including without limitation Subcontractors) under this Master Agreement, products and completed operations of the CMAR, and automobiles owned, hired, leased, or borrowed by the CMAR. Additional insured status is not intended to extend to liability caused by the Owner's or the Project Designer's negligence.
- g. For any claims related to this Project, the CMAR's insurance or self-insurance shall be primary and noncontributory with respect to any of the Owner's insurance to the extent of the CMAR's liability under this Section. Any insurance or self-insurance maintained by the Owner shall be excess and noncontributory with respect to the CMAR's insurance.
- h. All policies of insurance required under this Section shall contain a clause or endorsement waiving rights of subrogation against the Owner.
- i. Limits of coverage are not to be amended by deductible clauses of any nature without the express written consent of the Owner. The CMAR shall be solely responsible for any deductible assumptions that may exist in any insurance policies required under this Master Agreement. In addition, the CMAR shall be

responsible and shall not be reimbursed for any losses arising from any risk or exposure not insured as required by this Section or not covered as a result of normal policy exclusion or that falls within the self-insured retention, if the CMAR is self-insured.

The following deductibles are included in the CMAR's policies:

(1).	\$500,000	General Liability
(2).	\$500,000	Workers Compensation/Employers Liability
(3).	\$100,000	Auto Liability
(4).	\$500,000	Pollution Liability/Professional Liability
(5).	\$5,000	Builder's Risk (various other deductibles apply)

- j. The CMAR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- k. The claim provisions in the CMAR's insurance policies must specifically state the insurance company or CMAR's third party administrator. If self-insured, the CMAR has both the right and the duty to adjust a claim and provide defense.
- l. If any of the policies procured pursuant to this Section contain any warranty stating that coverage is null and void (or words to that effect), or if the CMAR does not comply with the most stringent regulations governing the Work, then the policies shall be modified so that coverage shall be afforded in all cases except for the CMAR's willful or intentional noncompliance with applicable government regulations.
- m. Any failure by any person to comply with reporting or other provisions of any insurance policy, including without limitation breach of warranties, shall not affect coverage provided to the Owner and its respective representatives, officials, and employees. The Builders Risk coverage does not include a Separation of Insured's provisions.
- n. The insolvency or bankruptcy of the insured or of the insured's estate shall not relieve the insurance companies of their obligations under these policies. Any clauses to the contrary are unacceptable and must be stricken.
- o. Reserved
- p. The Work under this Master Agreement shall not commence until the CMAR has verified to the Owner that all required insurance coverages as described in this Section have been obtained and further verified that appropriate certificates of insurance have been approved in writing by the Owner. The Owner's review and/or acceptance of such certificates of insurance shall neither relieve CMAR of any requirement to provide the specific insurance coverages set forth herein nor constitute a waiver or acknowledgment of satisfaction of the specific insurance coverage requirements set forth in this Master Agreement.

- (1). The Description of Operations/Locations/Vehicles section in the certificates of insurance should include COR Department/Division, Name of Project or Services, Projected Dates of Contract

The Certificate Holder address should read:

City of Fayetteville
433 Hay Street
Fayetteville NC 28301

- q. Worker's Compensation and Employer's Liability: The CMAR shall ensure that it and all of its Subcontractors procure and maintain Workers' Compensation Insurance in the amount and type required by the State of North Carolina and federal law for all employees employed under this Master Agreement who may come within the protection of Workers' Compensation Laws and covering all operations under this Master Agreement, whether performed by the CMAR or by its Subcontractors. In jurisdictions not providing complete Workers' Compensation protection, the CMAR shall ensure that it and its Subcontractors shall maintain employers' liability insurance in an amount, form, company, and agency satisfactory to the State of North Carolina and the Owner for the benefit of all employees not protected by Workers' Compensation Laws and covering all operations under this Master Agreement whether performed by the CMAR or by its Subcontractors.
 - (1). The CMAR shall pay such assessments as will protect the CMAR and the Owner from claims under the Workers' Compensation Laws, workers' or workmen's compensation disability benefits, and other similar employee benefit acts. The current Experience Modification Factor shall be indicated on the certificate of insurance.
 - (2). Coverage under this Section shall be as required by federal and state Workers' Compensation and Occupational Disease Statutes, and shall have minimum limits as follows:
 - Coverage A: Statutory, State of North Carolina
 - Employers' Liability: Each Accident: \$1,000,000
 - Disease - Policy Limit: \$1,000,000
 - Disease - Each Employee: \$1,000,000
 - (3). Such insurance shall include Voluntary Compensation coverage, a Waiver of Subrogation in favor of the Owner, as well as other endorsements that may be required by applicable jurisdictions, i.e. United States Longshoremen and Harbor Workers Act and maritime coverage (Jones Act).
- r. Automobile Liability Insurance: The CMAR shall ensure that it and all of its Subcontractors procure and maintain automobile insurance against liability for bodily injury, death, and property damage as described below, that may arise out of or result

from the Work being performed under this Master Agreement, and will provide protection from claims which may arise out of or result from the CMAR's performance of the Work and the CMAR's other obligations under this Master Agreement, whether such performance of the Work is by the CMAR; by any representative of the CMAR; by any of the CMAR's Subcontractors; by anyone employed directly or indirectly by the CMAR or any of its Subcontractors; or by anyone else for whose acts the CMAR or any of its Subcontractors may be liable.

- (1). This policy of insurance shall carry the following minimum Limit of Liability:

Combined Single Limit: \$1,000,000

- (2). The policy of insurance shall contain or be endorsed to include the use of any automobile, including owned, hired, and non-owned automobile liability.
- (3). If the policy contains a warranty stating that coverage is null and void (or words to that effect) if the transporter does not comply with the most stringent regulations governing the Work, the policy shall be modified so that coverage shall be afforded in all cases except for the transporter's willful or intentional noncompliance with applicable government regulations.

- s. General Liability: The CMAR shall ensure that it and all of its Subcontractors procure and maintain commercial general liability insurance against liability for bodily injury, death, and property damage, including the resulting loss of use therefrom, as described below, that may arise out of or result from the Pre-Construction Services being performed under this Master Agreement, and will provide protection from claims which may arise out of or result from the CMAR's performance of the Pre-Construction Services and the CMAR's other obligations under this Master Agreement, whether such performance of the Pre-Construction Services is by the CMAR; by any representative of the CMAR; by any of the CMAR's Subcontractors; by anyone employed directly or indirectly by the CMAR or any of its Subcontractors; or by anyone else for whose acts the CMAR or any of its Subcontractors may be liable. This policy of insurance must be written on an occurrence basis, with the following minimum Limits of Liability:

- General Aggregate per project: \$5,000,000.00
- Products/Completed Operations Aggregate: \$5,000,000.00
- Bodily Injury & Property Damage /each occur: \$5,000,000.00
- Personal Injury and Advertising Injury:

\$2,000,000.00 The policy of insurance shall contain or be endorsed to include the following:

Blanket Contractual Liability covering CMAR's indemnification obligations under this Master Agreement in accordance with ISO policy form CG 00 01. Modifications to the standard provision will not be acceptable if they serve to reduce coverage for the following:

- Premises/Operations Liability.
- Explosion, collapse, and underground fault.
- Independent Contractors and Independent Subcontractors coverage.
- Broad Form Property Damage.
- Personal Injury.
- Cross Liability/Severability of Interest clause.
- Employer's Stop-Gap Liability endorsement, if applicable.
- Amendment of the Pollution Exclusion Endorsement to allow coverage for bodily injury or property damage caused by heat, smoke, or fumes from a hostile fire.
- Designated General Aggregate Limit Endorsement if required by the Supplementary Conditions.

The CMAR shall ensure that it and all of its Subcontractors provide the Owner additional insured endorsements CG 20 10 10 01 or CG D3 61 03 05 for ongoing and premise operations and CG 20 37 10 01 for completed operations, except as may otherwise be approved by the Owner to meet MWBE goals. Umbrella or Excess Liability insurance coverage may be used to meet or exceed the minimum insurance limits in this Master Agreement using a follow-form coverage form for all layers. Coverage shall remain continuously in effect and without interruption for at least six (6) years after Substantial Completion and shall include coverage for exposures arising from operations that have been completed. The CMAR shall furnish the Owner and each other additional insured listed in this Master Agreement to whom the certificates of insurance have been issued, evidence satisfactory to the Owner of continuation of such insurance at the date of Substantial Completion and each year thereafter.

- t. Property Insurance: In the event any construction work is to be performed in connection with the CMAR's Pre-Construction Services, then prior to the commencement of any such construction work being performed, the CMAR shall be responsible for purchasing and maintaining builder's risk insurance to protect the Project from perils of physical loss. The Builder's Risk policy must be an "All Risk" (Special Perils) coverage form, have no coinsurance penalty provisions, and be endorsed to increase the limit of insurance for all Change Orders. The Builder's Risk policy shall contain no exclusion for theft, collapse, or damage to foundations or underground structures, pipes, or conduits.

The insurance required by this Subsection.t. shall provide for the full cost of replacement for the construction work at the time of any loss. The insurance shall insure against the loss from the perils of fire and all risk coverage for physical loss or damage due to theft, vandalism, riot, civil commotion, collapse, malicious mischief, transit, flood, earthquake, testing, damages resulting from defective design, negligent workmanship, blasting and explosion, windstorm, hail, lightning, vehicle impact, aircraft, smoke, mechanical breakdown, boiler

explosion, artificial generated electrical current, or defective material, or water damage other than caused by flood. The Owner, the Project Designer, and all tiers of Subcontractors shall be additional insureds on the Builder's Risk policy. The CMAR shall be the named insured (responsible for premium payments, policy changes, etc.). The CMAR shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost of the Project.

Cold Testing will be automatically included in the policy. Hot Testing exposures will apply to the Project, and as such this exposure is required to be added to the Builders Risk insurance policy.

(1). **WAIVERS OF SUBROGATION:** The Owner and the CMAR waive all rights against (1) each other and any of their Subcontractors, sub-Subcontractors, agents, and employees, each of the other, and (2) the Project Designer, its consultants, separate subconsultants, agents, and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance pursuant to this Subsection.t. or other property insurance applicable to the construction Work. The Owner or CMAR, as appropriate, shall require of the Project Designer, its consultants, separate subconsultants, agents, and employees, if any, and of the Subcontractors, separate sub-Subcontractors, agents, and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise; did not pay the insurance premium directly or indirectly; and whether or not the person or entity had an insurable interest in the property damaged.

u. Aviation/Aircraft: If required by Owner, the CMAR shall ensure that the operator of an aircraft of any kind, including without limitation drones and/or other forms of unmanned aircraft, utilized in the performance of this Master Agreement, must maintain liability insurance covering bodily injury and property damage on a combined single limit basis, each occurrence limit and in the aggregate (including passenger liability) with liability limits in an amount not less than Five Million and 00/100 Dollars (\$5,000,000). If non-employee passengers are carried, the policy procure must not include

a per-passenger sublimit. Prior to commencing operations, the operator of any aircraft covered by this Subsection.u. must provide the Owner with a certificate of insurance naming the Owner as additional insured on a primary and non-contributory basis. The operator of the aircraft and its insurer(s) must hold the Owner harmless and waive subrogation with respect to damage to the aircraft. If the aircraft is to be used to perform lifts at the Project site, a "slung cargo" endorsement must be included to cover the full replacement value of any equipment being lifted.

v. Professional Liability:

- (1). The CMAR shall ensure that it and all of its Subcontractors provide and maintain professional liability insurance coverage to protect the Owner from liability arising out of or resulting from the performance of professional services if any, by the CMAR and/or its Subcontractors under this Master Agreement or any amendments thereto. Such coverage shall be in the sum of not less than Ten Million Dollars (\$10,000,000.00).
- (2). Throughout the term of this Master Agreement, the professional liability policy shall contain full prior acts coverage. Coverage should be continuously maintained during the term of the Master Agreement. Coverage shall not include any exclusions or limitations related to (i) scope of professional services; (ii) delays in Project completion or cost overruns; (iii) who is authorized to notify the carrier of a claim or a potential claim; and
(iv) mold, fungus, asbestos, pollutants, or hazardous substances.
- (3). Claims-made coverage is permitted provided the policy retroactive date is continuously maintained prior to the Effective Date of this Master Agreement and coverage is continuously maintained during all periods in which the CMAR performs professional services for the Owner and for an additional period of one (1) year after termination of this Master Agreement or the last date such services are performed, whichever comes later.

w. Deductible: Any deductible, if applicable to loss covered by any insurance policy required by this Section, is to be borne by the CMAR and/or its Subcontractors.

x. Proof of Coverage: The CMAR shall ensure that it and all its Subcontractors furnish the Owner with satisfactory proof of carriage of the insurance required above before written approval of the CMAR's insurance for its Subcontractors is granted by the Owner.

y. Claims: The CMAR shall notify the Owner within twenty-four (24) hours of any claims or alleged claims received by the CMAR, or by any of its Subcontractors, that are covered by any of the policies of insurance required of the CMAR and/or its Subcontractors under this Master Agreement. The CMAR shall provide a written copy of the claim or alleged claim to the Owner within three (3) days of the CMAR's receipt of the claim or alleged claim. If a claim is settled to the satisfaction of the claimant, the CMAR shall submit a copy of the claimant's release to the Owner.

If a claim or alleged claim is rejected by the CMAR and/or its insurance company, the CMAR shall immediately report this fact to the Owner. Should thirty (30) days elapse after the claim or alleged claim has been received by the CMAR, and the CMAR is not able to report a settlement or rejection of the claim, it shall report to the Owner the steps being taken with respect to the claim. Without limiting the

foregoing, the CMAR shall notify the Owner in writing of any paid or incurred claims which may impair annual aggregate or general liability insurance coverage limits.

- z. Contractor As Joint Venture: If the CMAR is completing this Project on a joint venture basis, both joint venture partners shall retain all liabilities assumed by this Master Agreement, individually and collectively. This may include, but is not limited to, all premiums due, deductibles/self-insured retentions, coinsurance provisions, claim provisions, insurance policy conditions, and indemnification provisions hereunder.

Evidence of a Blanket Joint Venture Endorsement must be obtained from the General Liability and CMAR's Pollution Legal Liability carriers of each joint venture partner substantially as follows.

"With respect to "your work", and the "products-completed operations hazard", you are an insured for your liability arising out of the conduct of any partnership or joint venture of which you were a partner or member, even though this partnership or joint venture is not shown as a Named Insured in the Declarations. This coverage is excess over any available liability purchased specifically to insure the partnership or joint venture. This coverage will not inure to the benefit of any other party except you."

- aa. Pollution Legal Liability (PLL): The CMAR shall ensure that it and all of its Subcontractors provide and maintain pollution legal liability (PLL) insurance coverage. Coverage must include Asbestos Legal Liability and Errors and Omissions due to potential environmental hazards with limits no less than \$5,000,000 per occurrence or claim, and \$10,000,000 policy aggregate. Coverage shall apply to the scope of work described under this Master Agreement, including transportation, and shall include coverage for bodily injury, property damage (including loss of use of damaged property), clean-up costs, mold, defense costs, and investigative costs. The CMAR shall maintain Completed Operations coverage for six (6) years following completion of construction Work.

Claims Made Policies: If any coverage required is written on a claims-made coverage form, the retroactive date must be shown, and this date must be before the Effective Date of the Master Agreement or the beginning of the contract work. Insurance must be maintained, and evidence of insurance must be provided, for at least six (6) years after completion of construction Work.

If coverage is canceled or non-renewed, and not replaced with another claims made policy form with a retroactive date prior to the Master Agreement Effective Date or start of work date the CMAR must purchase an extended period coverage for a minimum of five (5) years after completion of contract work. A copy of the claims reporting requirements must be submitted to Owner for review. Pollution Liability shall not contain lead-based paint or asbestos exclusions.

- bb. The Owner may elect to purchase certain insurance, specifically Pollution Legal Liability and/or Builder's Risk Insurance covering the Owner, the CMAR, all Subcontractors, and all sub- Subcontractors. In this event, the CMAR and its Subcontractors shall not be required to purchase insurance provided by the Owner. If the Owner elects to purchase either Pollution Legal Liability and/or Builder's Risk insurance, this Master Agreement shall be amended accordingly.

TERMINATION FOR CAUSE

In the event of substantial failure by Vendor to perform in accordance with the terms of this Agreement, City of Fayetteville shall have the right to terminate Vendor upon ten calendar (10) days written notice in which event Vendor shall have neither the obligation nor the right to perform further services under this Agreement nor shall the City of Fayetteville be obligated to make any further payment for work that has not been performed. Vendor shall provide to the City of Fayetteville all reports, surveys or other related documents upon the City's request.

TERMINATION FOR CONVENIENCE

Upon thirty (30) calendar days' written notice to Vendor, the City of Fayetteville may, without cause and without prejudice to any other right or remedy legally available to the City of Fayetteville, terminate this Agreement. Upon such notice, Vendor shall have neither the obligation nor the right to perform services under this Agreement nor shall the City of Fayetteville be obligated to make any further payment for work that has not been performed in accordance with the terms stated herein. In such case of termination, Vendor shall be paid for the completed and accepted work executed in accordance with this Agreement prior to the written notice of termination. Additionally, upon mutual agreement, Vendor may be paid for any completed and accepted work which takes place in order to achieve a specifically identified item in the scope of services or a milestone of the Agreement, between the written notice of termination and the effective date of termination. Unless otherwise stated or agreed upon, the effective date of termination shall automatically occur 30 days' after the written notice is sent by the City of Fayetteville. Vendor shall provide to the City of Fayetteville all reports, surveys or other related documents upon the City's request.

PROTEST

Protest related to this procurement must be addressed to the Purchasing Manager for City of Fayetteville, 433 Hay St, Fayetteville, NC 28301 and shall be received, in writing, within 2 calendar days of bid award. Responses will be in writing by email and first-class mail not later than 7 calendar days following receipt of said protest by the Purchasing Manager.

SURVIVAL OF TERMS

All warranties, covenants, and representations contained within this contract and all applicable work authorizations, if any, shall continue in full force and effect for three (3) years after the execution and delivery of the final product, act, or service taken in furtherance of this Agreement. Survivability shall not be impacted, or otherwise shall not be rendered null or void, by the termination or natural expiration of this Agreement or other applicable work undertaken in furtherance of this Agreement.

VENUE AND FORUM SELECTION

The Parties expressly agree that if litigation is brought in connection with this Agreement and (1) the litigation proceeds in the Courts of the State of North Carolina, the Parties agree that the appropriate venue shall be in Cumberland County (Fourteenth Judicial District of North Carolina); or (2) the litigation proceeds in a federal court, the Parties agree that the appropriate venue shall be the United States District Court for the Eastern District of North Carolina.

INDEPENDENT VENDOR

Vendor is an Independent Vendor and shall undertake performance of the services pursuant to the terms of this Agreement as an Independent Vendor. Vendor shall be wholly responsible for the methods, means and techniques of performance. City shall have no right to supervise methods and techniques of performance employed by Vendor but City shall have the right to observe such performance .

AMENDMENT

The City and Vendor may, from time to time, request changes in services to be performed by Vendor. Any such changes that are mutually agreed upon by the City and Vendor shall be incorporated herein by written amendment to this Agreement. It is mutually agreed and understood that no alteration or validation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties hereto, and that any oral understanding or agreements not incorporated herein, unless made in writing and signed by the Parties hereto, shall not be binding.

ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties. Any proposed change to this Agreement shall be submitted to the City for its prior approval. No modification, addition, deletion, etc., to this Agreement shall be effective unless and until such changes are reduced to writing and executed by the authorized officers of each Party.

CITY'S TERMS SUPERSEDE

To the extent a conflict exists between the terms of this Agreement and the terms and conditions in any of the attachments to the Agreement, the terms of this Agreement shall govern.

The City of Fayetteville is an Equal Opportunity Employer and does not discriminate on the basis of sex, marital status, race, color, creed, national origin, age or disability.

Questions:

Kimberly Toon, Procurement Manager
City of Fayetteville
City Hall
433 Hay Street
Fayetteville, NC 28301