

City Manager's Office

To: Council Park Bond Subcommittee

CC: Douglas J. Hewett, City Manager

From: Kristoff Bauer, Deputy City Manager

Date: June 14, 2018

Re: Metcon CM@R Construction Contract Summary

The proposed contract attached is a refined version of the Construction Manager at Risk (“CM@R”) contract executed with Barton Malow for the construction of the stadium project. Like that process, the initial contract establishes the terms and scope of the work, but does not set the Guaranteed Maximum Price (“GMP”). Future GMP amendments will be presented to Council based on the outcome of bidding processes administered by CM@R.

The City awarded Metcon the preconstruction contract and they have been working with the design team to provide cost estimation and value engineering service during the Schematic Design (“SD”) process. They will continue that process working toward delivery of the project described within the established budget.

Key Points:

Many of the key elements of the proposed contract are included in Exhibits listed on page 3.

- Exhibit E – Preliminary Project Schedule (Page 53) this indicates that the project will be completed by November 30, 2019. Three separate GMP’s are planned in Sept. 18, January 19, and February 19. Final construction documents are scheduled for completion in Dec. 18.
- Exhibit F – GMP Amendment Form (Page 54) this is the form that will be used to present the GMP to the Council for consideration. The important part of this form is the breakdown of the price:

<i>Cost of work</i>	\$
<i>Direct Construction Costs</i>	\$
<i>General Conditions</i>	\$
<i>Construction Manager’s Bonds and Insurance</i>	\$
<i>Allowances</i>	\$
<i>Construction Phase Fee</i>	\$
<i>Construction Manager’s Contingency</i>	\$ _____
<i>Total Fixed Guaranteed Maximum Price</i>	\$

The Direct Construction Cost is set by bidding and similar competitive processes consistent with state law. The CM@R has control over General Condition and Fee costs. These costs, however, are limited to 12% of the Cost of work in Paragraph 7.4 which also include the Construction Cost Limitation defined as \$5.5 million in Paragraph 9.2. The Construction Manager's Contingency is limited to 3% and is refundable if not spent.

- Exhibit G – Liquidated Damage (Page 57) start at \$500 per day and escalates to \$1,000 per day if the delay exceeds 60 days.
- Exhibit I - Small Disadvantaged Business Enterprise Participation Plan (Page 62) establishes a target of 30% SDBE participation on top of the fact that Metcon is a certified SDBE. The tactics and strategies they plan to use are outlined in this exhibit.

One further clarification regarding the General Conditions and Fee costs is that these charges are not only limited to a maximum percentage (12%), but are also fixed upon the adoption of the GMP. This removes any incentive for change orders or cost overruns and provides a significant incentive for timely project completion.

**CONSTRUCTION PROJECT MANAGEMENT AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER-AT-RISK**

This Construction Project Management Agreement (“Agreement”) is made as of [_____], 2018 (the “Effective Date”), by and between:

The Owner: The City of Fayetteville
433 Hay Street
Fayetteville, NC 28301

and Construction Manager: Metcon Inc.
763 Comtech Drive
Pembroke, NC 28372
910-521-8013

for the Project: Construction of Fayetteville Senior Center West (“Project”) in the City of Fayetteville at a location described as Lake Rim off of Old Raeford Road and Debbie Street (“Project Site”), as shown in the Site Map attached hereto as **Exhibit A** and as further described in the Agreement between the Project Architect and the Owner (the “Architect Agreement”).

Project Architect: HH Architecture, PA
1100 Dresser Court
Raleigh, NC 27609
919-828-2301

The Owner and Construction Manager agree as follows:

ARTICLE 1 SCOPE OF WORK

Construction Manager has overall responsibility for the completion of the Work and will provide complete Pre-Construction Phase and Construction Phase Services and furnish all materials, equipment, tools and labor as necessary or reasonably inferable to complete the Work in accordance with the terms of the Construction Documents. A summary of the Scope of the Work is set forth in **Exhibit B** and is supplemented by the terms of this Agreement, including specifically the provisions of Articles 1, 4, 5, 7 and 8. Without limitation, the Scope of the Work for Construction Manager includes the following:

- 1) Providing preconstruction phase services including cost estimating, life-cycle cost analysis, value-engineering, constructability reviews, scheduling and phasing plans
- 2) Providing and maintaining Request for Information and submittal logs
- 3) Developing and maintaining a master Project Schedule
- 4) Preparing and maintaining a cash flow analysis
- 5) Defining and preparing scopes of work for bid packages
- 6) Developing a site management plan
- 7) Providing construction management and general contracting services
- 8) Developing a phasing and sequencing plan
- 9) Establishing and maintaining quality control standards
- 10) Providing the Guaranteed Maximum Price (“GMP”) for the Project

Construction Manager accepts a relationship of trust and confidence between itself and the Owner and undertakes to act as the Owner's fiduciary in the handling and opening of bids in accordance with the provisions of Chapter 143, Article 8 of the North Carolina General Statutes (NCGS). Metcon shall take all necessary actions contemplated under the Construction Documents to construct the Project and ensure timely and quality completion of the Project at a cost within the Guaranteed Maximum Price. Construction Manager agrees to furnish its best skills and its best judgment to cooperate with the Owner and Project Architect for undertaking all necessary action contemplated under the Construction Documents to (a) establish during the design phase a Guaranteed Maximum Price to construct and complete the Project, and (b) ensure timely and quality completion of the Project at a cost within the Guaranteed Maximum Price. Construction Manager acknowledges that it is a Construction Manager at Risk within the definition of NCGS 143-128.1 and is subject to the provisions of Chapter 143, Article 8 (Public Contracts). Construction Manager, and any Subcontractors retained by it, will be lawfully licensed to carry out the scope of the Work in the jurisdiction where the Project is located and will maintain such license at all times from the Notice to Proceed through Final Completion. Construction Manager will not be relieved of its obligations to perform the Work in accordance with the Construction Documents either by the activities or duties of the Project Architect in its administration of the Contract, or by any tests, inspections or approvals required or performed by persons or entities other than Construction Manager.

ARTICLE 2 CONSTRUCTION DOCUMENTS

2.1 The Construction Documents specifically include:

- a. The Request for Qualifications (RFQ);
- b. This Agreement including all exhibits, schedules and attachments;
- c. The GMP Amendment;
- d. The Final Project Schedule (when finalized by the GMP Amendment);
- e. All Change Orders issued after the date of the GMP Amendment;
- f. The Drawings, Specifications and other documents developed by Project Architect to describe the Project and accepted by Owner, provided that Construction Manager first receives such documents;
- g. Any additional drawings and specifications developed or prepared by Owner's other consultants, and adopted by the Owner, if any, provided that Construction Manager first receives the same;
- h. Any written Clarifications, additions and details which are prepared by the Project Architect or the Owner's other consultants for the Construction Manager concerning elements that are required for construction of the Project; and
- i. Any modifications or amendments to the foregoing.

2.2 In the event of any direct conflict or inconsistency in the Construction Documents, Construction Manager will bring the inconsistency to the attention of the Owner and Project Architect for Clarification or decision. Conflicts or discrepancies among the Construction Documents generally will be resolved in the following order of priority: (1) Change Orders or other Modifications, with those of a later date taking precedence over those of earlier date; (2) any Amendments to the Agreement with those of a later date taking precedence over those of an earlier date; (3) this Agreement including any Addenda or Exhibits hereto; (4) the Clarifications and any responses thereto; (5) the Drawings and Specifications; and (6) Request for Qualifications and responses thereto. Unless

otherwise stated in the Construction Documents, words that have well-known technical or construction industry meanings are used in the Construction Documents in accordance with such recognized meanings.

2.3 The Construction Documents form the entire and integrated contract between Owner and Construction Manager and supersede all prior negotiations, representations or agreements, written or oral. The intent of the Construction Documents is to include all items necessary for the proper execution and completion of the Work by Construction Manager.

2.4 Unless specifically enumerated in the Agreement, the Construction Documents do not include any advertisements or invitations to bid, any instructions to bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the terms of a contractor's or subcontractor's bid or proposal, or portions of any addenda relating to bidding requirements.

ARTICLE 3 LIST OF DEFINITIONS AND EXHIBITS

The definitions of certain terms, words and phrases used in the Construction Documents are set forth in **Exhibit C**. The following exhibits are fully incorporated into this Agreement by reference:

Exhibit Description

- A. Site Map
- B. Summary of Scope of Work
- C. Definitions
- D. Insurance Requirements
- E. Preliminary Project Schedule
- F. Form of GMP
- G. Liquidated Damages
- H. Forms of Performance and Payment Bonds
- I. Small Disadvantaged Business Enterprise Participation Plan
- J. Pre-Construction Services Agreement
- K. Other Cost of Work Items

ARTICLE 4 CONSTRUCTION MANAGER'S GENERAL RESPONSIBILITIES

4.1 Overview of Services. This Agreement is a contract for complete construction services for the Project in accordance with the "Construction Manager at Risk" method of delivery. Construction Manager agrees to perform all Work in accordance with the Construction Documents and consistent with Applicable Law. Construction Manager agrees to perform services related to the Work using the same skill and care ordinarily provided by construction managers practicing in the same or similar localities under similar circumstances. Construction Manager will furnish Pre-Construction Phase Services and Construction Phase Services and complete the Project in an expeditious and economical manner consistent with the Project Schedule. While Construction Manager is not a licensed design professional, it has participated in the design process of the Project and is aware of issues and constraints involved in this construction project.

4.2 Cooperation. Construction Manager will cooperate with the Project Architect and will further the interests of the Owner and the Project. Construction Manager will establish procedures for communication and coordination among the Project Team, Subcontractors, third party contractors, and

others involved with respect to all aspects of the construction and progress of the Project, and implement and enforce such procedures whenever possible.

4.3 Project Representative. Construction Manager will designate a Project Representative authorized to act on Construction Manager's behalf for the Project. The actions, omissions and decisions of Construction Manager's Project Representative will bind Construction Manager and the term "Construction Manager" will include Construction Manager's Project Representative.

4.4 Access to Work. Construction Manager will provide Owner and Project Architect access to the Work as may be reasonably requested from time to time. Construction Manager agrees that it may, from time-to-time, be required to coordinate with, and grant access to, certain third party contractors and other third parties being utilized for, or interested in, this Project. Upon request, Construction Manager agrees to allow reasonable access to the Project by such parties.

4.5 Project Records. Construction Manager will establish and maintain a numbering and tracking system for all Project records, including Change Orders, Requests for Information, submittals, and supplementary instructions and will provide updated records of the same at each Owner's meeting and when otherwise reasonably requested.

4.6 Stages. If the Owner elects to "fast-track" or develop the Project in multiple stages, Construction Manager will organize and perform its services as appropriate to each stage. Each stage of the Project may have a unique schedule for completion and a specific Construction Cost Limitation, at Owner's reasonable discretion.

4.7 Deviations. Construction Manager will maintain at the job office, a day-to-day working record of work-in-place that is inconsistent or at variance with the Construction Documents. Such variations will be fully noted with respect to the Drawings by Construction Manager and submitted to the Project Architect, no later than fifteen (15) days after Substantial Completion and prior to any Final Payment application.

4.8 Protection. Construction Manager will provide reasonable cover and protection for all portions of the structures, building equipment and valuable materials when the Work is not in progress, provide and set all temporary roofs, covers for doorways, sash and windows, and all other materials necessary to reasonably protect the Work and supplies related to the Project. Construction Manager will ensure that all trees and shrubs designated to remain in the vicinity of the construction operations are protected in accordance with the requirements of the Drawings and Specifications. Construction Manager will promptly remedy, without any cost to the Owner, all damage and loss to property referred to in this Section 4.8 caused in whole or in part by the Construction Manager, a Subcontractor, or anyone directly or indirectly employed by any of them, except to the extent that such damages or losses are (i) covered by insurance proceeds from coverage required by the Construction Documents, or (ii) attributable to force majeure events, acts or omissions of the Owner or Architect or anyone directly or indirectly employed or engaged by either of them.

4.9 Safety. All walks, roads, and other access points to the Project Site will be barricaded or diverted as directed by the Project Architect in order to keep the public away from the construction. All trenches, excavations or other hazards in the vicinity of the Work will be well barricaded and properly lighted at night. Construction Manager will develop and implement a project safety plan that provides all necessary safety measures for the protection of all persons on the job, including the

requirements of the A.G.C. *Accident Prevention Manual in Construction*, as amended, and will fully comply with all state laws or regulations and North Carolina State Building Code requirements to prevent accident or injury to persons on or about the location of the Work. Construction Manager will clearly mark or post signs warning of hazards existing, and will barricade excavations, elevator shafts, stairwells and similar hazards. Construction Manager will ensure that protection is provided against damage or injury resulting from falling materials and that all protective devices and signs be maintained throughout the progress of the Work. Construction Manager will adhere to the rules, regulations and interpretations of the North Carolina Department of Labor relating to Occupational Safety and Health Standards for the Construction Industry (Title 29, Code of Federal Regulations, Part 1926, published in Volume 39, Number 122, Part II, June 24, 1974, *Federal Register*), and revisions thereto as adopted by N.C.G.S. 95-126 through 155. Construction Manager will designate a responsible member of his organization as safety inspector, whose duties will include accident prevention on the Project. The name of the safety inspector will be made known to the Project Architect at the time the Work is started. Construction Manager will conduct daily safety and health inspections of the Project Site and, on a weekly basis, report to the Owner and Project Architect, in writing, the results of such inspections, all workplace hazards identified during such inspections, and any corrective action taken to correct such hazards.

4.10 Security. Construction Manager will ensure that the Project Site is reasonably secure by utilizing locks, covers, fences, cameras and similar measures when appropriate in order to project the safety and security of the Project Site and the materials stored thereon.

4.11 Cleanliness. Construction Manager will ensure that the building and surrounding area is reasonably free from rubbish at all times, and will remove debris from the Project Site on a timely basis or when directed to do so by the Project Architect. Construction Manager will provide an on-site refuse container(s) for the use of all Subcontractors. Construction Manager will endeavor to ensure that each Subcontractor removes their rubbish and debris from the building on a daily basis. Construction Manager will ensure that the building is broom cleaned as required to minimize dust and dirt accumulation.

4.12 Personnel. Construction Manager will identify to the Owner the key employees, Subcontractors and other key personnel (such as lead Project Managers and the General Superintendent) that it will assign to the Project and provide the Monthly Salary Rate for each of them. Construction Manager will also identify any CM Consultants that will be performing material services relating to the Project. After execution of this Agreement by the Owner, Construction Manager will not remove or replace the persons or entities assigned to the Project (except with the Owner's written consent, which consent will not be unreasonably withheld) unless such persons or entities become unavailable due to circumstances beyond the CM's control (e.g. extended illness or disability, death, or termination of employment, etc.). Construction Manager will not assign to the Project or contract with any person or entity to which Owner has a reasonable objection. Construction Manager will promptly update the list of persons and CM Consultants if they change during the course of the Project.

4.13 Minority Businesses. Construction Manager, as a provision of the Agreement, must encourage the participation of local, minority and other HUB firms in order to meet or exceed the goals set in North Carolina General Statute 143-128.2. Construction Manager must also assist the Owner in meeting the reporting requirements of North Carolina General Statute 143-128.3. To establish and meet a goal in excess of the statutory requirement, Construction Manager and Owner have agreed that Construction Manager will be governed by a Small Disadvantaged Business Enterprise Participation

Plan (“SDBEPP”) in the form attached hereto as **Exhibit I**, the terms of which are hereby incorporated into and made a part of this Agreement.

4.14 Non-discrimination. Construction Manager agrees not to discriminate against any employee, contractor or applicant by reason of age, race, religion, color, sex, national origin or physical or mental handicap while performing the services required herein or with regard to any position for which such employee, contractor or applicant is duly qualified. Construction Manager agrees to take affirmative action to employ, contract with, or otherwise treat qualified disabled or handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices.

ARTICLE 5 PRE-CONSTRUCTION PHASE SERVICES

The Pre-Construction Phase will be deemed to commence upon the date specified in a Notice to Proceed with Pre-Construction Phase Services issued by Owner (or, in the discretion of the Owner, in a separate Pre-Construction Services Agreement) and will continue through completion of the Construction Documents and procurement of all major Subcontractor agreements. Construction Manager is not entitled to reimbursement for any costs incurred for Pre-Construction Phase Services performed before issuance of the Notice to Proceed. Pre-Construction Phase Services may overlap Construction Phase Services. If a separate Pre-Construction Services Agreement is executed in advance of this Agreement, it (i) will be attached to this Agreement as **Exhibit J** and incorporated into the terms of this Agreement, and (ii) will serve as the Owner’s Notice to Proceed with respect to the Pre-Construction Phase Services described therein, but will not serve as a Notice to Proceed with respect to the Construction Phase Services described in Article 8. As part of the Pre-Construction Phase Services:

5.1 Project Schedule

5.1.1 Construction Manager will develop a critical path method schedule (“**Project Schedule**”) for Project Team review and the Owner’s approval, that coordinates and integrates activities on the Project, including Construction Manager’s services, the Project Architect’s design services, the Work of Subcontractors and other consultants and suppliers, and the Owner’s activities with the anticipated construction schedules for other contractors. To the extent the Work of Owner’s third party contractors is not known at the time of the acceptance of the Project Schedule, and to the extent that such work by Owner’s third party contractors materially impacts the Project Schedule after its adoption, Construction Manager will be entitled to an increase in the Contract Time and/or Project Schedule but only to the extent that such work causes actual delay to the progress of the Work and such delay cannot reasonably be avoided by Construction Manager. The Project Schedule must identify all major milestones through Final Completion, including the scheduled date of Substantial Completion.

The following milestones have been identified for the Project:

Construction Start:	Oct. 1, 2018
Substantial Completion:	Nov. 30, 2019
Final Completion:	Dec. 31, 2019

The Project Schedule will be created and maintained using Construction Manager’s specified format and software. A Preliminary Project Schedule will be provided within sixty (60) days of

the Effective Date and attached to this Agreement as **Exhibit E**. Once finalized and approved, the Final Project Schedule will be included with the GMP Amendment.

5.1.2 Construction Manager will update the Project Schedule throughout the Pre-Construction and Construction Phases and promptly provide Owner and Project Architect with copies of all such updates.

5.1.3 The Project Schedule will include other detailed schedule activities as directed by the Owner including, but not limited to, Owner-managed work under separate contracts such as equipment, furniture and furnishings, telephones, project security, property protection, life-safety systems, integration with central monitoring systems, information and instructional technology data-transmission systems, and computer technology systems.

5.2 **Budget and Cost Consultation.** Construction Manager is responsible to:

5.2.1 Prepare and update all procurement and construction cost estimates and distribute them to the Project Team throughout the duration of the Project.

5.2.2 Provide Estimated Construction Cost reports, including detailed estimates derived from cost quantity surveys based on unit prices for labor, materials, overhead and profit, organized for each portion of the Work according to the division 1-16 format of the Construction Specifications Institute, at the required stages of completion of the schematic design, design development, and construction documents phases of the Project as described in Section 5.5.

5.2.3 Provide continuous cost consultation services throughout the duration of the Project, including the reporting of and tracking of any decisions made known to Construction Manager that affect the scope or quality of the Project and providing ongoing updates of their cost and budget impact, and advise the Project Team within five (5) days if Construction Manager has reason to believe that the most current Estimated Construction Cost will exceed the Construction Cost Limitation or not meet Schedule requirements and recommend reasonable strategies for bringing the Project in line with the CCL and the Project Schedule to the extent possible.

5.2.4 Based upon the Construction Documents, Construction Manager will promptly identify all material variances between estimated costs and actual costs during the Construction Phase, and will promptly report such variances to the Project Team along with recommendations for action, but in any event no more than five (5) business days after acquiring such information.

5.2.5 Should any Estimated Construction Cost exceed the approved CCL, the Owner and Construction Manager will negotiate changes to the Project requirements or the CCL as required.

5.3 **Construction Documents.** Construction Manager shall:

5.3.1 Review all Drawings, Specifications, and other Construction Documents as they are developed by the Project Architect during the schematic design, design development, and construction documents design phases of the Project. It is recognized that Construction

Manager's review is made in Construction Manager's capacity as a manager of construction and not as a licensed design professional.

5.3.2 Consult with Owner and Project Architect on the selection of materials, equipment, component systems, and types of construction used on the Project and advise Owner on site use, construction feasibility, labor and material availability, procurement time requirements, and construction coordination.

5.3.3 Advise Owner of any error, inconsistency or omission discovered by or made known to Construction Manager in the Drawings, Specifications, and other Construction Documents. It is recognized that Construction Manager's review is made in Construction Manager's capacity as a manager of construction and not as a licensed design professional.

5.3.4 Advise Owner, when requested and whenever possible, on reasonable adjustments in the Project scope, quality or other options for keeping the Project cost within the CCL.

5.3.5 Construction Manager is not required to ascertain that the Construction Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but Construction Manager will promptly report to the Owner and Project Architect any nonconformity or inconsistency discovered by, or made known to, Construction Manager.

5.4 **Construction Planning and Bid Package Strategy.** Construction Manager will:

5.4.1 Identify equipment or materials requiring extended delivery times and advise Owner and Project Architect on the procurement of long lead items and possible expedited procurement of those items. If requested by Owner, and subject to Owner's prior approval, Construction Manager will issue requests for technical proposals to qualified sources and receive proposals and assist in their evaluation.

5.4.2 Make recommendations to the Project Team regarding organization of the Construction Documents to facilitate the bidding and awarding of construction subcontracts in a manner that promotes the interests of the Project and the Owner, taking into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-site production costs, shipping costs, code restrictions, the Owner's goals for HUB contractor participation, and similar constraints. These recommendations may include phased or staged construction or multiple separate contracts.

5.4.3 Review the Construction Documents with the Project Team in an effort to reduce or eliminate areas of conflict and overlap in the Work to be performed by the various Subcontractors or Owner's third party contractors.

5.4.4 Develop a bid/proposal package strategy in coordination with the Project Architect that addresses the entire scope of Work for each phase and stage of the Project. In doing so, Construction Manager will identify all bid/proposal packages on which Construction Manager intends to submit a self-performance bid/proposal. The bid/proposal package strategy will be

reviewed with the Owner on a regular basis and revised throughout the buyout of the Project so as to best promote the interests of the Project and the Owner.

5.4.5 Assist the Owner, the Project Architect, Owner's other consultants, and the Owner's third party contractors in their procurement of all applicable risk management, code, and regulatory agency reviews and approvals for the Project.

5.4.6 Advise Owner of any structural or environmental testing it believes is required, necessary or appropriate, and assist Owner in selecting testing laboratories and consultants, provided that Construction Manager does not assume any direct responsibility for the Work of such laboratories and consultants.

5.4.7 Provide an analysis of the types and quantities of labor required for the Project, review the appropriate categories of labor required for critical phases or stages, and make recommendations to minimize risks and adverse effects of labor shortages.

5.4.8 Consult with, and make recommendations to, the Owner on the acquisition schedule for fixtures, furniture and equipment, and coordinate with the Owner to meet the Project Schedule.

5.5 **Obtaining Bids/Proposals for the Work**

5.5.1 In accordance with Applicable Law, Construction Manager will pre-qualify trade contractors and publicly advertise and solicit competitive lump sum bids/proposals from those pre-qualified trade contractors or subcontractors for the performance of all major elements of the Work based on the criteria established by the Project Team for determining the bid/proposal that provides the best value to the Owner. Construction Manager will provide Owner with advance, written notice of the date it will receive the bids/proposals.

5.5.2 Construction Manager will schedule and conduct pre-bid conferences with interested and pre-qualified bidders/proposers, subcontractors, and suppliers, and record minutes of the conferences.

5.5.3 During the selection process, Construction Manager and Owner will review all trade contractor or Subcontractor bids/proposals in a confidential manner without disclosing the contents of any bid/proposal to persons other than the Project Team. Based on the selection criteria established and included in the request for proposals, Construction Manager will recommend to the Owner the bid/proposal that provides the best value for the Project and is fully qualified while meeting the established Project goals. Upon Owner's concurrence in the recommendation, which will not be unreasonably withheld, Construction Manager may negotiate the terms of the subcontract with the apparent best value bidder/proposer. It is agreed and understood that "best value" does not necessarily mean the "lowest cost" and that the overall Project goals must be considered in such selections.

5.5.4 Upon Owner's concurrence in the final terms of the subcontract, which will not be unreasonably withheld, Construction Manager will enter into a written subcontract for the subcontract work and provide a copy to the Owner. All bids/proposals will be available after award of the subcontract or within seven (7) days after the date of final selection, whichever is later.

5.5.5 If Construction Manager reviews, evaluates, and recommends to Owner a bid/proposal from a Subcontractor, but Owner requires another bid/proposal to be accepted at a materially greater cost, then Owner will allow Construction Manager to make a change in price, and if so required, the Guaranteed Maximum Price, but only to the extent of any additional cost that Construction Manager incurs because of Owner's requirement that the other bid/proposal be accepted.

5.5.6 Construction Manager may seek to self-perform portions of the Work identified for self-performance in the bid/proposal strategy. Construction Manager must submit a bid/proposal for the self-performance work in the same manner as all other trade contractors or Subcontractors. The Owner will determine whether Construction Manager's bid/proposal provides the best value for Owner, which determination is final. Construction Manager must perform approved self-performance work in accordance with the same terms and conditions as its other Subcontractors and, for payment purposes, will account for self-performance work in the same manner as it does for other subcontract costs.

5.5.7 Construction Manager will identify to Owner every Subcontractor it intends to use on the Project, including any self-performed work, in writing at least ten (10) days before entering into any subcontract. Construction Manager will not use any Subcontractor to which Owner has a reasonable objection. Construction Manager will not be required to subcontract with any Subcontractor to which it has reasonable objection. Following Owner's acceptance of a Subcontractor, that Subcontractor will not be changed without Owner's written consent, which will not be unreasonably withheld.

5.5.8 If a selected trade contractor or Subcontractor fails to execute a subcontract after being selected in accordance with this section or defaults in the performance of its work, Construction Manager may, in consultation with the Owner and without further advertising, fulfill the subcontract requirements itself or select a replacement trade contractor or subcontractor for such work. In the case of a Subcontractor in default of its obligations, the Owner may, but need not, direct Construction Manager to remove such defaulting Subcontractor and find a replacement, provided that Owner will first allow Construction Manager to comply, if necessary, with any notice and/or "opportunity to cure" provisions set forth in the Subcontract between Construction Manager and such defaulting Subcontractor.

5.6 **Development of GMP Proposal.** In accordance with Article 7, Construction Manager will prepare and submit a Guaranteed Maximum Price Proposal to Owner in the form attached hereto as **Exhibit F**.

ARTICLE 6 PRE-CONSTRUCTION PHASE FEE

6.1 Fee. The Pre-Construction Phase Fee is the total compensation payable to Construction Manager for the performance of all Pre-Construction Phase Services, except for Additional Pre-Construction Phase Services approved in advance and in writing by the Owner. The Pre-Construction Phase Fee will be a lump sum amount based on the CCL established in **Exhibit J** to this Agreement (or established in the Pre-Construction Services Agreement attached as **Exhibit J**). Except as specifically allowed in this Agreement (or the Pre-Construction Services Agreement, if applicable), Construction

Manager will not be entitled to any increase in the Pre-Construction Phase Fee for any costs, expenses, liabilities or other obligations arising from the performance of Pre-Construction Phase Services.

ARTICLE 7 GUARANTEED MAXIMUM PRICE PROPOSAL

7.1 Timing. When the Parties agree that the design of the Project is sufficiently developed and documented to allow detailed pricing of Project construction, Construction Manager will prepare and submit a Guaranteed Maximum Price Proposal to Owner in the form attached hereto as **Exhibit F**. Construction Manager will not withdraw its Guaranteed Maximum Price Proposal for thirty (30) days following submission to the Owner.

7.2 Format. The GMP Proposal must be prepared in a format reasonably agreeable to Owner. The Guaranteed Maximum Price Proposal will allow for reasonably expected refinements in the Drawings and Specifications through completion of the Construction Documents, except for material changes in scope. The GMP Proposal may include a Construction Manager's Contingency amount as allowed under Cost of work. The GMP Proposal will also include a schedule of Liquidated Damages in accordance with **Section 12.1.5** and **Exhibit G**. Included with its GMP Proposal, Construction Manager will provide a list of the Drawings, Specifications, plans, sketches, instructions, requirements, materials, equipment specifications and other information or documents that fully describe the Project as developed at the time of the GMP Proposal and that are relevant to the establishment of the GMP ("List of GMP Documents"). The list of supporting documents will be referenced in and incorporated into the GMP Proposal. The GMP Proposal and all supporting documents will identify and describe all items, assumptions, costs, allowances, contingencies, schedules and other matters necessary and relevant for proper execution and completion of the Work and for establishment of the Guaranteed Maximum Price. The GMP Proposal and the supporting documents are complementary and, in the event of an irreconcilable conflict between or among them, the interpretation that provides for the higher quality of material and/or workmanship will prevail over all other interpretations. Owner, in its sole but reasonable discretion, may specify different requirements for the GMP Proposal, provided that Construction Manager receives reasonable advance notice of any changes to such requirements.

7.3 Details. The GMP Proposal must include a written description of how it was derived that specifically identifies the Clarifications and assumptions made by Construction Manager in the GMP. The GMP Proposal will include, without limitation, a breakdown of Construction Manager's estimated Cost of work organized by trade; contingency amounts; Allowances, insurance and bond costs, the Construction Phase Fee; and a Project Schedule with a Schedule of Values and the proposed Contract Time, including dates for Notice to Proceed, Substantial Completion and Final Completion. In submitting the GMP Proposal, Construction Manager represents that it will provide every item, system or element of Work that is identified, shown or specified in the GMP Proposal or List of GMP Documents, along with all necessary or ancillary materials and equipment for their complete operating installation, unless specifically accepted by the Owner.

7.4 Budgeted Cost Limitation. In no event will the amount of the GMP Proposal exceed the amount of the Construction Cost Limitation. In no event shall the sum of General Conditions and Construction Phase Fee exceed **12%** of the Cost of work.

7.5 Coordination. In developing the GMP Proposal, Construction Manager will coordinate efforts with the Project Architect to identify qualifications, Clarifications, assumptions, exclusions, value engineering and any other factors relevant to establishment of a GMP. Construction Manager will

review development of the GMP Proposal with the Owner on an ongoing basis to address Clarifications of scope and pricing, distribution of contingencies, schedule, assumptions, exclusions, and other matters relevant to the establishment of a GMP.

7.6 Complete Proposal. The GMP Proposal will adopt and incorporate all of the terms and conditions of this Agreement and all attachments to this Agreement. Any proposed deviation from the terms and conditions of this Agreement must be clearly and conspicuously identified to the Owner in writing in the GMP Proposal (e.g. by way of a List of Assumptions, Clarifications, Qualifications and/or Exclusions, etc.) and specifically accepted by the Owner by way of inclusion in the finalized GMP Amendment. In the event of a conflict between any term of the GMP Proposal that was not clearly and conspicuously identified and approved by the Owner and the terms of this Agreement and its attachments, the terms of this Agreement and its attachments will control.

7.7 Approval Process. Owner may accept or reject the GMP Proposal or attempt to negotiate its terms with Construction Manager. Upon acceptance by the Owner of the GMP Proposal, both parties will finalize and execute the GMP Amendment and the terms thereof, including the Guaranteed Maximum Price and the supporting documents, will become part of this Agreement. If the Owner rejects the GMP Proposal or if the parties are unable or unwilling to agree on a GMP Amendment, the Owner may terminate this Agreement by written notice to Construction Manager. Upon Owner's acceptance of the GMP Proposal and preparation of the GMP Amendment, Construction Manager will not be entitled to any increase in the Guaranteed Maximum Price due to the continued refinement of the Construction Documents or the absence or addition of any detail or specification that may be required in order to complete the construction of the Project as described in and reasonably inferable from the GMP Proposal or the List of GMP Documents.

7.8 Monitoring. Following finalization of the GMP Amendment, Construction Manager will continue to monitor the development of the Construction Documents so that, when complete, the Construction Documents adequately incorporate and resolve all qualifications, assumptions, Clarifications, exclusions and value engineering issues identified in the GMP Amendment. During the Construction Documents stage, Construction Manager and the Project Architect will jointly deliver a monthly status report to the Owner describing the progress on the incorporation of all qualifications, assumptions, Clarifications, exclusions, value engineering issues and all other matters relevant to the establishment of the GMP into the Construction Documents. The Project Architect will review and approve, or take other appropriate action upon, Construction Manager's submittals but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Construction Documents, provided that no such review or other action will relieve Construction Manager from its obligations under this Agreement and the Project Architect will not approve of safety precautions or procedures that are the responsibility of Construction Manager under this Agreement.

7.9 Cost Changes. Subject to other provisions of this Agreement and the Construction Documents, Construction Manager will be entitled to an equitable adjustment of the GMP if it is required to pay or bear the burden of any new federal, state, or local tax, or any rate increase of an existing tax, except taxes on income, adopted through statute, court decision, written ruling, or regulation taking effect after finalization of the GMP Amendment. This equitable adjustment does not apply to tax increases borne solely by Subcontractors.

7.10 Time Changes. Subject to other provisions of this Agreement and the Construction Documents, Construction Manager may be entitled to an extension of the Contract Time only (but no

increase whatsoever in the Guaranteed Maximum Price or Contract Sum unless otherwise allowed) for actual, and not reasonably avoidable, delays arising from the following causes but only to the extent that such delays are not reasonably foreseeable, are beyond the control of Construction Manager, and are not caused by the fault, error, omission or negligence of the Construction Manager, its employees, agents, or Subcontractors (but only to the extent of the actual delay caused by such circumstances): (i) acts of God, such as tornado, fire, hurricane, blizzard, earthquake, typhoon or flood or similar unavoidable casualties that cause damage to completed Work or stored materials or otherwise cause delay to the progress of the Work; (ii) abnormal and adverse weather that is not reasonably foreseeable and is a substantial deviation from normal seasonal weather (it being agreed that delays due to normal seasonal weather conditions are already accounted for in the Project Schedule and do not qualify as any cause for allowable delay or extension of the Contract Time); (iii) acts of the public enemy and acts of third parties that are not part of, or related to in any way, the Construction Manager, the Subcontractors or the suppliers of materials to the Project; (iv) acts of the Owner or Project Architect or of an employee of either, or of a separate contractor employed by the Owner; and (v) by changes in the Work required by Owner, provided that such changes in the Work result from or are initiated by the Owner or Project Architect or an act or neglect of the Owner or Project Architect or of an employee of either, or of a third party contractor retained or employed by the Owner ("Project Owner Parties"). If Construction Manager is delayed in the commencement or progress of the Work by an act or neglect of a Project Owner Party, or by changes in the Work as provided above, and such delay is not caused or contributed to by Construction Manager or its Subcontractors, then Construction Manager will be entitled an equitable adjustment to the Contract Sum to the extent such delay affects Construction Manager's cost of performance hereunder.

7.11 Method/Change Orders. Changes in the Work may be accomplished after execution of the Agreement, and without invalidating the Agreement, by Change Order, Field Change or Field Order, subject to the limitations stated in this Article 7 and elsewhere in the Construction Documents. Except as is otherwise specifically provided in Article 7, any change to the Contract Sum or the Contract Time must be accomplished by a written Change Order approved by Project Architect and signed by Construction Manager and the Owner. No oral modifications or implied modifications will be effective to modify the Work, the Contract Sum or the Contract Time. Construction Manager may submit a request or application for a Change Order to the Architect or the Owner but such request or application for a Change Order must specify the change in the Work, the amount of the adjustment, if any, in the Contract Sum, the amount of the adjustment, if any, in the Contract Time, and any other material changes to the Construction Documents reasonably required as a result of such change, along with documentation sufficient to enable Owner to review and confirm such effects including all labor, services and materials altered, added, omitted or changed by the proposed Change Order and make a determination as to whether Construction Manager is entitled to such Change Order. Upon any such request, the Architect and the Owner will review the same and accept or reject such request. Agreement on any Change Order will be the exclusive remedy or result of all matters that are addressed by the Change Order including all direct and indirect costs and damages, and any adjustments to the construction schedule, the Contract Sum or the Contract Time. Any request or application for a Change Order by Construction Manager must be submitted in writing within 21 days after occurrence of or the date when Construction Manager discovered, or should have discovered, the event giving rise to the claim for such change. No Change Order will be granted if, in the exercise of reasonable prudence, the Construction Manager, or anyone for whom Construction Manager is responsible, could have avoided the delay in the progress of the Work or the increased cost or expense. Delays or increased costs that are otherwise allowable will be reduced by the amount of time or money that the Construction Manager, or anyone for whom Construction Manager is responsible, in the

exercise of reasonable prudence, could have avoided, reduced or mitigated in the course of the performance of subsequent portions of the Work, provided that Construction Manager will not be obligated to incur additional costs to make up for otherwise excusable delays. Except as otherwise specifically provided in this Agreement, Construction Manager will not be entitled to an increase in the GMP/Contract Sum or any payment or compensation of any kind from Owner for indirect, incidental, consequential or similar impact costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, extended job site general condition costs or home office overhead of any type, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether or not caused by the Construction Manager.

7.12 Field Changes/Field Orders. A Field Change or Field Order may be issued by the Owner or Architect as applicable in the absence of total agreement on the terms of a Change Order. If the Field Change or Field Order involves an adjustment to the Contract Sum, the adjustment will be based on one of the following methods:

- (i) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- (ii) Unit prices stated in the Construction Documents or subsequently agreed upon;
- (iii) Cost to be determined in a manner agreed upon by the parties as set forth in this Agreement, or a mutually acceptable fixed or percentage fee if not set forth elsewhere herein; or
- (iv) An reasonable adjustment determined by the Project Architect based on expenditures/savings, including reasonable overhead amount for any increase, taking into account reasonable labor costs and insurance, cost of materials and transportation, rental costs, insurance and bond premiums, additional supervisory costs and similar items. Upon receipt of a properly issued Field Change or Field Order, Construction Manager will promptly proceed with the change in the Work involved and advise the Architect of Construction Manager's agreement or disagreement with the method of determining the proposed adjustment in the Contract Sum or Contract Time due to the Field Change or Field Order. At such time as agreement is reached, a proper Change Order will be prepared.

ARTICLE 8 CONSTRUCTION PHASE SERVICES

The Construction Phase will be deemed to commence upon the date specified in a Construction Phase Notice to Proceed that is issued by Owner after finalization of the GMP Amendment and will continue until Final Completion of all Work. Pre-Construction Phase Services may overlap Construction Phase Services. Construction Manager agrees to not incur any Subcontractor costs for construction of the Work in the Construction Phase prior to issuance by Owner of written authorization to commence such Work. Construction Manager will perform the following Construction Phase Services:

8.1 Standard. Construct the Work in strict accordance with the Construction Documents and in a good and workmanlike manner within the time required by the Final Project Schedule approved by Owner.

8.2 Organization. Organize and maintain a competent, full-time staff at the Project Site with clearly defined lines of authority and communication as necessary to coordinate construction activities, monitor and direct progress of the Work, and further the goals of the Project Team.

- 8.3 Representative. Designate in writing a representative who is responsible for the day-to-day management of the Construction Phase Services. This designated representative will be the Owner's primary contact during the Construction Phase and will be available as required for the benefit of the Project and the Owner. The designated representative will be authorized to act on behalf of and bind Construction Manager in all matters related to Construction Phase Services including, but not limited to, execution of Change Orders and Applications for Payment.
- 8.4 Meetings. Attend Owner's regularly scheduled Project progress meetings and fully advise the Project Team of the Project status including schedule, costs, quality and changes. Construction Manager will also schedule, direct and attend interim progress meetings with other members of the Project Team as required to maintain Project progress and record and distribute minutes of each meeting to each Project Team member. The minutes will identify critical activities that require action and the dates by which each activity must be completed.
- 8.5 Methods. Be responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work. Construction Manager will keep the Owner informed of the progress and quality of the Work.
- 8.6 Deliveries. Coordinate delivery and installation of Owner-procured material and equipment.
- 8.7 Supply. Provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and all other facilities and services necessary for the proper execution and completion of the Work in strict accordance with the requirements of the Construction Documents.
- 8.8 Permits and Approvals. Obtain building permits, special permits and other approvals as are reasonably required or appropriate for permanent improvements by Applicable Law or the Construction Documents.
- 8.9 Assistance. Assist Owner or Project Architect in obtaining all approvals required from authorities having jurisdiction over the Project.
- 8.10 Coordination. Coordinate, monitor and inspect the Work of Subcontractors to ensure conformance with the Construction Documents.
- 8.11 Correction. Comply fully with the Construction Warranty set forth in this Agreement including Section 21.2 and promptly correct, at its sole expense without cost to the Owner, any defective Work that does not comply with the Construction Documents or Applicable Law except for any such defective Work or non-compliance that (i) was specifically authorized and/or approved by the Owner or the Project Architect, or (ii) was caused by the acts or omissions of Owner, its employees or anyone directly retained by Owner.
- 8.12 Delivery. Construction Manager will maintain and deliver the required documents that describe changes or deviations from the Construction Documents that occurred during construction and that reflect the actual "As Built" conditions of the completed Work.
- 8.13 Site. Construction Manager shall, unless otherwise specified, supply and pay for all lighting, power, heat, sanitary facilities and water up to the date of Substantial Completion or as otherwise agreed to in writing by the Parties, and will require the Subcontractors to, supply and pay for all labor,

transportation, materials, tools, apparatus, scaffolding and incidentals necessary for the completion of that portion of the Work, and to install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of same.

8.14 Safety. Construction Manager is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work including organizing and maintaining a safety program complying with applicable requirements of OSHA and all other applicable federal, state and local laws and regulations. Construction Manager will provide recommendations and information to Owner and Project Architect regarding the assignment of responsibilities for safety precautions and programs, temporary Project facilities, and equipment, materials, and services for common use of the Subcontractors. Construction Manager will use reasonable efforts to include appropriate safety provisions in the Construction Documents and any subcontracts executed by it.

8.15 Other Requirements.

8.15.1 E-Verify. Construction Manager 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. Construction Manager 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, will verify the Work authorization of the employee through E-Verify in accordance with NCGS §64-26(a). Construction Manager pledges, attests and warrants through execution of this contract that Construction Manager 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 Construction Manager will comply with any and all E-Verify requirements. Failure to comply with the above requirements will be considered a breach of this contract.

8.15.2 Records. Records of Construction Manager’s costs, reimbursable expenses pertaining to the Project and payments will be available to Owner or its authorized representative during business hours and will be retained for four (4) years after final Payment or abandonment of the Project, unless Owner otherwise instructs Construction Manager in writing.

8.15.3 NC Sedimentation Pollution Control Act of 1973. Any land-disturbing activity performed by Construction Manager or any Subcontractor in connection with the project will comply with all erosion control measures set forth in the Contract Documents and any additional measures which may be required in order to ensure that the project is in full compliance with the Sedimentation Pollution Control Act of 1973, as implemented by Title 15, North Carolina Administrative Code, Chapter 4, Sedimentation Control, Subchapters 4A, 4B and 4C, as amended (15 N.C.A.C. 4A, 4B and 4C). Upon receipt of notice that a land-disturbing activity is in violation of said act, Construction Manager will be responsible for ensuring that all steps or actions necessary to bring the Project in compliance with said act are promptly taken. Construction Manager will be responsible for defending any legal actions instituted pursuant to N.C.G.S. 113A-64 against any Project Owner Party. To the fullest extent permitted by law, Construction Manager will indemnify and hold harmless the Owner, Project Architect and any Project Owner Party from and against all claims, damages, civil penalties,

losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance of Work or failure of performance of Work, provided that any such claim, damage, civil penalty, loss or expense is attributable to a violation of the Sedimentation Pollution Control Act. Such obligation will not be construed to negate, abridge or otherwise reduced any other right or obligation of indemnity which would otherwise exist as to any party or persons described in this Agreement or under Applicable Law.

ARTICLE 9 OWNER'S RESPONSIBILITIES

9.1 Architect. The Owner will designate a Project Architect for the Project.

9.2 Budget. The Owner will provide the Preliminary Project Cost and general schedule for the Project. The Preliminary Project Cost will include the Construction Cost Limitation, contingencies for changes in the Work during construction, and other costs that are the responsibility of the Owner. The general schedule will set forth the Owner's plan for milestone dates and completion of the Project. The Preliminary Project Cost has been established as **\$7,000,000**. The Construction Cost Limitation has been established as **\$5,500,000**. The general schedule for the Project is to achieve Substantial Completion no later than **November 30, 2019**.

9.3 Representative. The Owner will identify at least one person as its Owner Designated Representative who is authorized to act in the Owner's behalf with respect to the Project and administer this Agreement on behalf of the Owner. The Owner Designated Representative will examine the documents submitted by Construction Manager and will render decisions on behalf of the Owner including determination of any fees and costs earned by Construction Manager and equitable back charges against Construction Manager.

9.4 Experts. The Owner, at Owner's cost, will secure the services of surveyors, soils engineers, existing facility surveys, testing and balancing, environmental surveys or other special consultants to develop such additional information as may be necessary for the design or construction of the Project.

9.5 Testing. The Owner will arrange and pay for materials, structural, mechanical, chemical and other laboratory tests as required by the Construction Documents.

9.6 Services. The Owner will furnish all legal, accounting, auditing and insurance counseling services for itself as may be necessary for the Project.

9.7 Approvals. The Owner will furnish required information and services and will render approvals and decisions as expeditiously as is reasonable under the circumstances so as not to unreasonably disrupt the orderly progress of Construction Manager's services and of the Work.

9.8 Inspection. The Owner may designate one or more construction inspectors who will be given access to the Work as reasonably requested or needed. The provision of inspection services by Owner will not reduce or lessen Construction Manager's responsibility for the Work. Construction Manager is fully and solely responsible for constructing the Project in strict accordance with the Construction Documents and Applicable Law.

9.9 Defects. Owner will have the right to reject any defective Work on the Project. Should Construction Manager refuse or neglect to correct any such Work within a reasonable time after notice,

Owner may have the Work corrected and recover all expenses incurred from Construction Manager on demand except to the extent such defects were caused by the acts or omissions of the Owner, its employees, or anyone under its control, including other third-party contractors retained by the Owner.

9.10 Documents. Owner will furnish to Construction Manager one set of the Construction Documents.

9.12 Funding. Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Agreement.

ARTICLE 10 OWNERSHIP AND USE OF DOCUMENTS

10.1 Drawings, Specifications and other documents prepared by the Project Architect, its consultants, or other consultants retained by the Owner for the Project that describe the Work to be executed by Construction Manager (the "Construction Documents") are instruments of service and will, except as otherwise agreed, remain the property of their authors whether the Project for which they are made is executed or not. Construction Manager will be permitted to retain one record set of the Construction Documents. All other copies of the Construction Documents will be returned to their respective authors or suitably accounted for. Construction Manager and its Subcontractors are authorized to reproduce and use portions of the Construction Documents as necessary and appropriate for the execution of the Work. Construction Manager and its Subcontractors will not use the Construction Documents on any other projects.

10.2 Submission or distribution of the Construction Documents to meet official regulatory requirements or for other purposes in connection with the Project will not diminish the Project Architect's or other author's rights.

ARTICLE 11 TIME

11.1 Timing. Time limits stated in the Construction Documents or the Project Schedule are of the essence of this Agreement. Any request for extension of the Contract Time must satisfy the requirements provided in **Section 7.10**. Unless otherwise approved, Construction Manager will perform its obligations under the Agreement as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work.

11.2 Schedule. Prior to commencement of the Construction Phase Services and concurrently with submission of the Guaranteed Maximum Price Proposal, Construction Manager will submit an up-to-date Project Schedule for the performance of the Construction Phase Services. The Project Schedule will include reasonable periods of time for the Owner's and Project Architect's review and approval of shop drawings and submissions and for the approval of other authorities having jurisdiction over the Project and will include periods to accommodate delays due to normal seasonal weather conditions.

ARTICLE 12 PAYMENTS

12.1 General Requirements

12.1.1 General. The Owner will make progress payments on account of the Contract Sum to Construction Manager based on applications for payment (“Application for Payment”) submitted to the Project Architect by Construction Manager and certificates for payment issued by the Project Architect. The period covered by each Application for Payment will be one calendar month ending on the last day of the month. Provided that an Application for Payment is received by the Project Architect not later than the 5th day of the month, the Owner will make payment to Construction Manager not later than the 20th day of the following month. If an Application for Payment is received by the Project Architect after the application date fixed above, payment will be made by the Owner not later than forty-five days after the Project Architect receives the Application for Payment.

12.1.2 Form. Applications for Payment will be in a form agreed upon by the Construction Manager, Project Architect and Owner and will prepared and supported by such data to substantiate the accuracy of the request as the Project Architect may require. Prior to submitting the first Application for Payment, Construction Manager will prepare a schedule showing a breakdown of the Contract Sum into values of the various parts of the Project Schedule. The anticipated payment schedule breakdown will be arranged so as to facilitate payments to the Subcontractors in accordance with the terms of this Agreement and the Construction Documents. The combined Construction Phase Fee, Bonds & Insurance, CM Contingency, and Project Reserve (if any) will be shown on the Schedule of Values as separate lines. The values for Construction Manager Contingency and Project Reserve (if any) will move to appropriate lines within the Cost of work as those funds are committed and expended. This schedule of values will be submitted to & approved by the Project Architect and Owner within 30 days of the Notice to Proceed. The schedule of values will be prepared in such form and supported by such data to substantiate its accuracy as the Project Architect and Owner may require.

12.1.3 Calculation. Subject to other provisions of the Construction Documents, the amount of each progress payment will be computed as follows:

- (i) Take that portion of the GMP properly allocable to completed work as determined by multiplying the percentage completion of each portion Cost of work by the share of the GMP allocated to that portion of the Work in the schedule of values.
- (ii) Add that portion of the GMP properly allocable to materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the Work or if approved in advance by the Owner, suitably stored off site at a location agreed upon in writing.
- (iii) Subtract the aggregate of previous payments made by the Owner.
- (iv) Subtract the amount, in any, by which Construction Manager has been previously overpaid, as evidenced by the Owner’s review of the CM’s documentation.
- (v) Subtract amounts, if any, for which the Project Architect has withheld or nullified a certificate of payment.
- (vi) Subtract retainage as per **Section 12.1.4**.
- (vii) Add the amount due for Construction Phase Fee calculated on the basis the percentage completion of the project or on a schedule of payment negotiated with the Owner less five percent (5%) and less previous payments for Construction Phase Fee.

12.1.4 Retainage. Payment allocated to Subcontractors will be subject to five percent (5%) retainage, provided, however that after fifty percent (50%) of the Cost of work has been

satisfactorily completed on schedule, Owner may decide, in its sole discretion and with consent of any applicable sureties, to waive the requirement for further retainage so long as progress of the Work continues to be completed satisfactorily and on schedule. In addition, upon request of the Construction Manager, the Owner agrees to approve in its reasonable discretion the release of retainage for early completion Subcontractors that have completed all of that Subcontractor's work to the satisfaction of the Architect, Owner and Construction Manager. The balance of the Construction Phase Fee will be held by the Owner until Final Payment. Satisfactory completion and close out of the project means that the Owner and Project Architect are satisfied that the project has been completed in accordance with the Agreement and within the GMP, all general conditions of the contract pertaining to close out have been satisfied, and all Subcontractors have satisfactorily completed their respective contracts. No retainage will be held for the cost of Bonds and Insurance.

12.1.5 Liquidated Damages. This Agreement is subject to the assessment of Liquidated Damages against Construction Manager as set forth in this Agreement. Amounts assessed as Liquidated Damages, and other amounts to which Owner is entitled by way of setoff or recovery, may be deducted from any moneys due Construction Manager. Construction Manager understands and agrees that, in the event the Owner is not able to utilize and/or occupy the Project in accordance with the Project Schedule by the dates provided therein (except as such dates may be extended pursuant to the terms of this Agreement), the Owner would suffer substantial monetary and non-monetary damages. Construction Manager and Owner have established a set of Liquidated Damages provisions in **Exhibit G** that will be assessed in such circumstances. Construction Manager agrees to pay to Owner all such Liquidated Damages compensation as a reasonable estimate of costs and damages that will be incurred by the Owner as a result of Construction Manager's failure to complete the Project on or before the milestone dates set forth in the GMP Amendment. The Owner and Construction Manager agree that the Liquidated Damages called for herein are not a penalty but are appropriate given the difficulty of determining Owner's actual damages for late completion and represent the best estimate of the Owner's damages in the event of a delay by Construction Manager in the completion of the Project within the dates specified. Except for the right to collect the Liquidated Damage amounts set forth in **Exhibit G**, the Owner waives any claims to amounts recoverable solely on the basis of delays to completion of the Project. Notwithstanding the foregoing, Liquidated Damages are intended to compensate Owner only for delays in completion of the Work and will in no way limit Owner's entitlement to damages for any other injury, damage or loss, other than for delay, for which Construction Manager may be obligated pursuant to the terms of this Agreement, the Construction Documents, or Applicable Law.

12.1.6 Title. Construction Manager warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment for such Work. Construction Manager further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of Construction Manager's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Construction Manager, all Subcontractors, all Suppliers, and other persons making a claim for payment by reason of having provided labor, materials or equipment relating to the Work.

12.1.7 Lien Waivers. No payment or reimbursement will become due and payable to Construction Manager until it delivers to Owner appropriate conditional lien waivers executed by each of its Subcontractors and Suppliers utilized for any portion of the Work for which payment or reimbursement is requested. Provided that Owner makes timely payment to Construction Manager, without limiting any indemnification otherwise provided under the Construction Documents or at law, or in equity, Construction Manager will indemnify, defend, and hold harmless Owner against any lien or claim filed by any Subcontractors, Suppliers, or other parties supplying labor, equipment, services or materials related to the Work. If at any time any such lien is placed on the Project or the funds upon which Construction Manager may receive, by any such parties, then Construction Manager will furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, except that Construction Manager will not be obligated to bond any lien resulting from Owner's failure to pay Construction Manager in accordance with this Agreement. Construction Manager's obligations hereunder will survive the termination, expiration or completion of this Agreement. Construction Manager will keep copies of all such lien waivers for the Project for inspection by Owner during construction and for a period not less than one (1) year from the date of Final Completion.

12.1.8 Withholdings. Owner will have the right to withhold certain amounts from payments otherwise due to Construction Manager to the extent reasonably necessary to protect Owner against any loss or damage which may result from the failure of Construction Manager or any Subcontractor to perform their respective obligations under this Agreement. Notwithstanding any other contractual provision to the contrary, Owner may withhold payment to Construction Manager under any of the following circumstances:

12.1.8.1 Construction Manager persistently fails to perform the Work in accordance with the Construction Documents; fails to commence or direct the correction of any Work that is not in accordance with the requirements of the Construction Documents within 10 days after receipt of written notice from the Owner; or Construction Manager is otherwise in material breach or default under this Agreement and fails to remedy such breach or default within 15 days after receipt of written notice from the Owner;

12.1.8.2 The Application for Payment includes a request for payment for services or materials that are not within the scope of the Work or that are not performed in accordance with the Construction Documents; provided that Owner will pay for Work that is performed in accordance with the Construction Documents;

12.1.8.3 The Application for Payment does not contain the documentation required by the terms of this Agreement; provided, however, Owner will pay for allowable Work for which Construction Manager has provided the required documentation;

12.1.8.4 Construction Manager has failed to make payments promptly to Subcontractors or other third parties used in connection with any services or materials for which Owner has made payment to Construction Manager unless Construction Manager has a documented and valid reason for withholding such payments;

12.1.8.5 There is reasonable, documented evidence that the unpaid balance of the GMP is not sufficient to complete the Work in accordance with the Construction Documents;

12.1.8.6 Construction Manager has repeatedly failed to complete the Work in accordance with the Project Schedule requirements or has repeatedly failed to provide reasonable evidence that the remaining Work will be completed within the Contract Time;

12.1.8.7 Construction Manager is insolvent, makes a general assignment for the benefit of its creditors or otherwise seeks protection under the laws and regulations of the bankruptcy courts; or

12.1.8.8 Construction Manager fails to obtain, maintain or renew insurance coverage as required by the terms of this Agreement.

12.1.9 Partial Payments. No partial payment made by the Owner will constitute, or be construed to constitute, final acceptance or approval of the Work to which the partial payment relates or of the documentation provided in support of the partial payment. No partial payment made by the Owner will constitute, or be construed to constitute, a release of Construction Manager from any of its obligations or liabilities with respect to the Work.

12.1.10 Records. Owner will have the right to verify and audit the details of Construction Manager's billings, certificates, accountings, cost data, and statements, either before or after payment, by (1) inspecting the books and records of Construction Manager during normal business hours; (2) examining any reports with respect to this Project; (3) visiting the Project Site; and (4) any other reasonable action. Construction Manager's records will be kept on the basis of generally accepted accounting principles and organized by each Application for Payment period. However, the specific insurance rates and bond rates/costs, lump-sum amounts, rate based and unit pricing underlying such costs will be excluded from any audit.

12.2 Pre-Construction Phase Payments. Payments for Pre-Construction Phase Services will be made as set forth in the Pre-Construction Services Agreement.

12.3 Construction Phase Payments

12.3.1 Application. Payments for Construction Phase Services will be made as provided in this Agreement. Payment requests will be submitted on an Application for Payment with a Schedule of Values approved by the Owner and will include all documents required by this Agreement identifying payments to minority, local or other Historically Underutilized Businesses and to all Subcontractors. Payment for approved Change Orders will be made as part of an Application for Payment.

12.3.2 Construction Phase Fee. The Construction Phase Fee will be shown as a separate line item on the Schedule of Values. Payment of the Construction Phase Fee will be made with each Application for Payment in the same proportion as the percentage completion of the Cost of work of the Project.

12.3.3 General Conditions. Payments for General Conditions will be made in equal installments calculated by dividing the GMP General Conditions amount by the number of construction months in the agreed Project Schedule.

12.3.4 Limits. Pay requests for Subcontractor work included in an Application for Payment will not exceed the percentage of Work allocated to that Subcontractor for each respective Schedule of Values work classification which has been completed and will not exceed the total value of the subcontract amount.

12.3.5 Final Payment. Construction Manager's Request for Final Payment will not be made until all Work is completed per the terms of this Agreement and all requirements of the Construction Documents have been satisfied including, without limitation:

- delivery to Owner of a complete conditional release of all liens arising out of the Work including a conditional release of liens from each Subcontractor on the Project;
- written consent of surety to release of final payment;
- all requirements and close out documentation described in Article 12 of this Agreement; and
- an affidavit that, to the best of Construction Manager information, knowledge and belief, the release includes and covers all materials and services over which Construction Manager has control and for which a lien could be filed and that all known debts arising from the Project have been satisfied. Alternatively, Construction Manager may, at its sole expense, furnish a bond satisfactory to Owner to indemnify Owner against any lien arising out of the Work.

If any lien is asserted against Owner after all payments are made, Construction Manager will reimburse Owner for all damages and costs Owner may incur in discharging such lien, including all costs or court and reasonable attorneys' fees, and Owner will retain all other remedies available to it at law and in equity. Construction Manager's Request for Final Payment will also include (i) conditional sworn statements or lien waivers from each Subcontractor along with copies of supporting pay applications, (ii) evidence that any inspection required by any governmental authority for such Final Completion has been completed with satisfactory results and a detailed itemization of any associated costs, (iii) if any Change Orders have occurred since last payment, an updated construction schedule and total budget/cost analysis, (iv) copies of any investigation results or reports occurring since the last payment, (v) any assignment of warranties, contracts or guarantees, (vi) all as-built drawings in electronic and hard copy formats, (vii) a binder containing all product and equipment operating and service manuals and warranty information, and (viii) a binder or electronic pdf files containing all applicable inspection reports, licenses, permits, off-site approvals, and certificates of completion or occupancy.

12.3.6 Nothing contained herein will require the Owner to pay Construction Manager an aggregate amount for Construction Phase Services that exceeds the Guaranteed Maximum Price. The total amount of all Construction Phase payments to Construction Manager will not exceed the Cost of work for the Project plus the Construction Phase Fee.

12.3.7 The acceptance by Construction Manager (or its successors) of Final Payment under this Agreement will constitute a full and complete release of Owner from any and all claims, demands, and causes of action whatsoever that Construction Manager, its Subcontractors, Suppliers or any of their successors or assigns have or may have against Owner arising from the Project or any provision(s) of this Agreement except for those previously made in writing and identified by Construction Manager as unsettled at the time of the Request for Final Payment.

ARTICLE 13 COST CATEGORIES

13.1 Cost of Work

Construction Manager is entitled to receive payment for the allowable Cost of work items incurred after receipt of Owner's written authorization to commence the Construction Phase Work through Final Completion of the Project. Construction Manager is not entitled to reimbursement for Cost of work costs incurred before receipt of Owner's written authorization. Cost of work includes the following:

13.1.1 Direct Construction Cost. Direct Construction Cost means the sum of the amounts included in the following sections:

- (i) Costs of materials and equipment purchased directly by Construction Manager and incorporated into, or to be incorporated, or consumed in the performance of the Work, including transportation charges, storage charges, installation charges, maintenance charges, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by Construction Manager at the Project Site and fully consumed in the performance of the Work, and a reasonable and customary allowance for waste and spoilage.
- (ii) Costs of site debris removal and disposal in accordance with all Applicable Laws.
- (iii) Payments made to Subcontractors and their vendors or suppliers by Construction Manager for the subcontract work in accordance with the Construction Documents and the requirements of the subcontracts with the Subcontractors, vendors or suppliers.
- (iv) Payments earned by Construction Manager for self-performed subcontract work, in accordance with the Construction Documents and the terms of this Agreement and approved by the Owner.
- (v) Testing fees not paid by Owner.
- (vi) Intellectual property royalties and licenses for items specifically required by the Construction Documents which are, or will be, incorporated into the Work.

- (vii) Wages of construction workers directly employed by Construction Manager to perform the construction of the Work at the Project Site or, with the Owner's prior approval, at off-site workshops.
- (viii) Fees and assessments for the building permit and for other permits, licenses and inspections for which Construction Manager is required by the Construction Documents to pay.
- (ix) Required performance bonds and builders risk insurance cost not paid by Owner.

13.1.2 General Conditions:

- (i) Wages or salaries of Construction Manager's supervisory and administrative personnel when stationed at the Project Site with the Owner's prior approval.
- (ii) Wages and salaries of Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
- (iii) Costs paid or incurred by Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries, incentive compensation and any other discretionary payments paid to anyone hired by Construction Manager included in the Cost of work.
- (iv) Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by Construction Manager at the Project Site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment will be subject to the Owner's prior approval.
- (v) Costs of document reproductions, postage and parcel delivery charges, telephone service at the Project Site and reasonable petty cash expenses of the Project Site office, and these same services provided at Construction Manager's principal or branch offices if provided directly for the Project.
- (vi) That portion of the reasonable expenses and subsistence expenses of Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.
- (vii) Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

- (viii) Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which Construction Manager is liable.
- (ix) Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.
- (x) Deposits lost for causes other than Construction Manager's negligence or failure to fulfill a specific responsibility in the Construction Documents.
- (xi) Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which will not be unreasonably withheld, provided that such costs and fees are incurred for the benefit of the Owner or the Project and exclude any costs and fees arising from any disputes or issues between Construction Manager and its Subcontractors or Suppliers.
- (xii) Subject to the Owner's prior approval, expenses incurred in accordance with Construction Manager's standard written personnel policy for relocation and temporary living allowances of Construction Manager's personnel required for the Work.
- (xiii) Other costs incurred in the performance of the Work if, and to the extent, specifically approved in advance in writing by the Owner.
- (xiv) Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.
- (xv) Costs of repairing or correcting damaged or nonconforming Work executed by Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of Construction Manager and only to the extent that the cost of repair or correction is not recovered by Construction Manager from insurance, sureties, Subcontractors, suppliers, or others. Costs not covered due to Construction Manager's applicable insurance deductibles are excluded.
- (xvi) Other costs, as identified and set forth in the attached **Exhibit K**, incurred by Construction Manager in the performance of its Work.

13.1.3 Bonds and Insurance: Premiums, at rates identified in the GMP Amendment, for that portion of insurance and bonds that can be directly attributed to this Contract as described in Article 17. Self-insurance for either full or partial amounts of the coverages required by the Construction Documents, with the Owner's prior approval.

13.1.4 Allowances. Allowances, as defined in Section 3.1, that are included in the GMP Amendment.

13.2 Construction Manager's Contingency

13.2.1 The Guaranteed Maximum Price Proposal may include a Construction Manager's Contingency. Unless agreed to by Construction Manager or otherwise provided in the Construction Documents, Construction Manager's Contingency will not be used by the Owner to fund scope increases, design changes, errors or omissions, and/or costs related to concealed or unknown conditions. In turn, Construction Manager's Contingency will not be used to cover items resulting from Construction Manager's negligence unless provided for below. Construction Manager understands and agrees that Construction Manager's Contingency may be used for the following, but is not limited to: (1) items of Work within the scope of this Agreement, but due to Construction Manager's error failed to be included in a Subcontract; (2) additional costs incurred as a result of a failure of a bidder to whom a portion of the Work is awarded in accordance with the Construction Document to enter into a subcontract with Construction Manager; (iii) unanticipated market conditions and labor and material conditions; (iv) casualty losses and related expenses uncompensated by insurance or otherwise and sustained by Construction Manager in connection with the Work, except to the extent such losses or expenses are attributable, in whole or in part, to Construction Manager's negligence; (v) acceleration or recovery schedule costs due to delays outside of Construction Manager's control; (vi) costs arising from default of un-bonded and uncollectible Subcontractors; and (vii) subcontract buyout errors.

13.2.2 Any re-allocation of funds from Construction Manager's Contingency to cover increases in the Cost of work must be approved by the Owner in advance and in writing, such approval not to be unreasonably withheld. In written requests to use Construction Manager's Contingency, Construction Manager will provide detailed documentation of the scope of work affected and the bases for any increases in costs.

13.2.3 As the Construction Documents are finalized and the Buyout of the Work progresses Construction Manager's Contingency amount will be reduced by mutual agreement of Owner and Construction Manager. Any balance in Construction Manager's Contingency fund remaining at the end of the Project will be returned to the Owner as savings.

ARTICLE 14 CONSTRUCTION PHASE FEE

The Construction Phase Fee will be a lump sum fee which includes all of Construction Manager's home office costs, overhead costs and profit, and costs which are not Cost of work. The Construction Phase Fee includes, but is not limited to, the following items:

14.1 Salaries and other compensation of Construction Manager's personnel stationed at Construction Manager's principal office or offices other than the Project Site office, except as specifically provided in Sections 13.1.1.(vii), 13.1.2.(i), and 13.1.2.(ii).

14.2 Any and all overhead and general expenses of any kind, except as may be provided in Article 13.

14.3 Any financial costs incurred by Construction Manager including the cost of capital or interest on capital, regardless of whether it is related to the Project, and costs associated with construction warranty reserves.

14.4 Any and all costs not specifically identified as an element of the Cost of work.

ARTICLE 15 CONTRACT SAVINGS, ALLOWANCES, REBATES & REFUNDS

15.1 Savings. If the final amount of the Cost of work, Allowance items and Construction Manager's Contingency is less than the amount established for each of those categories in the originally approved Guaranteed Maximum Price Proposal, the entire difference will be credited to the Owner as savings and the final contract amount will be adjusted accordingly. When buyout of the Project is at least 85% complete, the Owner may recognize any savings achieved to that point by issuing a deductive Change Order for the saved amount.

15.2 Allowance Adjustments. Any claim by Construction Manager for an adjustment to an Allowance amount included in the Guaranteed Maximum Price based on the cost of Allowance work will be made within a reasonable time after the issuance of the Construction Documents for the Allowance items. Construction Manager will not be entitled to any increase in its Construction Phase Fee for increases to Allowance amounts that were initially based on estimates provided by Construction Manager. Owner will be entitled to retain 100% of the balance of any unused Allowance amount.

15.3 Change Orders. The Owner will be entitled to a deductive Change Order for the following items:

15.3.1 Discounts earned by Construction Manager through advance or prompt payments funded by the Owner. Construction Manager will obtain all possible trade and time discounts on bills for material furnished, and will pay bills within the highest discount periods. Construction Manager will purchase materials for the Project in quantities that provide the most advantageous prices to the Owner.

15.3.2 Rebates, discounts, or commissions obtained by Construction Manager from material suppliers or Subcontractors, together with all other refunds, returns, or credits received for materials, bond premiums, insurance and sales taxes.

15.3.3 Deposits made by Owner and forfeited due to the fault of Construction Manager.

15.3.4 Balances remaining on any Allowances, Construction Manager's Contingency, or any other identified contract savings.

15.3.5 Substitutions, deletions or other changes to the Work or the scope of the Project to the extent of any decrease in the Cost of work realized as a result of such changes.

15.4 Offsets. Owner will be entitled to recover any savings realized between the Guaranteed Maximum Price and the buyout price for subcontracting work, provided however, that Construction Manager may use such savings to offset other buyout packages that exceed the amounts identified in the initial Guaranteed Maximum Price, so long as the total Cost of Work proposed in the Guaranteed Maximum Price does not increase.

15.5 Audit. Owner will be entitled to recognize and recover 100% of any savings identified by cost review or audit at any time before or within six months after Final Payment.

ARTICLE 16 PRE-EXISTING CONDITIONS & DESIGN ERRORS AND OMISSIONS

16.1 Control. Construction Manager will be provided unrestricted access to the existing improvements and conditions on the Project Site in order to become generally familiar with those observable and patent conditions. Construction Manager's observations will be instrumental in preparing its Guaranteed Maximum Price Proposal for the Work. Construction Manager will not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for Pre-Construction Phase Services or for Construction Phase Services arising from Project conditions that Construction Manager discovered or, in the exercise of reasonable care, should have discovered in Construction Manager's observation of the Project Site. In the event the Owner would like Construction Manager to perform a full-site investigation, the cost for such full-site investigation will be added, by way of Change Order, to the Pre-Construction Services Fee.

16.2 Review. Construction Manager acknowledges that as part of its Pre-Construction Phase Services it will participate in the review of the Construction Documents. Construction Manager's participation in the design development process will be instrumental in preparing its Guaranteed Maximum Price Proposal for the Work. Before submitting its Guaranteed Maximum Price Proposal, Construction Manager will review the drawings, specifications and other Construction Documents and notify the Owner of any errors, omissions or discrepancies in the documents of which it is aware. Construction Manager will not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum for errors or omissions in the Construction Documents that Construction Manager discovered or, in the exercise of reasonable care, should have discovered in Construction Manager's Pre-Construction Phase design review process that Construction Manager did not bring to the attention of the Owner and the Project Architect in a timely manner. This review is for the purpose of facilitating coordination and construction by Construction Manager. It is recognized that Construction Manager's review is made in Construction Manager's capacity as a construction manager and not a licensed design professional.

ARTICLE 17 BONDS AND INSURANCE

17.1 Surety Bond. Upon execution of this Agreement, Construction Manager will provide a Surety Bond on the form provided by the Owner in the amount of 5% of the Construction Cost Limitation. The surety for a Surety Bond will meet the same requirements as set forth for payment and performance bonds.

17.2 Performance and Payment Bond. Upon acceptance by the Owner of a Guaranteed Maximum Price Proposal, Construction Manager will provide performance and payment bonds in the form provided in **Exhibit H**, executed by a surety company authorized to do business in North Carolina. The penal sum of both the payment and performance bonds will be equal to the Guaranteed Maximum Price. If construction is phased or staged with different Guaranteed Maximum Prices established at different times, the penal sum of the bonds will be increased at the start of each stage or phase based on the cumulative total value of all Guaranteed Maximum Prices in effect.

17.3 Form. The bonds will be executed by an attorney-in-fact. There will be attached to each copy of the bond a certified copy of power of attorney properly executed and dated. Each copy of the bonds will be countersigned by an authorized individual agent of the bonding company licensed to do business in North Carolina. The title "Licensed Resident Agent" will appear after the signature. The

seal of the bonding company will be impressed on each signature page of the bonds. The CM's signature on the performance bond and the payment bond will correspond with that on the contract.

17.4 Coverages. Construction Manager will not commence work under the Agreement until it has obtained all required insurance and until evidence of the required insurance has been reviewed and approved by the Owner. Owner's review of the insurance will not relieve nor decrease the liability of Construction Manager. Prior to commencing any work under this Agreement, Construction Manager will provide evidence of the following insurance coverages:

17.4.1 Pre-Construction Phase: Employer's Liability, Workers' Compensation, Comprehensive General Liability and Comprehensive Automobile Liability in the amounts as set forth in the Owner's Requirements.

17.4.2 Construction Phase: In addition to the coverages required during the Pre-Construction Phase, Builder's Risk and Owner's Protective Liability in the amounts as set forth in the Owner's Requirements.

17.4.3 Builder's Risk: Prior to commencing any construction work, Construction Manager will provide evidence of Builder's Risk coverage as set forth in the Owner's Requirements, which coverage will remain in full force and effect throughout the term of the Project and will be increased as necessary for each separate bid package, phase, change order, or Stage of construction prior to the commencement of construction for that package, phase, or Stage. If the Builder's Risk insurance requires deductibles, Construction Manager will pay costs not covered because of such deductibles except to the extent the loss was caused by the Owner or anyone directly employed or retained by the Owner. In such case, the deductible will be paid from the Contingency amounts to the extent so remaining.

17.4.4 Construction Manager will include required insurance information in trade packages and indicate on bid/proposal forms the insurance that bidders/proposers are to include in their base proposals.

17.4.5 Construction Manager reserves the right to: (1) implement a Construction Manager's Controlled Insurance Program ("CCIP") covering General Liability, Workers' Compensation and Umbrella insurance obligations that will meet or exceed the Owner's insurance requirements; and (2) utilize Subcontractor Default Insurance in lieu of requiring subcontractor bonding.

17.5 Evidence. Before performing services under this Agreement, Construction Manager will provide Certificate(s) of Insurance for the above coverages, and must specifically list each of the coverages. The Certificate(s) must include a clause obligating the insurer to give thirty (30) days prior notice in the event of cancellation or a major change in the insurance, and (except for Workers' Compensation and Employers' Liability) name the City of Fayetteville as an additional insured. Information concerning reduction of coverage on account of revised limits or claims paid will be furnished by the Project Architect with reasonable promptness. Notwithstanding the foregoing, neither the requirement of the Project Architect to have sufficient insurance nor the requirement that the City is named as an additional insured will constitute a waiver of the City's governmental immunity under North Carolina law in any respects. When the City is so named as an additional insured, the City will be covered only for occurrences or wrongful acts for which the defense of governmental immunity is

clearly not applicable or for which, after the defense is asserted, a court of competent jurisdiction determines the defense of governmental immunity not to be applicable.

17.6 Continuous Coverage. Construction Manager will not cause or allow any of its required insurance to be cancelled nor permit any insurance to lapse during the term of the Agreement or as required in the Agreement. If Construction Manager fails to obtain, maintain or renew any insurance required by the Agreement, the Owner may obtain insurance coverage directly and recover the cost of that insurance from Construction Manager.

17.7 Review. The Owner reserves the right to review the insurance requirements set forth in this Article during the effective period of the Agreement and to make reasonable adjustments to the insurance coverages and their limits when deemed necessary and prudent by the Owner based upon changes in statutory law, court decisions, or the claims history of the industry as well as Construction Manager. To the extent Construction Manager incurs additional costs as a result of the Owner's reasonable adjustments to the insurance coverages and/or limits, such costs will be deemed Cost of work (unless caused by the CM's actions or omissions). In the event the additional insurance costs cause an increase in the GMP, the Owner will execute a Change Order increasing the GMP to cover these additional costs.

17.8 Certificates. The Owner will be entitled, upon request, and without expense, to receive Certificates of Insurance and all endorsements required pursuant to this Agreement. Damages caused by Construction Manager and not covered by insurance will be paid by Construction Manager.

ARTICLE 18 GOVERNING LAW AND DISPUTE RESOLUTION

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. In the event of a dispute between the parties regarding this Contract's validity, interpretation, execution, performance or otherwise, the parties will work in good faith to resolve the dispute. If those good faith efforts prove unsuccessful, the dispute will be submitted to non-binding mediation in Cumberland County, North Carolina in accordance with the North Carolina Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions. The mediation will remain open for thirty (30) days unless the mediator in his discretion chooses to impasse the mediation. If mediation is unsuccessful, either party may submit the dispute for resolution in an applicable federal court or North Carolina court situated in Cumberland County, North Carolina.

ARTICLE 19 PROJECT TERMINATION AND SUSPENSION

19.1 This Agreement may be terminated during the Pre-Construction Phase by either party upon fifteen (15) days written notice should the other materially breach the terms of this Agreement through no fault of the party initiating the termination and the breach is not cured or an acceptable plan to cure the breach is not established within the fifteen (15) day period.

19.2 This Agreement may be terminated by the Owner during the Pre-Construction Phase upon at least three (3) days written notice to Construction Manager in the event that the Project is to be temporarily or permanently abandoned.

19.3 This Agreement may be terminated by the Owner at the GMP Proposal stage upon three (3) days written notice to Construction Manager in the event that the parties are unable or unwilling to agree on a GMP Proposal.

19.4 In the event of termination that is not the fault of Construction Manager, Construction Manager will be entitled to compensation for all Work performed to the termination date as well as reasonable costs incurred by it in closing out any accounts or agreements by reason of such termination provided, however, Construction Manager has delivered to Owner such statements, accounts, reports and other materials as required per the Article 12 of this Agreement.

19.5 Termination of this Agreement by the Owner or Construction Manager will not constitute a waiver of a right or duty afforded to them under this Agreement.

19.6 In the event of termination for cause, Owner will have the right to use any documents or other materials prepared for the Project and the ideas and designs they contain for the completion of the services described by this Agreement, for completion of the Project, or for any other purpose.

19.7 If the Project is suspended or abandoned in whole or in part for more than ninety (90) consecutive days during the Pre-Construction Phase, Construction Manager will be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment. If the Project is resumed after being suspended for more than ninety (90) consecutive days, Construction Manager's compensation for Pre-Construction Services will be equitably adjusted if such adjustment is warranted. If the Project is suspended during the Construction Phase (other than as a result of an action, breach or omission of Construction Manager or its Subcontractors), the Contract Sum and Contract Time will be adjusted for increases in the cost and time caused by suspension, delay or interruption. Adjustment of the Contract Sum will include profit.

19.8 Construction Manager may terminate the Agreement upon 15 days' advance written notice during which such condition is not cured, if the Work is stopped for a period of 30 consecutive days through no act or fault of Construction Manager or a Subcontractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with Construction Manager, for any of the following reasons:

- (i) Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- (ii) An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- (iii) Because the Architect has not issued a Certificate for Payment and has not notified Construction Manager of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Construction Documents; or
- (iv) The Owner has failed to furnish to Construction Manager promptly, upon Construction Manager's request, reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligation under the Agreement.

19.8.1 Construction Manager may terminate the Agreement upon 15 days' advance written notice during which such condition is not cured, if, through no act or fault of Construction Manager or a Subcontractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with Construction Manager, repeated suspensions, delays

or interruptions of the entire Work by the Owner as described in Section 19.7 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

19.8.2 If one of the reasons described in Section 19.8 or 19.8.1 exists, Construction Manager may, upon seven days' written notice to the Owner and Architect, terminate the Agreement and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

19.8.3 If the Work is stopped for a period of 60 consecutive days through no act or fault of Construction Manager or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with Construction Manager because the Owner has repeatedly failed to fulfill the Owner's obligations under the Construction Documents with respect to matters important to the progress of the Work, Construction Manager may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 19.8.2.

19.9 During the Construction Phase, any of the following will constitute an "Event of Default":

- (i) Following written notice from Owner, Construction Manager fails or refuses to maintain progress of the Work in accordance with the timelines and requirements of this Agreement and Project Schedule (except to the extent that an extension of time is allowed);
- (ii) Construction Manager repeatedly fails to prosecute the Work or any of its components in accordance with the Construction Documents despite notice from the Owner;
- (iii) Construction Manager makes any intentional or knowing material misrepresentation to the Owner (including but not limited to misrepresentations in connection with any Application for Payment);
- (iv) Construction Manager persistently and repeatedly refuses or fails to supply sufficient properly skilled Subcontractors or proper materials to permit timely progress and completion of the Work;
- (v) Upon receipt of payment from the Owner for Work performed (unless payment is validly withheld in accordance with this Agreement), Construction Manager repeatedly fails to make prompt payment to Subcontractors for materials or labor supplied;
- (vi) Construction Manager fails to comply with Applicable Laws and fails to correct the same within 10 days following notice;
- (vii) Construction Manager makes a general assignment for the benefit of its creditors, has a bankruptcy proceeding filed against it, has a receiver appointed for it as a result of a claim of its insolvency, or is declared in breach or default under any agreement or obligation with a surety or its lender and such declaration not be revoked or cancelled within ten (10) days thereafter; or
- (viii) Construction Manager is material default or substantial violation of the terms of this Agreement or the Construction Documents and fails to cure or remedy such default within 10 days after written notice from the Owner.

19.10 Upon the happening of an Event of Default by the Construction Manager, Owner may elect to give Construction Manager written notice thereof at any time thereafter. Construction Manager thereafter will cure the default as soon as possible and in any event within 10 days from the giving of

the notice of default provided that if such cure cannot reasonably be completed within such ten-day period, and if such cure would not cause an extension of the Contract Time, then such ten-day period will be extended for additional time as is reasonably necessary to complete such cure, so long as Construction Manager has commenced working on such cure within the initial ten-day period and thereafter diligently and continuously prosecutes such cure to completion within a reasonable time provided that in no event will such cure extend beyond an additional thirty (30) days. In no event will the Contract Time, the Project Schedule or the scheduled completion dates be adjusted or extended (nor the corresponding Liquidated Damages avoided) on the basis of any notice or cure period permitted or provided hereunder. If Construction Manager does not timely cure its Event of Default, then upon written notification to the Construction Manager, Owner may exercise any one or more of the following rights and remedies:

- (i) Termination: Owner may terminate all or any portion of this Agreement and the Construction Documents and take possession of the Work or portions thereof, including the materials or equipment provided by Construction Manager for improvement of the Project, and to cause the remaining Work to be finished by another contractor or contractors as may be deemed appropriate by Owner. Upon such termination and written request by Owner, Construction Manager will assign its full interests and rights to Owner, in any or all of the Subcontracts or such part thereof as Owner may request, although Owner will not be required to accept an assignment of, or otherwise perform under any such agreement. Owner will be at liberty to negotiate with and engage (for itself or for any other contractors that Owner engaged to replace the CM) any Subcontractors that Construction Manager dealt with prior to termination. Upon termination of all or any portion of the Work, Owner will not be obligated to make any further payment to Construction Manager for any purpose except as provided below. If the cost for completing such Work will exceed the Guaranteed Maximum Price, as adjusted in accordance with the terms of the Construction Documents for the Work or any portion thereof so terminated, such excess cost and any associated damages will be a rightful claim by Owner against Construction Manager and such amount will be immediately due and payable and will be paid by Construction Manager to Owner upon demand. If the cost to Owner for completing such Work will be less than the Guaranteed Maximum Price as adjusted under the Construction Documents for the Work or any portion thereof so terminated, Owner will pay any amounts which Construction Manager had earned with respect to such Work prior to Owner's termination thereof; provided, however, that Owner will in no event be required to pay (in the aggregate to all contractors performing the Work) an amount greater than the Guaranteed Maximum Price. If only a portion of Work has been terminated, Construction Manager agrees to perform the remainder of the Work in conformity with the Construction Documents and in such a manner as not to interfere with Owner or others in their performance and completion of the portion of Work which was terminated.
- (ii) Withhold Money Due: Owner may withhold an amount from any and all retainages and progress or other payments then due or thereafter to become due to Construction Manager an amount reasonably sufficient to cover the costs of curing such default until the default has been corrected fully by the Construction Manager.

- (iii) Directed Additional Effort: Owner may direct Construction Manager to furnish, or contract for, additional labor, materials and equipment that, in Owner's opinion, would be sufficient to perform the Work and to expedite the delivery of materials in order to complete the Work as required under the Construction Documents. The additional labor, materials and equipment shall be so furnished without adjustment of the Guaranteed Maximum Price by reason thereof.

- (iv) Perform Work Without Termination: Owner may, without prejudice to any other rights or remedies and without terminating this Agreement, upon seventy-two (72) hours prior written notice to the Construction Manager, perform the obligations in respect of which Construction Manager is in default (including without limitation, obligations relating to the performance of the Work and obligations relating to the payment of money) with its own forces or by engaging other contractors. In such case an appropriate Change Order will be issued deducting from the payments then or thereafter due Construction Manager for the cost of correcting such deficiencies, including compensation for the Project Architect's additional services or other engineering or consulting fees or expenses and any attorney's fees, made necessary by such default, neglect or failure. If the payments then or thereafter due Construction Manager are not sufficient to cover such amount, Construction Manager will pay the difference to Owner upon demand.

- (v) Damages: Subject to **Section 12.1.7** and **21.9**, the Owner may recover from Construction Manager the amount of loss or damage suffered or incurred as a result of such Event of Default, including, without limitation, reasonable attorneys' fees and costs and any additional costs reasonably and actually incurred by Owner in the retention of a substitute Construction Manager to complete the services under this Agreement pursuant to **Section 19.5**. Owner may deduct and withhold from payments otherwise due Construction Manager any of the foregoing amounts, which deductions will be deemed credits or back charges against any amounts coming due under this Agreement.

19.10 Notwithstanding any other provisions of this contract, the parties agree that payments due hereunder from the Owner 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 Owner to pay the terms of this agreement for any fiscal year, this contract shall terminate immediately without further obligation of Owner.

ARTICLE 20 INDEMNITY AND CONSEQUENTIAL DAMAGES

20.1 To the Maximum extent permitted by applicable law, Construction Manager agrees to indemnify and hold harmless the Owner and its elected officials, employees, agents, successors and assigns, from any and all liability and claim for injury or damage to the extent caused by any act, omission or negligence of Construction Manager, its agents, servants, employees, contractors, licensees or invitees. Indemnification of the Owner by Construction Manager does not constitute a waiver of the Owner's governmental immunity in any respect under North Carolina law. Such obligation will not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity, immunity or other such remedy which would otherwise exist as to any party or person described in this article.

20.2 It is the intention of the Construction Documents that the Work and the use of any related instruments or service will not constitute in any way infringement of any patent whatsoever unless the fact of such patent is clearly evidenced herein. Construction Manager will protect and indemnify the Owner from and against all claims, damages, judgments and losses arising from infringement or alleged infringement of any United States patent, or copyright that arise out of any of the Work performed by Construction Manager or the use by Construction Manager, or by Owner at the direction of Construction Manager, of any article or material but Construction Manager will not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Construction Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. Upon becoming aware of a suit or threat of suit for patent or copyright infringement, Owner will promptly notify Construction Manager and Construction Manager will be given full opportunity to negotiate a settlement. Construction Manager does not warrant against infringement by reason of Owner's or Project Architect's design of articles or their use in combination with other materials or in the operation of any process. In the event of litigation, Owner agrees to cooperate reasonably with Construction Manager and parties will be entitled, in connection with any such litigation, to be represented by counsel at their own expense.

20.3 The indemnities contained herein will survive the termination of this Agreement for any reason whatsoever.

20.4 Except for any claims for indemnification, Liquidated Damages or the other express rights or remedies specifically provided in this Agreement, Construction Manager and Owner waive all claims against each other for consequential damages arising out of or relating to this Agreement. The foregoing mutual waiver of consequential damages includes: (1) damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and (2) damages incurred by Construction Manager for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 19.

ARTICLE 21 WARRANTIES OF CONSTRUCTION MANAGER

21.1 Notwithstanding anything to the contrary contained in this Agreement, Owner and Construction Manager agree and acknowledge that Owner is entering into this Agreement in reliance on Construction Manager's represented expertise and ability to provide construction management services. Construction Manager agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Owner in accordance with Owner's requirements and procedures.

21.2 Construction Manager warrants, represents, and agrees (the "Construction Warranty"), during the construction period and for a period continuing for twelve (12) months following the date of Final Completion, that:

- a. it will perform and has performed the Work and its services under this Agreement with the professional skill and care ordinarily provided by Construction Managers practicing in the same or similar locality under the same or similar circumstances and in compliance with

- the Construction Documents and all Applicable Laws, including the North Carolina State Building Code;
- b. all materials and equipment furnished under this Agreement will be of good quality and new unless the Construction Documents specifically require or permit otherwise;
 - c. the Work will be free from faults and defects, except for those inherent in the quality of the Work, provided that such warranty excludes the correction of any damages or defects caused by abuse, alterations to the Work not executed by Construction Manager, or normal wear and tear or normal usage;
 - d. that the Work will conform with the requirements of the Construction Documents and will be responsible for correcting Work that does not comply with the Construction Documents at its sole expense without cost to the Owner provided that such non-compliance was not specifically authorized and/or approved by the Owner or the Project Architect; and
 - e. it will bear the full cost of correcting Construction Manager's defective Work or any defects in the Work to the extent caused by the acts or omissions of Construction Manager or its Subcontractors or the CM Consultants; provided that the Construction Warranty excludes damages or defects to the extent caused by abuse, alterations to the Work not executed or caused by Construction Manager or its Subcontractors, improper or inefficient maintenance, improper operation, or normal wear and tear and normal usage. All such corrective Work will be performed in a timely manner at the reasonable convenience of the Owner.

The warranties set forth in this Agreement, including the Construction Warranty, will survive final acceptance of the Work and will be directly enforceable by the Owner, and its representatives and assigns.

21.3 In addition to the Construction Warranty, where items of equipment or material carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty will apply for that particular piece of equipment or material and Construction Manager will replace such defective equipment or materials, without cost to the Owner, within the manufacturer's warranty period and will assign to the Owner at the time of Final Completion, any and all manufacturer's warranties relating to materials and labor used in the Work. Construction Manager further agrees to perform the Work in a manner so as to preserve any and all such manufacturer's warranties. Any required manufacturer's inspections will be organized and completed by the Construction Manager for a period of twelve (12) months following the date of Final Completion and warrants to replace such defective materials or workmanship without cost to the Owner.

21.4 Additionally, the Owner may bring an action for latent defects caused by the negligent acts or omissions of the Construction Manager, which is hidden or not readily apparent to the Owner at the time of beneficial occupancy or final acceptance, whichever occurred first, in accordance with Applicable Laws.

21.5 Construction Manager's duties will not be diminished by any approval by Owner nor will Construction Manager be released from any liability by any approval by Owner, it being understood that the Owner is ultimately relying upon Construction Manager's skill and knowledge in performing the services required hereunder.

21.6 Construction Manager represents and agrees that all persons connected with Construction Manager directly in charge of its services are duly registered and/or licensed under the laws, rules and regulations of any authority having jurisdiction over the Project if registration is required.

21.7 Construction Manager represents and agrees to advise Owner of anything of any nature in any Drawings, Specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to Construction Manager (by the Owner or any other party) that is, in its opinion, unsuitable, improper, or inaccurate for the purposes for which the document or data is furnished to the extent Construction Manager becomes aware of such information.

21.8 Construction Manager represents and agrees to perform its services under this Agreement in an expeditious and economical manner consistent with good business practices and the interests of Owner.

21.9 Construction Manager represents and agrees that there are no obligations, commitments, or impediments of any kind that will limit or prevent performance of its obligations under this Agreement.

21.10 Construction Manager represents and agrees that the individual executing this Agreement on behalf of Construction Manager has been duly authorized to act for and to bind Construction Manager to its terms.

ARTICLE 22 MISCELLANEOUS PROVISIONS

22.1 Entire Agreement; Modifications. This Agreement supersedes all prior agreements, written or oral, between Construction Manager and Owner and will constitute the entire Agreement and understanding between the parties with respect to the Project. This Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by Construction Manager and Owner.

22.2 Captions. The captions of sections in this Agreement are for convenience only and will not be considered or referred to in resolving questions of interpretation or construction.

22.3 Waivers. No delay or omission by either party in exercising any right or power arising from non-compliance or failure of performance by the other party with any of the provisions of this Agreement will impair or constitute a waiver of any such right or power. A waiver by either party of any covenant or condition of this Agreement will not be construed as a waiver of any subsequent breach of that or of any other covenant or condition of the Agreement.

22.4 Assignment and Binding Effect. This Agreement is a personal service contract for the services of Construction Manager, and Construction Manager's interest in this Agreement, duties hereunder and/or fees due hereunder may not be assigned or delegated to a third party. This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted assigns and successors.

22.5 Appointment. Owner hereby expressly reserves the right from time to time to designate by notice in writing to Construction Manager a representative(s) to act partially or wholly for Owner in connection with the performance of Owner's obligations. Construction Manager will act only upon instructions from the designated representative(s) unless otherwise specifically notified to the contrary.

22.6 Severability. Should any term or provision of this Agreement be held invalid or unenforceable in any respect, the remaining terms and provisions will not be affected and this Agreement will be construed as if the invalid or unenforceable term or provision had never been included.

22.7 Notices. All notices, consents, approvals, demands, requests or other communications relied on by the parties will be in writing. Written notice will be deemed to have been given when delivered in person to the designated representative of Construction Manager or Owner for whom it is intended; or sent by U. S. Mail to the last known business address of the designated representative; or transmitted by email, with read receipt, to the email address of the designated representative, provided that any notice of default, termination or suspension must be delivered in writing by overnight courier service. Mail notices are deemed effective upon receipt or on the third business day after the date of mailing, whichever is sooner. Email notices are deemed received on the date of the read receipt.

22.8 Notice Recipients. Notices of claims or disputes or other legal notices required by this Agreement will be sent to the following persons at the indicated locations.

If to Owner: Kristoff Bauer
Deputy City Manager
City of Fayetteville
433 Hay Street
Fayetteville, NC 28302
(910) 433-1993
kbauer@ci.fay.nc.us

With a copy to: Karen McDonald
City Attorney
City of Fayetteville
433 Hay Street
Fayetteville, NC 28302
(910)433-1987
kmcdonald@ci.fay.nc.us

If to Construction Manager: Sam Isham
Vice President / COO
Metcon, Inc.
763 Comtech Drive
Pembroke NC 28372
910.521.8013
sisham@metconus.com

With a copy to: Tonya Warren
Director of Safety & Risk Mgt.
Metcon, Inc.
763 Comtech Drive
Pembroke NC 28372
910.521.8013
twarren@metconus.com

The parties may make reasonable changes in the person or place designated for receipt of notices upon advance written notice to the other party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on the day and the year written first above.

WITNESS: Metcon

_____ By: _____
Aaron Thomas
President

ATTEST: **CITY OF FAYETTEVILLE**

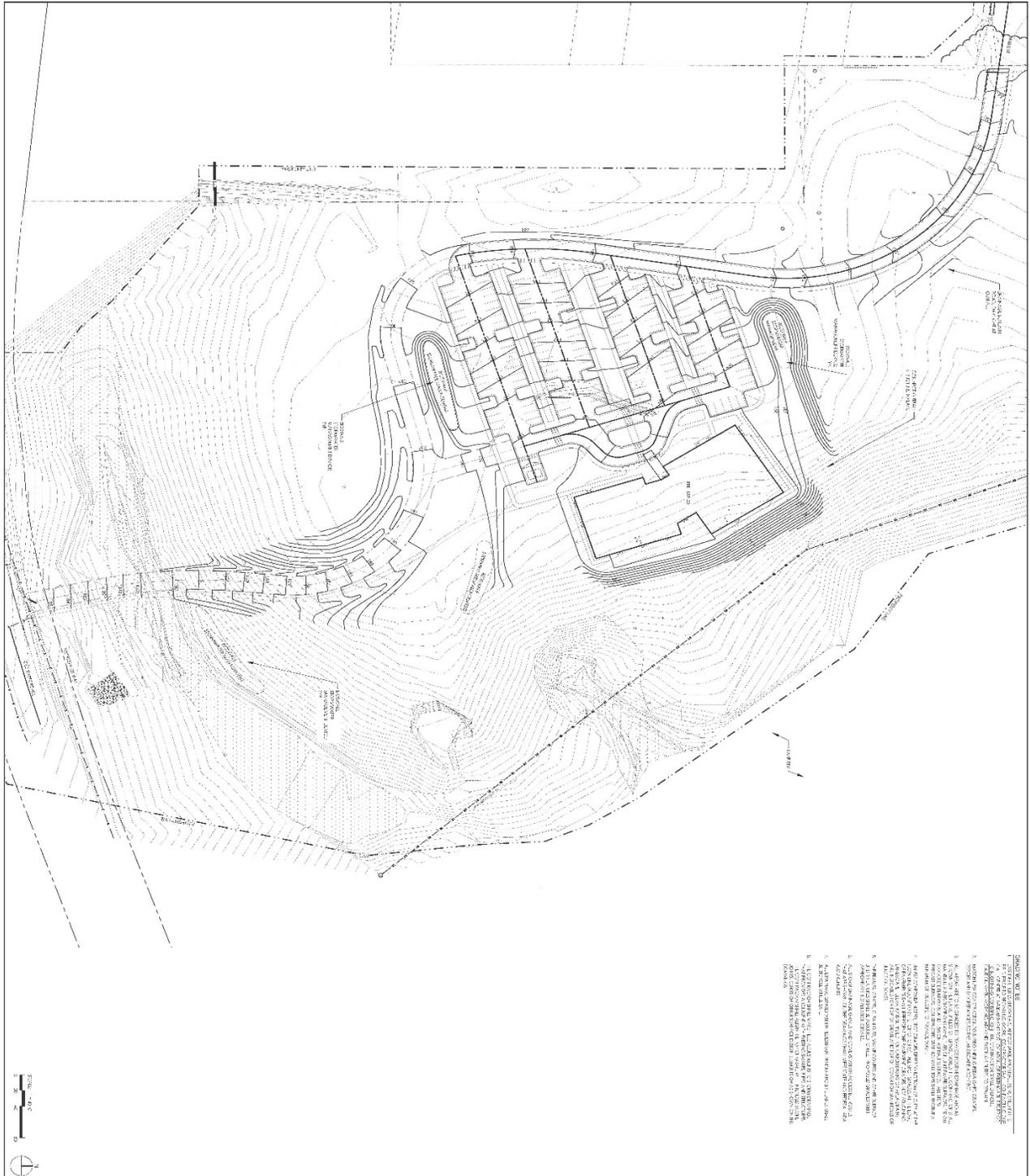
_____ By: _____
PAMELA MEGILL, City Clerk DOUGLAS J. HEWETT, ICMA-CM ,
City Manager

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

JAY TOLAND, CFO
City of Fayetteville

EXHIBIT A Agreement between Owner and Construction Manager-at-Risk

Site Map



GENERAL NOTES:

1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
2. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING UTILITIES AND STRUCTURES.
4. THE CONTRACTOR SHALL MAINTAIN THE EXISTING EROSION CONTROL MEASURES THROUGHOUT THE CONSTRUCTION PERIOD.
5. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION AND RESTORATION OF ALL EXISTING TREES AND VEGETATION.
6. THE CONTRACTOR SHALL MAINTAIN THE EXISTING DRAINAGE SYSTEM AND SHALL BE RESPONSIBLE FOR ANY NECESSARY IMPROVEMENTS.
7. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION AND RESTORATION OF ALL EXISTING SOILS.
8. THE CONTRACTOR SHALL MAINTAIN THE EXISTING SITE SECURITY THROUGHOUT THE CONSTRUCTION PERIOD.
9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION AND RESTORATION OF ALL EXISTING UTILITIES AND STRUCTURES.
10. THE CONTRACTOR SHALL MAINTAIN THE EXISTING EROSION CONTROL MEASURES THROUGHOUT THE CONSTRUCTION PERIOD.

																			
FAYETTEVILLE SENIOR CENTER WEST CITY OF FAYETTEVILLE										HH ARCHITECTURE 220 S. HARRINGTON STREET, RALEIGH, NORTH CAROLINA PHONE (919) 782-2067 FAX (919) 782-2067									

EXHIBIT B
Agreement between Owner and Construction Manager-at-Risk

Summary of Scope of Work

The new Senior Center on Lake Rim off of Old Raeford Road and Debbie Street will be a 19,130-square foot (gross area) freestanding building custom designed to accommodate popular programs for Fayetteville's senior population. The building will be a single-story structure that will incorporate a Porte cohere, open lobby, a large, dividable multi-purpose room, commercial grade kitchen, flexible classroom/meeting space, restrooms, and offices.

Fitness programs will also be a major portion of this facility with spaces for an exercise equipment room, dance studio, a warm water exercise pool, and men's and women's locker rooms. This building will be positioned to capture views of Lake Rim with large windows in the dance studio, exercise equipment room, lounge, and multipurpose rooms. To allow guests an opportunity to interact with the outdoors a large deck will be provided on the lake-side of the building. The new facility has been designed to support the effective operation of recreational, and volunteers of all ages and abilities seamlessly. The building will be universally accessible, with automatic doors at the main entrance, spacious restrooms, and safe, user-friendly finishes, fixtures, and furnishings throughout.

Sustainable practices will be incorporated in the design and construction of the center. The building will be oriented to allow beneficial natural light and views to the adjacent lake. Materials with high percentages of recycled content when feasible, and local manufacturers/suppliers will be patronized to minimize transportation expense and impact.

Water and energy needs will be reduced through the reclamation of roof water and internally generated heat. The selected heating and cooling system exceeds required efficiencies and includes zoned controls for flexible use.

EXHIBIT C
Agreement between Owner and Construction Manager-at-Risk

DEFINITIONS

The terms, words and phrases used in the Construction Documents will have the meanings given as follows.

“Additional Pre-Construction Phase Services” has the meaning provided in Article 6.

“Allowances” means the estimated cost of work performed in the various allowance categories, to the extent set forth in the GMP Summary.

“Applicable Law” means any and all applicable laws, ordinances, codes, judgments, decrees and orders of any court, arbitrator or governmental agency and any corresponding rules, regulations, orders, and interpretations, as well as any permits waivers, variances, authorizations, licenses or orders, of or from any national, federal, state, county, municipal, regional, environmental or other governmental body or agency having jurisdiction over the Project Site, or performance of the Work.

“Change Order” means a written order to Construction Manager subsequent to the signing of the contract authorizing a change in the GMP contract and addresses any (i) changes in the Work, (ii) the amount of adjustment, if any, to the GMP, and (iii) the adjustment, if any, to the Project Schedule, Contract Time and/or Contract Sum. An order, directive or request only qualifies as a Change Order if it is approved by Project Architect and signed by Construction Manager and the Owner. Agreement on any Change Order will be the exclusive remedy or result of all matters that are addressed by that Change Order including all direct and indirect costs and damages, and any adjustments to the Project Schedule, the Contract Sum or the Contract Time.

“Clarification” or **“Request for Information”** is a request from Construction Manager seeking an interpretation or clarification by the Project Architect relative to the Construction Documents and the corresponding clarification by the Project Architect responding to such request. The Request for Information, which must be labeled “Request for Information,” will clearly and concisely set forth the issue or item requiring clarification or interpretation and why the response is needed. The Request for Information must set forth the Construction Manager’s interpretation or understanding of the Construction Documents requirements in question, along with reasons for such an understanding. The Clarification will be Project Architect’s written response to such request.

“CM Consultant” means any consultant, expert or service provider retained or engaged by Construction Manager relating to the Project that does not qualify as a Subcontractor.

“Construction Cost Limitation” or **“CCL”** means the maximum monetary amount payable to Construction Manager for all Construction Phase services, materials, labor and other work required for completion of the Work in accordance with the Construction Documents. The CCL includes, without limitation, the Cost of work, the Construction Phase Fee, Insurance and Bonds, Allowances and Construction Manager’s Contingency. The CCL may be adjusted by the parties for changes in the scope of the Project before or after acceptance of the Guaranteed Maximum Price Proposal. The CCL does not include Construction Manager’s Pre-Construction Phase Fee or Owner’s Construction Contingency.

“Construction Documents” means, collectively, this Agreement (including the Exhibits hereto and the separate agreements to be executed or finalized based on those Exhibits), the documents and items listed in **Section 2.1** and any written Clarifications, details, and other documents provided to Construction Manager which are prepared by the Project Architect, its consultants and by the Owner’s other consultants that describe the scope and quality of the Project and the materials, supplies, equipment, systems and other elements that are required for construction of the Project, including any modifications or amendments to the same.

“Construction Manager” or **“CM”** as used in the Construction Documents means Construction Manager-at-Risk. The term **“Construction Manager”** will be interchangeable with the terms **“Contractor”** and **“General Contractor”** or other similar terms as appropriate in the Construction Documents.

“Construction Phase Fee” will be a lump sum fee established in the GMP Amendment which will include all Construction Manager-at-Risk home office costs, including all Construction Manager-at-Risk overhead costs and profit, and costs which are not Cost of work, provided that the foregoing are subject to review, adjustment and approval when the GMP Proposal is provided.

“Construction Phase Services” means the coordination, implementation and execution of the Work required by the Construction Documents.

“Construction Warranty” is defined in **Sections 8.11** and **21.2**.

“Contract Sum” means the total amount of all compensation payable to Construction Manager for the Project and will not exceed the sum total amount of the Pre-Construction Phase Fee plus the Guaranteed Maximum Price established in the GMP Amendment, subject to adjustment for Additional Services or Change Orders. Any costs that exceed the Contract Sum will be borne solely by Construction Manager without reimbursement by Owner.

“Contract Time” means the dates and schedule for Completion of the Work including dates for the Notice to Proceed, Scheduled Date of Substantial Completion, and Final Completion as established in the GMP Amendment, provided that such dates are subject to adjustment for delays and adjustments to the extent provided in **Section 7.9**. Time limits stated in the Construction Documents are of the essence of the Agreement. The term **“day”** as used in the Construction Documents will mean calendar days unless otherwise specifically defined.

“Cost of Work” has the meaning set forth in **Section 13.1**.

“Direct Construction Cost” has the meaning set forth in **Section 13.1.1**.

“Drawings” or **“Project Drawings”** means the graphic and pictorial portions of the Construction Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

“Effective Date” means the date specified in the preamble of the Agreement.

“Estimated Construction Cost” or **“ECC”** means the amount calculated by Construction Manager for the total cost of all elements of the Work based on the Construction Documents available at the time(s) that the Estimated Construction Cost is prepared. The Estimated Construction Cost will be based on current market rates with reasonable allowance for overhead, profit and price escalation and will

include and consider, without limitation, all alternates, allowances and contingencies, designed and specified by the Project Architect and the cost of labor and materials necessary for installation of Owner furnished equipment. The Estimated Construction Cost will not include Construction Manager's Pre-Construction Phase Fee, Project Architect Fees, cost of the land, rights-of-way, or any other costs that are the direct responsibility of the Owner.

"Field Change," as used herein will mean a written approval from the Owner for Construction Manager to proceed with work requested by the Owner to be paid for from Construction Manager Contingency or Owner's Project Reserve within the GMP.

"Field Order," as used herein, will mean a written approval for Construction Manager to proceed with the Work requested by Owner prior to issuance of a formal Change Order. The field order will be signed by the Construction Manager, Project Architect and Owner.

"Final Completion" means the date upon which final completion of all aspects of the Work is achieved in accordance with all Applicable Laws and the terms of this Agreement and the Construction Documents, including, but not limited to, the completion of all punch-list items, and when the Project Architect (i) finds the Work has been fully performed and is acceptable under the Construction Documents, and (ii) issues a final Certificate for Payment stating that to the best of its knowledge, information and belief, based on its on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Construction Documents and that the entire balance owing to Construction Manager, as noted in the final Certificate of Payment, is due and payable. The Project Architect's final Certificate for Payment will constitute a further representation that all conditions precedent to Construction Manager's being entitled to final payment have been satisfied. It is intended that the date of Final Completion will occur within 60 days of the date of Substantial Completion. The GMP Amendment will identify the scheduled Final Completion Date.

"Guaranteed Maximum Price" or "GMP" means the amount proposed by Construction Manager and accepted by the Owner as the maximum cost to the Owner for construction of the Work in accordance with the Construction Documents. The GMP includes Construction Manager's Construction Phase Fee, the Cost of work, Insurance and Bonds, Allowances, Construction Manager's Construction Contingency amount, and the Owner's Construction Contingency amount.

"GMP Amendment" means a complete, finalized and executed GMP Amendment between Owner and Construction Manager following review and approval or changes to the GMP Proposal.

"GMP Proposal" means the Guaranteed Maximum Price Proposal for the Project prepared by Construction Manager in accordance with Article 7 and **Exhibit D** of this Agreement.

"Insurance Requirements" means the insurance requirements and standards detailed in **Exhibit B** attached to this Agreement.

"Liquidated damages," as stated in Section 12.1.7 and **Exhibit E** of this Agreement, are the amounts identified in advance to cover the losses incurred by the Owner by reason of failure of Construction Manager to complete the Work within the time specified.

"Modification" means (i) a Change Order, (ii) a Field Order, or (iii) a Field Change issued by the Project Architect.

“Monthly Salary Rate” means the amount agreed to by the Owner that can be used to account for the services of Construction Manager’s salaried personnel assigned to the Project for purposes of establishing the Construction Phase Fee and any adjustments thereto. A Monthly Salary Rate must be established for each salaried person anticipated to be used by Construction Manager on the Project and must be approved in writing by the Owner in advance.

“Owner Designated Representative” means the individuals or individuals appointed pursuant to **Section 9.3** to represent the Owner.

“Pre-Construction Phase Services” means the participation, documentation and execution of Construction Manager’s Pre-Construction Phase deliverables as required by the Construction Documents.

“Pre-Construction Services Agreement” means a pre-construction services agreement executed between Construction Manager and Owner for Pre-Construction Phase Services as further described in Article 5 of the Agreement. For purposes of this Agreement, any such Pre-Construction Services Agreement (i) will be attached to this Agreement as an exhibit hereto and incorporated into the terms of this Agreement, and (ii) will serve as the Owner’s Notice to Proceed with respect to the Pre-Construction Phase Services described in the Pre-Construction Services Agreement and in Article 5 of the Agreement, but will be separate and distinct from a Notice to Proceed with respect to the Construction Phase Services described in Article 8 of the Agreement.

“Preliminary Project Cost” (PPC) means the total estimated cost of the entire Project, including design, construction, and other associated costs and services that is established by the Owner prior to the commencement of design.

“Project Architect” or **“Designer”** means the professional architect or engineer employed by the Owner as architect or engineer of record for the Project and its consultants.

“Project Improvements” means the improvements to be constructed at the Project Site and all other improvements, fixtures, equipment, systems, facilities, features, amenities and appurtenances to be situated on or about the Project Site and owned by City, as described more fully in this Agreement and the Construction Documents.

“Project Owner Party” means Owner or Project Architect or any employee or third party contractor of either, but excludes Construction Manager, and its consultants, the Subcontractors, and any third party suppliers used by Construction Manager.

“Project Schedule” means the schedule for completion of the Project developed by Construction Manager in accordance with **Section 5.3**. The Project Schedule consists of initially the Preliminary Project Schedule but once approved, the Final Project Schedule shall become the Project Schedule.

“Project Team” means the Owner, Construction Manager, Project Architect and its consultants, any third party contractors and consultants so designated by Owner relating to the Project. The members of the Project Team may be modified from time to time by Owner.

“Scheduled Date of Substantial Completion” means that date set forth in the GMP Amendment, provided that the Scheduled Date of Substantial Completion is subject to adjustment for delays as set forth in this Agreement.

“Schedule of Values” means the values assigned to each portion of the Work as part of the GMP Amendment including the portion of the Work by each Subcontractor and the approximate timeline of that portion within the Project Schedule, with sufficient detail and itemization to permit Owner and Project Architect to assess the proportionate values of the various categories of Work during the progress of construction.

“Specifications” means the portion of the Construction Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

“Subcontractor” means a person, business or entity that has an agreement with Construction Manager or any other Subcontractor of the Project, to perform any portion of the Work including any a sub-subcontractors, principal trade and specialty contractors so engaged. A Subcontractor will be in the case of a principal trade contractor, a general, mechanical, electrical or plumbing contractor or in the case of a specialty contractor, a trade contractor who is not a principal trade contractor, who has entered into a direct contract with a Construction Manager, and includes one who furnishes materials worked to a special design in accordance with plans and specifications covered by the contract, but does not include one who only sells or furnishes materials not requiring work so described or detailed. The term Subcontractor also does not include the Project Architect or any other person or entity hired directly by the Owner separate and apart from Construction Manager.

“Substantial Completion” means the stage when the Work is sufficiently complete in accordance with the Construction Documents and Applicable Laws so that the Owner can occupy or utilize the Work for its intended use.

“Supplier” means a person, business or entity that supplies, or has an agreement with Construction Manager or any Subcontractor of the Project to provide, any equipment or materials to the Project related to the Work including, but not limited to, all vendors or providers of the material or equipment required for the completion of the Work.

“Work” means the provision of all services, labor, materials, supplies, and equipment that are required of Construction Manager to complete the Project in strict accordance with the requirements of the Agreement, Applicable Law and the Construction Documents. Work includes, but is not limited to, the Construction Phase Services, additional work required by Change Orders, and any other work reasonably inferable from the Construction Documents. The term “reasonably inferable” takes into consideration the understanding of the parties that some details necessary for completion of the Work may not be shown on the Drawings or included in the Specifications, but they are a requirement of the Work if they are a usual and customary component of the Work or otherwise necessary for complete installation and operation of the Work.

EXHIBIT D
Agreement between Owner and Construction Manager-at-Risk

Insurance Requirements

1. Construction Manager agrees to obtain, furnish and maintain in full force and effect without interruption during and throughout the entire term of the Agreement all of the insurance required by and described in this **Exhibit D**. Unless agreed otherwise by the Owner, Construction Manager will require Subcontractors and consultants of every tier to obtain, furnish and maintain in full force and effect without interruption during and throughout the entire term of the Agreement, reasonably and customary levels of insurance as reasonably determined by Construction Manager, and all of the insurance specifically required for Subcontractors as provided in this **Exhibit D**. Construction Manager will cause the Owner, the Project Architect, and each of the “Additional Parties” provided in paragraph 3 below to be named as additional insureds on its General and Umbrella Liability Policies. All of said insurance will be written by, and secured from, a responsible company or companies which are satisfactory to Owner and which are authorized to engage in such insurance business in the State of North Carolina and will be subject to the requirements of the Owner set forth below. All of said insurance will be written for not less than the limits specified in herein, or as required by law, whichever is greater. All deductible or self-insured retentions are the sole responsibility of Construction Manager or the applicable Subcontractor.

2. Liability Insurance. Construction Manager will obtain, furnish and maintain in full force and effect without interruption during and throughout the entire term of this Agreement, all of the following insurance:

(a) Workers’ Compensation and other benefits in the amounts as required by law and Employer’s Liability for limits of \$1,000,000. Workers’ Compensation coverage will include statutory coverage for the State of North Carolina and the state of domicile of Construction Manager. The All States and Voluntary Compensation Endorsements will be attached to the policy in form acceptable to Owner.

(b) Commercial General Liability, including Construction Manager’s Liability, Contingent Liability, Contractual Liability, Personal Injury, Premises, Operations, and Products/Completed Operations Liability, all on an occurrence basis; and Broad Form Property Damage. Policies provided hereunder will not contain XCU exclusions relating to Explosion, Collapse and Underground Property Damage. Construction Manager must maintain the Completed Operations coverage until the expiration of the longer of: (i) the statute of limitations period, (ii) the North Carolina statute of repose period of six years, or (iii) any other period in which a claim may be asserted, each in accordance with the laws of the State of North Carolina.

Liability Extensions are to include:

- Limits equivalent to not less than \$2,000,000 each occurrence and \$4,000,000 in the annual aggregate (Bodily Injury and Property Damage combined).

(c) Umbrella policy will be no less restrictive than “following form” of the primary Commercial General Liability contract. Umbrella will have a limit of not less than \$20,000,000 each occurrence and in the aggregate for Construction Manager, which must provide coverage

and limits over the underlying primary coverages set forth under subsections 2(a) (employers' liability only), (b) and (e) of this **Exhibit D**.

(d) Professional Liability. Limits equivalent to not less than \$1,000,000 combined single limit (Bodily Injury and Property Damage combined); provided, however, that the requirements of this subsection (c) will only apply to subcontractors and consultants that provide professional services.

If policy is a Claims-Made policy in lieu of an Occurrence policy, in the event that coverage is canceled within five (5) years from the Date of Substantial Completion; Construction Manager must purchase a reporting endorsement to cover claims that are presented in the future for claims that occurred during the period of time (including all remedial obligations) of this Contract.

(e) Comprehensive Automobile Liability, including coverage for all owned, non-owned and hired motor vehicles licensed for highway use.

Limits are to be equivalent to not less than \$2,000,000 combined single limit – including umbrella coverage (Bodily Injury and Property Damage combined).

(a) Construction Manager's Pollution Liability insurance applicable to the Project, or an equivalent policy for Pollution Legal Liability affording such coverage.

(b) Construction Manager's Errors & Omissions/Professional Liability with a limit of not less than \$1,000,000.

(c) If Construction Manager, any Subcontractor or any other person or entity on its behalf, uses or may use any type of aerial drone at or near the Project Site, then Construction Manager will notify the Developer and will maintain, or will cause such operator to maintain, during the entire term of this Agreement, drone liability insurance, including coverage for bodily injury, property damage, and personal injury with respect to any drone owned, used, operated or hired in connection with the Work, with limits of not less than \$1,000,000 combined single limit for bodily injury and property damage any one occurrence.

3. Endorsement

(a) Construction Manager, Subcontractors of every tier, and consultants will cause the Owner and the "Additional Parties" listed below to be named as additional insured on all policies (other than professional liability and Workers' Compensation) furnished pursuant to this Agreement for liability or loss arising out of or in any way associated with any act, error, omission or product of Owner, Additional Parties, Construction Manager or any Subcontractor including their directors, officers, shareholders, workforce or anyone else for whose acts or products they may be held responsible (with coverage to the Owner and Additional Parties at least as broad as that which is provided to Construction Manager and any Subcontractor and not lessened or avoided by endorsement). The additional insured status for the commercial general liability insurance must be given using both the CG 20 10 0413 and the CG 2037 0413 ISO Additional Insured forms or their equivalent. Construction Manager will provide additional insured endorsements to Owner prior to commencement of the Work and upon renewal or replacement of Construction Manager's general liability insurance policy, in addition to the required certificates of insurance.

Additional Parties:

Not Applicable

(b) On all policies Construction Manager's insurance will be primary and will provide that any right of contribution, proration, apportionment, or participation which Construction Manager's insurer or insurers may have under any "Other Insurance" or similar provision in Construction Manager's policy or policies, or otherwise at law, will be waived against the Owner, Additional Parties and their insurer(s).

4. Certificates of Insurance. As evidence of the insurance required by this **Exhibit D** herein, and prior to the beginning of any Work and within no more than five (5) business days after subsequent renewals of such policies, Construction Manager will submit to Owner certificates of insurance evidencing all of the required coverage and certifying that the insurance policies have been properly endorsed to meet the requirements set forth in this **Exhibit D**.

5. Other Duties, Representations, and Obligations.

(a) The foregoing provisions requiring Construction Manager to carry insurance will not be construed in any manner as waiving, restricting or limiting the liability of Construction Manager as to any obligations imposed under the Agreement, whether or not same are, or may be covered by insurance.

(b) Construction Manager will not violate or knowingly permit any violation of any conditions or terms of the policies of insurance described herein. In the event Construction Manager neglects, refuses or fails to provide or maintain any of the insurance required under this Agreement or if such insurance is canceled for any reason, Owner will have the right, but not the obligation, to procure or maintain the same. In the event Owner does procure or maintain such insurance, Owner will have, in addition to any and all other available remedies, the right to recover from Construction Manager (including the right of set-off against sums otherwise due Construction Manager) all of the costs associated with procuring or maintaining such insurance.

6. Additional Insurance.

(a) Owner may require Construction Manager at any time, and from time to time, during the life of the Agreement, to obtain and maintain in force additional coverage or limits in addition to that required hereinabove. The additional premium cost of any such additional insurance required by Owner, however, will be borne by Owner and Construction Manager will arrange to have such costs billed separately and directly to Owner by the insuring carrier or carriers.

(b) Owner may purchase and maintain such other insurance as it may deem appropriate. No purchase of any insurance by Owner will in any way be deemed to alter or amend the rights or responsibilities of Owner or Construction Manager under this Agreement.

7. Property Insurance. Construction Manager will purchase and maintain insurance against Fire, Extended Coverage Perils, Vandalism and Malicious Mischief and builder's risk coverage on the Work at the **Project Site** during the process of construction until Substantial Completion. This insurance will protect the property interests of the Owner, Construction Manager and its Subcontractors of every tier in said Work for the full insurable value thereof. However, such insurance will not cover any

machinery, tool or equipment of Construction Manager or its Subcontractors, whether owned or not, used in the performance of the Work unless the total capital value of such property is directly and specifically charged to the Project. If the Builder's Risk insurance requires deductibles, Construction Manager will pay costs not covered because of such deductibles except to the extent the loss was caused by the Owner or anyone directly employed or retained by the Owner. In such case, the deductible will be paid from the Contingency amounts to the extent so remaining. Any insured loss will be adjusted by Construction Manager, in trust for those parties protected hereunder, and made payable to Construction Manager as the representative for all parties as their interests may appear. The Owner, Construction Manager and its Subcontractors will waive all rights of recovery against each other as a result of any loss or damage to the insured property. Construction Manager will require similar waivers in favor of the Owner and Construction Manager by all Subcontractors of every tier.

8. Certain Requirements of Insurance. Each policy of insurance required pursuant to this Agreement will be issued by insurers with a current A.M. Best's rating of A- or better and with a financial size of no less than Class VIII.

9. Specific Subcontractor Requirements. Construction Manager may, at its option and in lieu of requiring Subcontractor payment and performance bonds, obtain, furnish and maintain in full force and effect without interruption during and throughout the entire term of this Agreement, subcontractor default insurance with a limit of not less than \$10,000,000 each occurrence and in the aggregate and not less than \$20,000,000 each occurrence and in the aggregate. The deductible will be no greater than \$1,000,000. In the event Construction Manager provides subcontractor default insurance, Construction Manager has the sole right to determine if a subcontractor will be enrolled in such program. Construction Manager reserves the sole right to require Subcontractor bonding in lieu of furnishing subcontractor default insurance.

EXHIBIT E Agreement between Owner and Construction Manager-at-Risk

Preliminary Project Schedule

Task

Schematic Design / Pre-Construction:
 Notice To Proceed
 Substantial Completion:
 Final Completion:

Completion

April 30, 2018
 July 1, 2018
 October 31, 2019
 November 30, 2019

*Final Project Schedule to be included in GMP Amendment

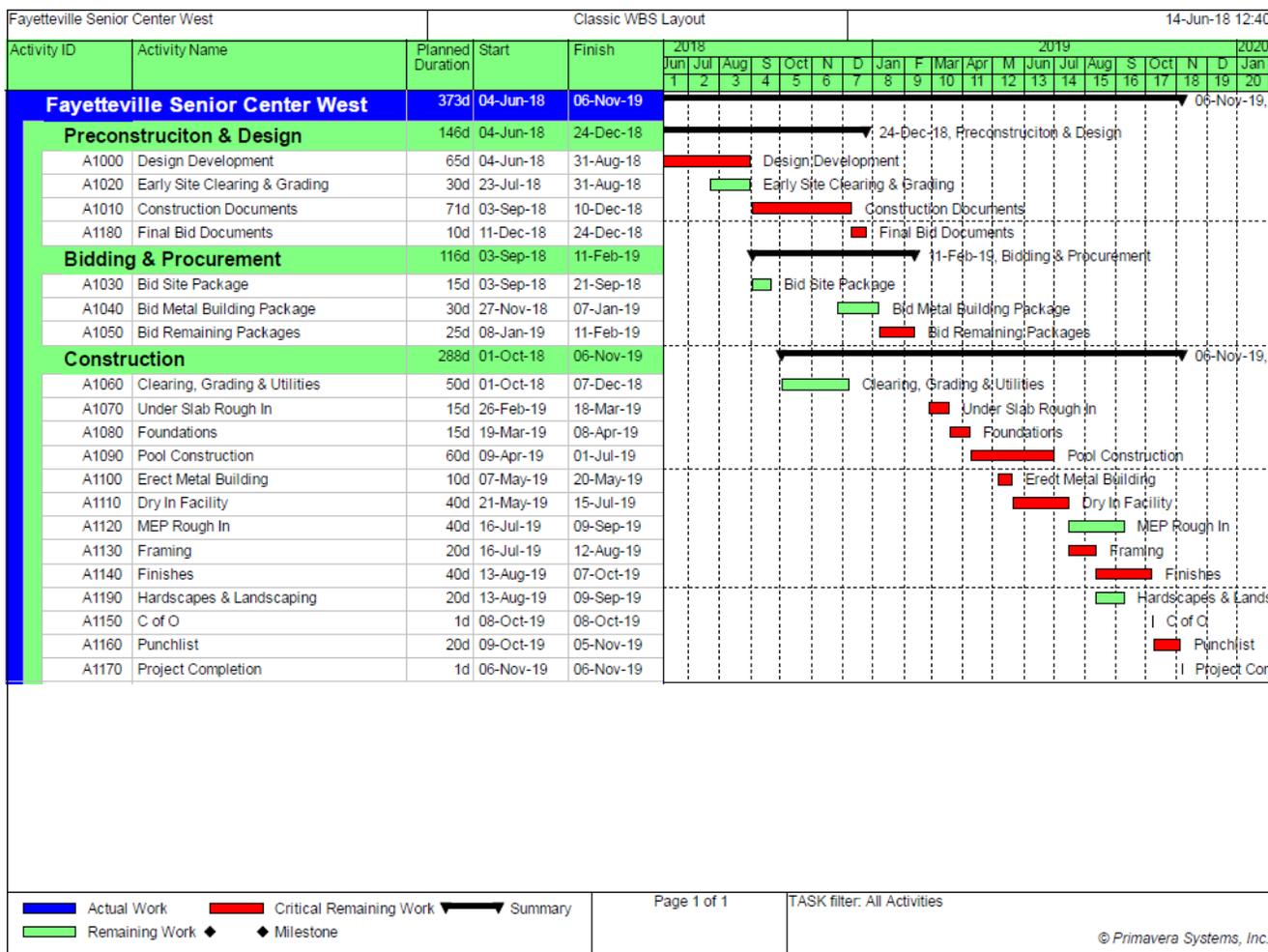


EXHIBIT F
Agreement between Owner and Construction Manager-at-Risk

Form of GMP Proposal

GUARANTEED MAXIMUM PRICE AGREEMENT

THIS GMP AGREEMENT, made this _____ day of _____ in the year of 2018, is executed between:

The **Owner:** The City of Fayetteville

and **Construction Manager:** Metcon

for the **Project:** Construction of Senior Center West in Fayetteville (“Project”) pursuant to an Agreement between Owner and Construction Manager dated _____, 2018 (“Project Construction Agreement”).

WITNESSETH

WHEREAS the Owner has published a Request for Proposals seeking the submission of competitive proposals to act as a Construction Manager at Risk to furnish professional construction management services during the design and construction of the Project identified and described in that Request for Proposals; and,

WHEREAS, the undersigned Construction Manager submitted a competitive proposal that was evaluated by the Owner; and,

WHEREAS, the Owner has made an award of the Work to the undersigned Construction Manager, and pursuant to the terms of the Request for Proposals this form is to be executed to form and memorialize the contractual relationship between the parties;

NOW THEREFORE, Construction Manager and the Owner agree as follows:

1. Upon execution of this GMP Agreement, this GMP Agreement will be incorporated into the Construction Management Agreement and become a part thereof.
2. For the sums set forth in the Construction Management Agreement, Construction Manager undertakes to furnish professional construction management services during the construction of the Project.
3. The providing of Construction Manager services will be in compliance with the provisions of the Project Construction Agreement and, to the extent that any term, requirement, or specification in this GMP Agreement will be in conflict with the Project Construction Agreement, the order of priority set forth in the Project Construction Agreement will control how any such conflicts are resolved.

4. That Construction Manager will commence provision of construction phase services under the Project Construction Agreement on a date to be specified in a written order of the Owner (Notice to Proceed) and will fully complete all services hereunder and accomplish the final completion of the project within [_____] consecutive calendar days from the date of Notice to Proceed. Construction Manager will furnish to the Owner various schedules as provided in the Construction Documents setting forth planned progress of the project broken down by the various divisions or part of the Work and by calendar days.

5. It is further mutually agreed between the parties hereto that if at any time after the execution of this GMP Agreement and the surety bonds hereto attached for its faithful payment and performance, , or if, for any reason, such bonds cease to be adequate to cover the performance of the Work, Construction Manager shall, at its expense, within five (5) days after the receipt of notice from the Owner so to do, furnish an additional bond or bonds in such form and amount, and with such surety or sureties as will be satisfactory to the Owner. In such event no further payment to Construction Manager will be deemed to be due under this GMP Agreement until such new or additional security for the faithful performance of the Work will be furnished in manner and form satisfactory to the Owner.

6. Fixed Guaranteed Maximum Price

Cost of work	\$
Direct Construction Costs	\$
General Conditions	\$
Construction Manager's Bonds and Insurance	\$
Allowances	\$
Construction Phase Fee	\$
Construction Manager's Contingency	\$ _____
 Total Fixed Guaranteed Maximum Price	 \$

IN WITNESS WHEREOF, the Parties hereto have executed this agreement on the day and date first above written in four (4) counterparts, each of which will without proof or accounting for other counterparts, be deemed an original contract.

Construction Manager: [_____]

By: _____

Name:

Title: _____

(Owner, Partner, or Corp. Pres. or Vice Pres. only)

(CORPORATE SEAL)

Attest: [_____]

By: _____

Name:

Title: _____

(Corporate Sec. or Asst. Sec. only)

ATTEST: **CITY OF FAYETTEVILLE**

PAMELA MEGILL, City Clerk

By: _____
DOUGLAS J. HEWETT, ICMA-CM ,
City Manager

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

JAY TOLAND, CFO
City of Fayetteville

EXHIBIT G
Agreement between Owner and Construction Manager-at-Risk

Liquidated Damages

Time is of the essence in the performance of this Agreement. In the event Construction Manager is not able to achieve Substantial Completion in accordance with those dates established in the Project Schedule, or as such dates may be extended as provided for in the Agreement, the Owner would suffer substantial damages, as set forth in Section 12.1.7. set forth in Section. In recognition of the foregoing, and as a sole remedy for delay of Construction Manager, Construction Manager agrees to pay as Liquidated Damages to Owner compensation for all costs and damages which the Owner incurs as a result of Construction Manager's failure to achieve Substantial Completion on or before the dates set forth in the Project Schedule (as such dates may be extended pursuant to the terms of this Agreement in accordance with the following rates:

1. As to Substantial Completion:

(a) If Construction Manager fails to achieve Substantial Completion on or before the date established in the Project Schedule (as may be extended pursuant to the terms of this Agreement), Construction Manager will pay to the Owner the amount of \$500 per day for days 1 to 30, and \$750 per day for days 31 to 60, and \$1,000 per day for days 61 to 90 beyond the scheduled date of Substantial Completion until Substantial Completion is achieved; and

The parties agree that the Liquidated Damages specified herein are not a penalty but are appropriate given the difficulty of determining Owner's actual damages for late completion of the Project and represent the parties' best estimate of the Owner's damages in the event of a delay in the completion of the Project within the time required in the Agreement. Owner may deduct any Liquidated Damages from any amounts due Construction Manager or Owner may require Construction Manager to pay any Liquidated Damages, which amount exceeds amounts due to Construction Manager, within ten (10) days after written demand. Liquidated Damages will in no way limit Owner's entitlement to damages for any other injury, damage or loss, other than for delay, for which Construction Manager may be responsible pursuant to the terms of the Agreement or Applicable Law.

EXHIBIT H
Agreement between Owner and Construction Manager-at-Risk

Forms of Payment and Performance Bond

FORM OF PERFORMANCE BOND

Date of Contract: _____

Date of Execution: _____

Name of Principal
(Contractor) (Obligor): _____

Name of Surety: _____

Name of Owner/
Contracting Body
(Obligee): _____

Amount of Bond: _____

Project _____

KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety above named, are held and firmly bound unto the above named contracting body, hereinafter called the contracting body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind, ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the contracting body, identified as shown above and hereto attached:

NOW, THEREFORE, if the principal will well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the contracting body, with or without notice to the surety, and during the life of any guaranty required under the contract, and will also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Executed in counterparts.

Contractor: _____

By: _____

Name: _____

Its: _____

Attest: (Corporation)

By: _____

Name: _____

Title: _____

(Corp. Sec. or Asst. Sec. of Contractor)

Surety: _____

By: _____

Name: _____

Its: _____

Countersigned:

(Surety Corporate Seal)

(N.C. Licensed Resident Agent)

Name and Address-Surety Agency

Surety Company Name and N.C.
Regional or Branch Office Address

FORM OF PAYMENT BOND

Date of Contract: _____

Date of Execution: _____
Name of Principal
(Contractor)
("Obligor") _____

Name of Surety: _____

Name of
Owner/Contracting
Body ("Obligee"): _____

Amount of Bond: _____

Project _____

KNOW ALL MEN BY THESE PRESENTS, that we, the principal and surety above named, are held and firmly bound unto the above named contracting body, hereinafter called the contracting body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the contracting body identified as shown above and hereto attached:

NOW, THEREFORE, if the principal will promptly make payment to all persons supplying labor/material in the prosecution of the Work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Executed in counterparts.

Contractor: _____

By: _____

Name:
Its:

Attest: (Corporation)

By: _____

Name: _____

Title: _____

(Corp. Sec. or Asst. Sec. of Contractor)

Surety: _____

By: _____

Name:
Its:

Countersigned:

(Surety Corporate Seal)

(N.C. Licensed Resident Agent)

Name and Address-Surety Agency

Surety Company Name and N.C.
Regional or Branch Office Address

EXHIBIT I
Agreement between Owner and Construction Manager-at-Risk
Small Disadvantaged Business Enterprise Participation Plan

Minority Participation Plan

City of Fayetteville Senior City West

PROVEN RESULTS

FSU Student Center (Additions & Renovations)	45%
Fayetteville State University Renaissance Hall	39%
Sandy Grove Middle School	52%
USC Rutledge LeGare Pinckney	38%
USC Hamilton (Renovation)	28%
Cumberland County Jail	40%
UNCP Cypress Hall Dormitory	36%
Downtown Remote Operations Facility	22%
Robeson County Dept. Of Social Services	30%
Lumbee Tribal Housing Authority	88%
UNCP University Center Annex	37%
City of Raleigh New Transit Operations Facility	26%
Progress Energy	51%
AVERAGE:	41%

This planning document is just that - a plan. We expect it to evolve and respond to changes in the state's minority business community and state demographic trends.

Introduction

Minority business is our business. Minority distinctions and certifications mean nothing if we are not making access to work easier for minority business owners. Our commitment to minority business inclusion and development is sincere; it is an inherent and important aspect of our business philosophy.

Our commitment at the construction management level will foster an environment of inclusion that will permeate throughout the project. Minority subcontractors as a whole feel more comfortable dealing with other minorities; our participation will augment and strengthen the (HUB) participation throughout the subcontract tiers. Additionally, we maintain a dedicated group of highly-skilled minority subcontractors that work in higher education in eastern NC.

We wish to partner with your HUB liaison to make this project one of the most successful ever. Our focus will be to strengthen minority communities by strengthening minority businesses. To achieve that goal, we will take a variety of actions, with an emphasis on increased project awareness, pre-qualification assistance and relationship building. We are dedicated to increasing minority participation in the City of Fayetteville and will work tirelessly to achieve our participation goal of 100% prime contract (HUB) +30% SUBTIERS (HUB).

Primary Plan Objectives:

1. Create a more inclusive minority business community in and around the city of Fayetteville by identifying program participants, advocates and resources and increasing interaction between local minority subcontractors, general contractors/construction managers, owners and key advocacy/support agencies.
2. Build relationships with new subcontractors and introduce the city of Fayetteville to our strong following of eastern NC-based minority subcontractors.
3. Increase assistance/awareness to better promote opportunities for HUB contractors to participate on this project.
4. Implement our plan to achieve or surpass the 30% SUBTIERS (HUB) minority participation goal.
5. Train and add new local business to the NC (HUB) certified list.

Sub-prime Assistance

Our plan centers on assistance and awareness; we believe these are two fundamental aspects of any minority business participation plan.

Awareness: Connecting minority communities with opportunities and increasing their knowledge of how to do work with the state of North Carolina; increasing minority firms' access to project-specific information.

Assistance: Technical & managerial assistance; capacity building; one-one meetings; navigating "red tape"; resource referrals

Awareness

(Ongoing efforts)

1. Hosting bi-annual Statewide Uniform Certification Seminars
2. Hosting networking and subcontractor outreach sessions
3. Developing informational newsletters to send to minority subcontractors in our database

Project Awareness

Metcon will solicit HUB interest in the project by utilizing the following:

1. Advertising our HUB Outreach efforts, meetings, pre-qualification information process and bid solicitation in media outlets such as:
 - a. The Fayetteville News & Observer
 - b. The Fayetteville Press
 - c. Robesonian Newspaper
 - d. The Raleigh News & Observer
 - e. Fayetteville City Guide
 - f. Acento Latino

2. Utilizing other settings/agencies to advertise our outreach meetings, pre-qualification information process and bid solicitations to reach a broader audience such as:
 - a. City of Fayetteville M/WBE Program
 - b. Fayetteville State University HUB Office
 - c. Metcon Fayetteville Office
 - d. NC Institute of Minority Economic Development
 - e. HUB Coordinators Network
 - f. United Minority Contractors of North Carolina (UMCNC)
 - g. NC Hispanic Chamber of Commerce
 - h. North Carolina Indian Economic Development Initiative
 1. El Centro Hispano/Latino
3. Written notices are sent to potential subcontractors and suppliers using information compiled from the State of North Carolina's Office of Historically Underutilized Businesses database, CCR database, and internal Metcon databases as well as other listings that may be supplied by the project owner or engineer
4. Metcon personnel, including HUB Coordinator, follow-up via phone with the subcontractors and suppliers who were mailed a written notice.
5. Project Information/Outreach Sessions and Pre-qualification Assistance Sessions are planned and hosted during preconstruction. The information collected during these sessions is compiled and evaluated to identify opportunities for HUB firms.

During the pre-construction/bidding phase, we will:

1. Review and structure bid packages to encourage participation by HUB firms.
2. Conduct interviews with each interested HUB firm to determine qualifications and make every attempt to pre-qualify them.
3. Identify specific trade packages as reduced barrier packages, and make arrangements for special payment terms if necessary to encourage response.

4. Provide opportunities that would enable HUB firms to obtain bonding through an identified underwriter.
5. Provide alternatives to bonding requirements should bonding present a problem for a minority subcontractor.
6. Conduct mandatory meetings with approved pre-qualified bidders to instruct them on the requirements for MBE participation.
7. Require pre-qualified bidders to make the same good faith effort to meet the HUB requirements of the project.

Oversight/Reporting

1. Our team will monitor and evaluate progress towards our goal on a monthly basis. We will coordinate with HUB Liaison to report progress, evaluate plan effectiveness and continually revise the plan to reach maximum participation.
2. Prepare aggregate and disaggregate participation reports, classifying by ethnicity, gender, scope of service and spend.
3. Conducting monthly site visits to confirm HUB participation as reported.
4. Provide HUB Liaison with bid tabulations.
5. Provide a listing of reduced barrier bid packages and dollar amounts to the HUB Liaison prior to bid.
6. Submit a written monthly report qualifying (HUB) participation.

EXHIBIT J
Agreement between Owner and Construction Manager-at-Risk

Pre-Construction Phase Agreement

Pre-Construction Services Agreement

This agreement (“Agreement”) is made this 14 day of December, 2017 between **Metcon Inc.** henceforth known as “Contractor,” and **the City of Fayetteville**, henceforth known as “Owner.”

Pursuant to the work described in **Exhibit A, the November 28, 2017 letter provided by Sam Isham of Metcon Inc.**, the Contractor and Owner agree to the following:

Section 1
The Work

The Contractor and Owner agree that the following scope of work will be done:

- See Exhibit A.

Section 2
Timeline

The Contractor and Owner agree that the work detailed above will be completed according to the following timeline:

Work to diligently progress alongside of the design document production schedule.

Any delays that arise during the course of the work must be discussed with Owner immediately.

Section 3
Payment

Owner agrees to pay the Contractor a total not to exceed **\$40,000** payable in the following manner:

The Contractor shall invoice the Owner no more or less than once every 30 days. The Owner has the right to request that the Contractor provide reasonable documentation to support an invoice. The Owner shall pay invoices within 30 days of receipt of such invoice.

Section 4
Changes

Any changes made to plans, materials used, time needed, or any other portion of the work must be discussed with Owner prior to any decisions.

Section 5
Permits

Not applicable to this portion of the Project.

Pre-Construction Services Agreement

Section 6 Workers

Contractor agrees that any laborer, subcontractor and/or employee that he/she hires for the purposes of this job is legally permitted to work in this function in this country.

Section 7 Subcontractors

Owner agrees that the Contractor may hire subcontractors at his/her discretion, provided that Contractor agrees that the payment for said subcontractors is entirely the Contractor's responsibility. Owner is not in any way liable for a subcontractor's missed payment.

Section 8 Insurance Requirements

The Contractor shall not commence work under this Contract until he has obtained all insurance required under this paragraph, and such insurance has been approved by the City Attorney, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance has been so obtained and approved. See Other Provisions Section (2) (c) below titled "Subcontractors."

The insurance required for this contract is as follows:

(a) Commercial General Liability ISO #CG 00 01 10 93: The Contractor shall take out and maintain during the life of this contract commercial general liability insurance with limits of \$1,000,000 per occurrence; \$2,000,000 aggregate other than products/completed operations; \$2,000,000 aggregate for products/completed.

(b) Automobile Liability ISO #CA 00 01 12 93: The Contractor shall take out and maintain during the life of this contract automobile liability insurance in an amount not less than \$1,000,000 combined single limit per accident for bodily injury and property damage from owned, non-owned, and hired automobiles.

(c) Workers' Compensation and Employers' Liability Insurance: The Contractor shall take out and maintain during the life of this contract workers' compensation insurance as required by the laws of the State of North Carolina and Employers' Liability with limits of \$100,000 each accident, \$500,000 policy limit and \$100,000 each employee for all employees employed on the project. In case any employee(s) engaged in work under this contract is or are not protected under the Workers' Compensation Statute, the Contractor shall provide adequate coverage for the protection of employees not otherwise protected.

Pre-Construction Services Agreement

Acceptability of Insurance

All insurance policies shall be written by insurers licensed to do business in North Carolina. It is realized that certain business activities may not be readily insurable by admitted carriers. If insurance is written by non-admitted carriers whose names appear on the current listing of approved and non-admitted carriers prepared by the North Carolina Department of Insurance, such carriers will be favorably considered assuming they meet all other requirements. Non-admitted carriers should be so identified on the Certificate of Insurance form. The City reserves the right to reject any and all certificates or policies issued by insurers with a Best's rating less than A;VII.

Indemnity Provision

Contractor 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 of Fayetteville 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 Contractor, his subcontractors, 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 of Fayetteville, and agrees to indemnify and hold harmless the City of Fayetteville, 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 there from. As an integral part of this agreement Contractor agrees to purchase and maintain during the life of this contract contractual liability insurance in the amount required in the general liability insurance requirements and to furnish proper evidence thereof.

Other Provisions:

- (1) Any deductible or self-insured retention must be declared to and approved by the City.
- (2) The policies are to contain, or be endorsed to contain, the following provisions:
 - (a) Commercial General Liability Coverage
 - 1) The City of Fayetteville, its officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees or volunteers.

Pre-Construction Services Agreement

2) The Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

3) Coverage shall state that Contractor'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.

(b) All Coverage's

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to:

City of Fayetteville Purchasing Office
P.O. Box 1089
Fayetteville, NC 28301

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, and volunteers. In the event the City is damaged by the failure of the Contractor to maintain such insurance and to so notify the City, the Contractor shall bear all reasonable costs properly attributable thereto.

(c) Subcontractors

Contractor shall include all subcontractors as insurers under its policies OR shall furnish separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to all of the requirements stated herein.

(d) No Waiver of Immunity

Any insurance coverage required by the terms of this contract shall not be deemed a contract of insurance purchased by the City nor a waiver of the City's immunity pursuant to NCGS 160A-485.

Section 9 Cleanup

Not applicable.

Pre-Construction Services Agreement

Section 10 Severability

Invalidity or unenforceability of one or more provisions of this Agreement shall not affect any other provision of this Agreement.

Section 11 Governing Law

Contractor and Owner acknowledge that this Agreement is subject to the laws and regulations of the State of North Carolina.

Section 12 Terms and Conditions

This agreement is limited to the terms and conditions contained on the face and back of the purchase order. Any additional or different terms in the Seller's form are hereby deemed to be material alterations and notice of objection to them and rejection of them is hereby given. All delivery of goods and/or services shall conform to specifications, price, terms and conditions as set forth in this instrument.

Section 11 E-VERIFY

Contractor/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. Contractor/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). Contractor/Vendor hereby pledges, attests and warrants through execution of this Agreement that Contractor/Vendor complies with the requirements of Article 2, Chapter 64 of the North Carolina General Statutes and further pledges, attests and warrants that any Subcontractors currently employed by or subsequently hired by Contractor/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.

Pre-Construction Services Agreement

Attest:

Jane G. Starling

PAMELA MEGILL, City Clerk
Jane G. Starling



CITY OF FAYETTEVILLE:

Kristoff T. Bauer

Kristoff T. Bauer Deputy City Manager

DOUGLAS J. HEWETT, ICMA-CM
City Manager

12/18/2017

Dated

METCON, INC.:

By: Metcon, Inc.

Address: 763 Comtech Drive
Pembroke, NC 28372

Phone: 910-521-8013

Date: 12-14-17

[Signature]
Sam Isham, Executive Vice President
Contractor Signature

This instrument has been pre-audited in the manner
Required by the Local Government Budget and Fiscal
Control Act.

Cheryl Spivey

Cheryl Spivey, Chief Financial Officer



November 28, 2017

Mr. Kristoff T. Bauer
Deputy City Manager, ICMA-CM
City of Fayetteville
433 Hay Street
Fayetteville, NC 28301

Senior Center Project
Pre-construction Services Scope of Work

Dear Mr. Bauer:

We are pleased to provide our proposed scope of work for Pre-construction services for the Senior Center Project.

1. Pre-Construction Services:

a. Partnering Session & Team Integration Meeting – Given the complex nature of this project we propose kicking off the preconstruction phase with a partnering session between the Owner, Architect and Construction Manager. At this meeting we will develop project specific policies and procedures that will insure close coordination between stakeholders and solidify our “Team Approach”. Deliverables from this meeting will include a conflict resolution plan and responsibility matrix.

b. Schematic Design Phase – We will work closely with the Owner, Architect and Survey Consultant throughout the entire schematic design phase. We will be “on-call” and available to assist with walkthrough’s or existing building inspections whenever needed. We will review the programmatic design and provide contractor input with regards to constructability, project phasing, safety, ongoing operations, etc. We will assist in the development of a detailed phasing plan that will be incorporated into the project schedule.

c. Program Budget - Working with the Owner and Designer through the programming phase we will establish a program budget based on historical square foot pricing adjusted for current market conditions. This will give the A/E a “benchmark” for every area and discipline as they proceed with the design

CORPORATE
763 Comtech Drive
P.O. Box 1149
Pembroke, NC 28372
Phone: 910.521.8013
Fax: 910.521.8014

RALEIGH
3100 Smoketree Court, Suite 215
Raleigh, NC 27604
Phone: 919.322.2220
Fax: 919.322.2222

CHARLOTTE
2905 Queen City Drive, Unit-B
Charlotte, NC 28208
Phone: 980.209.9680
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d. Design Consultation – We will meet with the Owner and Architect during regularly scheduled meetings to review the schedule, open action items and to make recommendations related to site improvements, the selection of materials and systems/equipment, building methods, construction feasibility, and offer alternate solutions when applicable.

e. BIM Modeling – Working with the Architect we will utilize our in-house resources to model critical areas of the project with Revit and Navisworks on an as needed basis to help insure the emerging design avoids conflicts when constructed.

f. Preliminary Project Schedule – We will prepare a critical path schedule utilizing Primavera software. The schedule will be used to identify key milestone activities, the sequence of the work, and determination of the overall project duration. Activities will be detailed so as not to cover more than 500 man-hours under one activity. We will regularly update and maintain the schedule as the project progresses throughout the pre-construction phase.

g. Value Analysis – We will thoroughly review the documents at each stage of design and offer possible cost savings and best-value recommendations to the Owner. We will continuously maintain a log of items throughout design phase of all possible Value Engineering options and their associated costs.

h. Constructability Review – We will perform a constructability review at each design phase noting any potential conflicts and the recommended solution. We will prompt a plan flip with the designer to jointly resolve each issue.

i. Preliminary Cost Estimates – Prepare cost estimates for Design Development, and 80% Construction Documents Phase to include the subcontracted cost of work, Construction Manager's general conditions, fee, and contingency. We will reconcile costs at each deliverable with any other independent estimates obtained by the designer or Owner. We will also reconcile costs between each phase to quantify any differences through design progression.

j. Subcontractor Pre-qualification – Conduct subcontractor pre-qualification for all bid packages using the AIA A305 qualification questionnaire or similar document. We will thoroughly review the response to each questionnaire to determine a subcontractor's capability to perform the work.

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k. Subcontractor Bidding – Advertise and perform community outreach sessions to create interest in the project from perspective subcontractors. We will sub-divide all aspects of the work into bid packages and formulate a detailed scope for each package. In addition, we will develop packages geared towards qualified local and W/MBE subcontractor in the interest of obtaining project goals set forth. We will develop detailed bidding instructions with each package and perform public bid openings.

i. Hub Participation - Our in-house HUB Coordinator, working in unison with our HUB Partners and conduct multiple outreach sessions to insure and maximize HUB participation. We will utilize our knowledge of the local HUB community to develop reduced barrier bid packages and will provide training and assistance during preconstruction.

m. Develop GMP - After Subcontractor bidding, we will develop a GMP proposal to include the subcontracted cost of work, CM Fee, Contingency, and General Conditions.

2. Preconstruction Cost Breakdown – The attached Exhibit “A” includes a detailed breakdown of the costs for the proposed preconstruction services

As you can see from the list of services above we are proposing an enhanced level of CM services during the preconstruction phase. We believe this management approach; along with our hands-on involvement through the critical schematic phase, is the key to insuring success on this project.

We propose to perform all of the above referenced Pre-construction services for a lump sum fee of \$TBD. Based on the construction budget of \$4M, and given the extended design phase and enhanced preconstruction services, we believe this cost is commensurate with industry standards.

We appreciate the opportunity to work with you on this project. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

Sam Isham, LEED AP
Executive Vice President / COO
Metcon Inc.

cc: Aaron Thomas, President / CEO

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EXHIBIT K
Agreement between Owner and Construction Manager-at-Risk

Other Cost of Work Items

Not Applicable