



**Request for Qualifications # 274-SM- 2024-0021**

**Smoky Hollow Park Project – Construction Manager at Risk  
Services**

**Issue Date: May 10, 2024**

**Due Date: July 9, 2024 not later than 4:00 p.m. EST**

**\*LATE PROPOSALS WILL NOT BE ACCEPTED\***

**Issuing Department: *Engineering Services, Stormwater  
Management Division***

**Direct all inquiries concerning this RFQ to:**

Megan Walsh, P.E

Senior Stormwater Engineer

Email: [Megan.Walsh@RaleighNC.gov](mailto:Megan.Walsh@RaleighNC.gov)

# Table of Contents

<b>1.</b>	<b>INTRODUCTION .....</b>	<b>1</b>
1.1	Purpose.....	1
1.2	Background.....	2
1.3	RFQ Timeline.....	4
1.4	Pre-Submittal Conference.....	5
1.5	Questions.....	6
1.6	Submittal Requirements and Contact Information.....	6
1.7	MWBE Participation Form.....	8
1.8	Rights to Submitted Material.....	8
1.9	Communications.....	8
1.10	Lobbying.....	8
1.11	Conflicts of Interest.....	8
1.12	Proposer Expenses.....	9
1.13	Proposer Acceptance.....	10
<b>2.</b>	<b>QUALIFICATIONS PACKAGE .....</b>	<b>10</b>
2.1	Request for Qualifications Required Document Format.....	10
2.2	Hourly Rates.....	16
2.3	Qualifications Package Documents.....	16
<b>3.</b>	<b>PROPOSAL EVALUATION .....</b>	<b>16</b>
3.1	Evaluation Criteria.....	16
3.2	Final Selection.....	17
3.3	Notice to Submitting Firms Regarding RFQ Terms and Conditions.....	18
3.4	Contract Term.....	18
<b>4.</b>	<b>SCOPE OF SERVICES .....</b>	<b>18</b>
4.1	Joint Ventures.....	19
4.2	Project Budget and Funding.....	19
	<b>APPENDIX I HOURLY RATE SCHEDULE.....</b>	<b>20</b>
	<b>APPENDIX II PROPOSER QUESTIONNAIRE .....</b>	<b>20</b>
	<b>APPENDIX III REFERENCE QUESTIONNAIRE .....</b>	<b>21</b>
	<b>APPENDIX III REFERENCE QUESTIONNAIRE FORM.....</b>	<b>22</b>
	<b>APPENDIX IV MWBE PARTICIPATION FORM .....</b>	<b>24</b>
	<b>APPENDIX V CONTRACT STANDARD TERMS AND CONDITIONS.....</b>	<b>25</b>
	<b>APPENDIX VI Contractor Safety Evaluation Questionnaire and Safety Record Information .....</b>	<b>126</b>

# 1. INTRODUCTION

## 1.1 Purpose

The City of Raleigh is soliciting Request for Qualifications (RFQ) from Construction Management at Risk (CMAR) firms with expertise transforming previously developed sites with a history of environmental contamination into new public parks with urban stream restoration; stormwater treatment; pedestrian pathway, boardwalks, and bridges; and plaza features; and native plant landscapes. The site for the proposed Smoky Hollow Park is a 13.7-acre City-owned parcel, located north of downtown Raleigh near the intersection of Capital Boulevard and Peace Street. The project is currently at the conclusion of schematic design and has an approved schematic site plan in place to bring the project into advanced design phases.

CMAR services include, but are not limited to, pre-construction and construction phase services. The CMAR scope of work is anticipated to include at a minimum:

- Coordination with the project design team
- Value Engineering,
- Review and Identification of Constructability Issues,
- Coordination with Nearby Construction Projects,
- Remediation Action Plan (RAP) implementation,
- Cost Model(s)/Estimate(s),
- Requests for Information and Shop Drawings,
- Quality Control, and
- Schedule and Staffing Plan.

The total budget for this project is \$19M, which includes concept design, schematic design, design development, site preparation (building demolition and underground storage tank removal), remediation, and construction. A portion of the project budget has been spent to date for previous environmental assessments and investigations and concept and schematic design services. See Section 4.2 Project Budget and Funding for more information.

A detailed scope of services is provided in Section 4 of this document.

Information related to this solicitation, including any addenda, will be posted to the North Carolina electronic Vendor Portal (eVP) at: <https://evp.nc.gov/solicitations/>

Existing documentation, data, models, and reports that document the current site conditions and design efforts to date will be made available to Proposers upon request via email to the individual listed below. All questions related to this solicitation must be submitted in writing (via email) to the following individual:

Contact Name	Email Address
Megan Walsh	Megan.Walsh@RaleighNC.gov

Questions submitted via telephone will not be answered. Questions concerning this RFQ will be received until **June 20, 2024, at 4:00 PM**, at which time no future questions will be accepted. A summary of all questions and answers may be issued in the form of an addendum. Any comments or questions that arise concerning any requirement that is unclear or objectionable **must be submitted electronically**

## **1.2 Background**

The City of Raleigh, the Capital City of North Carolina, remains one of the fastest growing areas in the country. A great economy, top educational institutions, and exceptional health care facilities are some of the characteristics that attract people to the triangle area. The mild climate, diverse work force and proximity to Research Triangle Park combine to make Raleigh a great place to live.

Raleigh is a 21<sup>st</sup> Century City of Innovation focusing on environmental, cultural, and economic sustainability. The City conserves and protects our environmental resources through best practice and cutting-edge conservation and stewardship, land use, infrastructure and building technologies. The City welcomes growth and diversity through policies and programs that will protect and enhance Raleigh's existing neighborhoods, natural amenities, history, and cultural and human resources for future generations. The City leads to improve quality of life for neighborhoods and standard of living for all citizens. The City works with universities, colleges, citizens, and local partners to promote new technology, create new job opportunities, and encourage local businesses and entrepreneurs. The City enlists and prepares 21<sup>st</sup> Century staff with the skill sets to carry out the duties of the City through transparent civic engagement and by providing the very best customer service to our citizens.

The Engineering Services Department is recognized as a leader in providing full-service, comprehensive engineering and facility operational service for the City. The department's vision focuses on innovative, efficient and effective management and delivery of modern public infrastructure assets for the Raleigh community. This is accomplished through strategic planning, key partnerships, teamwork and collaborative implementation leading to focused, measurable and beneficial results and outcomes.

The 2014 and 2022 City of Raleigh Parks Bond Referendums allocate funding for site remediation, park design and permitting, and construction of the future Smoky Hollow Park. The bonds were approved through ballot voting by the citizens of Raleigh, NC.

The current site is a City maintenance and fleet facility, with the temporary Conlon Family Skatepark located at the northern end. Most of the facility is covered in extensive pavement and located within the floodplain of the Pigeon House Branch. Along the western edge of this site, Pigeon House Branch flows within an underground culvert, once under the former Devereux Meadow baseball stadium, before exiting into a heavily channelized streambed as it flows northward. Existing reports that document the site conditions include:

- Stream Geomorphic and Stormwater Assessment (2018)
- Topographic Survey (2021)
- Concept Plan Report & Appendices (2022)

From 2017 to 2024, the City contracted consultant services for environmental and site design at the project site.

In November 2022, Raleigh City Council approved and adopted the Concept Plan for Smoky Hollow Park (formerly called Devereux Meadow Park). The Schematic Design, based on the Concept Plan, was approved by City Council on May 7, 2024. Per the Concept and Schematic Designs, the project focuses on:

- environmental site remediation;
- stream daylighting, realignment, and restoration;
- flood and stormwater management;
- constructed wetland;
- greenway and other secondary paths ;
- plaza and gathering areas;
- habitat restoration and native plantings;
- and other passive and interpretive park improvements.

A series of environmental assessments and remedial investigations from 2017 to 2024 identified and further characterized the presence of contaminated soil and groundwater. Previous coordination with NCDEQ resulted in the site being designated as low-risk in terms of degree of contamination and risk to potential receptors. As a result of the low-risk determination, the site was approved for entrance into the Registered Environmental Consultant (REC) Program. Some level of remediation is expected prior to the construction of park while other in-situ remediation efforts could occur during park construction. Costs associated with remediation activities are part of the project budget.

Existing environmental assessments, investigations, and pre-construction activities from 2017 to 2024 include:

- Phase II Environmental Site Assessment (2019)
- Soil Vapor Intrusion Investigation (2021)
- Preliminary discussions with regulatory staff from the North Carolina Division of Environmental Quality (2020-2021)
- Topographic Survey (2021)
- Phase 1 Remedial Investigations (2021)
- Phase 2 Remedial investigations (2023)
- Phase 3 Remedial Investigations (on-going, 2024)
- Removal of thirteen (13) underground storage tanks and service station demolition (on-going, 2024)

Pigeon House Branch drains a large portion of north downtown Raleigh, east to the Oakwood neighborhood, and west to the Village District. The 830-acre contributing drainage area consists of highly developed area that is approximately 60% impervious. The stream receives significant flow during storm events and can flood a large area of the site. Therefore, improvements to the Pigeon House Branch conditions are major elements in the overall park design. In the southern half of the site, Pigeon House Branch daylights and aligns into a natural and meandering flow. In the northern half, the stream remains within its current location but with re-graded stream banks and flood benching.

Per the Schematic Design, the stream bed is to have several types of habitat structures, thus improving water quality and supporting healthy plant, animal, and fish habitats. Vegetation installed along and above the stream banks are to be native species to ensure the long-term structural stability of the banks during flood events, while also providing habitat. The constructed wetland will be tied to the existing stormwater system piped to the park site from the east (Seaboard Station area) and under Capital Boulevard. The first flush of stormwater is captured in the wetland, allowing water to remain within the wetland, rather than directly flowing into Pigeon House Branch.

Whereas the existing site is mostly paved, large areas of the park will act as a natural sponge for stormwater infiltration, with the goal of overall water quality improvement. The Schematic Design has the amount of impervious paving is reduced from the current 8.5 acres to approximately 2 acres. The stream improvements and constructed wetland, combined with the increased pervious areas, will all work to improve stormwater quality in this part of the Pigeon House Branch watershed.

The main entrance into the park is planned at Peace Street. The Peace Street Plaza serves as gateway, gathering, and steam observation area. The plaza is sized for occasional, small events and can accommodate food trucks, along with seating and more formal landscape areas.

The plaza connects to the main greenway path that runs the entire length of the park, connecting to Dortch Street at the northern end. The greenway layout mimics the streamflow and ties into to a series of secondary paths, boardwalks, and bridges. The plaza also links to the “history walk” via a bridge over the stream to the west side of the park. The intention of the history walk is to provide opportunities for thematic interpretation of the site’s history and the Pigeon House Branch restoration. The history walk then connects to the North West Street entry area that has terraced seating areas and an overhanging observation platform.

Landscape berms along the eastern edge of the park serves as a visual buffer to Capital Boulevard. Secondary pedestrian entrances, crossing through the berms, connect the park pathways to the Capital Boulevard sidewalk.

Per the Schematic Design planting plan, most landscape areas are designed to replicate plant species commonly occurring in native North Carolina ecosystems, such as Piedmont streamside forest and wetlands, oak-hickory woodlands, longleaf pine groves, and dry meadows. Scattered along the greenway are areas of open, mowed lawn, intended for informal gathering and unstructured recreation.

At the north end of the park and near the proposed, future elevated high-speed rail overpass, there is an opportunity for a small skate spot and accessible parking area off Dortch Street.

### **1.3 RFQ Timeline**

Provided below is a list of the anticipated schedule of events related to this solicitation. The City of Raleigh reserves the right to modify and/or adjust the following schedule to meet the needs of the project. All times shown are Eastern Time (ET):

RFQ Process	Date and time
RFQ Advertisement Date	<i>May 10, 2024</i>
Pre-Submittal Conference (on-site)	<i>May 22, 2024 at 9:30am to 10:30am</i>
Deadline for written questions	<i>June 20, 2024 at 4:00 pm</i>
City Response to Questions (anticipated)	<i>July 2, 2024</i>
<b>Submittal Due Date and Time</b>	<i>July 9, 2024 at 4:00 pm</i>
Evaluation Meeting (anticipated)	<i>Week of July 22, 2024</i>
Interviews (if required)	<i>Week of August 5, 2024</i>
Selection Announcement (tentative)	<i>Week of August 19, 2024</i>

**1.4 Pre-Submittal Conference**

Prospective Proposers must register in order to receive all information. Proposers must provide valid contact information including name, physical mailing address, phone number and valid e-mail address.

Complete project information may be obtained by contacting Megan Walsh at [megan.walsh@raleighnc.gov](mailto:megan.walsh@raleighnc.gov).

A **mandatory** pre-submittal conference for all prospective Proposers is scheduled for **May 22nd, 2024 at 9:30am to 10:30am** at the site of the future Smoky Hollow Park, 1014 N. West St, Raleigh, NC 27603. RFQ registration will be conducted at this conference. The completed and signed registration sheet resulting from this conference will be used to validate that submittals have been received from those contractors in attendance at the pre-submittal conference. Responses to the RFQ will only be accepted from those contractors that have signed and registered at this mandatory pre-submittal conference. Failure to sign and register at this conference will be cause for rejection.

Prospective proposers should carefully review the requirements of this solicitation. Any comments or questions that arise concerning any of these requirements that is unclear or objectionable must be submitted electronically to Megan Walsh ([Megan.Walsh@raleighnc.gov](mailto:Megan.Walsh@raleighnc.gov)).

No questions will be discussed via telephone. Prospective proposers are encouraged to submit written questions in advance. A summary of all questions and answers will be issued in the form of an addendum.

Addenda will be posted on the North Carolina electronic Vendor Portal (eVP) at: <https://evp.nc.gov/solicitations/>. All addenda shall be acknowledged in the Proposer's submittal. It is the Proposer's responsibility to ensure that all addenda have been reviewed, signed and included in the response to the RFQ.

**1.5 Questions**

Requests for clarification and questions to this RFQ must be received by the City not later than the date shown above in Section 1.3 RFQ Timeline, for the submittal of written inquires. The firm's failure to request clarification and submit questions by the date in the RFQ Timeline above shall be considered to constitute the firm's acceptance of all City's terms and conditions and requirements. The City shall issue addenda reflecting questions and answers to this RFQ, if any, and shall be posted to North Carolina electronic Vendor Portal (eVP). No information, instruction or advice provided orally or informally by any City personnel, whether made in response to a question or otherwise in connection with this RFQ, shall be considered authoritative or binding. Respondents shall be entitled to rely *only* on written material contained in an Addendum to this RFQ.

***It is important that all Respondents submitting to this RFQ periodically check the North Carolina electronic Vendor Portal (eVP) for any Addenda. It is the Respondents responsibility to ensure that all addenda have been reviewed and, acknowledged on the cover letter included in the RFQ response.***

All questions related to this solicitation must be submitted in writing (via email) to the following individual:

Contact Name	Email Address
Megan Walsh	<a href="mailto:Megan.Walsh@RaleighNC.gov">Megan.Walsh@RaleighNC.gov</a>

Questions submitted via telephone will not be answered. Questions concerning this RFQ will be received until 4:00 pm EST on **June 20, 2024** at which time no future questions will be accepted. A summary of all questions and answers may be issued in the form of an addendum. Any comments or questions that arise concerning any requirement that is unclear or objectionable **must be submitted electronically**.

**1.6 Submittal Requirements and Contact Information**

Proposals must follow the format as defined in Section 2 Qualifications Package. The City will equally accept either electronic responses or hard copy responses, as most efficient for the responding firm. The City will not require both electronic and hard copy responses.

If the Proposer chooses to submit their qualifications-based proposals electronically, then there are several options available for firms to submit their proposals electronically:

1. Submit the proposal as a viewable and printable Portable Document File (PDF)

secure attachment to email to [megan.walsh@raleighnc.gov](mailto:megan.walsh@raleighnc.gov). For practical purposes, please consider that an email with attached file size of up to 20 Mb can be received by the City.

2. If the electronic file size of the proposal document is potentially too large to send via email as an attachment, and the file size cannot be successfully compressed in size or otherwise be emailed successfully, then the firm may choose to send an email to [Megan.Walsh@raleighnc.gov](mailto:Megan.Walsh@raleighnc.gov) with a secure file transfer link such that the recipient (City of Raleigh RFQ contact only) can download the file. Firms are in no way required to have or obtain such file transfer system, however. Moreover, the City will not be providing any type of file-sharing site to use for the submittal of packages in response to this RFQ. Also, physical media storage devices with electronic files will not be required or accepted by the City for this RFQ.
  
3. If preferred, firms may continue to elect to submit hard copy responses (signed original plus five copies) per the mailing address information provided below. Hard copy submittals must be enclosed in a sealed envelope or package and clearly marked with the name of the submitting company, the *RFQ number* and the *RFQ Title*. Proposers must submit one (1) signed original and five (5) copies of the signed proposal.

<b><u>DELIVERED BY US POSTAL SERVICE MAIL:</u></b>	<b><u>DELIVERED BY OTHER DEIVERY SERVICES:</u></b>
City of Raleigh Engineering Services Department, Stormwater Management Division ATTN: Megan Walsh One Exchange Plaza Building 1 Exchange Plaza, 7th Floor Room 706 Raleigh NC 27601 RFQ No. 274-SM- 2024-0021	City of Raleigh Engineering Services Department, Stormwater Management Division ATTN: Megan Walsh One Exchange Plaza Building 1 Exchange Plaza, 7th Floor Room 706 Raleigh NC 27601 RFQ No. 274-SM- 2024-0021

Both hard copy and electronic versions must be received by the City on or before the RFQ date and time provided in Section 1.3 RFQ Timeline. Proposals received after the RFQ deadline above will not be considered and will be returned unopened to the return address provided on the submission envelope.

The City intends to utilize its standard CMAR contract language without modification for this project. Exceptions to the City’s standard contract language will not be allowed. **Proposers must respond to the entire Request for Qualifications (RFQ). Any incomplete proposal may be eliminated from competition at the discretion of the City of Raleigh.** The City reserves the right to reject any or all proposals for any reason and to waive any informality it deems in its best interest.

If the Proposer elects to mail in its response, the Proposer must allow sufficient time to ensure the City’s proper receipt of the package by the time specified in Section 1.3 RFQ Timeline.

Regardless of the delivery method, it is the responsibility of the Firm to ensure that their response arrives at the designated location specified in this Section 1.6 by the due date and time specified in Section 1.3 RFQ Timeline.

### **1.7 MWBE Participation Form**

The City of Raleigh prohibits discrimination in any manner against any person based on actual or perceived age, race, color, creed, national origin, sex, mental or physical disability, sexual orientation, gender identity or expression, familial or marital status, religion, economic status, or veteran status. The City maintains an affirmative policy of fostering, promoting, and conducting business with women and minority owned business enterprises.

Complete and submit the MWBE Participation Form (Appendix IV) with your qualification package.

### **1.8 Rights to Submitted Material**

All qualification packages and supporting materials, as well as correspondences relating to this RFQ, shall become the property of the City. The content of all submittals will be held confidential until the selection of the company is made. Qualifications will be reviewed by the Evaluation Team, as well as other City staff and members of the general public who submit public record requests. Any proprietary data must be clearly marked. In submitting qualifications, each submitting firm/company agrees that the City may reveal any trade secret materials contained in such submittal to all City staff and City officials involved in the selection process and to any outside consultant or other third party who serves on the Evaluation Team or who is hired by the City to assist in the selection process. Qualification submittals marked entirely as “confidential”, “proprietary”, or “trade secret” will be considered non-responsive and will be removed from the evaluation process.

### **1.9 Communications**

All communications of any nature regarding this RFQ with any City staff, elected City officials, evaluation committee members are strictly forbidden from the time the solicitation is publicly posted until award. Questions must be submitted in writing to the individual designated in Section 1.1 Purpose, prior to the deadline provided in Section 1.3 RFQ Timeline. Violation of this provision may result in the company’s proposal being removed from consideration.

### **1.10 Lobbying**

By responding to this solicitation, the company certifies that it has not and will not pay any person or company to influence or attempt to influence an officer or employee of the City or the State of North Carolina, or any elected official in connection with obtaining a contract as a result of this RFQ.

### **1.11 Conflicts of Interest**

City of Raleigh contracts are controlled by three conflict of interest provisions.

First, federal procurement standards provide in 2 CFR 200.318 (c)(1),

No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which

employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a company considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

Similarly, the North Carolina General Statutes provides a *criminal* statute for conflicts of interest in public contracting, N.C.G.S. § 14-234(a) states:

(1) No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law. (2) A public officer or employee who will derive a direct benefit from a contract with the public agency he or she serves, but who is not involved in making or administering the contract, shall not attempt to influence any other person who is involved in making or administering the contract. (3) No public officer or employee may solicit or receive any gift, favor, reward, service, or promise of reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves.

City of Raleigh Charter Section 3.9 regulates private transactions between the City and its officials and employees. The Charter states:

No member of the City Council, official, or employee of the City of Raleigh shall be financially interested, or have any personal beneficial interest, either directly or indirectly, as agent, representative, or otherwise, in the purchase of, or contract for, or in furnishing any materials, equipment or supplies to the City of Raleigh, nor shall any official or employee of the City of Raleigh accept or receive, or agree to accept or receive, directly or indirectly, from any person, company or corporation to whom any contract may be awarded or from whom any materials, equipment or supplies may be purchased by the City of Raleigh, by rebate, gift, or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation, for recommending or procuring the uses of any such materials, equipment or supplies by the City of Raleigh; no member of the City Council, official or employee of the City of Raleigh shall for his own personal benefit operate, directly or indirectly, any concession in any building or on any lands of the City of Raleigh, nor shall any official or employee of the City of Raleigh bid for or be awarded any contract granting concessionary rights of any nature or kind from the City of Raleigh; it shall be unlawful for any member of the City Council, official or employee of the City of Raleigh to bid for or to purchase or to contract to purchase from the City of Raleigh any real estate, equipment, materials, or supplies of any nature or kind whatsoever, either directly or indirectly, at either public or private sale, either singly, or through or jointly with any other person.

### **1.12 Proposer Expenses**

The City of Raleigh will not be responsible for any expenses incurred by any Firm in the development of a response to this Request for Qualifications or any other activities associated with this procurement including but not limited to any onsite (or otherwise) interviews and/or presentations, and/or supplemental information provided, submitted, or given to City of Raleigh and/or its representatives. Further, the City of Raleigh shall reserve the right to cancel the work described herein prior to issuance and acceptance of any

contractual agreement/purchase order by the recommended Firm even if the awarding authority for each entity has formally accepted a recommendation.

**1.13 Proposer Acceptance**

Submission of any proposal indicates a Proposer’s acceptance of the conditions contained in this RFQ. The City of Raleigh has the sole discretion and reserves the right to cancel this RFQ, and to reject any and all proposals, to waive any and all informalities and/or irregularities, if it is deemed to be in the City of Raleigh’s best interests to do so. The City of Raleigh reserves the right to accept or reject any or all of the items in the proposal, and to award the contract in whole or in part and/or negotiate any or all items with individual Firms if it is deemed in the City of Raleigh’s best interest. Moreover, the City of Raleigh reserves the right to make no selection if proposals are deemed not in the best interest of the City of Raleigh.

**2. QUALIFICATIONS PACKAGE**

Submittal responses must follow the format outlined below. The City may reject as non-responsive at its sole discretion any submittal that does not provide complete and/or adequate responses or departs in any substantial way from the required format.

**2.1 Request for Qualifications Required Document Format**

Responses should be divided using tabs to separate each section, listed sequentially as follows:

**Tab 1: Response Cover Letter, Receipt of Addenda, and Executive Summary**

The response should contain a cover letter, signed by a principal in the firm, indicating his or her title that he or she has authority to submit the response on behalf of the firm,

a. The cover letter should contain the following statement:  
The undersigned has the authority to submit this response on behalf of name of company in response to the above Request for Qualifications dated **May 10, 2024** for providing Construction Manager at Risk services for the **Smoky Hollow Park Project** for the City of Raleigh.

b. The cover letter should contain the following statement to be considered an offer meeting the terms of this Request:

The principal place of business is \_\_\_\_\_.

c. The cover letter shall specifically acknowledge any addenda relating to the response, in the format noted below that has been provided by the City. Failure to acknowledge any addenda that have been provided by the City can be cause for rejection of the response.

ADDENDUM NO \_\_\_\_\_ ACKNOWLEDGED BY: \_\_\_\_\_

d. The Cover Letter shall include no more than a one-page Executive Summary that clearly outlines the overall capability of the firm, which briefly summarizes the

capability to perform the work items as outlined in the Scope of Work for which the firm proposes to perform.

**Tab 2: Corporate Background and Letter from Insurance Company**

Information shall be provided regarding the organizational structure of the firm (e.g., corporation, partnership, joint venture, etc.), year organized and year of incorporation, and information shall be noted relating to corporate officers, major shareholders, partners, etc.

If the Proposer is a joint venture firm or partnership, the Proposer must provide all identification information for all parties and all requirements for all parties (i.e., licenses, insurance, etc.) as requested.

Submitters must possess all licenses required by North Carolina law and shall submit proof of current licensing within an appendix to the response. If the firm is a national firm, please indicate the location of the office from which the project will be managed. The City may reject responses from any firm if it does not comply with State-required licensure.

Provide annual workload for each of the last five (5) years with number of projects and total dollar value. Provide a list of projects for which the company is currently committed, including name & location of each project, project manager name, time frame to complete and dollar volume of each project.

Attach a letter from insurance company or its agent licensed to do business in North Carolina and verifying company's current coverage and ability to attain insurance coverage required by the City.

**Tab 3: Project Understanding, Approach, Schedule, and Commitment to Quality**

Provide a description of how the project will be organized and managed, and how the services will be performed in both Pre-Construction and Construction phases. If the Proposer is a joint venture firm or partnership, the Proposer must provide all identification information for all parties and all requirements for all parties (i.e., licenses, insurance, etc.) as requested. The Proposer must identify the responsibilities of each joint venture or partnership party with respect to the scope of services/work inclusive of the requirements for each entity based on such services:

- a. Coordination with the project design team
- b. Value Engineering,
- c. Review and the identification of Constructability Issues,
- d. Coordination with Nearby Construction Projects
- e. Remediation Action Plan (RAP) implementation
- f. Cost Model(s)/Estimate(s),
- g. Requests for Information and Shop Drawings,
- h. Quality Control, and
- i. Schedule and Staffing Plan.

Project planning that offers the same project manager for Pre-Construction and Construction phases shall be given preference.

Include a narrative explaining how the Proposer will interact with the design team, commissioning agent, other representatives, and the Owner to achieve the project budget, quality, schedule, and safety goals.

Provide a narrative statement outlining capability and experience, management and documentation systems in place, and field procedures used to provide quality construction and compliance with specification requirements, including that of a multitude of subcontractors and suppliers. Provide samples/examples of your quality control program inclusive of applicable documentation for quality control meetings, inspections, specification review, shop drawings, submittals, deficiency tracking, daily and other reports utilized during construction to meet quality requirements. Sample forms and documents may be included in the appendix of this submission.

**Tab 4: Team Organization, Experience, and Certifications/Qualifications & Minority and Woman-Owned Business Enterprise Participation Strategy.**

The Proposer shall provide an organizational chart that identifies relationships and roles of each key individual and who s/he will report to in the overall project organization. In particular, please identify the staff members within the organization who will serve as: project manager; signatory licensee (who will be the professionals of record); discipline leaders (site, building plumbing, mechanical, electrical, etc.); field representatives, etc. Résumés and curricula vitae shall be submitted for key project staff members. Staff members assigned to this team shall demonstrate proficiency in Value Engineering, Constructability Issues, Cost Modeling/Estimating, Project Tracking/Reporting, Requests for Information, Shop Drawings, Quality Control, Project Scheduling, and other construction-related skill sets.

If the Proposer is a joint venture firm or partnership, the Proposer must provide all identification information for all parties and all requirements for all parties (i.e., licenses, insurance, etc.) as requested. The Proposer must identify the responsibilities of each joint venture or partnership party with respect to the scope of services/work inclusive of the requirements for each entity based on such services as described in this RFQ document. All joint venture/partnership parties will be held responsible for the contract obligations jointly and severally.

The identified project manager for CMAR will be that individual who will be involved in daily interactions and meetings with the City for the project duration. Include a statement from your firm committing to assigning these proposed personnel if your firm is the selected firm and noting that the approved project management personnel will not be removed or reassigned without approval in writing from the City.

Provide the firm's strategy to solicit and engage minority participation. As required by N.C.G.S. 143-128.1(c), the CMAR must submit its plan for compliance with N.C.G.S. 143-128.2 for approval by the City prior to soliciting bids for any of the Project's first-tier subcontractors. The CMAR and first-tier subcontractors shall make a good faith effort to comply with N.C.G.S. 143-128.2, N.C.G.S. 143-128.4, and to recruit and select small business entities. Provide a copy of a successful plan from a previous

project. The plan should highlight specific efforts your company has used to inform minority and other Historically Underutilized Businesses (HUB) firms of opportunities for participation and indicate the minority goal that was required and achieved on that project. This plan may be included in an appendix to the response.

The City of Raleigh encourages and provides equal opportunity for Certified Minority and Woman-Owned Business Enterprise (MWBE) businesses to participate in all aspects of the City's contracting and procurement programs. The City has an aspirational goal of 15% of the total contract amount to be performed by MWBE businesses on construction and repair projects of \$300,000 or more, and contracts of \$100,000 or more that include any State funding.

**Tab 5: Evidence of experience with projects of similar scope.**

To demonstrate the requisite experience, Proposers are asked to provide detailed summaries for at least three (3) public park, stream restoration, remediation, or other similar projects, either private or publicly funded. Of the three projects, at least one project must be a completed public-sector project and at least one project must be a completed CMAR delivery.

- a. Specific details on the extent to which pre-construction and construction phase services were provided;
- b. The GMP or construction cost. If the GMP or construction cost is not available, please provide the estimated cost (or preliminary GMP) and the total cost of the project at completion;
- c. For completed public-sector project, indicate if it was a state or local municipality, and identify the name of the owner. Share when the GMP was finalized and during what phase of project development. Detail the project concerns that influenced and informed your decision.
- d. If any project implemented a phased bidding approach, please share that strategy and evaluate its efficacy;
- e. If any project involved coordinating with or implementing an impacted soil management plan or a remedial action plan, please include a description of those activities and strategies used to ensure the project schedule and budget were met;
- f. The number of days in the original schedule with the actual number of days; and
- g. Contact information for the owner: name, address, telephone and fax numbers, and email address of the project owner representative.

Please include information pertaining to current workload and anticipated projects to be awarded that can affect the management of this project.

Provide experience in the prequalification of bidders, proposed approach to (preliminary and final) GMP packages, and bidding, bid evaluation, and award procedures. Provide successful strategies on re-bidding for instances where the minimum number of bidders has not been obtained.

**Tab 6: Contractor Safety Evaluation Questionnaire and Safety Record Information.**

Included in Appendix VI is a questionnaire. The Proposer is requested to complete the questionnaire and include it in the response.

**Tab 7: Any project where there were legal or technical problems encountered and the final resolution(s).**

Prepare a brief narrative of projects in which your firm and subcontractors on your projects has been involved in the last five (5) years which have experienced legal or technical problems. The narrative should briefly describe the problem, describe the final solutions or outcomes, and describe how your company was involved in the outcomes. This information should be completed with the firms comprising the Joint Venture.

Litigation/Claims: Please include responses to the below items. If yes to any of the questions below, list the project(s), dollar value, contact information for owner and provide a full explanation with relevant documentation for projects for which work has been performed during the last five years.

- a. Has your company ever failed to complete work contracted to it?  
 Yes  No
- b. Has your company been defaulted?  
 Yes  No
- c. Has your company filed any claims, or had any claims filed against it, within the last five years?  
 Yes  No
- d. Has your company been involved in any suits, mediation, or arbitration with Local Governments within the last five years?  
 Yes  No
- e. Has your company been involved in any suits or arbitration with state or federal governments, individuals or organizations within the last five years?  
 Yes  No
- f. Are there currently any judgments, claims, arbitration proceedings or suits pending or outstanding against your company, its officers, owners, or agents?  
 Yes  No
- g. Has your present company, its officers, owners, or agents ever been convicted of charges relating to conflicts of interest, bribery, or bid-rigging?

\_\_\_ Yes \_\_\_ No

- h. Has your present company, its officers, owners, or agents ever been barred from bidding public work in North Carolina?

\_\_\_ Yes \_\_\_ No

**Tab 8: References and Résumés.**

Include all other detailed and descriptive information for project reference information noted in Tab 5. Reference information may also include letters from project owners. It is desired that the references be made aware the firm has submitted qualifications for this project and may be contacted by the City.

**Tab 9: Financial Information**

Provide this information in a separate, electronic file on a flash drive. Review and provide one of the following three (3) financial statement options:

If the Proposer is a joint venture company or partnership, the Proposer must provide all identification information for all parties and all requirements for all parties (i.e., licenses, insurance, etc.) as requested.

1. Recent audited or reviewed financial statements prepared by an independent certified public accountant (CPA) that shall include, at a minimum, a balance sheet, income statement (i.e., profit/loss statement) and cash flow statement **and**, if the audited or reviewed financial statements were prepared more than six (6) months prior to the issuance of this RFQ, the Proposer shall submit its most recent internal financial statements (balance sheet, income statement and cash flow statement or budget with entries reflecting revenues and expenditures from the date of the audited or reviewed financial statements to the end of the most recent financial reporting period (i.e., the quarter or month preceding the issuance date of this RFQ)).

OR

2. Recent compiled financial statements prepared by an independent CPA that shall include, at a minimum, a balance sheet, income statement (i.e., profit/loss statement) and cash flow statement **and**, if the compiled financial statements were prepared more than three (3) months prior to the issuance of this RFQ, the Proposer shall submit its most recent internal financial statements (balance sheet, income statement and cash flow statement or budget with entries reflecting revenues and expenditures to date), and other evidence of financial stability such as most recently filed income tax return, evidence of a line of credit/loans/other type of financing with statement of amount in use/outstanding balance (e.g., a complete copy commitment letter, loan agreement, billing statement reflecting the line of credit or statement from lender acknowledging the commitment to fund the Proposer's stated financing), personal guaranty with copies of personal income tax filing and statement of net worth or such other evidence that is accurate, reliable and trustworthy regarding the Proposer's financial stability.

OR

3. Include a certified, signed statement from a licensed CPA regularly engaged in the review of the firm's financial information verifying the financial viability of the firm.

All financial information, statements and/or documents provided in response to this solicitation shall be kept confidential provided that EACH PAGE is marked as follows: **“CONFIDENTIAL – DO NOT DISCLOSE EXCEPT FOR THE EXPRESS PURPOSE OF PROPOSAL EVALUATION.”**

**“Recent”** shall be defined as financial statements that were prepared within the 12 months preceding the issuance date of this RFQ.

**Consolidated financial statements** of the Proposer's parent or related corporation/business entity will not be considered, unless: (1) the Proposer's actual financial performance for the designated period is separately identified in and/or attached to the consolidated statements; (2) the parent or related corporation/business entity provides the State with a document wherein the parent or related corporation/business entity will be financially responsible for the Proposer's performance of the contract and the consolidated statement demonstrates the parent or related corporation's/business entity's financial ability to perform the contract, financial stability and/or such other financial considerations identified in the evaluation criteria; and/or (3) Proposer provides its own internally prepared financial statements and such other evidence of its own financial stability identified above.

The firm's failure to provide any of the above-referenced financial statements may result in the proposal being removed from consideration. Proposers are also encouraged to explain any negative financial information, and to provide documentation supporting those explanations and demonstrating the financial strength of the firm.

## **2.2 Hourly Rates**

This solicitation is being issued in accordance with NCGS 143-64.31, otherwise known as the Mini-Brooks Act, and therefore price cannot and will not be a determining factor in the selection of the successful contractor. One copy of the Hourly Rate Schedule (see Appendix I) for all proposed project personnel should be enclosed with the separate Financial Information (Tab 9), in a sealed envelope and submitted as a separate file when electronic submittals are acceptable.

## **2.3 Qualifications Package Documents**

This RFQ is comprised of the base RFQ document, any attachments, and any addenda released before Contract award. All attachments and addenda released for this RFQ in advance of any Contract award are incorporated herein by reference.

## **3. PROPOSAL EVALUATION**

### **3.1 Evaluation Criteria**

This is not a bid. There will not be a public opening. Proposals will be evaluated based solely on the following criteria:

Criteria	(a) Weight	(b) Score (0-3)	(a) x (b) Weighted Score
Response Cover Letter, Receipt of Addenda, and Executive Summary	5		
Corporate Background and Letter from Insurance Company	7		
Project Understanding, Approach, Schedule, Commitment to Quality	15		
Team Organization, Experience, and Certifications/Qualifications	15		
MWBE Strategy/Successful MWBE Plan from a Prior Project	5		
Evidence of experience with projects of similar scope	25		
Contractor Safety Evaluation Questionnaire and Safety Record Information	8		
Firm is Clear of Legal Claims Involving Standard of Care, Projects with Legal or Technical Problems and Final Resolution	5		
References and Résumés	10		
Financial Statements and Rate Information	5		
Final Score	100		

**Score Points**

- 0 - Missing or Does Not Meet Expectation
- 1 - Partially Meets Expectation

- 2 - Meets Expectation
- 3 - Exceeds Expectation

**3.2 Final Selection**

Qualifications will be reviewed after opening and will be ranked in order of choice, at which point contract negotiations will begin with the most qualified company. If negotiations are unsuccessful, the City will then pursue negotiations with the next most qualified company. The City shall not be bound or in any way obligated until both parties have executed a contract. The City also reserves the right to delay the award of a contract or to not award a contract.

The general conditions and specifications of the RFQ, including the company’s fee proposal, and/or written correspondence applicable to the RFQ, may become part of the contract

documents. Failure of the awarded company to perform as represented may result in contract cancellation.

### **3.3 Notice to Submitting Firms Regarding RFQ Terms and Conditions**

It shall be the Submitting Firm's responsibility to read the Instructions, the City's terms and conditions, all relevant exhibits and attachments, and any other components made a part of this RFQ, and to comply with all requirements and specifications provided herein. Submitters are responsible for obtaining and complying with all Addenda and other changes that may be issued in connection with this RFQ.

### **3.4 Contract Term**

Included in Appendix V are excerpts from the City's standard construction contract terms and conditions, which shall be included in any contract resulting from this solicitation. The City's standard CMAR contract will be issued in a future addendum, outlining contract terms and conditions, which shall be included in any contract resulting from this solicitation. The City's estimated project schedule is from FY 2024 through FY 2029. The City will not consider any exceptions to these terms presented in a response and no template contract language submitted by a Proposer will be considered acceptable to the City.

## **4. SCOPE OF SERVICE**

The awarded firm shall provide services, all as set forth in this RFQ and more particularly described in this Section 4. The scope of services described below is not comprehensive and additional services may be required. The selected firm will receive additional information about the project from which to further define the scope of work to be included in their proposal.

The scope of work will include preconstruction and construction CMAR services for site remediation and construction of a new City of Raleigh public park. The park will include an urban stream restoration; stormwater treatment; pedestrian pathway, boardwalks, and bridges; and plaza features; and native plant landscapes.

For the purposes of this solicitation, CMAR services include both Pre-Construction and Construction Services including but not limited to as follows:

**Pre-Construction Services** may include, but are not limited to the following:

- consultation during project development,
- value analysis,
- schedule development,
- constructability reviews,
- construction cost modeling and estimating,
- coordination of contract documents,
- identification and coordination of early bid packages,
- development of preliminary Guaranteed Maximum Prices (GMPs), and
- estimation of contingency amounts, sub-contractor pre-qualification, etc.

**Construction Services** may include, but are not limited to the following:

- consultation during project construction,
- estimation of project construction costs,

- development and bidding of bid packages,
- bidding of early bid packages,
- execution of principal trade and specialty contracts,
- development of the final GMP, project control and management,
- development of process for Requests for Information (RFIs),
- resolution of potential claims,
- preparation of reports, and
- completion of contract close-out, warranties, etc.

Selected consultants shall be required to coordinate and cooperatively work with other consultants hired by the City of Raleigh.

The CMAR will enter into a Master Agreement and the work will be performed in two or more phases under separate agreements for each phase. Phase I will include the pre-construction phase services and the preparation of a preliminary Guaranteed Maximum Price (GMP). Phase II, construction services include the bidding, award and management of numerous principal and specialty trade contracts for others to provide the actual construction of the Project and preparation of the final GMP

The CMAR Master Agreement includes the detailed scope of services and is included as Appendix V.

#### **4.1 Joint Ventures**

RFQ responses from joint ventures will be considered. The organization and terms of agreement between the joint venture partners will affect the evaluation of the RFQ response. The joint venture agreement should be submitted with the RFQ response and may be included in an appendix. If the joint venture partners intend to organize a single-purpose limited liability company, corporation or partnership, the operating agreement, bylaws, shareholders agreement or partnership agreement as appropriate should be submitted with the response. If the joint venture partners are submitting the response pursuant to an interim agreement or “teaming” agreement, the interim agreement should be submitted along with a draft of the proposed joint venture agreement.

There must be a **lead** partner in the joint venture such that the primary decision maker is clearly defined for the City. The City reserves the right to reject any proposal submitted by a joint venture in which the terms of the joint venture agreement are not acceptable to the City. Any such joint venture arrangements proposed for a final contract agreement that cannot be resolved to the satisfaction of the City or which are unable to be resolved to the satisfaction of the City in a timely manner in order to adhere to the project schedule shall be cause for rejection.

#### **4.2 Project Budget and Funding**

The entire project budget, including environmental studies and remedial investigations (complete/in process), conceptual design (complete), schematic design (complete), design development and construction documents, remediation action plan and site remediation, construction, and other soft costs, shall not exceed **\$19M**.

**APPENDIX I**  
**HOURLY RATE SCHEDULE**

Awarded company shall perform the services to be performed as set forth in this RFQ and more particularly described in Section 4 Scope of Services utilizing the following hourly rate schedule below.

As stated above in section 2.2 Hourly Rates, provide the Hourly Rate Schedule with the Financial Information (Tab 9) in a separate, sealed envelope.

<b>Position Title</b>	<b>Hourly Rate</b>

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Firm Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date \_\_\_\_\_

Signed by: \_\_\_\_\_  
                  [Type or Print Name]

Title of Signer: \_\_\_\_\_

## APPENDIX II PROPOSER QUESTIONNAIRE

The following questions must be answered, and data given must be clear and comprehensive. If necessary, questions may be answered on separate sheets. The Proposer may submit any additional information desired.

Company Name:		d/b/a (if applicable)	
Street / PO Box:			
City:		State:	Zip:
Phone:	Fax:	E-Mail:	
Website (if applicable):			
<input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Other			
Number of years in business under company's present name:			
Fed Tax ID #:		DUNS #	
Are you registered with the North Carolina Secretary of State to conduct business (if required)? (Check One) YES: <input type="checkbox"/> NO: <input type="checkbox"/> Not Applicable: <input type="checkbox"/>			
Are you properly licensed/certified by the Federal and/or State of North Carolina to perform the specified work? YES: <input type="checkbox"/> NO: <input type="checkbox"/> Not Applicable: <input type="checkbox"/> ATTACH COPY OF ALL APPLICABLE LICENSING/CERTIFICATION DOCUMENTS			
Are/will you be properly insured to perform the work? YES: <input type="checkbox"/> NO: <input type="checkbox"/>			
Contact for this Contract:		Title:	
Phone:	Fax:	E-Mail:	
Have you ever defaulted or failed on a contract? (If yes, attach details) YES: <input type="checkbox"/> NO: <input type="checkbox"/>			
List at least three (3) references for which you have provided these services (same scope/size) in the past three years - preferably government agencies. <u>Do not include City of Raleigh as a reference to meet the requirement of listing at least (3) references.</u> <b>PROPOSERS ARE RESPONSIBLE FOR SENDING REFERENCE QUESTIONNAIRE (APPENDIX III) TO THEIR REFERENCES.</b>			
1.	Company:		
Contact Person:		Title:	
Phone:	Fax:	E-Mail:	
Describe Scope of Work:			
2.	Company:		
Contact Person:		Title:	
Phone:	Fax:	E-Mail:	
Describe Scope of Work:			
3.	Company:		
Contact Person:		Title:	
Phone:	Fax:	E-Mail:	
Describe Scope of Work:			
4.	Company:		
Contact Person:		Title:	
Phone:	Fax:	E-Mail:	
Describe Scope of Work:			
5.	Company:		
Contact Person:		Title:	
Phone:	Fax:	E-Mail:	
Describe Scope of Work:			
The undersigned swears to the truth and accuracy of all statements and answers contained herein:			
Authorized Signature:		Date:	

## **APPENDIX III**

### **REFERENCE QUESTIONNAIRE (Instructions)**

#### **Request for Qualifications # 274-SM- 2024-0021 Smoky Hollow Park Project – Construction Manager at Risk Services**

The City of Raleigh, as a part of the RFQ, requires proposing companies to submit a minimum of three (3) business references as required within this document. The purpose of the references is to document the experience of the proposer relevant to the scope of services and assist in the evaluation process.

- The Proposer is required to send the reference form (the following two pages) to each business reference listed on Proposer Questionnaire.
- The business reference, in turn, is requested to submit the Reference Form directly to the City of Raleigh Point of Contact identified on the Reference Questionnaire form for inclusion in the evaluation process.
- The form and information provided will become a part of the submitted proposal. The business reference may be contacted for validation of the response.
- It is the Proposer's responsibility to verify its references have been received by the City of Raleigh Point of Contact by the date indicated on the reference form.

**APPENDIX III**

**REFERENCE QUESTIONNAIRE FORM**

**Request for Qualifications # 274-SM- 2024-0021  
Smoky Hollow Park Project – Construction Manager at Risk Services**

**(Name of Business Requesting Reference)** \_\_\_\_\_

This form is being submitted to your company for completion as a business reference for the company listed above.

This form is to be returned to the City of Raleigh, **Megan Walsh**, via email to **Megan.Walsh@RaleighNC.gov** no later than **July 9, 2024 at 4:00 pm** and **MUST NOT** be returned to the company requesting the reference.

For questions or concerns regarding this form, please contact the City of Raleigh, Point of Contact above.

**Company Providing Reference**

**Contact Name and Title/Position** \_\_\_\_\_

**Contact Telephone Number** \_\_\_\_\_

**Contact Email Address** \_\_\_\_\_

Questions:

1. In what capacity have you worked with this company in the past? If the company was under a contract, please acknowledge and explain briefly whether or not the contract was successful.

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. How would you rate this company's knowledge and expertise?

3= Excellent

2= Satisfactory

1= Unsatisfactory

0= Unacceptable

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. How would you rate the company's flexibility relative to changes in the scope and timelines?

3= Excellent

2= Satisfactory

1= Unsatisfactory

0= Unacceptable

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. What is your level of satisfaction with hard-copy materials, e.g. reports, logs, etc. produced by the company?  
 3= Excellent     2= Satisfactory     1= Unsatisfactory     0= Unacceptable

Comments:

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5. How would you rate the dynamics/interaction between the company and your staff?  
 3= Excellent     2= Satisfactory     1= Unsatisfactory     0= Unacceptable

Comments:

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6. Who were the company's principle representatives involved in providing your service and how would you rate them individually? Would you comment on the skills, knowledge, behaviors or other factors on which you based the rating?  
(3= Excellent; 2= Satisfactory; 1= Unsatisfactory; 0= Unacceptable)

Name: _____	Rating: _____
Name: _____	Rating: _____
Name: _____	Rating: _____
Name: _____	Rating: _____

Comments:

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7. With which aspect(s) of this company's services are you most satisfied?

Comments:

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8. With which aspect(s) of this company's services are you least satisfied?

Comments:

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9. Would you recommend this company's services to your organization again?

Comments:

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## APPENDIX IV MWBE PARTICIPATION FORM

### IDENTIFICATION OF MWBE PARTICIPATION FOR PROFESSIONAL SERVICES

This Identification of MWBE Participation Form captures information regarding MWBE participation in the providing of professional services as defined by NCGS §143-64.31, *et seq.* MWBE participation is encouraged for all City of Raleigh contracting opportunities. Please refer to the City's MWBE Policy for any contract specific requirements. *Copy this Form as needed.*

<b>COMPANY NAME</b>			
<b>PROJECT NAME</b>		<b>CITY DEPARTMENT</b>	
<b>PROJECT NUMBER</b>		<b>RFQ SUBMITTAL DATE</b>	

#### Section 1: PROFESSIONAL SERVICE PROVIDER—PRIMARY CONTRACTOR

\*\* CONTRACT IS FOR PROFESSIONAL SERVICES. Please complete the following:

<b>COMPANY NAME</b>			
<b>PROFESSIONAL SERVICES PROVIDED</b>	<input type="checkbox"/> Architectural <input type="checkbox"/> Engineering <input type="checkbox"/> Public-Private Construction	Partnership	<input type="checkbox"/> Design-Build <input type="checkbox"/> Surveying <input type="checkbox"/> Construction Management at Risk
<b>PRIMARY CONTRACTOR IS MWBE</b>	Classification: _____ ** Certified with NCHUB ** Certified with NCDOT-DBE	<b>RESIDENT FIRM</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO

\*MWBE Classifications: American Indian (AI), Asian American (AA), Black/African-American (B), Hispanic (H), Non-Minority Female (NMF), Socially/Economic Disadvantaged (D)

#### Section 2: PROFESSIONAL SERVICE PROVIDER—MWBE SUBCONTRACTORS

Complete the chart below for all MWBE subcontractors that you intend to use for this Contract regardless of dollar amount.

<b>COMPANY NAME</b>			
<b>PROFESSIONAL SERVICES PROVIDED</b>	<input type="checkbox"/> Architectural <input type="checkbox"/> Engineering <input type="checkbox"/> Public-Private Construction	Partnership	<input type="checkbox"/> Design-Build <input type="checkbox"/> Surveying <input type="checkbox"/> Construction Management at Risk
<b>MWBE CLASSIFICATION</b>		<b>RESIDENT FIRM</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO

\*MWBE Classifications: American Indian (AI), Asian American (AA), Black/African-American (B), Hispanic (H), Non-Minority Female (NMF), Socially/Economic Disadvantaged (D)

<b>COMPANY NAME</b>			
<b>PROFESSIONAL SERVICES PROVIDED</b>	<input type="checkbox"/> Architectural <input type="checkbox"/> Engineering <input type="checkbox"/> Public-Private Construction	Partnership	<input type="checkbox"/> Design-Build <input type="checkbox"/> Surveying <input type="checkbox"/> Construction Management at Risk
<b>MWBE CLASSIFICATION</b>		<b>RESIDENT FIRM</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO

\*MWBE Classifications: American Indian (AI), Asian American (AA), Black/African-American (B), Hispanic (H), Non-Minority Female (NMF), Socially/Economic Disadvantaged (D)

<b>COMPANY NAME</b>			
<b>PROFESSIONAL SERVICES PROVIDED</b>	<input type="checkbox"/> Architectural <input type="checkbox"/> Engineering <input type="checkbox"/> Public-Private Construction	Partnership	<input type="checkbox"/> Design-Build <input type="checkbox"/> Surveying <input type="checkbox"/> Construction Management at Risk
<b>MWBE CLASSIFICATION</b>		<b>RESIDENT FIRM</b>	<input type="checkbox"/> YES <input type="checkbox"/> NO

\*MWBE Classifications: American Indian (AI), Asian American (AA), Black/African-American (B), Hispanic (H), Non-Minority Female (NMF), Socially/Economic Disadvantaged (D)

**APPENDIX V**  
**CONTRACT STANDARD TERMS AND CONDITIONS**

*The contract terms provided herein are non-negotiable and shall become a part of any contract issued as a result of this solicitation.*



**CITY OF RALEIGH**  
**RALEIGH, NORTH CAROLINA**  
**WAKE COUNTY**

**CONTRACT NUMBER: SM- 2024-0021**

**DATE: \_\_\_\_\_**

FORM OF AGREEMENT BETWEEN THE CITY OF RALEIGH AND \_\_\_\_\_ TO PROVIDE  
CONSTRUCTION MANAGER AT RISK SERVICES FOR:

**CONSTRUCTION OF THE SMOKY HOLLOW PARKPROJECT**

This Master Agreement is entered into this the \_\_\_\_ day of \_\_\_\_\_, **2024** (the "Effective Date")

between:

[CMAR legal name]  
The Construction Manager at Risk ("CMAR"), and

The City of Raleigh, North Carolina  
(The Owner)

**RECITALS:**

WHEREAS, the Owner is employing a Construction Manager at Risk contracting system to aid in the professional review and management of the design, and to effect the construction of, the project identified above; and

WHEREAS, the Owner published a Request for Qualifications ("RFQ"), dated **May 10, 2024**, seeking the submission of Statements of Qualifications to act as a Construction Manager at Risk to furnish construction management at risk services during the design and construction of the project identified and described in that RFQ (as described therein and as further defined below, the "Project"); and

WHEREAS, the undersigned CMAR submitted a responsive Statement of Qualifications, dated XXXX, 2024; and

WHEREAS, the Owner evaluated the Statements of Qualifications and approved, on **XXXXX**, 2024, the selection of the undersigned CMAR to furnish professional construction management at risk services during the design and construction of the Project; and

WHEREAS, the CMAR's Proposal for the Project, dated **XXXXXX**, is attached hereto as Attachment B and is incorporated herein by reference; and

WHEREAS, the Construction Manager at Risk and the Owner now wish to form and memorialize this Master Agreement for Construction Management at Risk Services for construction of the Project in accordance with the terms of the RFQ.

NOW THEREFORE, for the consideration hereinafter set forth, the Construction Manager at Risk and the Owner agree as follows:

## TABLE OF CONTENTS

ARTICLE	TITLE
1.	GENERAL SCOPE AND INTENT
2.	DEFINITIONS
3.	COMPENSATION
4.	CMAR FEE
5.	GENERAL CONDITIONS COSTS
6.	GUARANTEED MAXIMUM PRICE (GMP)
7.	CONTINGENCY AND ALLOWANCES
8.	PROJECT DESIGNER'S STATUS
9.	REVIEW AND COORDINATION OF CONSTRUCTION DOCUMENTS
10.	BIDDING AND CONTRACTING
11.	CONSTRUCTION PHASE SERVICES
12.	DRAWINGS, SPECIFICATIONS, AND RECORD DOCUMENTS
13.	OTHER TASKS AND REQUIREMENTS
14.	CODES AND STANDARDS
15.	USE AND OWNERSHIP OF DOCUMENTS
16.	LABOR, MATERIALS, EQUIPMENT, AND EMPLOYEE CONDUCT
17.	SUBCONTRACTS AND SUBCONTRACTORS
18.	NON-DISCRIMINATION
19.	MWBE BUSINESS PARTICIPATION GOALS AND STANDARDS
20.	CONSTRUCTION MANAGER AND SUBCONTRACTOR RELATIONSHIPS
21.	SEPARATE CONTRACTS
22.	WARRANTY AND GUARANTEE
23.	ROYALTIES, LICENSES, AND PATENTS
24.	PERMITS, INSPECTIONS, FEES, REGULATIONS
25.	CONDUCT AND USE OF PREMISES
26.	CUTTING, PATCHING, AND DIGGING
27.	UTILITIES, STRUCTURES, SIGNS
28.	CLEANING UP
29.	PROTECTION OF WORK, PROPERTY, AND THE PUBLIC
30.	SEDIMENTATION POLLUTION CONTROL ACT OF 1973
31.	INSPECTION OF THE WORK
32.	TIME OF COMPLETION, EXTENSION OF TIME
33.	DELAYS, DAMAGES FOR DELAY
34.	CONSTRUCTION SUPERVISION AND SCHEDULE
35.	SHOP DRAWINGS, SUBMITTALS, SAMPLES, DATA
36.	POST-BID SUBSTITUTION REQUESTS
37.	REQUESTS FOR INFORMATION
38.	SUBSTANTIAL COMPLETION
39.	PARTIAL UTILIZATION/BENEFICIAL OCCUPANCY
40.	FINAL INSPECTION, ACCEPTANCE, AND PROJECT CLOSEOUT
41.	COST CONTROL
42.	SAFETY
43.	CHANGES IN THE WORK
44.	CLAIMS FOR EXTRA COST
45.	DIFFERING SITE CONDITIONS
46.	CORRECTION OF WORK BEFORE FINAL PAYMENT
47.	CORRECTION OF WORK AFTER FINAL PAYMENT
48.	UNCORRECTED FAULTY WORK
49.	OWNER'S RIGHT TO DO WORK
50.	TERMINATION FOR CONVENIENCE
51.	TERMINATION FOR DEFAULT
52.	CMAR RIGHT TO STOP WORK OR TERMINATE THE MASTER AGREEMENT
53.	PROGRESS PAYMENTS
54.	PAYMENTS WITHHELD
55.	FINAL PAYMENT

56.	CONTRACTOR'S AFFIDAVIT
57.	PAYMENT FOR STORED MATERIALS
58.	AUDIT OF RECORDS
59.	TAXES
60.	INSURANCE FOR PRE-CONSTRUCTION SERVICES
61.	INSURANCE FOR CONSTRUCTION MANAGEMENT SERVICES
62.	INDEMNIFICATION
63.	PERFORMANCE BOND AND PAYMENT BOND
64.	ASSIGNMENTS
65.	APPLICABLE LAW AND VENUE
66.	ENTIRE AGREEMENT
67.	ATTACHMENTS
68.	LAWS AND REGULATIONS
69.	FORCE MAJEURE
70.	DISPUTE RESOLUTION
71.	HAZARDOUS MATERIALS
72.	CONTRACTOR EVALUATION
73.	E-VERIFY
74.	IRAN DIVESTMENT ACT CERTIFICATION
75.	ADVERTISING
76.	EMPLOYEE EDUCATION & TRAINING
77.	MISCELLANEOUS
78.	COMPANIES BOYCOTTING ISRAEL DIVESTMENT ACT CERTIFICATION
79.	INCORPORATION OF DOCUMENTS/COMPLETE CONTRACT
80.	ACKNOWLEDGMENT OF CITY BRAND AND TREE LOGO OWNERSHIP AND RESTRICTIONS
81.	COMMUNICATIONS
82.	NOTICE

## 1. GENERAL SCOPE AND INTENT

The CMAR'S services shall be performed in strict compliance with the requirements of the Owner's RFQ, including all addenda thereto; the CMAR's Statement of Qualifications; this Master Agreement and the CMAR Pre-Construction Services Scope of Work attached hereto as Attachment A and incorporated herein by reference; and any future, agreed-upon construction scope(s) of Work for construction of the Project to be incorporated into this Master Agreement as additional attachment(s) thereto by written amendment(s) to the Master Agreement. If a conflict arises in the language or interpretation of these documents, the order of precedence shall be as follows:

- Master Agreement,
- Owner's RFQ,
- CMAR's Statement of Qualifications

It is the Owner's intention that the work performed by the CMAR be accomplished in two phases: a pre-construction phase and a construction phase. This Master Agreement defines the terms and general conditions that will govern the services to be provided by the CMAR during both the pre-construction and the construction phases. Specific scopes of work for the pre-construction and construction phases of the Project are to be incorporated into this Master Agreement as attachments hereto. The agreed-upon CMAR Pre-Construction Services Scope of Work is attached hereto as Attachment A. If the parties shall reach agreement on construction scope(s) of work for the Project, then by amendment(s) to this Master Agreement, such construction scope(s) of work shall be attached hereto and incorporated herein by reference as additional attachment(s). In the event the Owner, the CMAR, and the Project Designer collectively decide to utilize early Bid Packages, such will be addressed in an agreed-upon construction scope of work, which shall outline the scope of these early Bid Packages, including the establishment of a Guaranteed Maximum Price for such early Bid Packages.

In broad terms, the CMAR shall perform the following services for the Project:

- (1). Pre-Construction Services, as more particularly described in the Pre-Construction Services Scope of Work attached to this Master Agreement as Attachment A, upon the issuance by Owner of a Notice to Proceed, will commence as of the date provided in the Notice to Proceed and will extend through the approval by the Owner of the Final Guaranteed Maximum Price submitted by the CMAR. Upon agreement of the Owner in writing, a preliminary Guaranteed Maximum Price may be submitted by the CMAR at any time after completion and approval of the design development phase, but in no case later than twenty (20) days after the Project Designer submits final Construction Documents for review.
- (2). Construction Management Services, to be more particularly described in future construction scope(s) of Work to be attached hereto and incorporated herein by reference as amendment(s) to this Master Agreement, shall include General Conditions to be provided on a not-to-exceed allowance basis and a CMAR Fee to be provided on a lump sum basis, with all construction being accomplished through trade and specialty Subcontractors selected as provided herein. The Owner may require construction of the Project to be broken into two or more phases, to be memorialized in amendment(s) to this Master Agreement that attach and incorporate by reference two or more agreed-upon construction scopes of Work and establish a Guaranteed Maximum Price for each such construction phase. By way of example, but not limitation, breaking the construction Work into multiple phases may be desirable if the Owner, in consultation with the Project Designer and the CMAR, determines that the completion of early construction packages would be beneficial to expeditious Project completion. In the event the construction Work is performed in phases, the Final GMP (as defined in Subsection 6.a. of this Master Agreement) shall be derived from the sum of all Interim GMPs (as defined in Subsection 6.b. of this Master Agreement) for each of the construction phases.
- (3). The CMAR shall contract directly with the Owner for all construction; shall publicly advertise for the construction of the Project as prescribed in G.S. 143-129; and shall

prequalify and accept bids from First-Tier Subcontractors for all construction work, all as more fully described herein and in any future amendments to this Master Agreement.

- a. The CMAR 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 G.S. 143-128.1. The CMAR agrees to furnish its best skills and its best judgment to cooperate with the Owner and Project Designer for undertaking all necessary action contemplated under the Contract Documents to (a) establish a Final GMP to construct the Project and (b) ensure timely and quality completion of the Project at a cost within the Final GMP.
- b. The CMAR shall furnish efficient constructability reviews, change and cost control, business administration, field supervision, safety management, and quality control and shall use its best efforts to see to it that the Work of the Project is performed in the best and most expeditious, economical manner consistent with the interests of the Owner, and in strict conformity with the Contract Documents, including all reasonable inferences arising therefrom.
- c. The CMAR shall familiarize itself with all available Project funding and work with the Owner and the Project Designer to maximize the scope and quality of the Project based upon the available funds.
- d. The performance of the CMAR's services shall be in strict compliance with the Contract Documents. To the extent that any term, requirement, or specification in the CMAR's Statement of Qualifications shall be in conflict with any of the terms, requirements, or specifications in this Master Agreement or the other Contract Documents, then the terms, requirements, and specifications of the Master Agreement and the other Contract Documents shall control, and the conflicting contents of the CMAR's Statement of Qualifications and supporting documents thereto shall be deemed unenforceable. The CMAR shall be responsible for ensuring that all requirements of G.S. 143-128.1 are adhered to in its operations under this Master Agreement.
- e. During the construction phase of the Project, the CMAR shall provide all services necessary to coordinate, manage, and effect construction of the Project, including without limitation the following services: the award and management of all subcontracts; value analysis and change order review (i.e., evaluation, negotiation, and recommendations for approval); quality control administration and inspections; safety management; schedule maintenance; cost control measures; attendance at all Project meetings; shop drawing review; processing, tracking and monitoring of Requests For Information and substitution requests; resolution of claims asserted by and/or against all Subcontractors; coordinating inspections, including inspections by regulatory agencies, the Project Designer, the Owner's Representative, and the Owner's other technical inspectors; and submission of close-out documents pursuant to the terms and conditions of this Master Agreement.
- f. The drawings, specifications, and other Construction Documents for the Project shall be considered complementary, one to the other. That which is shown on the drawings or called for in the specifications shall be as binding as if it were both called for in the specifications and shown on the drawings. The intent of the drawings, specifications, and other Construction Documents is to establish the scope of all labor, materials, transportation, equipment, and any and all other things necessary to provide a complete job. In case of discrepancy or disagreement in the Contract Documents, the order of precedence shall be: Contract Documents, Project Designer's specifications, large-scale detail drawings, and small-scale drawings.
- g. The wording of the specifications shall be interpreted in accordance with common usage of the language except that words having a commonly used technical or trade meaning shall be so interpreted in preference to other meanings.

## 2. DEFINITIONS

- a. Allowance means any amount specified and included in an agreed-upon construction scope of work for a certain item of work whose details are not yet determined at the time of agreement between the CMAR and the Owner for such scope of work.
- b. Beneficial Occupancy is that stage of the construction Work before Final Completion at which the Owner can occupy the Project for its intended purposes.
- c. Bid Packages are assembled by the CMAR to solicit and secure work from the First-Tier Subcontractors. It is the CMAR's responsibility to clearly assign and describe the scope of work in each Bid Package so that the intent of the Construction Documents will be met in its entirety. Although Bid Packages and/or other materials prepared by the CMAR to contract with First-Tier Subcontractors might incorporate all or part of the Contract Documents and/or the Construction Documents, Bid Packages and associated materials shall neither be deemed part of nor modify the Contract Documents and/or the Construction Documents. The CMAR may obtain bids prior to issuance of the Final Construction Documents with approval of the Owner in writing when deemed necessary to maintain the Project schedule and/or for other reasons deemed important to the Owner in its sole discretion. If bids are received prior to the issuance of Final Construction Documents, changes in the construction Work affecting cost or time arising from the issuance of the Final Construction Documents shall be made in accordance with the Contract Documents, including but not limited to the terms of this Master Agreement. Bid Packages to solicit and secure work from the First-Tier Subcontractors shall be publicly advertised as prescribed in G.S. 143-129. The CMAR shall prequalify and accept bids from First-Tier Subcontractors for all construction Work related to the Project.
- d. Certified MWBE means a person or business entity currently certified by the North Carolina Department of Administration as a Historically Underutilized Business ("HUB") or by the North Carolina Department of Transportation as a Disadvantaged Business Enterprise ("DBE").
- e. Change Order means a written order to the CMAR subsequent to the signing of this Master Agreement and/or any amendments to this Master Agreement attaching agreed-upon construction scope(s) of Work, authorizing a change in (i) the not-to-exceed lump sum contract amount for the CMAR's Pre-Construction Services, (ii) Interim and/or Final GMPs associated with the CMAR's Construction Management Services, or (iii) the contract time/schedule. Any and all Change Orders shall be signed by the CMAR, the Project Designer, and the Owner. Any increases in the lump sum contract amount for the CMAR's Pre-Construction Services or any increases in an Interim GMP or Final GMP for the CMAR's Construction Management Services shall require the prior approval of the Owner's governing body.
- f. Change Order Report means a listing of all Requests For Information (RFIs), Requests For Proposals (RFPs), change order directives, field change directives, interpretations, and other items or events that may justify an adjustment in the price or schedule or affect critical decisions that need to be made by the Owner or the Project Designer. The report shall list, numerically, a brief description of the item, date originated, estimated cost and/or time for the item and other status of the item. If resolved, the report shall note date and final price and schedule information.
- g. Commissioning Agent is the technical professional responsible for the delivery of the commissioning process. He ensures the proper installation and operation of the building systems as designed, functionally tested, and capable of being operated and maintained to perform in conformity with the design intent.
- h. The Construction Manager at Risk, abbreviated herein as "CMAR," is the entity identified on page 1 of this Master Agreement that shall serve in the capacity set forth in G.S. 143-128.1 and take all necessary actions contemplated by such statute and under the Contract Documents to (a) establish during the design phase a preliminary Guaranteed Maximum Price (GMP) to construct the Project and (b) ensure the timely and high-quality completion of the Project at a cost within the agreed-upon Final GMP. The CMAR is the fiduciary for the Owner to the extent required by G.S. 143-128.1 and shall provide Construction Management Services during the Project to facilitate and manage execution of the Work in accordance with the Owner's budgetary, schedule, and quality requirements.

- i. CMAR Cost Elements include the following:
- (1). The CMAR Fee, which shall consist of a lump sum amount payable to the CMAR for its Construction Management Services hereunder. The CMAR Fee for Interim and/or Final GMPs is more fully outlined elsewhere in this Master Agreement.
  - (2). General Conditions, which shall include categories of costs described as General Conditions costs that will be provided on a not-to-exceed allowance basis. The General Conditions costs are more fully outlined in Section 5 of this Master Agreement.
  - (3). CMAR Contingency, which is a not-to-exceed amount that is established for the use of the CMAR to defray costs in excess of the Cost of the Work for which the CMAR is not otherwise entitled to an increase in the price under the terms of the Master Agreement and is more fully outlined in Section 7 of the Master Agreement. The CMAR Cost Elements are building into a Final GMP for construction of the Project. Cost Events initiated through approved authorization requests from any contingency amount does not increase the GMP.
- j. Construction Deficiency Notice, abbreviated herein as “CDN,” is a formal communication from the CMAR’s Quality Control Manager (as defined in this Master Agreement), or from the Project Designer, advising of a construction deficiency that has been identified that requires correction. The notice, which shall be labeled “CDN,” shall clearly and concisely set forth the issue or item requiring correction or repair and shall include applicable plan or specification references noting the Contract Document’s requirements. A log shall be maintained during the construction Work that tracks CDNs as they are issued, managed, and addressed by the CMAR and various trade Subcontractors.
- k. The Construction Documents are the drawings, specifications, and other plans for the Project prepared by the Project Designer and approved in writing by the Owner’s Representative, which define the scope of the construction Work. In case of discrepancy or disagreement in the Construction Documents, the order of precedence shall be large-scale detail drawings and then small-scale drawings.
- l. Construction Management Services mean those services, if any, to be provided by the CMAR to facilitate and manage the execution of the construction Work during the construction phase of the Project in accordance with the Contract Documents and the Owner’s schedule requirements, quality requirements, and Fixed Limit of Project Cost. The CMAR’s Construction Management Services, if any, shall be set forth in future construction scope(s) of Work to be attached hereto and incorporated herein by reference as amendment(s) to this Master Agreement,
- m. A Cost Change Proposal is a proposal, in a form acceptable to the Owner, submitted by the CMAR to utilize the CMAR Contingency defined in Subsection 2.i.(3), above, and more fully outlined in Section 7 of this Master Agreement.
- n. The Contract Documents consist of this Master Agreement and any amendments thereto; the RFQ; CMAR’s Statement of Qualifications; the CMAR’s accepted proposals; the Construction Documents; Change Orders, including all bulletins, addenda or other modifications of the drawings and specifications incorporated into the Construction Documents prior to their execution; the performance bond and the payment bond for the Project, as each is required by G.S. 143-128.1 and the terms of this Master Agreement; and the insurance certificates as required by the terms of this Master Agreement. The Minority- and Women-Owned Businesses Plan, upon approval by the Owner, also shall be considered part of the Contract Documents.
- o. Contingency is a fixed, lump-sum amount set aside to cover unexpected costs that might arise during the performance of the construction Work. Contingency funds are in reserve and not allocated to a specific area of work.

- p. Cost of the Work is the sum of the Subcontractor costs and all trade packages necessary to perform the construction Work, but specifically does not include General Conditions, CMAR Contingency, or CMAR Fee, as each is defined in this Master Agreement.
- q. Cost Events or Change Events (or similar term used by the CMAR's cost accounting system) shall identify all changes to the Contract Documents and the corresponding agreements between the CMAR and its various First-Tier Subcontractors. Cost Events and Change Events shall include changes to both cost and time and shall also include changes that result in an increase, decrease, or no net change in contract amount. Certain Cost Events or Change Events between trade Subcontractors will only be acknowledged by the Owner. Other Cost Events or Change Events, and in particular use of construction Allowances, Contingencies, or Special Allowances, shall require specific approval by the CMAR, the Project Designer, and the Owner. All documents are subject to audit as more particularly described in this Master Agreement.
- r. Days, as used herein, unless otherwise noted, are intended to be calendar days.
- s. Design Development Phase means the phase in project design development that sets forth, in writing and in drawings, all basic program elements, systems, and materials to be used in the Project. It can be considered a further development of the schematic design phase. This phase is accompanied by a life cycle cost analysis, performed by the Project Designer, of various building orientations, materials, and finishes, as well as an estimate of probable construction costs.
- t. The Designer or Project Designer means the firm or firms of architects, engineers, or both, together with their respective consultants, which have undertaken to design the Project pursuant to a contract with the Owner (hereinafter, the "Design Contract" or the "Design Agreement"). The Project Designer will provide design and construction administration services throughout the duration of the Project. The Owner may utilize independent architects, engineers, designers and other firms for design and construction administration services. Delegated Design Professional (DDP) means the licensed technical professional responsible for submitting shop drawings, calculations, and other supporting documentation that comply with the written engineering and architectural requirements of the specifications. The DDP shall affix its professional certification and seal and its signature on all submittals.
- u. Delay, unless otherwise noted, means any event, action, force, or factor causing work to extend beyond the specified contract time. In this context, a delay is further defined as either:
- (1). Compensable - An excusable delay for which the CMAR may be entitled to additional compensation.
  - (2). Excusable - A delay that causes an inability to meet a milestone or completion date that is beyond the CMAR's control, is unforeseeable to the CMAR, and is without the fault or negligence of the CMAR, and for which an extension of the contract time may be granted.
  - (3). Non-Compensable - A delay for which the CMAR may be entitled to additional contract time but is not entitled to additional compensation and/or adjustment to any GMP.
  - (4). Non-Excusable - A reasonably foreseeable delay to a milestone or completion date within the CMAR's control and for which the CMAR shall be entitled to neither additional compensation nor extension of the contract time.
- v. Equal to or approved equal means materials, products, equipment, assemblies, or installation methods considered equal by the bidder in all characteristics (physical, functional, and aesthetic) to those specified in the Construction Documents.
- w. Field Order or Field Change Directive means a written approval for the CMAR to proceed with the construction Work requested by Owner prior to issuance of a formal Change Order. The Field Order shall be signed by the CMAR, the Project Designer, and the Owner's Representative.

- x. Final Completion is that stage of the construction Work when the CMAR has satisfied all requirements of the Contract Documents.
- y. Final Construction Documents are those documents that have been sealed by the design professionals, approved by the Owner for construction, and labeled, "Final Construction Documents."
- z. Fixed Limit of Project Cost: At all times during the Project, the Owner shall approve an estimate of the total cost of the Project (the "Fixed Limit of Project Cost"), which shall include all the consulting fees; costs of demolition and site preparation; costs of the construction (including Cost of the Work, the CMAR Fee, General Conditions, and Contingencies, as each is defined in this Master Agreement); costs of equipment; owner's furnishings, furniture and signage; permit fees; and appropriate Owner project support costs and Contingencies.
- aa. Guaranteed Maximum Price, abbreviated herein as "GMP," is a monetary amount for the construction Work or a phase of the construction Work that, once approved by the Owner, shall represent the maximum amount the CMAR will be entitled to be paid for the construction Work or phase of the construction Work. It is the intent of this Master Agreement that once a GMP is agreed upon, any and all costs incurred by the CMAR in excess of that GMP will be at the risk of and borne by the CMAR without reimbursement from the Owner, unless that GMP is adjusted in accordance with this Master Agreement or any subsequent amendment(s) thereto.
- bb. Home Office means the CMAR's off-site places of business where the CMAR performs administrative and other services in support of the CMAR's operations as a whole, as opposed to services in support of a single project. As used herein, the term "Home Office" refers to all of the CMAR's principal and local places of business.
- cc. Inspection means examination or observation of construction Work completed or in progress to determine its compliance with the Contract Documents.
- dd. Liquidated Damages means an amount reasonably estimated by the Owner in advance to cover the consequential damages associated with the Owner's economic losses in not being able to use the Project for its intended purposes by reason of failure of the CMAR to substantially complete the construction Work within the contract time specified, including without limitation the CMAR's failure to submit required closeout documents within ninety (90) days of achieving Substantial Completion.
- ee. Notice to Proceed is the written authorization to the CMAR from the Owner stating the date for work start and the running of any applicable contract time.
- ff. The Owner is the City of Raleigh. The Owner, in its sole discretion, shall designate an Owner's Representative who shall be the CMAR's point of contact with the Owner throughout the Project and the Work. Such representative shall be the City Construction Projects Administrator unless otherwise designated in writing by the Owner. The Owner's Representative shall be the primary channel of communication to the Owner and shall act as the Owner's liaison with the CMAR. The Owner's Representative may designate in writing multiple representatives responsible for defined aspects of the Project and may replace or re-designate any or all multiple representatives as the Owner deems appropriate in its sole discretion. In the event of any disagreement or dispute between any members of the Project Team regarding the Project, the Owner's Representative shall be the final decision-making authority, subject to written appeal by either party to the City Manager or his/her designee and further subject to the dispute resolution procedures established herein.
- gg. An Owner-Requested Change is a change in, addition to, and/or reduction of the construction Work requested by the Owner necessitating an adjustment to a GMP, the date for Substantial Completion, or both. The document by which the CMAR proposes an adjustment to a GMP, the date for Substantial Completion, or both in response to an Owner-Requested Change is a Change Order Proposal.

- hh. Pre-Construction Services shall include, at minimum, those pre-construction services described in the RFQ and elsewhere in this Master Agreement, including without limitation those services described in Attachment A attached hereto. The Pre-Construction Services are necessary to fully understand the Owner's program, design documents, Project scope, and all other pertinent aspects of the Project. Essential services to be provided by the CMAR during the Pre-Construction Services phase include, but are not limited to, active consultation during project development, value analyses, construction scheduling, constructability and biddability reviews, development of construction cost models and estimates, coordination of Construction Documents for bidding purposes, development of GMPs, delegated design preparation, and establishment of appropriate Contingencies. The agreed-upon not-to-exceed amount for Pre-Construction Services associated with the Project has been established in Attachment A attached hereto.
- ii. The Project means the Smoky Hollow Park Project and shall include the total pre-construction and construction work to be performed to complete the Project, including but not limited to the Work to be performed by the CMAR under the Contract Documents and the work, if any, to be performed by the Owner and/or by the Owner's separate contractors.
- jj. Project Closeout means the completion of all testing, training, reporting, record drawings, submission of as-built drawing, and the submission of all other necessary documents to bring the Project to closure. The requirements for Project Closeout will be outlined in the contract specifications and elsewhere in this Master Agreement.
- kk. The Project Team consists of the Owner, the Project Designer and its consultants, as applicable, the Owner's Commissioning Agent, the CMAR, others as identified in the RFQ, and/or others as may be identified by the Owner.
- ll. Provide or provides means to furnish or install by the CMAR, to the extent permitted by G.S. 143-128.1, or by its Subcontractors as more fully described in the Contract Documents.
- mm. Records refer to data of every kind and character, including but not limited to books, documents, papers, accounting records, contract documents, information, and materials that, in the Owner's sole discretion, relate to matters, rights, duties or obligations of the parties under the Contract Documents.
- nn. Request for Information, abbreviated herein as "RFI," is a request from the CMAR seeking an interpretation or clarification by the Project Designer relative to the Construction Documents. Any Request for Information shall be labeled "RFI" and shall clearly and concisely set forth the issue or item requiring clarification or interpretation and why the response is needed. The RFI must set forth the CMAR's interpretation or understanding of the Construction Documents' requirements in question, along with the CMAR's reasons for such an understanding.
- oo. Safety Program means the documents, plans, programs, activities, and training designed by the CMAR and its Subcontractors to prevent accidents and/or occupational diseases and to promote and encourage a safe work site. The CMAR's Safety Program shall be a written document that includes procedures to conduct investigations and audits and addresses the following elements: management commitment and employee involvement, worksite analysis, hazard prevention and control, and training.
- pp. SPCA means 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).
- qq. Subcontractor means a general, mechanical, electrical, or plumbing Subcontractor, or other specialty Subcontractor, trade Subcontractor, supplier or vendor, and includes one who furnishes labor, materials, equipment, or other services to complete Work in accordance with the drawings, specifications, and other Construction Documents for the Project. The term Subcontractor also shall include, where appropriate, sub-Subcontractors and suppliers to Subcontractors of any tier. Where the Contract Documents intend to refer to a Subcontractor with a direct contractual

relationship with the CMAR, such Subcontractor may be referred to in the Contract Documents as a First-Tier Subcontractor. Where the Contract Documents intend to refer to a Subcontractor with a direct contractual relationship with an entity other than the CMAR, such Subcontractor may be referred to in the Contract Documents as a Lower-Tier Subcontractor.

- rr. Substantial Completion is that point when the construction Work is sufficiently complete in accordance with the Contract Documents that the Owner could occupy and/or utilize the Project for its intended use.
- ss. Substitution or substitute means materials, products, equipment, assemblies, or installation methods deviating in at least one characteristic (physical, functional, and/or aesthetic) from those specified in the Construction Documents, but which, in the opinion of the CMAR and/or Subcontractor bidder, would improve competition and/or enhance the finished installation.
- tt. Surety means the bonding company or corporate body which is bound with and for the CMAR, and which engages to be jointly and severally responsible with the CMAR for (i) the CMAR's acceptable performance of the Work and (ii) the CMAR making timely payment to its First-Tier Subcontractors pursuant to its contracts with its First-Tier Subcontractors and applicable law.
- uu. The Total Construction Budget consists of the not-to-exceed contract amount for Pre-Construction Services, as established in Attachment A attached hereto, the Cost of the Work, the CMAR Contingency and Allowances, the General Conditions, and the CMAR Fee, as each is more fully defined in this Master Agreement and/or in subsequent amendments to this Master Agreement. Upon approval by the Owner of the Total Construction Budget, the Total Construction Budget shall not exceed the specified amount. The Owner reserves the right to adjust the Total Construction Budget at any time prior to agreement on the Final GMP, as more fully outlined in this Master Agreement.
- vv. Value Engineering means providing information on alternative means, methods, materials, or equipment that, when incorporated into the Project, will provide the intended function at less cost to the Owner.
- ww. Written notice means notice in writing delivered (i) in person or to a member of one of the Project Team who is authorized to act or accept such notice on behalf of such organization or (ii) sent by registered mail to the last known business address of an organization that is part of the Project Team .
- xx. Work as used herein as a noun is intended to include materials, equipment, labor, and workmanship provided by the CMAR and its Subcontractors to carry out the intent of the Construction Documents. Work may also include the professional services provided by the CMAR during different phases of the Project, including without limitation the Pre-Construction Services phase.

### 3. COMPENSATION

Payment for services shall be made monthly upon the Owner's approval of monthly payment requests from the CMAR. For construction Work performed during the construction phase of the Project, approval of payments by the Owner will be provided after the Owner's consultation with the Project Designer.

- a. PRE-CONSTRUCTION SERVICES COMPENSATION shall be the not-to-exceed contract amount for Pre-Construction Services set forth in Section Eight of the CMAR Pre-Construction Services Scope of Work attached hereto as Attachment A and incorporated herein by reference.
- b. CONSTRUCTION MANAGEMENT SERVICES COMPENSATION shall be addressed in future, agreed-upon construction scope(s) of Work to be attached hereto and incorporated herein by reference as one or more amendment(s) to this Master Agreement.

### 4. CMAR FEE

- a. The CMAR shall be entitled to payment of a fee (the CMAR Fee) for its construction management services for the construction phase of the Project and shall be entitled to reimbursement of General Conditions costs as set forth in this Master Agreement and in any future, agreed-upon construction scope(s) of Work to be attached hereto and incorporated herein by reference as amendment(s) to this Master Agreement. As established in Attachment A attached hereto, Pre-Construction Services shall be paid as a lump sum and shall not be considered part of the CMAR Fee.
- b. The negotiated amount(s) of the CMAR Fee(s) shall be established in future, agreed-upon construction scope(s) of Work to be attached hereto and incorporated herein by reference as amendment(s) to this Master Agreement.
- c. The CMAR Fee shall include all of the following: (i) compensation of CMAR personnel providing off-site services in a Home Office, including without limitation the compensation of the CMAR's officers and Home Office support staff not included in the General Conditions; (ii) all overhead costs associated with all such Home Office personnel, as well as the costs of operating the CMAR's Home Office(s); (iii) all other CMAR off-site overhead costs; and (iv) the CMAR's Project profit. This CMAR Fee shall also include all home office quality control and safety reviews and all required services to be provided by a Project executive by whatever name called. Costs that shall not to be included in the CMAR Fee are the costs of all subcontracts for the Cost of the Work, the costs of the CMAR's on-site field staff and other General Conditions costs, and the CMAR Contingency described below.
- d. When a GMP is established and approved for a defined phase of the construction Work, and the final cost for that GMP has been determined, the CMAR Fee for that GMP shall be converted to a lump sum and included in the final GMP for that defined phase of the construction Work.
- e. When the Final GMP is established and approved, the CMAR agrees that the cumulative CMAR Fee shall not exceed the maximum amount set forth herein and/or in any future, agreed-upon construction scope(s) of Work to be attached hereto and incorporated herein by reference as amendment(s) to this Master Agreement, and shall not cause the Final GMP to exceed the Total Construction Budget approved by the Owner. In this instance, the cumulative CMAR Fee is the sum, or total, of CMAR Fees associated with any agreed-upon Interim GMPs determined for defined phases of construction Work.

Upon establishment and approval of the Final GMP, the total CMAR Fee shall not be adjusted upwards unless cumulative Owner-Requested Changes to the construction Work increase the total Cost of the Work in the Final GMP in excess of one percent (1.0%). The entire CMAR Fee at the time the Final GMP is fixed, including all lump sum CMAR fees for each GMP for a defined phase of construction Work, shall not exceed the agreed-upon total CMAR Fee established in future construction scope(s) of Work to be attached hereto and incorporated herein by reference as amendment(s) to this Master Agreement. In the event an adjustment upwards of the total CMAR Fee is warranted under this Section 4.e., a lump sum adjustment to the total CMAR Fee shall be equitably determined based on the nature of the Owner-Requested Changes to the construction Work, proven changes in the scope of Construction Management Services provided by the CMAR, and/or any other factor that would affect the effort and cost expended by the CMAR due to Owner-Requested Changes to the construction Work. Once the one percent (1%) threshold set forth in this Section 4.e. is met, the CMAR shall be entitled to add overhead and profit, not to exceed five percent (5%) of the net cost of a Change Order approved by the Owner in writing; provided, however, that the CMAR shall not be entitled to any increase in the total CMAR Fee on account of differing site conditions unless (i) the CMAR is entitled to an extension of the contract time for Substantial Completion of more than 30 calendar days to resolve such conditions and (ii) the CMAR can demonstrate an increase in its direct costs.

## 5. GENERAL CONDITIONS COSTS

- a. Each Interim GMP shall contain an allowance for the CMAR's General Conditions costs in providing Construction Management Services during the performance of the construction Work. General Conditions may be broken down into a reasonable number of categories as recommended by the CMAR and approved by the Owner in writing.

All General Conditions costs should be incurred by the CMAR judiciously. Upon the Owner's request, the CMAR shall provide justification for any General Conditions costs deemed extravagant or unnecessary by the Owner in its sole discretion.

The General Conditions to be provided and managed by the CMAR on a not-to-exceed allowance basis should include, but not necessarily be limited to, the following items, the costs of which should be included in the CMAR's General Conditions allowance:

- (1). Mobilization: The CMAR shall be responsible for the establishment of a fully functioning job site, including without limitation office and storage trailer set-up, utility connections, site fencing, precipitation gauge, wind gauge, and identification signage. Such costs should only apply to and be included within the General Conditions allowance for the initial Interim GMP.
- (2). Field Staff: Field personnel shall be provided by the CMAR and be billed per an approved billable rates schedule or as may otherwise be approved in writing by the Owner. The on-site field staff shall be limited to the specific staff positions proposed by the CMAR and approved by the Owner in writing and shall include the CMAR's senior project managers, project managers, senior project engineers, project engineer(s), superintendent(s), assistant superintendents, senior field coordinators, field coordinators, quality control/safety officer(s) actually furnishing on-site services at the Project, field secretaries/clerks, and occasional carpenters, laborers, maintenance, and security personnel provided by the CMAR on an as-needed basis. Changes in compensable staffing may only be made after the CMAR makes a written request for a staffing change and same is approved in writing by the Owner. All other CMAR staff positions not specifically identified and approved by the Owner in writing as on-site field staff shall be deemed Home Office personnel, the compensation and overhead for whom shall be included in the CMAR Fee.
- (3). Travel Expenses: All travel outside of the local area required for the completion of the Project, such as travel by the CMAR to review, select, approve, and/or expedite production of Project materials, components, and or systems, and for which travel expenses may be incurred, shall be compensated as a General Conditions cost pursuant to the Reimbursable Expense Guidelines for the City of Raleigh and current GSA Per Diem Rates, which are attached hereto as Attachment C and incorporated herein by reference. Daily commuting expenses to/from the Project site by any of the CMAR's personnel is not reimbursable and shall not be included in the CMAR's General Conditions.
- (4). Field Office: The CMAR shall provide field office(s) for use by the Owner, the Owner's Representative, the Project Designer, and the CMAR. Such office(s) shall include (i) an independent office for the Owner's Representative(s); (ii) conference room space to accommodate up to fifteen (15) people; (iii) suitable furniture; (iv) telephone(s) with voice mail; (v) a dedicated fax line; (vi) high-speed Internet connections accessible via a password-protected, secured wi-fi connection; (vii) computers capable of running the latest version of AutoCAD; (viii) adequate software for accounting, tracking, scheduling, word processing, AutoCAD, and Project management purposes, and (viii) printers, plotters, facsimile, and other data processing equipment for the CMAR's and the Owner's use.
- (5). The CMAR may provide such other appropriate office-type equipment for field office use as approved by the Owner. Costs for field office temporary electric, heating, water, sanitation, electronic equipment maintenance, and other field office operation costs, such as stationary and postage, shall be included in the CMAR's General Conditions allowance. The CMAR shall also establish and maintain appropriate shipping and receiving systems and include any cost of same within its General Conditions.
- (6). Plans/Surveys/Permits: The costs of the following shall be included in the CMAR's General Conditions: (i) reproduction of Construction Documents during the construction Work; (ii) surveyor services (site layout, etc.) as required by the Construction Documents; and (iii) acquiring all required permits (fees for permits will be reimbursed by Owner

through a separate Allowance, unless otherwise directed by the Owner's Representative).

- (7). Independent engineers, architects, and/or other consultants employed by the CMAR, and deemed necessary by the Owner, shall be billed at the reasonable prevailing hourly rates for such services. Any consultants to be employed by the CMAR for the Project must be approved by the Owner prior to the consultant performing any Work for the CMAR; consultant costs incurred prior to such approval shall not be reimbursable.
  - (8). Site Safety/Security/Cleanup: The CMAR shall establish and maintain throughout all construction phases an on-site Safety Program. (Note: The cost of Home Office safety personnel is included in the CMAR Fee. The cost of materials and on-site personnel to be included in the General Conditions.) The Owner expects that such Safety Program will include without limitation the installation and maintenance of the following temporary facilities: safety barricades, partitions, ladders, stairs, site fencing, signage, first aid, traffic control devices, and the like. The CMAR shall also provide daily site cleanup, trash collection, and removal; provide and maintain site security throughout all Project construction phases; provide snow, ice, storm water, sanitary sewer water, or other debris removal as may be required throughout Project construction phases to maintain the safety and accessibility of the site. The costs for the above items may be included in the First-Tier Subcontractor Bid Packages.
  - (9). Temporary weather and dust protection measures, as may be required during construction phases, may be budgeted at direct cost without markup.
  - (10). Insurance/Bond: 100% performance and payment bonds and liability insurance and builders risk insurance policies, all as required by this Master Agreement, shall be procured by the CMAR and carried in each Interim GMP as separate line items, not as part of the CMAR Fee.
  - (11). Closeout/Demobilization: The CMAR shall provide the following: (i) final site/facility clean-up and demobilization; (ii) final release of liens for all Subcontractor contracts; and (iii) two sets of all Subcontractor as-built drawings to the Owner and the Project Designer, respectively, one of which will be used by the Project Designer to prepare complete as-built drawings. The costs for the above items may be included in the Subcontractor Bid Packages. Project Closeout requirements are further outlined in Sections 40 and 55 of this Master Agreement.
  - (12). All non-consumable items (e.g., small tools, equipment, materials, etc.) purchased with Owner funds for use in the construction process shall be returned to the Owner upon completion of the Project, and an inventory of such items shall be provided at each bi-monthly Project progress meeting.
- b. Expenditures in excess of General Conditions category totals may be made if and only if the CMAR can first certify to the Owner that identified funds in other General Conditions categories are in excess of actual needs. The CMAR will be reimbursed for actual General Conditions costs only as they are incurred, with no mark-up by the CMAR, with exception to the negotiated billable rates for personnel incorporated into any future, agreed-upon construction scope(s) of Work attached hereto and incorporated herein by reference as amendment(s) to this Master Agreement. Other expenditures in excess of the total General Conditions allowance that are not covered in the Cost of the Work may be paid out of the CMAR Contingency as allowed hereunder or are otherwise deemed included in the CMAR's Fee.
- c. The Owner reserves the right to adjust the Total Construction Budget at any time prior to the parties reaching agreement on the Final GMP. The Owner and the CMAR acknowledge and agree that the separate, Interim GMP totals will include costs for General Conditions that (a) will overlap or otherwise continue into subsequent construction phases of the Work and Project, (b) may involve preparation for Work to be performed and completed in subsequent construction phases of the Work and Project, and (c) assures adequate protection and maintenance of construction Work completed in subsequent phases. Notwithstanding the foregoing acknowledgement and agreement, the CMAR agrees that the Final GMP will not exceed the

Total Construction Budget, as may be adjusted by the Owner in accordance with this Master Agreement.

- d. Any unused balance from a General Conditions allowance in an Interim GMP may be carried forward by the CMAR to each subsequent Interim GMP, and to the end of the Project as may be approved by the Owner. Any unused portion of the total General Conditions allowance remaining after the Project is finally complete shall be returned to the Owner.
- e. Additional General Conditions costs alleged to arise from any Owner-Requested Changes to the construction Work of the Project will be reviewed on an individual Change Order basis. After consultation with the Project Designer, the Owner shall determine whether the requested increases in General Conditions are caused by an Owner-Requested Change. Absent extraordinary circumstances, the CMAR should not expect that any Change Order other than those requested by the Owner will allow for an increase in its General Conditions.

#### 6. GUARANTEED MAXIMUM PRICE (GMP)

- a. The Final GMP shall mean the agreed-upon GMP for the construction Work, including but not limited to the sum of all Interim GMPs entered into by the Owner and the CMAR for the Project.
- b. Interim GMPs. The Owner reserves the right, in its sole discretion, to require delivery of the construction Work in phases, in which case GMPs will be estimated and finalized for each phase upon the successful bid and award of the construction Work for that phase. The GMP established for each phase of the construction Work shall be referred to as an "Interim GMP," and the scope of work and Interim GMP for that phase of the construction Work shall be referred to as the "Interim GMP Package."

#### 7. CONTINGENCY AND ALLOWANCES

- a. OWNER'S CONTINGENCY: An "Owner's Contingency" will be established. Expenditures against this contingency will be available to cover all costs not covered by the Final GMP resulting from changes in scope initiated by the Owner via a Change Order issued by the Owner.
- b. RESERVED.
- c. OWNER'S SPECIAL ALLOWANCE: In addition to the Owner's Contingency for the overall Project, the Owner may include in the Total Construction Budget one or more special allowances ("Owner's Special Allowance") that are dedicated to the Project but which may only be spent in the sole discretion of the Owner. The Owner's Special Allowance is a designated special allowance to provide for the management of unforeseen conditions, potential cost and schedule completion bonus, design errors and omissions, or new scope identified and desired by the Owner and as otherwise noted herein. The Owner's Special Allowance is not included in any of the GMPs, whether Interim or Final, until written authorization signed by the Owner for its expenditure is executed. Allocations, restrictions upon, or expenditures from this Owner's Special Allowance must be approved by the Owner in writing to be considered valid in any manner.

Written authorizations shall be provided for Owner-requested scope additions, submitted to the Project Designer for approval and modification to the plans and specifications as deemed appropriate by the Owner. This allowance includes any fees, general conditions, or contingencies for additional scope of work authorized.

The Owner may, in its sole discretion, also use the Owner's Special Allowance to pay justifiable claims for additional costs submitted by the CMAR in accordance with the Contract Documents. The Owner may also, in its sole discretion, authorize the CMAR to procure Subcontracts to perform Work previously deleted through Value Engineering, or to procure Subcontracts to perform additional or changed Work as directed by the Owner in writing. The CMAR shall diligently seek to reallocate and transfer unexpended and unneeded CMAR Contingency to the Owner's Special Allowance as required by this Master Agreement. No expenditures from this Owner's Special Allowance will be made for any Work without prior written approval of the Owner.

- d. CMAR CONTINGENCY: Each GMP for each phase of the construction Work shall contain a CMAR Contingency, fixed as an estimated lump sum for each such GMP, in an amount approved by the Owner in writing, to help reduce the risks assumed by the CMAR in providing the Final GMP for the Project.

The CMAR acknowledges its responsibility to keep the costs of all defined construction phases of Work within the applicable Interim GMPs (as well as to keep the sum of all such costs within the Final GMP). The CMAR also acknowledges that the CMAR Contingency is estimated to cover the Cost of the Work if the Cost of the Work reflected in a GMP is exceeded because of circumstances outside of the CMAR's control as described in Subsection 7.d.(7)., below.

The entire CMAR Contingency shall be fixed, based on the Total Construction Budget at the time of the agreed upon Final GMP, after which the CMAR Contingency shall not be increased unless an amount is negotiated with the Owner. In the event of such negotiation, a lump sum adjustment to the CMAR Contingency shall be equitably determined based on the nature of the changes to the construction Work, proven changes in the scope of services provided by the CMAR, and any other factor that would affect the CMAR's risks due to changes to the construction Work.

- (1). The CMAR Contingency is not allocated to any particular item of the Cost of the Work, and is established for the CMAR's use as may be required for increases in the Cost of the Work resulting from circumstances outside the control of the CMAR as described in Subsection 7.d.(7)., below.
- (2). When each Interim GMP is fixed, the CMAR Contingency for that Interim GMP shall be converted to a lump sum.
- (3). Once all Bid Packages for any phase of the construction Work subject to an Interim GMP are accepted and awarded, the CMAR Contingency included in that Interim GMP shall be adjusted to reflect the actual cost of constructing that phase of the construction Work.
- (4). It is understood that the CMAR Contingency is the maximum sum available to the CMAR to cover costs incurred as a result of circumstances outside of its control, and that cost overruns in excess of the total Cost of the Work and the CMAR Contingency will be borne by the CMAR.
- (5). The CMAR may request that the CMAR Contingency be applied to any items within the Cost of the Work without the necessity of a Change Order, without constituting a change in the construction Work, and without resulting in any change in any of the GMPs.
- (6). Should the CMAR desire to utilize any portion of the CMAR Contingency to fund a cost variation, then the CMAR shall obtain written approval from the Owner and the Project Designer by submitting a Cost Change Proposal in accordance with the requirements of Section 43, below. The CMAR shall fully document all approved requests to apply the CMAR Contingency on its copy of the Construction Documents for inclusion in the as-built record documents required by this Master Agreement.
- (7). The Owner and the CMAR acknowledge that the CMAR Contingency is included to compensate for unforeseen conditions or other conditions outside of the control of the CMAR, which have not been taken into precise account in the establishment of any of the GMPs, specifically unanticipated costs which do not result in, or cause a Change Order to a GMP, including:
  - i. legal fees not to exceed in the aggregate \$50,000.00 associated with defending bid protests or Subcontract awards, provided that the CMAR is not negligent or at fault;
  - ii. scope of work gaps between trade Subcontractors;
  - iii. contract default by trade Subcontractors;

- iv. threat of or damage to permanent work due to Acts of God to the extent not otherwise covered by insurance;
  - v. costs of corrective work not provided for elsewhere or which are not the responsibility of the Subcontractors; and
  - vi. field conditions which could not reasonably have been detected during the discharge of the CMAR's Pre-Construction Services duties.
- (8). If the Owner changes the Total Construction Budget, the CMAR Contingency shall not exceed two percent (2%) of the sum of the changed Cost of the Work and the changed General Conditions, as each is more fully defined in this Master Agreement, as of the date when the Final GMP is established and approved by the Owner, subject to modification and limitation as set forth in this Section.
- (9). The amount of the interim and total CMAR Contingency for a particular phase of construction Work is to be reviewed by the Owner as part of its review of each proposed Interim GMP and Final GMP. The Owner retains the right to specifically request revisions to the proposed amount of each interim CMAR Contingency prior to the Owner's acceptance and approval of each Interim GMP Package. If, after a CMAR Contingency is fixed as part of an Interim GMP Package, the price for performing the work that is the subject of an approved request to apply the CMAR Contingency is lower than anticipated, the CMAR and the Owner agree that the CMAR Contingency will only be reduced in accordance with Subsection 7.d.(10)., below.
- (10). In the event that the CMAR does not use any or all of the CMAR Contingency for a particular Interim GMP Package, such Contingency shall be available and carried forward to each subsequent Interim GMP Package. In the event that there are any funds remaining in the total CMAR Contingency that is included within the Final GMP upon Final Completion of the Project, such funds shall be retained solely by the Owner.

## 8. PROJECT DESIGNER'S STATUS

- a. The Project Designer shall be a liaison between the Owner and the CMAR and shall provide necessary inspection of the construction Work to ensure compliance with the Construction Documents. The Project Designer has authority to stop construction Work or to order construction Work removed, and to order corrections of faulty construction Work where such action may be necessary to assure successful completion of the construction Work.
- b. The Project Designer is the impartial interpreter of the Construction Documents. The Project Designer shall review and make a recommendation to Owner to approve, deny, or modify all requests for Change Orders and extensions to the contract time.
- c. Should the Project Designer cease to be employed on the Project for any reason whatsoever, the Owner shall employ a competent replacement who shall assume the status of the former Project Designer.
- d. The Project Designer will make periodic inspections of the Project at intervals appropriate to that stage or phase of construction. The Project Designer will inspect the progress, the quality, and the quantity of the construction Work.
- e. The Project Designer and the Owner shall have access to the construction Work throughout the Project during normal working hours. The CMAR shall provide facilities for such access so the Project Designer may perform its functions under the Contract Documents.
- f. Based on the Project Designer's inspections and evaluations of the Project, the Project Designer shall issue interpretations, directives, and decisions as to the Construction Documents as may be necessary to assist the CMAR in the administration of the Project. The Project Designer's decisions relating to aesthetics, artistic effect, and technical matters shall be final, provided such

decisions are within the limitations of this Master Agreement. The CMAR's decisions, however, relating to construction means and methods and administration of the Subcontractor contracts that the CMAR holds are final.

9. REVIEW AND COORDINATION OF CONSTRUCTION DOCUMENTS – This Section and Section 10 below address activities associated with the Pre-construction Services to be provided by the CMAR for the Project. These activities, along with the costs of such services, are set forth more fully in the CMAR Pre-Construction Services Scope of Work attached hereto as Attachment A and incorporated herein by reference. To the extent any conflicts or inconsistencies exist between the Master Agreement and the CMAR Pre-Construction Services Scope of Work attached hereto as Attachment A, then the CMAR Pre-Construction Services Scope of Work shall control.

- a. The CMAR shall review the drawings, specifications, and other Construction Documents as they are being prepared by the Project Designer, recommending alternative solutions whenever design details affect costs, quality, construction feasibility, constructability, and/or schedule(s) for Substantial Completion. The CMAR shall notify the Project Designer and the Owner in writing within seven (7) business days of its observation that any features in the drawings, specifications, or other Construction Documents appear to be ambiguous, confusing, conflicting, erroneous, unfeasible, non-constructible, or otherwise not in the best interests of the Owner.
- b. If, after reviewing the CMAR's comments and consulting with the Project Designer, the Owner agrees that corrections or modifications should be made to any of the Construction Documents by the Project Designer, the Owner shall require that the Project Designer incorporate such changes and/or corrections as directed by the Owner into the Construction Documents to allow the CMAR to incorporate any associated cost impacts into the CMAR Cost Model Update (as defined in Attachment A).
- c. Prior to advertising or otherwise soliciting any Bid Packages, the CMAR shall provide a thorough interdisciplinary coordination review of the Construction Documents submitted for review to the Owner and the Project Team. Such review shall be performed by a qualified outside firm or qualified CMAR personnel approved by the Owner utilizing a structured, industry-accepted process. The CMAR shall review the Final Construction Documents for each phase of design to ensure that all of the CMAR's comments have been incorporated.

## 10. BIDDING AND CONTRACTING

- a. The CMAR shall be responsible, with the support of the Project Designer, for preparing Bid Packages in order to solicit bids from potential First-Tier Subcontractors for the construction Work. The CMAR also shall be responsible for preparing contracts with First-Tier Subcontractors. The CMAR, acting as the Owner's fiduciary, shall develop procedures to advertise and solicit First-Tier Subcontractors in an open and public manner consistent with G.S. 143-129. The CMAR shall develop procedures and requirements to assure time, cost, and quality control during construction.
- b. The CMAR shall arrange and prepare Bid Packages for the complete execution of the construction Work by Subcontractors and provide opportunities for maximum participation by minority- and women-owned firms. The CMAR shall provide a provisional critical path method ("CPM") construction schedule for issuance with the Bid Packages.
- c. Within forty-five (45) days of the Effective Date of this Master Agreement, the CMAR shall submit its plan for compliance with G.S. 143-128.2, "Minority Business Participation Goals," for approval by the Owner prior to soliciting bids for any of the Project's First-Tier Subcontractors. The CMAR hereby agrees that it and its First-Tier Subcontractors will make good-faith efforts to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities.
- d. The CMAR shall pre-qualify all potential First-Tier Subcontractors in accordance with the Owner's prequalification process. In conjunction with the Owner, the CMAR shall prepare and implement an MWBE outreach program to encourage participation by minority- and women-owned firms, advertise and distribute Bid Packages, schedule and conduct pre-bid conferences in conjunction with the Project Designer, educate First-Tier Subcontractors on sustainability measures to enhance the CMAR's participation in meeting the Owner's objective of attaining LEED silver certification, and monitor bidder activity.
- e. The CMAR shall publicly open, review, and analyze bids in conjunction with the Owner and the Project Designer. Once opened, all such bids are public records under Chapter 132 of the North Carolina General Statutes. A thorough scope review will be conducted with the bidders. The CMAR shall prepare a "Recommendation to Award" (RTA) for each trade subcontract, which RTA shall document and explain the reasons for the CMAR's award decision and recommendation. Bid tabulations shall be attached as exhibits to each of the RTAs. If requested by the Owner, the Project Designer shall assist the CMAR in evaluating bids and making recommendations for each trade subcontract. Notwithstanding anything herein to the contrary, First-Tier Subcontractors

shall be selected pursuant to the requirements of G.S. 143-129 and in conformity with the terms and conditions set forth in Subsection 17.d. of this Master Agreement.

- f. Upon the written approval of the Owner, the CMAR shall execute contracts with the First-Tier Subcontractors.

11. CONSTRUCTION PHASE SERVICES - The construction activities and services set forth in this Section, along with the costs of such services, are contemplated to be established more fully in future, agreed-upon construction scope(s) of Work to be attached hereto and incorporated herein by reference as amendment(s) to this Master Agreement. To the extent any conflicts exist between the Master Agreement and any of the future, agreed-upon construction scope(s) of Work to be attached hereto as amendments to this Master Agreement, then the construction scope(s) of Work shall control.

- a. The CMAR shall provide Construction Management Services as required to complete construction of the Project in a timely, economic, and high-quality fashion. The CMAR shall become an integral part of the Project Team that will coordinate the development and progress of the construction Work. The CMAR's responsibilities for providing Construction Management Services are described further in this and subsequent sections of the Master Agreement.
- b. The CMAR shall maintain an on-site staff for the management of the construction Work. The CMAR shall establish and maintain coordinating procedures to execute the construction Work in its entirety. Continuous monitoring shall be performed by the CMAR to ensure the quality of the construction Work and conformity to the Construction Documents. Deficiencies in the construction Work shall be documented and tracked by the CMAR until satisfactorily corrected.
- c. The CMAR shall incorporate commissioning activities in its CPM schedules and cooperate with the Commissioning Agent to ensure satisfactory installation and operation of all building systems prior to Substantial Completion. The Owner's use of a Commissioning Agent shall not relieve the CMAR and/or the Subcontractors of their responsibility for quality control.
  - (1). All GMPs shall include all costs necessary to meet the commissioning requirements. The commissioning requirements shall be included in the mechanical, electrical, plumbing, and controls Bid Packages and other necessary subcontracts to ensure full cooperation of all parties in the commissioning program. The CMAR shall ensure acceptable representation, including means and authority to prepare and coordinate execution of the commissioning program as described in the Contract Documents.
  - (2). During construction, the CMAR shall issue documentation verifying that necessary equipment has been calibrated, and that all pre-functional checklists (PFCs) and functional performance tests (FPTs) have been completed, prior to inviting the commissioning authority to complete the commissioning process. The CMAR shall remedy the deficiencies identified in the verification tests and evaluate any performance deficiencies identified in the FPT report for non-conformance with the Contract Documents.
  - (3). When the functional testing performed by the Commissioning Agent fails, all costs associated with any and all retests shall be borne by the CMAR and the responsible trade Subcontractor(s).
- d. The CMAR shall fully support, cooperate, and participate during the LEED certification process to fulfill the Owner's policy of attaining LEED silver certification.
- e. The CMAR's Construction Management Services shall continue until all post-occupancy activities are completed to the satisfaction of the Owner, such post-occupancy activities to include coordination of furniture, furnishings and equipment deliveries and installation; resolution of punch lists; assembly of guarantees, operation manuals, record drawings, and all other closeout documents; training; and regulatory approvals, all as required for Project Closeout under Sections 40 and 55 of this Master Agreement and as otherwise required by the other Contract Documents.

12. DRAWINGS, SPECIFICATIONS, AND RECORD DOCUMENTS

- a. All data, information, material and matter of any nature and all copies thereof in any and all forms whatsoever developed by the CMAR or in the CMAR's possession or control relating to the Project are the property of the Owner and shall be turned over to the Owner within ten (10) days after the Owner's written request.
- b. The Owner shall bear the reasonable cost of reproduction and distribution of drawings, sketches, specifications, and other Construction Documents for use on the Project by the CMAR and its Subcontractors for bidding, administrative, and construction purposes; provided, however, that the CMAR obtain competitive proposals for Construction Document reproduction and obtain the Owner's approval of the selected source prior to the CMAR's incurring of reproduction costs and that all reproduction costs for which the CMAR seeks reimbursement are supported by actual invoices from the selected source approved by the Owner. The CMAR shall receive clean sets of black line prints on white paper of all appropriate drawings provided by the Owner. The CMAR shall clearly and legibly record in redline all work-in-place that is at variance with the Construction Documents.
- c. In such cases where the nature of the construction Work requires clarification by the Project Designer, such clarification shall be furnished by the Project Designer with reasonable promptness by means of written instructions, detail drawings, or both. Clarifications and drawings shall be consistent with the intent of the Construction Documents and shall become a part thereof unless objected to by the Owner's Representative in writing in his or her sole discretion. The CMAR and the Project Designer shall prepare, if deemed necessary to ensure the timely completion of the construction Work, a schedule fixing dates upon which foreseeable clarifications will be required.
- d. The CMAR shall maintain, in readable condition at its job office, one complete set of working drawings and specifications for its construction Work, including all shop drawings. Such drawings and specifications shall be available for use and review by the Owner, the Project Designer, and/or their respective authorized representative(s).
- e. The CMAR shall require all Subcontractors to provide, and the CMAR shall maintain at the job office, a day-to-day record of "as built" work-in-place drawings that are at variance with the Construction Documents. The CMAR shall compile from its Subcontractors all "as-built" work-in-place drawings that are at variance with the Construction Documents, fully note such variances on the Project drawings, and make such "as-built" drawings available for review by the Owner and/or the Project Designer during and throughout construction to verify and determine that all "as-built" work is being properly recorded. The CMAR expressly acknowledges and agrees that the maintenance of "as-built" drawings at the job office in accordance with the requirements of this Section 12.e. shall be a condition precedent to the release of payment to the CMAR and/or its Subcontractors.

Final as-built drawing copy shall be submitted to the Project Designer upon Substantial Completion, and a corrected copy (if applicable) shall be provided no later than thirty (30) days after notice of acceptance of the Project by the Project Designer and the Owner. A condition of final payment to the CMAR shall be delivery to the Project Designer, in paper and digital image or electronic form, each Subcontractor's submittal drawings and as-built records. It shall be a further condition of final payment to the CMAR that the Project Designer provide written certification that it has all of the information it needs to prepare a comprehensive as-built record of the Project for delivery to the Owner in accordance with the Project Designer's contract with the Owner.

- g. The CMAR shall devise, implement, and maintain at the Project site, on a current basis, a structured document control system which includes and tracks records of all necessary contracts, RFIs, CDNs, changes, payments, shop drawings, samples, purchases, materials, equipment, maintenance and operating manuals and instructions, and any other documents and revisions thereto which arise out of the Master Agreement, the other Contract Documents, or the Work.

The CMAR shall make these documents and copies thereof readily available to the Owner in paper or electronic form, or both as may be requested, any time during the performance of this Master Agreement and the other Contract Documents.

- h. The CMAR shall arrange for and submit monthly (or other frequency as agreed to in writing by the Owner) to the Owner and Project Designer, as a General Conditions expense, progress photographs, organized by date into sequentially labeled, three-ring binders or approved electronic equivalents, in sufficient detail to properly record the progress of the construction Work.

### 13. OTHER TASKS AND REQUIREMENTS

- 1. The CMAR shall provide all other services as required in accordance with the RFQ published May 10, 2024, inclusive of all addenda and appendices, as well as in accordance with any attachments to this Master Agreement.
- 2. Applicability of North Carolina Public Records Law – Notwithstanding any other provisions of this Master Agreement, this Master Agreement and all materials submitted to the Owner by the CMAR, including, without limitation, all bids of Subcontractors and potential Subcontractors, are subject to the public records laws of the State of North Carolina. It is the responsibility of the CMAR to properly designate materials that may be protected from disclosure as trade secrets under North Carolina law as such and in the form required by law prior to the submission of such materials to the Owner. The CMAR understands and agrees that the Owner may take any and all actions necessary to comply with federal, state, and local laws and/or judicial orders, and that such actions will not constitute a breach of the terms of this Master Agreement. To the extent that any other provision(s) of this Master Agreement or the other Contract Documents conflict with this Section, the provisions of this Section shall control.

### 14. CODES AND STANDARDS

Wherever reference is given to codes, standard specifications, or other data published by regulating agencies including, but not limited to, national electrical codes, North Carolina state building codes, federal specifications, ASTM specifications, various institute specifications, etc., it shall be understood that such reference is to the latest edition including addenda published prior to the date of the Contract Documents.

### 15. USE AND OWNERSHIP OF DOCUMENTS

- a. Any and all information, data, instruments, documents, studies, reports, or deliverables given to, exposed to, or prepared or assembled by, or for, the CMAR under this Master Agreement and the other Contract Documents shall be kept as confidential proprietary information of the Owner and not divulged or made available to any individual or organization without the prior written approval of the Owner. Such information, data, instruments, documents, studies, reports, or deliverables are the sole property of the Owner and not the CMAR.
- b. All drawings and specifications are instruments of service and remain the property of the Owner. The use of these instruments on work other than this Master Agreement and the other Contract Documents without express permission from and without the express, written consent of the Owner, is strictly prohibited. All copies of drawings and specifications other than contract copies shall be returned to the Owner upon request after Final Completion of the Project.

### 16. LABOR, MATERIALS, EQUIPMENT, AND EMPLOYEE CONDUCT

- a. The CMAR shall, unless otherwise specified in the Contract Documents, contract for and pay for all labor, transportation, materials, tools, equipment, construction apparatus, lights, power distribution, generators, heating apparatus, sanitary facilities, water distribution, scaffolding, and incidentals necessary for the completion of the construction Work; shall arrange for the installation, maintenance and removal of all construction equipment, utensils, or things; and be responsible for the safe, proper, and lawful construction, maintenance, and use of same. The CMAR shall construct, in the best and most workmanlike manner, a complete Project and everything incidental thereto, as shown on the drawings, stated in the specifications, or

reasonably implied from such drawings and/or specifications, all in accordance with the Contract Documents.

- b. All materials shall be new and of the quality specified, except where reclaimed material is authorized by the Contract Documents or approved for use with the express, written consent of the Project Designer and Owner. Workmanship shall at all times be of a grade accepted as the best practice of the particular trade involved, and as stipulated in written standards of recognized organizations or institutes of the respective trades, except as exceeded or qualified by the specifications.
- c. As set forth in the Contract Documents or upon reasonable notice from the Owner's Representative, the CMAR shall require the Subcontractors to furnish warranties and/or other evidence as to the quality of materials.
- d. Products are generally specified by ASTM or other reference standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, the CMAR may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the CMAR has the option of using any product and manufacturer combination listed. However, the CMAR shall be aware that the cited examples are used only to denote the quality standard of the product desired and that they do not restrict bidders to a specific brand, make, manufacturer, or specific name; that they are used only to set forth and convey to bidders the general style, type, character, and quality of product desired; and that equivalent products will be acceptable. Specific items may be referred to by the Project Designer by designed name to be compatible and function within the Owner's existing materials or systems. Request for substitution of materials, items, or equipment shall be submitted to the Project Designer for approval or disapproval; such approval or disapproval shall be made by the Project Designer prior to the opening of bids.
- e. The CMAR shall obtain written approval from the Project Designer for the use of products, materials, equipment, assemblies, or installation methods claimed as equal to those specified. Such approvals must be obtained as soon after contract award as possible and before any materials are ordered.
- f. The Project Designer shall be the sole judge of the equality of any proposed substitution and its opinion shall be final unless overridden by the Owner's Representative in writing. A decision by the Project Designer that a proposed substitution is not equal to the product, material, equipment, assembly, or installation method specified shall be subject to written appeal to the Director of Engineering Services, City of Raleigh.
- g. If at any time during the construction and completion of the Work covered by these Contract Documents, the conduct of any worker of the various crafts be adjudged by the Owner's Representative a nuisance to the Owner or Project Designer, or if any worker be considered detrimental to the Work, the CMAR and the Subcontractor (if applicable) shall order such parties removed immediately from the site and its environs.

## 17. SUBCONTRACTS AND SUBCONTRACTORS

- a. The CMAR shall prepare the appropriate Bid Packages based on the available resources. One or more Bid Packages shall be prepared for each of the general construction, electrical, mechanical, fire protection, plumbing, and other major phase(s) of the construction Work as determined by the Project Designer and the Owner. The CMAR shall prepare any other Bid Packages for other phases or subdivisions of the construction Work as may be determined by the Project Designer and the Owner. Each First-Tier Subcontractor shall be required by the CMAR to provide bonds and insurance, consistent with the terms of the RFQ, this Master Agreement, and the other Contract Documents.
- b. First-Tier Subcontractors shall be pre-qualified by the CMAR in accordance with the Owner's pre-qualification process as described in the City of Raleigh's Policy for Prequalification of Bidders for Construction Projects as referenced below. Only pre-qualified First-Tier Subcontractors are allowed to bid on and contract with the CMAR on the Project. Should the Project Designer

disapprove of any proposed Subcontractor to pre-qualify for bidding, then the Project Designer shall submit its reasons for disapproval in writing to the Owner and the CMAR. If the Owner's Representative concurs with the Project Designer's recommendation, the CMAR shall remove the Subcontractor from the list.

- c. The CMAR and the Owner's Representative shall confer on the pre-qualification of Lower-Tier Subcontractors, and the CMAR shall decide whether to pre-qualify Lower-Tier Subcontractors after giving due regard to the Owner's MWBE goals. The prequalification process for Lower-Tier Subcontractors, if any, shall comply with the City of Raleigh's Policy for Prequalification of Bidders for Construction Projects.
- d. The CMAR shall publicly advertise as prescribed in G.S. 143-129 and shall accept bids from First-Tier Subcontractors for all construction Work as outlined in the Contract Documents except for that construction Work to be self-performed by the CMAR as permitted by G.S. 143-128.1 and as allowed herein.
- e. All bids shall be opened publicly in accordance with G.S. 143-129 and once they are opened, shall be public record under Chapter 132 of the North Carolina General Statutes. The CMAR shall award each contract to the lowest responsible, responsive bidder, taking into consideration the Owner's requirements, quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, the time for completion, compliance with G.S. 143-128.2, and any other factors deemed appropriate by the Owner's Representative and advertised as part of the bid solicitation.
- f. If the apparent low-bid First-Tier Subcontractor fails to account for all costs associated with the scope of the construction Work on which it is bidding, then the bid may be disqualified at the discretion of the CMAR, in which case the CMAR shall consider the next low bid submitted. The CMAR shall have the right as outlined above to verify the scope of each low bid in the same manner until it determines the lowest verified bid.
- g. The CMAR shall conduct pre-bid meetings and award meetings for all First-Tier Subcontractor contracts. The CMAR shall notify the Owner and the Project Designer of each such meeting no less than one (1) week in advance of such meeting. The CMAR shall not hold any pre-bid meetings outside of the presence of the Owner and the Project Designer, with the sole exception that award meetings may be held outside the presence of the Project Designer (but not outside the presence of the Owner).
- h. The CMAR may reject all bids and re-advertise and re-bid a First-Tier Subcontractor contract only with the express, written approval of the Owner and only if one or more of the following conditions is satisfied: the initial bidding produces no responsible, responsive bids for that portion of the construction Work; no responsible, responsive bidder will execute a contract for that portion of the construction Work; or, in the judgment of the CMAR, the prices contained in the bids received are excessive based on current market value.
- i. The CMAR shall not award or issue notice of award to a potential First-Tier Subcontractor for any portion of the construction Work until the applicable GMP that includes that portion of the Work has been approved by the Owner in writing, said GMP is fixed in a construction scope of work document attached hereto and incorporated herein by reference as an amendment to this Master Agreement, and the CMAR provides and the Owner approves the following with respect to that portion of the construction Work for which the CMAR seeks to issue notice of award: a certified tabulation of the bids; copies of all bids received; the CMAR's recommendations for award; a report of the documentation of MWBE participation; and documentation of the good-faith efforts of the bidders to comply with the Owner's MWBE participation goals for the Project.
- j. If requested by the Owner, the Project Designer shall assist the CMAR in evaluating bids and making written recommendations to the Owner relative to acceptance or rejection of proposals and award of contracts to the lowest responsible, responsive bidder or bidders, taking into consideration the Owner's requirements, quality, performance, the time specified in the proposals for performance of the First-Tier Subcontractor contract(s), the cost of construction oversight, the time for completion, compliance with G.S. 143-128.2, and any other factors deemed appropriate by the Owner's Representative and advertised as part of the bid solicitation.
- k. The CMAR may not bid on any Bid Package or other trade package. Further, the CMAR is

prohibited from performing any portion of the construction Work without the written approval of the Owner to perform such portion of the construction Work and only if one or more of the following conditions is met: (i) the bidding for that portion of the construction Work produces no responsible, responsive bidder; (ii) the lowest, responsive, responsible bidder will not execute a contract for that bid portion of the construction Work; or (iii) a First-Tier Subcontractor defaults and a pre-qualified replacement cannot be obtained in a timely manner.

- l. Once Subcontractors are in place, the CMAR shall provide copies of Subcontractor contracts to the Owner and Project Designer, including those for equipment and material suppliers. The CMAR shall require the Subcontractors to provide the applicable contract documents including insurance certificates, MWBE participation schedules, and verification of MWBE participation to the Owner.
- m. Reserved.
- n. Reserved.
- o. The CMAR is and remains fully responsible for its own acts or omissions as well as those of its Subcontractors or of any employee of either. The CMAR agrees that, except as expressly provided in Section 17.p. and 17.q., immediately below, no contractual relationship exists between the Subcontractors and the Owner in regard to this Master Agreement and/or the other Contract Documents, and that the Subcontractors act on their work for or on behalf of the CMAR.
- p. The CMAR shall prepare bid documents and construction contract conditions for the Subcontracts for the construction Work, with the participation of the Project Designer as set forth in this Master Agreement. All subcontracts of First-Tier Subcontractors shall be in writing in form and substance substantially similar to the CMAR's standard form subcontract, attached to this Master Agreement and made a part hereof as Appendix 1 to Attachment A, and shall specifically provide that the Owner is a direct, intended third-party beneficiary of such subcontract. Further, all subcontracts between the CMAR and its First-Tier Subcontractors shall include a "flow down" clause by which each First-Tier Subcontractor agrees to be bound to the terms of the Construction Documents and to assume toward the CMAR all of the obligations and responsibilities that the CMAR assumes toward the Owner and the Project Designer under the Construction Documents.
- q. Each subcontract between the CMAR and each of its First-Tier Subcontractors is assigned by the CMAR to the Owner, provided that: (i) such assignment is effective only upon the termination of the CMAR for convenience pursuant to Section 50, below, or termination of the CMAR for default pursuant to Section 51, below, and only for those subcontracts that the Owner accepts by notifying the CMAR and the First-Tier Subcontractor; and (ii) such assignment is subject to the rights of the CMAR's performance bond Surety for the Project in the event of a termination of the CMAR for default pursuant to Section 51, below.

18. NON-DISCRIMINATION

- a. To the extent permitted by North Carolina law, the parties for themselves, their agents, officials, directors, officers, members, representatives, employees, and contractors agree not to discriminate in any manner or in any form based on actual or perceived age, mental or physical disability, sex, religion, creed, race, color, sexual orientation, gender identity or expression, familial or marital status, economic status, veteran status or national origin in connection with this Master Agreement or its performance. The parties agree to conform with the provisions and intent of Raleigh City Code § 4-1004 in all matters related to this Master Agreement. This provision is incorporated into this Master Agreement for the benefit of the City of Raleigh and its residents and may be enforced by an action for specific performance, injunctive relief, or any other remedy available at law or equity. This section shall be binding on the successors and permitted assigns of all parties with reference to the subject matter of this Master Agreement.
- b. The non-discrimination clause contained in Section 202 (Federal) Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex, or national origin, and the implementing rules and regulations proscribed by the secretary of Labor, are incorporated herein. The CMAR agrees not to discriminate against any employee or applicant for employment because of physical or mental

handicap in regard to any position for which the employee or applicant is qualified. The CMAR agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices.

19. MWBE BUSINESS PARTICIPATION GOALS AND STANDARDS

Minority and Women Owned Businesses Program – Owner prohibits discrimination in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation and will pursue an affirmative action policy of fostering, promoting and doing business with women and minority-owned business enterprises.

- a. The Owner's goal on construction projects of \$300,000 or more, or on construction contracts that include \$100,000 or more in state funding, is to contract or sub-contract fifteen percent (15%) of the contract amount to Certified MWBEs. The Owner, subject to the requirements of state law and City of Raleigh policy, requires documentation of good faith efforts for meeting established MWBE participation goals. The Owner's MWBE policy and the applicable North Carolina General Statutes are hereby incorporated into and made a part of this Master Agreement. The CMAR shall submit its plan for compliance with G.S. 143-128.2, "Minority Business Participation Goals," for approval by the Owner prior to soliciting bids for any of the Project's First-Tier Subcontractors. The CMAR shall ensure that it and its First-Tier Subcontractors will make good faith efforts to recruit and select small business entities and comply with G.S. 143-128.2 and G.S. 143-128.4.
- b. The First-Tier Subcontractors and the CMAR shall comply in all respects with the Owner's MWBE policies, rules, and regulations, including, without limitation, the Owner's stated goal to contract or sub-contract fifteen percent (15%) of the contract amount to Certified MWBEs.
- c. To increase MWBE participation, and if necessary to achieve the Owner's stated goal to contract or sub-contract fifteen percent (15%) of the contract amount to Certified MWBEs, the CMAR may, with the written approval of the Owner's Representative, offer the participation of the CMAR as a guarantor or surety in the financing of materials purchased by Certified MWBE Subcontractors, provided that the CMAR may condition such financing assistance upon a Certified MWBE Subcontractor's acceptance of the issuance of joint checks or other similar arrangements to allow the CMAR to verify that timely payments are made to suppliers furnishing credit to the Certified MWBE Subcontractor.
- d. The CMAR shall identify subcontract packages that remove barriers to participation commonly experienced by Historically Underutilized Businesses (HUB), as that term is defined in G.S. 143-128.2.
- e. In furtherance of achieving the Owner's stated goal to contract or sub-contract fifteen percent (15%) of the contract amount to Certified MWBEs, and prior to the CMAR soliciting bids from any potential First-Tier Subcontractors, the CMAR shall develop, review with Owner for approval, and implement procedures and policies regarding the following:
  - Outreach and networking to Certified MWBEs
  - The participation of Certified MWBEs during preconstruction
  - Community meetings to identify and recruit Certified MWBEs for participation in the Project
  - Supporting the Owner's Workforce Development program
  - Providing certification assistance to applicants seeking Certified MWBE status
  - Payment handling with respect to Certified MWBEs participating in the Project
  - Change order handling with respect to Certified MWBEs participating in the Project
  - Bonding assistance for Certified MWBEs participating in the Project
  - Partnering with First-Tier Subcontractors to achieve the Owner's MWBE participation goals for the Project
  - Handling of rental and leased equipment required by Certified MWBEs in the performance of the construction Work

- f. The CMAR shall participate in and shall lead meetings regarding MWBE, HUB, and DBE-related issues, including but not limited to contracting, outreach, and partnering.
- g. The CMAR shall document all aspects of its activities undertaken to comply with this Section 19 as required by the reporting requirements of the State of North Carolina and the Owner. The CMAR shall report all information required by local and state law and regulations to the Owner within ten (10) days after the end of each quarter (March 31, June 30, September 30, and December 31) when any GMP package is completed, which information the Owner, in turn, will submit to the North Carolina Department of Administration, Office of Historically Underutilized Businesses.

20. CONSTRUCTION MANAGER AND SUBCONTRACTOR RELATIONSHIPS

- a. The CMAR agrees that the requirements of this Master Agreement and the Contract Documents shall apply equally to each Subcontractor as to the CMAR, and the CMAR agrees to take such action as may be necessary to bind each Subcontractor to such requirements.
- b. The CMAR agrees that payments to Subcontractors shall be made in accordance with the provisions of G.S. 143-134.1, including, without limitation, the following requirements:
  - i. Within seven (7) days after the CMAR receives each periodic or final payment and its bank makes the funds available after deposit, the CMAR shall pay each Subcontractor based on construction Work completed or service provided under the Master Agreement. Should any periodic or final payment to a Subcontractor be delayed by more than seven days after receipt of periodic or final payment by the CMAR, the CMAR shall pay that Subcontractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on such unpaid balance as may be due, provided the Subcontractor has conformed to the specified billing procedures and insurance requirements of the Contract Documents and the pertinent subcontract.
  - ii. Any retainage withheld from payments made by the CMAR to a Subcontractor shall comply with G.S. 143-134.1. Any retainage on payments made by the CMAR to a Subcontractor that exceeds the corresponding retainage on payments made by the Owner to the CMAR shall be subject to interest to be paid by the CMAR to that Subcontractor at the rate of one percent (1%) per month or fraction thereof.
  - iii. Nothing in this Section shall prevent the CMAR at the time of application and certification to the Owner from withholding application and certification to the Owner for payment to a Subcontractor for unsatisfactory job progress, defective construction not remedied, disputed construction Work, third-party claims filed or reasonable evidence that claim will be filed, failure of Subcontractor to make timely payments for labor, equipment and materials, damage to CMAR or another Subcontractor, reasonable evidence that the contract cannot be completed for the unpaid balance of the contract sum, or a reasonable amount for retainage not to exceed the initial percentage retained by Owner.

21. SEPARATE CONTRACTS

Without invalidating its contractual relationship with the CMAR, the Owner reserves the right to let other contracts in connection with the Project, the work under which shall proceed simultaneously with the execution of the CMAR's Work. Separate contracts may include materials or equipment that the Owner elects to provide itself. The Owner may also enter into separate contracts with testing firms or other technical support firms to assist the Owner in connection with the Project. The CMAR shall afford other separate contractors reasonable opportunity for the execution of their work and for the introduction and storage of their materials at the Project site, and the CMAR shall take all reasonable action to coordinate its construction Work with theirs. If the work performed by a separate contractor is defective or so performed as to prevent the CMAR from carrying out its construction Work according to the Construction Documents, the CMAR shall immediately notify the Project Designer and the Owner upon discovering such conditions.

## 22. WARRANTY AND GUARANTEE

- a. The CMAR unconditionally warrants and guarantees all materials and workmanship against patent defects arising from faulty materials, faulty workmanship, or negligence for a period of one (1) year following the date of Substantial Completion of the construction Work or Beneficial Occupancy, whichever occurs first, and shall replace such defective materials and/or workmanship without cost to the Owner. The CMAR shall include an identical requirement in all subcontracts with First-Tier Subcontractors except any demolition subcontracts, any cleaning or trade support subcontracts, or any other subcontracts as may be approved by the Owner in writing.
- b. In addition to the foregoing general warranty, the Project Designer and Owner may require extended warranties for specified building components, including, without limitation, mechanical and electrical equipment, elevators and escalators, security equipment, curtain wall, doors, roofing, and waterproofing. Extended warranties shall be specified in the Construction Documents or in specific written instructions from the Owner. All such extended warranties shall either be provided by the CMAR or by a Subcontractor or manufacturer. If the warranty is provided by a Subcontractor or manufacturer, the warranty shall explicitly state that it is for the benefit of and may be enforced by the Owner. Such warranties shall provide, at a minimum, for the repair or replacement of defective or non-conforming components within the warranty period.
- c. Prior to the CMAR advertising any Bid Packages, the CMAR shall make recommendations to the Owner and the Project Designer on warranty issues, including, without limitation, suggestions for alternates in all Bid Packages with respect to warranty durations and features, so as to assure optimal bid responses are received from potential First-Tier Subcontractors. The Owner and the Project Designer shall review and consider such recommendations and direct the CMAR on the inclusion of any and all applicable warranty alternates in the Bid Package awards.
- d. The Owner may bring an action against the CMAR for latent defects which are hidden or not readily apparent to the Owner at the time of Substantial Completion or final acceptance, whichever occurs first, in accordance with applicable law.
- e. Guarantees for roof, equipment, materials, and supplies shall be stipulated in the specifications sections in the Construction Documents that govern such roof, equipment, materials, or supplies.
- f. The CMAR's construction management at-risk obligations and services hereunder shall extend through and until the completion of the warranty phase; provided, however, that once Project Closeout is achieved, the CMAR's obligations and services hereunder shall be limited to the warranty obligations set forth in the Contract Documents.

## 23. ROYALTIES, LICENSES, AND PATENTS

- a. The CMAR shall pay all royalties and license fees that may be required as a result of the CMAR's prosecution of the Work.
- b. To the fullest extent permitted by law, the CMAR's obligations to indemnify, defend, and hold harmless the Indemnified Parties (as that term is defined in Section 62, below) pursuant to Section 62, below, shall extend and apply to any and all claims, damages, liabilities, lawsuits, civil penalties, losses, and expenses, including without limitation attorneys' fees, that arise out of, result from, or are in any way related to claims for infringement of copyright and/or patent rights when the Fault (as that word is defined in Section 62, below) of the CMAR or its Derivative Parties (as that term is defined in Section 62, below) is a proximate cause of the claim, damage, liability, lawsuit, civil penalty, loss, or expense asserted, subject to the following:
  - i. The CMAR's indemnity, defense, and hold harmless obligations set forth in Subsection 23.b., above, shall not apply when the claim for infringement of copyright and/or patent rights arises out of, results from, or is related to a particular design, process, or product of a particular manufacturer or manufacturers that is required by the Contract Documents or Construction Documents, or where the copyright and/or patent

violation(s) are contained in separate drawings, specifications, or other documents prepared by the Owner or the Project Designer.

- ii. The exception set forth in Subsection 23.b.i, above, shall not apply if the CMAR and/or its Derivative Parties become aware of such infringement and fail to promptly furnish information about such infringement to the Owner or the Project Designer.
- iii. Nothing contained in this Subsection 23.b. shall require the CMAR to indemnify, defend, or hold harmless the Indemnified Parties against the negligent acts of one or more of the Indemnified Parties.

#### 24. PERMITS, INSPECTIONS, FEES, REGULATIONS

- a. The CMAR shall give all notices and comply with all laws, ordinances, codes, rules, and regulations bearing on the conduct of the Work under the Master Agreement and the other Contract Documents. If the CMAR observes that the drawings and specifications are at variance therewith, it shall promptly notify the Project Designer and the Owner in writing. Any necessary changes required after contract award shall be made by Change Order. If the CMAR performs any Work knowing it to be contrary to such laws, ordinances, codes, rules, and/or regulations, and without such written notice to the Project Designer and the Owner, it shall bear all cost arising therefrom. Additional legal requirements implemented after bidding will be subject to equitable adjustments to any GMP.
- b. All Work under this Master Agreement and the other Contract Documents shall conform to the North Carolina State Building Code and other State, local, and federal laws as are applicable. During construction, the cost of all required regulatory agency inspections under State, local, and federal laws shall be the responsibility of the CMAR and its Subcontractors.
- c. Costs for re-inspections by the City of Raleigh, other regulatory agencies, or by the Owner's inspection agents, to the extent attributable to the acts and/or omissions of the CMAR and/or its Subcontractors, shall be the responsibility of the CMAR and its Subcontractors, and not recoverable as a Cost of the Work.
- d. The CMAR shall be responsible for obtaining all permits required for the construction Work that have not already been obtained by the Owner or the Project Designer, including, but not limited to, the following permits: North Carolina Department of Environmental Quality Erosion Control Permit, North Carolina Department of Environmental Quality NPDES NCG01 permit, Wake County Pool/Aquatics permit, City of Raleigh Development Services site permits, City of Raleigh Development Services Building permits, City of Raleigh Development Services Demolition Permit. The CMAR shall be responsible for all tasks associated with obtaining these permits, including but not limited to the following tasks: completing any and all applicable forms; providing all information required by authorities having jurisdiction over permit issuance, such as the names, license numbers, and other pertinent information for the CMAR and its First-Tier Subcontractors; installing tree protection fencing on the Project site as shown on the Construction Documents; conducting tree protection inspections and pre-construction meetings at the Project site; paying the permit fees; and physically taking possession of the permits. Additionally, upon request of the Owner, the CMAR shall be responsible for physically taking possession of permits applied for by the Owner or the Project Designer. The CMAR shall use the permit allowance established in an Interim GMP or Final GMP to pay for any permit fees at cost; no markup for overhead or profit shall be allowed for obtaining permits. The CMAR shall only become entitled to reimbursement for permit fees from the permit allowance upon submission to the Owner of documentation of the permit fees actually incurred by the CMAR and approval of the submission by the Owner in its sole discretion.

#### 25. CONDUCT AND USE OF PREMISES

- a. The CMAR shall confine its apparatus and the apparatus of its Subcontractors, the storage of materials, and the operations of its employees and the employees of its Subcontractors to limits as indicated by law, ordinances, permits, or directions of the Project Designer and the Owner's

Representative and shall not exceed these established limits in its operations and the operations of its Subcontractors.

- b. The CMAR shall not load or permit any part of the Project to be loaded with a weight that will endanger the integrity or safety of the Project or any portion thereof.
- c. The CMAR shall enforce the Project Designer's and the Owner's Representative's instructions regarding signs and advertisements.
- d. The CMAR, its employees, its Subcontractors, and their respective employees shall not possess or carry, whether openly or concealed, any gun, rifle, pistol, or explosive on any property owned by the Owner. This includes firearms locked in containers, vehicles, or firearm racks within vehicles.
- e. The CMAR, its employees, its Subcontractors, and their respective employees are prohibited from profane, lewd, obscene, or offensive conduct or language, including without limitation engaging in sexual harassment.
- f. The CMAR, its employees, its Subcontractors, and their respective employees shall not manufacture, transmit, conspire to transmit, possess, use, or be under the influence of any alcoholic or other intoxicating beverage, narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana, anabolic steroids, or other controlled substance, or possess, use, transmit, or conspire to transmit drug paraphernalia on any property owned by the Owner, except pursuant to a drug prescription by a physician currently licensed to practice medicine by the North Carolina Medical Board.
- g. Smoking or use of any tobacco product is prohibited in any enclosed or occupied facility related to the Project at all times, whether such facility is permanent or temporary. The use of tobacco products is prohibited at all times on all sites routinely occupied by staff of the Owner and/or the Project Designer and in enclosed areas of unoccupied sites. An enclosed area for construction projects shall be defined as any dried-in area as designated by the Project Designer.
- h. The CMAR, its employees, its Subcontractors, and their respective employees shall not solicit from or sell anything within the Owner's facilities.
- i. Operators of all commercial vehicles on any property owned by the Owner shall be subject to post-accident, random, reasonable suspicion, and follow-up testing for drugs and alcohol.
- j. The CMAR shall at all times enforce strict discipline and good order among its employees and shall not employ any unfit person or anyone not skilled in the task assigned to it. The CMAR shall ensure that each Subcontractor enforces strict discipline and good order among its employees and shall require that each Subcontractor not employ any unfit person or anyone not skilled in the task assigned to it. The Owner may require the CMAR to remove any employee or Subcontractor or Subcontractor employee the Owner deems incompetent, careless, or otherwise objectionable.

## 26. CUTTING, PATCHING, AND DIGGING

- a. The CMAR shall ensure satisfactory performance of all cutting, fitting, or patching that may be required to (i) make the construction Work come together properly and/or (ii) fit the construction Work to receive or be received by the work of other Subcontractors or separate contractors shown upon or reasonably implied by the drawings and specifications, as the Project Designer may direct.
- b. Any cost brought about by defective or ill-timed construction Work shall be borne by the party responsible therefore.

- c. No Subcontractor shall endanger any construction Work or the work of any other Subcontractor by cutting, digging, or other means, nor shall any Subcontractor cut or alter the construction Work or the work of any other Subcontractor without the written consent of the Project Designer and the affected Subcontractor(s).

## 27. UTILITIES, STRUCTURES, SIGNS

- a. Prior to the operation of permanent systems, the CMAR will cooperate with the Owner to arrange for temporary power, lighting, water, and heat to maintain space temperature above freezing, as necessary and required for construction operations. Utility charges for temporary power, lighting, water, and heat shall be paid by the CMAR as a General Conditions expense until Substantial Completion of the Project.
- b. The CMAR shall provide or arrange for necessary and adequate apparatus and facilities for water, electricity, gas, oil, sewer, heat, and other utility services, which may be necessary and required for completion of the Project. Any permanent meters installed shall be listed in the CMAR's name until its construction Work is deemed substantially complete.
- c. Coordination of the work of the utility companies during construction is the sole responsibility of the CMAR.
- d. Any and all permanent utility meters listed in the name of the CMAR shall be re-listed in the Owner's name on the day following Substantial Completion, and the Owner shall pay for utility services related to such meters after that date.
- e. The Owner shall be reimbursed for all metered utility charges, except for utility charges associated with completion of minor punch list items, used by the CMAR or its Subcontractors after Substantial Completion and prior to Final Completion and acceptance of the construction Work.
- f. The CMAR shall have the permanent building systems in sufficient readiness for furnishing temporary climatic control at the time any under-construction building to include conditioned air is enclosed and secured. The HVAC systems shall maintain climatic control throughout the enclosed portion of the building sufficient to allow completion of the interior finishes of the building. A building shall be considered enclosed and secured when windows, doorways (exterior, mechanical, and electrical equipment rooms), and hardware are installed; and other openings have protection, which will provide reasonable climatic control. The appropriate time to start the mechanical systems and climatic condition shall be jointly determined by the CMAR and the Project Designer. Use of the equipment in this manner shall in no way affect the warranty requirements of the CMAR.
- g. The CMAR shall coordinate the construction Work so that any under-construction building's permanent power wiring distribution system shall be in sufficient readiness to provide power as required by the HVAC Subcontractor for temporary climatic control.
- h. The CMAR shall coordinate the construction Work so that any under-construction building's permanent lighting system shall be ready at the time the Subcontractors begin final interior painting and other final interior finishes and shall provide adequate lighting in those areas where other interior painting and finishing is being performed.
- i. The CMAR shall be responsible for its permanently fixed service facilities and systems in use during progress of the construction Work. The following procedures shall be strictly adhered to:
  - (1). Prior to acceptance of construction Work by the Owner, the CMAR shall coordinate the removal and replacement of any parts of the permanent building systems damaged through use during construction.
  - (2). Temporary closures or filters shall be installed in each of the heating and air conditioning units and at each return grille during construction. New filters shall be installed in each unit prior to the Owner's acceptance of the construction Work.

- (3). Extra effort shall be maintained to keep any under-construction building and the site adjacent to any under-construction building clean. The air systems shall not be operated if finishing and site construction Work operations are creating dust that would be considered detrimental to any under-construction building's system operation and future occupancy.
  - (4). It shall be understood that any warranty on equipment presented to the Owner shall extend from the date of Substantial Completion. The cost of maintaining the equipment during operation in the pre-Substantial Completion finishing stages of construction shall be borne by the Subcontractor whose system is utilized.
  - (5). The CMAR shall ensure that all lamps are in proper working condition at the time of final Project acceptance.
- j. The CMAR shall provide, if required and where directed, toilet facilities and shall furnish and install all water closets required for a complete and adequate sanitary arrangement. These facilities shall be available to the Subcontractors on the job and shall be kept in a neat and sanitary condition at all times. Chemical toilets are acceptable.
  - k. The CMAR shall erect one construction sign on the Project and may erect other signs if approved by the Owner in writing. Specifications for the sign(s)' fabrication and installation are included in the Construction Documents. The sign(s) shall be of sound construction and shall be neatly lettered. As approved by the Owner, the sign(s) shall bear the names or logos of the participants on the Project, including the CMAR's name and the name of the Project Designer and its consultants. Directional signs may be erected on the Owner's property subject to the written approval of the Owner with respect to size, style, and location of such directional signs. Such signs may bear the name of the CMAR and a directional symbol. All signs permitted hereunder must comply with all City of Raleigh sign, appearance, and traffic ordinances. No other signs shall be permitted within the Project site except by permission of the Owner in writing.

28. CLEANING UP

- a. The CMAR shall ensure that the Project site is reasonably free from rubbish at all times and shall remove debris from the site on a timely basis or when directed to do so by the Owner's Representative. The CMAR shall provide onsite refuse container(s) for its use and the use of all Subcontractors. The CMAR shall ensure that each Subcontractor removes its rubbish and debris from any under-construction building and surrounding area on a daily basis. The CMAR shall ensure that any under-construction building is broom cleaned as necessary to minimize dust and dirt accumulation.
- b. The CMAR shall provide and maintain suitable all-weather access to any under-construction building.
- c. Before final inspection and acceptance of the construction Work, the CMAR shall ensure that all portions of the construction Work are clean, including glass, hardware, fixtures, masonry, tile and marble (using no acid). The CMAR shall clean and wax all floors as specified, and completely prepare the building and site for use by the Owner, with no cleaning required by the Owner.
- d. The CMAR shall provide sufficient containers and shall manage and direct waste disposal by all Subcontractors to support the Project Designer's and the Owner's efforts to achieve any LEED certification or other sustainability goals required by the Contract Documents.
- e. The CMAR shall promote the use of green cleaning products by all Subcontractors for use throughout the construction period to support the Project Designer's and Owner's efforts to achieve LEED silver certification or other sustainability goals required by the Contract Documents.

29. PROTECTION OF WORK, PROPERTY, AND THE PUBLIC

- a. The CMAR shall comply with all laws, ordinances, codes, rules, regulations, safety standards, and licensing requirements that are applicable to the practice and/or conduct of its business,

including those of Federal, State, and local agencies having jurisdiction and/or authority over the CMAR and/or the construction Work.

All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate state inspector which customarily requires the labeling, re-examination listing, or identification marking of the appropriate safety standard organization, such as the American Society of Mechanical Electrical Engineers for pressure vessels, the Underwriters' Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies, or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type(s) of devices offered and furnished. Further, all items furnished by the Contractor shall meet all requirements of the Occupational Safety and Health Act (OSHA), as well as all state and federal requirements relating to clean air and water pollution.

- b. The CMAR must comply with Occupational Safety and Health Standards for General Industry, 29 CFR 1926. In addition, the CMAR shall comply with all applicable occupational health and safety and environmental rules and regulations.
- c. The CMAR shall effectively manage its safety and health responsibilities, including but not limited to the following:
  - (1). Accident Prevention:  
Prevent injuries and illnesses to their employees and others on or near their job site. The CMAR's managers and supervisors shall ensure personnel safety by strict adherence to established safety rules and procedures.
  - (2). Environmental Protection:  
Protect the environment on, near, and around their work site by compliance with all applicable environmental regulations.
  - (3). Employee Education and Training:  
Provide education and training to all CMAR and Subcontractor employees before they are exposed to potential workplace or other hazards as required by specific OSHA Standards.
- d. During construction, the CMAR shall be responsible for the entire Project site and provide all necessary protections as required by (i) the Owner's Representative and/or the Project Designer and (ii) any and all laws or ordinances governing such conditions. The CMAR shall be responsible for any damage to the Owner's property and shall make good such damages. Consistent with the indemnification provision in Section 62, below, and subject to the benefits of any Owner-controlled or Owner-provided insurance that covers the interests of the CMAR and its Subcontractors, the CMAR shall be responsible for protecting the public and those on the Project site against all bodily injury or harm, and protecting against any damage to the construction Work, to adjacent property, and to the property of others. The CMAR shall have access to the Project site at all times during construction. Subject to its ultimate contractual responsibility for protection of the construction Work, property, and the public under this Master Agreement, and subject to any non-delegable duties imposed by law, the CMAR may delegate to Subcontractors these obligations of the CMAR under this Master Agreement, and may obtain indemnification and insurance from Subcontractors as the CMAR deems reasonable and prudent.
- e. The CMAR shall provide cover and protect all portions of the Project when the construction Work is not in progress, provide and set all temporary roofs, covers for doorways, sash and windows, and all other materials necessary to protect all the construction Work.
- f. Any construction Work damaged through the lack of proper protection or from any other cause shall be repaired or replaced without extra cost to the Owner.

- g. Any construction site security cameras that may be installed on the Project site by the CMAR for the Project shall be the sole and exclusive responsibility of the CMAR and must be completely self-sufficient system(s). Under no circumstance may any construction cameras installed, operated, and/or monitored by the CMAR or any Subcontractor be connected to any existing or new camera systems, IT network equipment, or related infrastructure owned and maintained by the Owner. At all times, any and all CMAR- and/or Subcontractor-placed temporary construction site security cameras shall be used in a professional and ethical manner in accordance with the Owner's policies and all applicable local, state, and federal laws, ordinances, and regulations. The CMAR shall provide the Owner with access to video footage and/or pictures recorded by the CMAR's site security cameras upon request by the Owner.
- h. Any construction site security cameras to be placed on the Project site by the CMAR must first be reviewed and approved by the Owner's Representative. At a minimum, the CMAR shall provide the following to the Owner in connection with any proposal by the CMAR to install construction site security cameras:
  - (1). Marked-up construction area site plan indicating quantity of cameras to be installed, specific locations, and mounting method(s). All supports and attachment points are the responsibility of and must be provided by the CMAR.
  - (2). Specific information and details on the type of security surveillance system to be installed, including but not limited to the system's manufacturer, features, specifications, means of power, and self-sustaining features.
  - (3). Recommended procedures for the CMAR's handling of requests from the Owner for access to security video footage and/or pictures.
  - (4). Documentation describing how the security cameras would be monitored and a notification list of individuals that would be called in the event of an incident. Include any recording timeframes and durations.
  - (5). Surveillance system maintenance procedures and protocols, including without limitation, details on how often the security cameras and system(s) will be checked for functionality and operability to ensure that the security cameras do not become inactive.
- i. No fires of any kind will be allowed inside or around the Project operations during the course of construction without special written permission from the Owner's Representative, which shall be granted or denied in its sole discretion.
- j. The CMAR shall protect all trees and shrubs designated to remain in the vicinity of the Project operations by having substantial boxes built around such trees and shrubs. The CMAR shall barricade all walks, roads, etc., as directed in writing by the Project Designer to keep the public away from the construction site. All trenches, excavations, and other hazards in the vicinity of the construction Work shall be well-barricaded and properly lighted at night.
- k. The CMAR shall bear primary and ultimate responsibility for safety at the Project site and shall develop and implement a Project Safety Program in accordance with all applicable laws and regulations. Prior to commencement of any construction Work at the Project, the Project Designer and the Owner shall review the CMAR's Safety Program and may impose additional safety measures to be appended to and included in such program as they may deem appropriate. The CMAR shall ensure that all Subcontractors comply with the CMAR's Safety Program, including without limitation all measures that exceed state or federal safety requirements and any additional safety measures required by the Project Designer and/or the Owner. The CMAR shall report to the Owner, as part of each monthly report, any safety violations and any actions taken to protect the safety of persons and property engaged in the Project. The CMAR shall require that all Subcontractors meet the CMAR's Safety Program requirements including where those requirements meet or exceed State or federal requirements.

- l. The CMAR shall be ultimately responsible for all necessary safety measures for the protection of all persons on the job and shall 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 construction Work. The CMAR shall clearly mark or post signs warning of existing hazards, and shall barricade excavations, elevator shafts, stairwells, and similar hazards. The CMAR shall protect against damage or injury resulting from falling materials and shall maintain in good working order all protective devices and signs throughout the progress of the construction Work. Any construction fencing installed on the Project site must be coordinated with the Owner's Representative prior to installation and installed per the Contract Documents.
- m. The CMAR shall, at a minimum, 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 General Statutes of North Carolina 95-126 through 155.
- n. The CMAR shall designate a responsible member of its organization as Project Safety Officer, whose duties shall include overall management of the Safety Program for the Project and for accident prevention on the Project. Prior to commencement of any construction Work at the Project, the CMAR shall provide the Owner and the Project designer with (i) the name and qualifications of the CMAR's Project Safety Officer and (ii) the name and qualifications of each Subcontractor's onsite safety officer. The CMAR's Project Safety Officer shall manage the efforts of all Subcontractor safety programs.
- o. In the event of emergency affecting the safety of life, the protection of construction Work, or the safety of adjoining properties, the CMAR is hereby authorized to act at its own discretion, without further authorization from anyone, to prevent such threatened injury or damage. Any compensation claimed by the CMAR on account of such action shall be determined as provided in this Master Agreement.
- p. If reasonable precautions are inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created on the site by the CMAR or its Subcontractors, the CMAR shall, upon recognizing the condition, immediately stop construction Work in the affected area and report the condition to the Owner and the Project Designer verbally and in writing. The Owner shall take responsibility for remediation of the material or substance from the Project site. If the CMAR claims its progress in completing the Project is delayed because of the Owner's remediation of the Project site, the CMAR shall file notice and a claim in accordance with this Master Agreement.
- q. Prior to the commencement of any construction Work at the Project site, the CMAR shall submit for approval by the Owner and the Project Designer procedures for addressing any undocumented archaeological conditions, such as unmarked burial sites and/or remains, archaeological artifacts, and/or other items of historical significance, that may be encountered during the construction Work. Such procedures shall include, without limitation, provisions for coordination and work stoppage should archaeological artifacts be encountered, corresponding protections for such artifacts, and additional excavations where required and shall comply with all applicable local, state, and federal laws, including without limitation the provisions of G.S. 70-29 through G.S. 70-33.

30. SEDIMENTATION POLLUTION CONTROL ACT OF 1973

- a. Any land-disturbing activity performed by the CMAR and/or its Subcontractors in connection with the Project shall comply with all erosion control measures set forth in the Construction Documents and any additional measures which may be required in order to ensure that the Project is in full compliance with the SPCA.
- b. Upon receipt of notice that a land-disturbing activity is in violation of the SPCA, the CMAR, at its sole cost, shall be responsible for ensuring that any and all necessary steps or actions are taken promptly to bring the Project into compliance with the SPCA .

- c. To the fullest extent permitted by law, the CMAR's obligations to indemnify, defend, and hold harmless the Indemnified Parties pursuant to Section 62, below shall extend and apply to any and all claims, damages, liabilities, lawsuits, civil penalties, enforcement actions, losses, and expenses, including without limitation attorneys' fees, that arise out of, result from, or are in connection with a failure to comply with all applicable legal requirements of the SPCA when the Fault of the CMAR or its Derivative Parties is a proximate cause of the claim, damage, liability, civil penalty, loss or expense indemnified. Notwithstanding the foregoing, nothing herein shall require the CMAR to indemnify the Indemnified Parties against any such claims, damages, liabilities, lawsuits, civil penalties, enforcement actions, losses, or expenses arising out of, resulting from, or in connection with any negligent acts of one or more of the Indemnified Parties.

### 31. INSPECTION OF THE WORK

- a. It is a condition of this Master Agreement that the construction Work shall be subject to inspection during normal working hours by the Project Designer, the Owner Representative and/or other designated official representatives of the Owner, and those persons required by state law to test special construction Work for official approval. The CMAR shall therefore provide safe access to the construction Work at all times for such inspections.
- b. All instructions to the CMAR regarding the interpretation of the Construction Documents shall be made only by or through the Project Designer or its designated Project representative. Observations made by official representatives of the Owner shall be conveyed to the Project Designer for review and coordination prior to issuance to the CMAR.
- c. The CMAR shall maintain an adequate inspection system and perform all inspections to ensure that the construction Work performed under this Master Agreement, including that of all Subcontractors, is performed per the requirements of the Contract Documents. The CMAR shall maintain complete inspection records and shall make them available to the Owner upon request. All materials and equipment furnished for the Project and all construction Work done that is not in accordance with the Construction Documents or that is otherwise defective will be rejected. The CMAR shall promptly replace or correct construction Work, at its sole expense and without charge to the Owner, that is found to be in non-conformance with the Construction Documents unless the Owner, in its sole discretion in the furtherance of its interests, consents in writing to accept the defective construction Work in its as-is condition, subject to an appropriate downward adjustment in the CMAR Contingency.
- d. Where special inspection or testing is required either by virtue of (i) any federal, state, or local laws, (ii) instructions of the Project Designer, (iii) specifications in the Construction Documents, and/or (iv) applicable codes, the CMAR shall give adequate notice to the Project Designer and Owner of the time set for such inspection or test, if the inspection or test will be conducted by a party other than the Project Designer. Such special tests or inspections will be made in the presence of the Project Designer or its designated Project representative and the Owner's Representative or its designated agent, and it shall be the CMAR's responsibility to serve ample notice of such tests or inspections.
- e. All laboratory tests shall be paid by the Owner unless provided otherwise in the Contract Documents. Notwithstanding the foregoing sentence, the CMAR shall pay for laboratory tests to establish design mix for concrete and asphalt (the cost of which shall be reimbursable from the Owner) and for additional tests necessary to prove compliance with Contract Documents after materials have previously tested deficient by the Owner's testing laboratory (the cost of which shall be borne solely by the CMAR, except in cases in which the CMAR demonstrates that the Owner's testing laboratory did not follow the appropriate ASTM or other required testing procedure(s)).
- f. The CMAR shall perform quality control inspections on the construction Work of the Subcontractors to guard the Owner against defects and deficiencies in such construction Work and shall coordinate its activity with the on-site duties of the Project Designer. The CMAR shall designate and appoint a "Quality Control Manager" to supervise and manage the quality control

activities for the Project, including that of the Subcontractors. The CMAR and its Quality Control Manager shall ensure that the construction Work meets the requirements of the Construction Documents. The CMAR shall advise the Project Designer and Owner of any apparent variation and/or deviation from the intent of the Construction Documents and shall take any and all necessary actions to correct such variations and/or deviations.

- g. The CMAR shall maintain a daily log of construction summarizing the construction activities performed for each day that construction Work is in progress. This daily log shall note daily job-site weather conditions, Subcontractor work force levels and equipment use, all work performed, all meetings conducted, all inspections and quality control activities with any deficiencies observed or correction notice issued, all testing results, all material deliveries, all instances of environmental protection non-compliance, all changes, all field directives, all safety activities, incidents, and/or concerns, and any other information to accurately depict the construction Work performed on that date. The CMAR shall provide sets of all daily logs and inspection reports, in three-ring binder form, to the Project Designer and the Owner as part of the bi-monthly job progress meetings described in Subsections 34.o. and 34.p., below.
- h. The Owner reserves the right to independently contract for compliance inspection and testing services. The CMAR shall incorporate and coordinate its services with the activities of inspections agents provided by the Owner in general accordance with the State of North Carolina, Department of Administration, State Construction Office's "Special Inspections Guidelines."
- i. The CMAR shall record and effectuate the correction of any and all deficiencies identified and submitted to the CMAR by the Owner and the Project Designer, in addition to deficiencies recorded and maintained by the CMAR and its Quality Control Manager. A master construction deficiency log shall be maintained by the CMAR and its Quality Control Manager. A construction deficiency notice system shall be implemented by the CMAR to document and record quality control activities during construction of the Project.
- j. The Project Designer shall, in all cases, make final interpretation of the Construction Documents and rule on the compliance of the construction Work with the Construction Documents.
- k. Should any construction Work be covered up or concealed prior to required inspection and approval by the Project Designer, such construction Work shall be uncovered or exposed for inspection, if so requested by the Project Designer in writing. Inspection of the construction Work will be made promptly upon notice to the CMAR. Any and all costs incurred by the CMAR in uncovering, repairing, replacing, recovering, and restoring to design condition any portion of the construction Work that has been covered or concealed prior to required inspection and approval by the Project Designer shall be borne solely by the CMAR.
- l. If any portion of the construction Work has been covered which the Project Designer has not specifically requested to observe prior to being covered, the Project Designer or Owner's Representative may request to see such construction Work and it shall be uncovered by the CMAR. If such construction Work is found to be in accordance with the Construction Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such construction Work is found not to be in accordance with the Construction Documents, then the CMAR shall bear all such costs.

## 32. TIME OF COMPLETION, EXTENSION OF TIME

- a. The CMAR shall commence its provision of services under this Master Agreement on the date specified in an applicable Notice to Proceed issued by the Owner and shall fully complete all services hereunder and accomplish the substantial and final completion of the Project in accordance with the following target schedule(s), which shall be adhered to unless otherwise agreed to by the Owner in writing:
  - (1). The CMAR Pre-Construction Services Scope of Work, attached hereto as Attachment A, contains the schedule milestones and associated deliverables for the Pre-Construction Services phase of the Project.

(2). If agreed upon by the parties, future construction scope(s) of Work, to be attached hereto and incorporated herein by reference as amendment(s) to this Master Agreement, shall contain the schedule milestones and associated deliverables for the construction phase(s) of the Project.

b. The Project shall be brought to Substantial Completion and Final Completion within the time prescribed by the Project schedule that is updated and established at the time the Final GMP is accepted by the Owner in writing, which shall be in accord with the target schedule(s) set forth in the construction scope(s) of Work to be attached hereto and incorporated herein by reference as amendment(s) to this Master Agreement, as such target schedule(s) may be extended by Change Order.

c. If the CMAR is delayed at any time in the progress of its construction Work by any act or negligence of the Owner or the Project Designer, or by any employee of either, by Owner-Requested Changes in the construction Work, by labor disputes at the Project site, by abnormal weather conditions not reasonably anticipated for the locality where the construction Work is performed, by unavoidable casualties, by any causes beyond the CMAR's control, or by any other causes which the Project Designer and the Owner determine may justify the delay, then the contract time may be extended by Change Order for the time which the Project Designer and the Owner may determine is reasonable. Contract defaults and other breaches of any legal duty owed by a Subcontractor shall not be grounds for a time extension under this Master Agreement.

Time extensions will not be granted for rain, wind, snow, or other natural phenomena of normal intensity for the locality where construction Work is performed. Any time extensions for weather delays are excusable, not compensable, and shall not entitle the CMAR to an increase in any GMP, the CMAR's General Conditions, or the CMAR Fee. For purposes of this Master Agreement, "bad weather days" are defined below and are restricted to days when construction Work activities on the Project schedule's then-critical path are unable to proceed:

- (1). Days on which precipitation exceeds 0.10 inch of rain equivalent as measured at the beginning of the work-day by the precipitation gauge maintained at the Project site.
- (2). Days on which the average temperature at the Project site (a) measures less than 40 degrees Fahrenheit or below product specification constraints related to temperature (examples include, but are not limited to, placing concrete, roofing applications, fireproofing, waterproofing application, exterior envelope installation, and masonry activities) or (b) in excess of 100 degrees Fahrenheit.
- (3). Days on which prior to building dry-in conditions, Project site conditions such as mud, pooling of water, ice, or standing snow prevent the performance of construction activities such as, but not limited to, mass grading, building pad grading, excavations, and backfill operations.
- (4). Days on which wind speeds, as measured by a gauge located at the Project site, exceed those wind speeds that are permissible to use equipment or to perform certain construction tasks safely. Examples may include not being able to safely use crane(s) or other aerial equipment for erection of the building structure.

The Master Agreement allows for bad weather days for each month as presented below.

January: 17 days	May: 7 days	September: 5 days
February: 15 days	June: 4 days	October: 3 days
March: 5 days	July: 5 days	November: 9 days
April: 4 days	August: 5 days	December: 10 days

The CMAR's daily logs, required pursuant to Subsection 31.g., above, shall reflect the effect of the weather on the progress of the construction Work and shall be initialed by the Project Designer. For construction activities associated with the critical path, if the total accumulated number of working days in any given month that are lost to bad weather exceeds the total number of normal bad weather days for that particular month as listed in the table above, then the dates of Substantial Completion and Final Completion will be extended by the difference. Dates for Substantial Completion and Final Completion will not be extended for actual bad weather days suffered during a particular month which fail to exceed the total number of normal bad weather days for that month as is listed in the table above.

If the CMAR considers that the critical path of the Project is delayed due to bad weather days, the CMAR shall identify in writing to the Project Designer and the Owner the adverse weather condition(s) affecting the critical path activities, the specific nature of the critical path activities affected, the number of days lost, and the identity of each trade Subcontractor affected. Where more than one adverse weather condition presented above exists on any give calendar day, only one calendar day extension of time shall by granted.

The CMAR shall present the Owner and the Project Designer with requests for additional contract time arising from bad weather days at the last bi-monthly progress meeting of each calendar month or at intervals not greater than 30 days. The Project Designer shall subsequently provide written notice of its approval or denial of each such request at the next scheduled bi-monthly progress meeting.

- d. It is the CMAR's responsibility to meet the required construction completion dates, as such may be extended by the Owner in accordance with this Master Agreement. The Owner and the CMAR also agree that it is in their best interests and the interests of the Project to complete the Project ahead of schedule, if possible. It is the responsibility of the CMAR to take action in order to meet its contractual responsibility to complete the Project on time or to mitigate liquidated damages payable to the Owner, including, by way of example and not limitation, directing Subcontractors to work overtime, increase their labor forces or staffing, work out of sequence, or take other measures as deemed appropriate by the CMAR.
- e. If the CMAR finds that the construction schedule is likely to be impacted by an action or inaction on the part of the Owner, the CMAR must review the situation with the Owner in a timely manner, and if necessary, request a Change Order for such portion of the construction Work prior to taking any action which has a time and/or cost impact.

With the exception of requests for extension of time arising from bad weather days, a request for extension of time pursuant to this Subsection 32.e. shall be made in writing to the Owner and the Project Designer within ten (10) days following the date the CMAR becomes aware of the occurrence of the event that is the cause of the delay; otherwise, any such claim shall be deemed irrevocably waived by the CMAR. In the case of a continuing delay, the CMAR shall notify the Owner and the Project Designer in writing of the delay (and request an extension of time because of this delay) within ten (10) days of the beginning of the delay, and only one claim shall be necessary.

- f. Reserved
- g. The CMAR shall notify its Surety in writing of each extension of contract time granted by Owner.
- h. The schedule for all responses by the Project Designer to submittals by the CMAR shall be part of the Project schedule, as amended from time to time in accordance with this Master Agreement. No request for a time extension shall be allowed on account of the alleged failure of the Project Designer to process any type of submittals, furnish drawings, or provide instructions unless and

until the CMAR provides the Owner and the Project Designer with written notice in strict accordance with Subsection 32.e.

### 33. DELAYS, DAMAGES FOR DELAY

Time is of the essence of this Master Agreement and a material consideration thereof. Should the CMAR fail to achieve Substantial Completion and/or Final Completion within the times prescribed by the Project schedule that is established at the time the Final GMP is accepted by the Owner in writing (or such later date as may result from extension of time as allowed by the Contract Documents), then the CMAR shall be liable to the Owner for delay damages as set forth herein. The CMAR acknowledges that its failure to deliver the Project within the times required for achieving Substantial Completion and/or Final Completion would damage the Owner, but also acknowledges that proof of such damages would be difficult and costly for both parties to determine, and that the injury to the Owner which could result from a failure of the CMAR to achieve Substantial Completion and/or Final Completion on-schedule is uncertain and cannot be computed with exact precision. In order to liquidate in advance the delay damages that the Owner will be entitled to recover from the CMAR in the event of non-excused delays in the Substantial Completion and/or Final Completion of the Project, the CMAR agrees that it will pay, and that the Owner may retain from the funds otherwise to be paid to the CMAR for the construction Work, the following damages, which the CMAR agrees represent a reasonable and proper measure of damages that the Owner would sustain by failure of the CMAR to achieve the completion date(s) stipulated in the Contract Documents, and as Owner's sole and exclusive remedy for any such delays:

- (1). For each day in excess of the contract time for achieving Substantial Completion, as set forth in the Project schedule established at the time the Final GMP is accepted by the Owner in writing (or such later date as may result from one or more extensions of time approved by the Owner as allowed by the Contract Documents), the CMAR shall pay the Owner, as Substantial Completion Liquidated Damages and not as a penalty, the Owner's loss-of-use damages, additional engineering expenses, and other fees on a per calendar day basis in an amount to be specified in future, agreed-upon construction scope(s) of Work to be attached hereto and incorporated herein by reference as amendment(s) to this Master Agreement.
- (2). In addition to the foregoing Substantial Completion Liquidated Damages, the Owner shall be entitled to recover extended utility charges as expressly set forth elsewhere in this Master Agreement.
- (3). The CMAR shall not use its unexpended CMAR Contingency to pay Liquidated Damages. The CMAR may, in its discretion, provide in its construction subcontracts that its Subcontractors will be liable for liquidated delay damages, in the amount of the Liquidated Damages or in different amounts. Notwithstanding anything in this Master Agreement that might be construed to the contrary, in the event the CMAR deducts Liquidated Damages from a particular construction subcontract, thereby reducing the sum payable under that subcontract, the Final GMP will not be reduced by the amount withheld from that Subcontractor.
- (4). In addition to the above-described Substantial Completion Liquidated Damages, additional Final Completion Liquidated Damages, in per calendar day amount(s) to be specified in future, agreed upon construction scope(s) of Work to be attached hereto and incorporated herein by reference as amendment(s) to this Master Agreement, shall be assessed for each day in excess of ninety (90) days of achieving Substantial Completion that the CMAR fails to submit all required closeout documents as set forth in Sections 40 and 55 of this Master Agreement.

This provision for Substantial Completion Liquidated Damages and Final Completion Liquidated Damages (collectively, "Liquidated Damages") does not bar Owner's right to enforce its other contractual rights and remedies under this Master Agreement, including without limitation the right to order the CMAR to accelerate the construction Work or the right to terminate the Master Agreement. Liquidated Damages represent the Owner's best effort at the commencement of the Master Agreement to estimate its reasonable, anticipated damages for delays and are neither intended to constitute nor should be construed to constitute a penalty. Notwithstanding the foregoing, the CMAR and the Owner waive claims against each other for any and all consequential damages arising out of or relating to the Contract

Documents and the Project, provided that such waiver shall not preclude the award of Liquidated Damages, when applicable, as set forth above.

The Owner shall be entitled to withhold payment otherwise due to the CMAR on account of Liquidated Damages. The CMAR and its Surety shall be liable to the Owner for the payment of any Liquidated Damages that are in excess of the remaining contract amount due the CMAR.

#### 34. CONSTRUCTION SUPERVISION AND SCHEDULE

- a. Throughout the progress of the construction Work, the CMAR shall maintain a competent and adequate full-time staff approved, by the Owner and the Project Designer, at the Project site to coordinate and provide adequate direction of the construction Work and to monitor progress of the Subcontractors on the Project at all times. The CMAR's on-site representatives shall manage the construction Work of the Subcontractors and coordinate the construction Work with the activities and responsibilities of the Owner, the Project Designer, and the CMAR to complete the Project in accordance with the Owner's cost, schedule, and quality requirements and objectives.
- b. It is understood that the designated and approved on-site CMAR representatives will remain on the job and in responsible charge for the Project as long as those persons remain employed by the CMAR, unless the Owner's Representative agrees otherwise in writing during the course of the Project. If a designated and approved on-site resident CMAR representative changes for any reason, a contract amendment shall be required. The Owner may request in writing that the CMAR promptly remove any individual staff member from the Project site for any reason.
- c. The CMAR shall establish an on-site organization and lines of authority in order to act on behalf of the CMAR and carry out the overall plans of the Project Team. The CMAR will coordinate with the on-site Subcontractors to provide the necessary on-site services for the construction activities and on-site requirements of the CMAR, Owner, and Project Designer.
- d. The CMAR shall establish and maintain a quality control program and provide a site Quality Control Manager as required in Subsection 31.f., above. The quality control program shall be discussed on a regular basis at CMAR/Subcontractor meetings and during CMAR/Owner/Project Designer bi-monthly progress meetings. Quality control reports and records shall be included in the CMAR's daily logs and in weekly and bi-monthly progress reports. The CMAR shall provide Project quality control for all construction activities, including that of all Subcontractors.
- e. The CMAR shall accept delivery and arrange for storage, protection, and security for any Owner-purchased materials, systems, and equipment that are a part of the construction Work until such items are turned over to the responsible installation Subcontractor(s).
- f. The CMAR shall provide a cost and resource loaded critical path method (CPM) schedule utilizing accepted standard computer-based software that is compatible with the Owner's project scheduling software. The CPM schedule shall be supported by detailed bid item cost that accurately total and reflect the progress shown for the associated schedule activities. The scheduling software shall allow for integration of all aspects of the Project and provide for coordination of all construction Work to be performed. The scheduling software used by the CMAR shall be capable of producing and coordinating logic developed network diagrams and tabular format reports.
- g. After acceptance of each GMP and issuance of an amendment to this Master Agreement attaching hereto and incorporating herein by reference an agreed-upon construction scope of work for any construction phase of the Project, including early delivery packages, and within fifteen (15) days of written Notice to Proceed for such construction phase of the Project, the CMAR shall submit a preliminary CPM schedule for inclusion in the Bid Packages consistent with the time frames submitted by the CMAR in each GMP.
- h. After contract award to Subcontractor(s) but prior to thirty (30) days from the date of the applicable Notice to Proceed, the CMAR shall obtain from the Subcontractors their respective construction Work activities and integrate them into the CMAR's overall Project construction schedule. At the time the Final GMP is accepted by the Owner in writing, the CMAR shall have developed the complete and final CPM schedule for the Project in the form of a network diagram using the

CMAR's logic and time estimates for each phase of the construction Work, to achieve Substantial Completion within the required contract time. The CMAR's scheduling obligations shall include coordinating and tracking the progress of the Owner's and the Project Designer's tasks and activities in relation to the Project schedule. Schedules shall also incorporate more detailed Owner events, LEED and commissioning activities, and durations as developed and provided to the CMAR by the Project Designer and the Owner.

- i. The CMAR shall promptly notify Owner of any delay that might impact construction. The CMAR shall make recommendations to the Owner and the Project Designer regarding strategies for overcoming any delay in the design of the Project that will affect the construction schedule.
- j. The Project schedule shall be drawn in a level of detail suitable for displaying all salient features of the Work, including but not limited to the placing of orders for materials, submission of shop drawings for approval, approval of shop drawings by the Project Designer and the Owner, delivery of materials, and all construction Work activities, inclusive of punch list items, agreed to by the Owner. Each construction Work activity shall be assigned a time estimate by the CMAR. One calendar day shall be the smallest time unit used. Data shall also be provided in Gantt form. This Project schedule may be a factor to be considered by the Project Designer and the Owner when evaluating the percentage of construction Work represented to be complete in each schedule of values.
- k. Upon completion of the network diagram(s), the CMAR shall generate a printout of the Project schedule based on the information supplied. In the event the Substantial Completion and/or Final Completion dates indicated in the Project schedule exceed the Substantial Completion and/or Final Completion dates established in the Contract Documents, then the CMAR shall review the logic and time estimates used to develop the plan, make changes in the logic and time estimates, and generate another computer run of the Project schedule showing Substantial Completion and Final Completion in accordance with the Contract Documents. This procedure shall be repeated as necessary to provide a plan and schedule to meet the Owner's requirements. All schedule submissions shall be both in hard copy and in electronic format.
- l. Within fifteen (15) days of each Interim GMP or Final GMP Notice to Proceed, the updated CPM schedule shall be submitted to the Project Designer and the Owner for review and approval. No application for payment will be processed until the Project CPM schedule is approved by the Owner. The CPM schedule shall clearly identify the Project and all activities necessary for completion of the construction Work, the duration for each activity, the calendar dates for the start and finish of each activity, and activities critical to the on-schedule completion of the Project. When approved by the Owner, the CPM schedule shall become the working plan and schedule for the Project and shall be provided to the CMAR for distribution to the Project Team. The CMAR shall distribute the approved Project CPM schedule(s) to all First-Tier Subcontractors and shall display same at the Project site.
- m. The CMAR shall review the plan and CPM schedule each week. An updated CPM schedule shall be furnished to the Owner and the Project Designer at the end of each month showing actual completed construction Work in relation to the entire Project. The form of updated CPM schedule to be used shall be approved by the Owner and shall be submitted with the CMAR's monthly invoice. The CMAR shall also develop and submit to the Owner and the Project Designer at the CMAR/Owner/Project Designer bi-monthly progress meetings a construction Work plan to include a two-week, thirty-day, and sixty-day look ahead.
- n. The CMAR shall provide regular monitoring of the CPM schedule as construction progresses, identify potential variances between scheduled and required completion dates, review the schedule for construction Work not started or incomplete, review the status of submittals and delivery of long-lead time deliveries, review the Owner's occupancy priorities, and take the action necessary to meet the required completion dates. The CMAR shall furnish to the Owner various schedules and updates setting forth planned and completed progress of the Project broken down by the various divisions or parts of the construction Work and by calendar days. The CMAR shall ensure that all schedules are prepared and updated in strict conformance with the Owner's requirements for formatting of reports for the Owner. The CMAR shall keep the Owner, the

Project Designer, and all First-Tier Subcontractors fully informed as to all changes and updates to the CPM schedule. The CMAR shall ensure that all schedules are prepared and updated in strict conformance with the Owner's requirements and for provision of one inclusive CPM schedule incorporating necessary lead times for actions required by the Owner and regulatory agencies (including the City of Raleigh), by the Designer, by the CMAR, by utility companies providing services or relocating service lines and facilities, by all Subcontractors, and for significant General Conditions activities, including but not limited to Raleigh City Council agenda submittals, permit and approvals applications, and review of interim and final plans, specifications, and Bid Packages.

- o. The CMAR shall schedule and preside over regular site coordination meetings with Subcontractors as conditions on the Project require, but at least weekly. In addition, the CMAR shall conduct bi-monthly progress meetings and other meetings as may be directed by the Owner, at which Subcontractors, the Owner, the Project Designer, other designated representatives, and the CMAR can discuss jointly such matters as progress, scheduling, and construction-related problems. The key management personnel for all affected Subcontractors shall be represented at these job progress conferences. The CMAR shall require attendance from other Subcontractors and material suppliers who can contribute toward maintaining required job progress. It shall be the principal purpose of these meetings to effect coordination, cooperation, and assistance in every practical way in order to ensure that the Project is progressing on-schedule and will be substantially completed within the specified contract time. The CMAR shall be prepared to assess progress of the construction Work and to recommend remedial measures for correction of progress as may be appropriate. The CMAR, with assistance from the Project Designer, shall be the coordinator of such meetings and shall preside thereover as the chair. The CMAR shall take and distribute complete minutes of meetings to all attendees and others as directed by the Owner within three (3) days of such meetings. Representatives of the Owner may attend any or all meetings, including without limitation any site coordination meetings between the CMAR and Subcontractors, and shall in any case receive all notices and minutes of meetings.
- p. The CMAR shall keep accurate and detailed written records of Project progress during all stages of construction in the form of daily logs as required by Subsection 31.g., above. The CMAR shall compile and submit to the Owner and the Project Designer the daily logs, in three-ring binder form, at the bi-monthly progress meetings.
- q. In addition to providing the Owner and the Project Designer copies of the daily logs at each bi-monthly progress meeting, the CMAR also shall submit to the Owner and the Project Designer a bi-monthly summary status report of the status of all key construction Work activities. The bi-monthly status report shall summarize the construction Work completed to date, work scheduled but not performed, and issues to be addressed, inclusive of information concerning the Subcontractors' construction Work.
- r. The CMAR shall submit to the Owner and the Project Designer at each of the CMAR/Owner/Project Designer bi-monthly progress meetings a summary status report of the status of all key construction Work activities. The bi-monthly status report shall describe major milestones achieved and slipped, including a discussion of each slippage. In addition to schedule information, the bi-monthly status report shall contain an overall summary of the financial status of the Project, with a cost control report with proposed solutions for resolution of any cost overruns, concerns, and/or issues. The bi-monthly status report shall contain a summary statement on the status of Change Orders for the Project, inclusive of potential Change Orders, approved Change Orders, rejected/voided Change Orders, and potential Change Orders which require the Owner's immediate attention. The bi-monthly status report shall contain a summary statement as to the status of shop drawings, submittals, and RFIs for the Project, inclusive of items requiring the Owner's and/or the Project Designer's immediate attention. The bi-monthly status report shall contain a summary statement as to the status of quality control/inspections for the Project including, but not limited to, number and type of inspections made, overall Project quality to date with status of CDNs and corrective actions, and any recommendations of the CMAR for corrective actions to be taken. The bi-monthly status report also shall include a safety/accident report.

- s. If the CMAR is behind schedule and issues a schedule update with negative float or late milestone dates, then not later than five (5) calendar days thereafter, the CMAR shall provide a written report of such condition to the Owner and the Project Designer and present them with a proposed written plan to re-sequence and reschedule the construction Work to achieve the agreed-upon Project completion dates. The plan shall indicate what measures the CMAR is taking to bring the construction Work back on-schedule and ensure that the Substantial Completion date is not exceeded.
- t. If any schedule update shows critical path construction Work thirty (30) or more days behind the Substantial Completion date required by the Contract Documents, then the CMAR shall prepare and submit to the Owner and the Project Designer a formal recovery schedule at the next scheduled bi-monthly progress meeting. Such recovery schedule shall include as necessary overtime work, extra shifts, additional labor forces, additional supervision, re-sequencing of activities, changes in means and methods, and any other tactics needed to achieve timely completion. The recovery schedule shall identify the activity durations to be modified to achieve timely completion and the Subcontractors to be affected by such modifications.
- u. If the CMAR intends to seek a time extension other than for bad weather days, in addition to the other requirements of this Master Agreement, the request for a time extension shall include a time impact analysis appropriately referenced to specific predecessor and successor activities in the baseline schedule, as updated, supporting any proposed revisions to the Project schedule.

35. SHOP DRAWINGS, SUBMITTALS, SAMPLES, DATA

All materials, equipment, and other items required by the Contract Documents to be incorporated into the construction Work must be approved by the Project Designer and acceptable to the Owner for their intended use. Submittals for materials, equipment, and other items required by the Contract Documents are to be made in strict accordance with this Section and as noted elsewhere in the Master Agreement. The Project Designer and/or the Owner may request that submittals be provided for items in addition to those outlined in the Construction Documents when deemed necessary in their sole discretion. Each submittal shall be complete, and in such detail, to allow for a determination of compliance with the Master Agreement, any amendments thereto, and/or the Construction Documents. Submittals covering component items, or which form an interrelated system, shall be coordinated and submitted concurrently.

Shop drawings must be submitted and approved before the item that is the subject of the submittal is incorporated into the construction Work. Any materials, equipment, or other items required by the Contract Documents for which submittals are required, either per the Construction Documents and/or a request by the Project Designer or the Owner, that are incorporated into the construction Work prior to approval by the Project Designer in writing and acceptance by the Owner are subject to be removed, disposed of, and replaced at the CMAR's expense. Once a submittal is approved, any subsequent proposed substitution must be submitted to the Project Designer for approval in writing pursuant to Section 36, below.

- a. The CMAR shall develop and implement a quality control system for review, acceptance or rejection, and processing of all shop drawings and submittals, including the projected lead-time on the CPM schedule. The CMAR shall provide this system to the Project Designer for approval by the Project Designer and the Owner.
- b. Within thirty (30) calendar days from the Notice to Proceed for each applicable Interim GMP or Final GMP, a schedule for anticipated submission of all shop drawings, product data, samples, color charts, and similar submittals shall be prepared by the CMAR and provided to the Project Designer and the Owner. This schedule shall indicate the items, relevant specification sections, other related submittal data, and the date when these items will be furnished to the Project Designer and the Owner. Submittals shall be presented to the Project Designer and the Owner in accordance with the schedule required by this Subsection 35.b. so as to cause no delay in the completion of the Project.

- c. The Quality Control Manager shall be responsible for logging all shop drawings/submittals, reviewing them for compliance with contract requirements and, if acceptable, so stamping them as being reviewed and approved by the Quality Control Manager prior to submission to the Project Designer and the Owner. The CMAR shall provide additional copies of any submittals or shop drawings requested by the Project Designer or the Owner. The CMAR shall ensure that shop drawing/submittal packages are submitted in an appropriate manner and, if not, return them to the Subcontractor for appropriate correction and resubmission.
- d. The CMAR shall be responsible for tracking and monitoring all shop drawings/submittals throughout the construction Work until all shop drawings/submittals have been approved by the Project Designer and accepted by the Owner, and this record shall be reported to the Owner.
- e. The CMAR shall include shop drawings as an agenda item with respect to all bi-monthly progress meetings and advise the Owner immediately of any delays in the shop drawing and submittal process.
- f. The CMAR shall develop a shop drawing and submittal aging report, which is to be submitted to the Project Designer and the Owner at each bi-monthly progress meeting.
- g. Shop drawings are not Construction Documents, and approval of shop drawings by the Project Designer and acceptance of same by the Owner shall not be construed as relieving the CMAR from its responsibility to comply with the Contract Documents and the Construction Documents in the performance of the Construction Work. Nor shall such approval and acceptance relieve the CMAR from responsibility for errors of any sort in the shop drawings, unless such error has been called to the attention of the Project Designer and the Owner in separate writing by the CMAR.

The CMAR acknowledges and agrees that portions of the final design may be delegated to the CMAR, and that all such delegated designs, if any, shall be identified, defined, and assigned during the CMAR's performance of its Pre-Construction Services as schematic designs for the Project are being prepared by the Project Designer. If utilized on the Project, delegated designs shall follow the guidance provided by the State Construction Office in its Memorandum 031215 dated March 25, 2015. Delegated designs do not abdicate the responsibility of the Project Designer for the complete design of the Project or that particular design element. The CMAR shall be responsible for hiring Project-specific Delegated Design Professional(s) (DDP) and shall ensure that each such DDP complies with all written requirements received from the Project Designer. The DDP shall forward the appropriate documents, calculations, and drawings for its proposed design, which shall be based on the requirements received from the Project Designer, with the DDP's seal and signature attached thereto to the Project Designer for its review and approval. The Project Designer shall review the submittal and confirm that the submittal conforms to the design intent of the responsible design professional and meets the written requirements provided for the basis of design, and the responsible design professional shall approve the submittal if the submittal so conforms.

For the purposes of the Project, the Owner will allow the following design elements for delegation:

- |                                                           |                                                  |
|-----------------------------------------------------------|--------------------------------------------------|
| Precast Concrete                                          | Pre-engineered Roof Trusses                      |
| Pre-engineered Metal/Wood Buildings                       | Pre-engineered Pedestrian Bridges                |
| Modular Block Retaining Walls (over 5')                   | Curtain Walls and Storefronts                    |
| Modular Buildings                                         | Shear & Bracing Connections for Structural Steel |
| Seismic Restraints for Non-structural Building Components | Pre-engineered Canopies                          |
| Shoring Systems                                           | Fire Sprinkler Systems                           |
| Pre-engineered pre-insulated thermal utility piping       |                                                  |

Any other design elements proposed for design delegation by the CMAR must receive prior written approval from the Owner. The Project Designer shall submit to the Owner a listing of all proposed delegated designs with the responsible design professional for each.

36. POST-BID SUBSTITUTION REQUESTS

Post-bid Substitutions shall be considered only if submitted with a detailed justification supporting the request. The CMAR and its Quality Control Manager shall be responsible for logging all Substitution requests and for reviewing all Substitution requests to ensure that they are complete and sufficiently detailed; if not, the CMAR shall return them to the appropriate Subcontractor(s) for proper resubmission.

It is to be noted that the Project Designer and the Owner discourage post-bid Substitutions and that the Owner's approval will be granted only upon the most persuasive arguments as to quality, function, and financial merit regarding a Substitution.

The CMAR shall be responsible for tracking and monitoring all Substitution requests throughout construction until all Substitution requests are processed by the Project Designer and the Owner. The CMAR shall be responsible to see that all Substitution requests are submitted in a timely manner per the specifications. The CMAR shall include Substitution requests, if any, on the agenda topic at the bi-monthly progress meetings and advise the Owner immediately of the potential consequences of any delay in the Substitution request and review processes.

37. REQUESTS FOR INFORMATION

The CMAR shall be responsible for developing and implementing a Request for Information (RFI) form and system for use on the Project. The CMAR shall be responsible for logging and reviewing all RFIs prior to submission of same to the Owner and the Project Designer. The CMAR shall ensure that all RFIs submitted are appropriate and not frivolous. The CMAR shall be responsible for tracking and monitoring all RFIs throughout the construction Work in a timely manner until they are processed by the Project Designer and the Owner. The CMAR shall include RFIs as an agenda topic at all bi-monthly progress meetings and advise the Owner immediately of any delays in their processing. All responses to the RFIs that have an added cost impact must also be discussed with the Owner immediately upon such determination. The CMAR shall develop an RFI aging report that is to be submitted to the Owner at each bi-monthly progress meeting.

38. SUBSTANTIAL COMPLETION

- a. The date of Substantial Completion of the construction Work, or designated portion thereof, is the date certified by the Project Designer when the construction Work, or a designated portion thereof, is sufficiently complete, in accordance with the Construction Documents, so the Owner can fully occupy and utilize the construction Work, or designated portion thereof, for the use for which it is intended, with all of the Project's parts and systems operable as required by the Contract Documents. Only incidental corrective construction Work, punch list items not affecting Owner's operation, and any final cleaning beyond that needed for the Owner's full use may remain outstanding for Final Completion to be achieved. The issuance of a temporary or final certificate of occupancy shall not, in and of itself, constitute Substantial Completion.
- b. When the CMAR considers that the construction Work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined above, the CMAR shall prepare for and submit to the Project Designer and the Owner a list of all items which, in the CMAR's opinion, are to be completed or corrected and shall attach it to a request in writing that the Project Designer perform a Substantial Completion inspection. The Owner's occupancy of incomplete construction Work shall not alter the CMAR's responsibilities hereunder. The Project Designer shall review the CMAR's list and shall compile a punch list of items to be corrected and completed. The failure to include any items on such a list does not alter the responsibility of the CMAR to complete all construction Work in accordance with the Contract Documents.
- c. When the Owner, the Project Designer, and the CMAR, on the basis of an inspection, jointly determine that the construction Work, or designated portion thereof, is substantially complete, the Project Designer will then prepare a Certificate of Substantial Completion, which (i) shall establish the date of Substantial Completion, (ii) shall state the responsibilities of the Owner and the CMAR, as of the date of Substantial Completion, for security, maintenance, heat, utilities,

damage to the construction Work, and insurance, and (iii) shall signify the beginning of the time within which the CMAR shall complete the punch list items included therein. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the construction Work, or designated portion thereof, unless otherwise provided in the Certificate of Substantial Completion.

- d. The Certificate of Substantial Completion shall be submitted to the Owner and the CMAR for their written acceptance of the responsibilities assigned to them in such certificate. Upon Substantial Completion of the construction Work, or designated portion thereof, and upon application by the CMAR and certification by the Project Designer, the Owner shall make payment, except retainage held pursuant to the Contract Documents, for such construction Work or portion thereof as provided in the Contract Documents.
- e. The acceptance of Final Completion payment shall constitute a waiver of all claims by the CMAR and its Subcontractors, except those previously made in writing and identified by the CMAR as unsettled at the time the CMAR submits the application for payment for Final Completion, and except for the retained sums due at final acceptance and Project Closeout.
- f. The CMAR's obligation to indemnify, defend, and hold harmless the Indemnified Parties pursuant to Section 62, below, shall apply in the event of any claims, damages, liabilities, lawsuits, losses, and expenses, including without limitation attorneys' fees, that arise out of, result from, or are in connection with any claims made by the CMAR's Subcontractors that are waived because of the Fault of the CMAR where such claims were not made in writing and identified by the CMAR as unsettled when the CMAR submitted its application for payment for Final Completion, when such Fault of the CMAR is a proximate cause of the claim, damage, liability, loss or expense indemnified. Notwithstanding the foregoing, nothing herein shall require CMAR to indemnify the Indemnified Parties against any such claims, damages, liabilities, losses or expenses arising out of, resulting from, or in connection with any negligent acts of one or more of the Indemnified Parties.
- g. The Owner shall have the option to correct or complete any and all punch list items not completed by the CMAR to the satisfaction of the Project Designer and the Owner within forty-five (45) days from the actual date of Substantial Completion for any GMP package of one year's duration or less and not more than ninety (90) days from the actual date of Substantial Completion for any GMP package of more than one year's duration by utilizing its own forces or by hiring others. The cost to correct or complete any remaining punch list items either by the Owner or others contracted with by the Owner to correct or complete such punch list items shall be deducted from the final payment to the CMAR.
- h. If CMAR does not complete certain punch list items within the required time period, all warranties and guarantees for such incomplete punch list items shall become effective upon the CMAR submitting to the Owner and the Project Designer certification of the date such items were completed and approved by the Owner's Representative and the Project Designer. The issuance of the Certificate of Substantial Completion does not indicate final acceptance of the Project by the Owner, and the CMAR is not relieved of any responsibility for the Project except as specifically stated in the Certificate of Substantial Completion.
- i. Should the Project Designer and the Owner after a Substantial Completion inspection determine that the construction Work, or a designated portion thereof, is not substantially complete, then they shall provide the CMAR with written notice stating why the construction Work, or designated portion thereof, is not substantially complete. The CMAR shall expeditiously complete the construction Work and shall re-request in writing that the Project Designer perform another Substantial Completion inspection. Costs, if any, associated with such re-inspection shall be assessed to the CMAR at the rates specified in the Project Designer's contract.

### 39. PARTIAL UTILIZATION/BENEFICIAL OCCUPANCY

- a. The Owner may desire to occupy or utilize all or a portion of the Project when the construction Work for that portion is substantially complete.

- b. Prior to the final payment, the Owner may request the CMAR in writing, through the Project Designer, if appropriate, to permit the Owner to use a specified part of the Project which the Owner believes it may use without significant interference with the remaining construction Work. If the CMAR, in its reasonable discretion, consents to the request, the Project Designer will schedule a beneficial occupancy inspection, after which the Project Designer may issue a Certificate of Beneficial Occupancy limited to the specified part of the Project the Owner seeks to occupy. The certificate shall include the following documentation:
  - (1). Date of Beneficial Occupancy.
  - (2). A tentative punch list of items to be completed or corrected before final payment, including the date by which these punch lists items are to be completed or corrected.
  - (3). Establishing responsibility between the CMAR and Owner for maintenance, heat, utilities and insurance.
  - (4). Establishing the start date for guarantees and warranties under the terms of this Master Agreement.
  - (5). Consent of the CMAR's Surety.
  - (6). An endorsement from the CMAR's insurance company permitting occupancy shall not be a condition precedent to the Owner's occupancy of a part or parts of the Project.
- c. The Owner shall have the right to exclude the CMAR from any part of the Project that the Project Designer has certified to be beneficially occupied, but the Owner shall allow the CMAR reasonable access to complete or correct construction Work to bring it into compliance with the Master Agreement and the other Contract Documents. The CMAR shall require all Subcontractors allowed to work in beneficially occupied areas to clean up after their operations on a daily basis or be subject to back charges therefore. Occupancy by the Owner under this Section 39 shall in no way relieve the CMAR from its contractual requirement to finally complete the Project within the specified contract time.

#### 40. FINAL INSPECTION, ACCEPTANCE, AND PROJECT CLOSEOUT

- a. The CMAR is responsible for the closeout requirements set forth in this Master Agreement and in the other Contract Documents. The CMAR shall work closely with the Owner as to the procedures and schedule for Project Closeout and the related contractual obligations arising therefrom.
- b. The CMAR shall work closely with the Owner's Commissioning Agent(s) throughout the design, construction, and closeout phases of the Project to ensure timely achievement of Substantial Completion and Final Completion.
- c. Upon notification from the CMAR that the Project is complete and ready for final inspection, the Project Designer shall make a preliminary final inspection to verify that the Project is complete and ready for final inspection. Prior to final inspection, the CMAR shall complete all items requiring corrective measures as noted by the Project Designer's preliminary final inspection report. The Project Designer shall schedule a final inspection at a time and date acceptable to both the Owner and the CMAR.
- d. At the final inspection, the Project Designer shall, if job conditions warrant, record a list of items that are found to be incomplete or not in accordance with the Construction Documents. At the conclusion of the final inspection, the Project Designer shall make one of the following determinations:
  - (1). That the Project is completed and accepted.

- (2). That the Project is accepted, conditioned upon the CMAR's coordination of completion of the punch list and/or correction of deficiencies noted by the Project Designer. Subject to unavoidable delays in the delivery of materials needed to correct or complete deviations from the Construction Documents, all punch list items must be completed and/or all deficiencies corrected within the timeframes established in Subsection 38.g., above, or the Owner may invoke "Owner's Right to Do Work" as permitted by Section 49, below.
- (3). That the Project is not complete and another date for a final inspection will be established.
- e. Within fourteen (14) days of the Project Designer's acceptance of the entire construction Work or within fourteen (14) days after the CMAR's completion of all punch list items to the satisfaction of the Project Designer, whichever shall first occur, the Project Designer shall certify the construction Work and issue applicable Certificate(s) of Compliance.
- f. Any discrepancies listed or discovered after the date of final inspection and acceptance shall be resolved as warranty items.
- g. The CMAR shall obtain as-built and product data from Subcontractors and maintain a current set of record drawings, specifications, and operating manuals. For mechanical and electrical equipment, the CMAR shall obtain the operating and maintenance ("O&M") manuals at least three (3) months prior to the demonstration for such equipment. Not less than three (3) sets of O&M manuals are to be sent to the Owner's Representative, who is to forward one (1) set to the Owner's department responsible for maintaining the facility for review prior to the equipment demonstration and one (1) set to the Commissioning Agent.
- h. As a condition to the Owner's obligation to release final payment, the CMAR shall deliver a complete set of as-built drawings for use by the Project Designer in preparing Record Drawings. The other Project Closeout requirements that must be satisfied before final payment can be made to the CMAR are set forth in Section 55, below.

#### 41. COST CONTROL

- a. The CMAR shall develop and maintain an effective system of Project cost control. Elements of this system shall include Project budgets, GMP proposals, CPM schedule, and cash flow forecasts and reports, all in formats to be approved by the Owner in writing.
- b. The CMAR shall incorporate into each element of the system of Project cost control (i) all Owner-approved Change Orders as they occur, (ii) updated and refined Interim GMPs, and (iii) reports and forecasts as needed, or as directed by the Owner in writing. The CMAR shall identify variances between actual and estimated costs and advise the Owner whenever projected costs exceed bid allowances or estimates.
- c. The CMAR shall check and supervise all material deliveries and all equipment and labor entering the Project site. The CMAR shall maintain cost accounting records on authorized construction Work performed under unit costs, actual costs for labor and material, or other bases requiring accounting records, and afford the Owner access to these records and preserve them for a period of three (3) years after final payment. The Owner reserves the right to audit these records at any time during that three-year period pursuant to Section 58, below.

#### 42. SAFETY

- a. Protection of Work, Property, and Persons - The CMAR shall submit a Safety Program, which will outline its plan to ensure a safe work site for its employees, Subcontractors, consultants, Owner, and visitors, in accordance with Section 29, above. The CMAR is solely responsible for site safety throughout the prosecution of the construction Work and for initiating, maintaining, and supervising all safety precautions and programs in connection with the construction Work. The CMAR shall take all necessary precautions for the safety of, and will provide the necessary

protection to prevent damage, injury or loss to, (i) all CMAR and Subcontractor employees performing work on the Project and other persons who may be affected thereby, (ii) all of the construction Work and all of the materials, equipment, and other items to be incorporated therein, whether in storage on or off the site, and (iii) other property at the site or adjacent thereto, including without limitation trees, shrubs, lawns, lakes, drainage ways, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

In providing Construction Management Services for the Project, the CMAR shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction over the construction Work. The CMAR shall erect and maintain, as required by the conditions and progress of the construction Work, all necessary fencing, safeguards, and other devices for the safety and protection of the construction Work, the public, and adjoining property. The CMAR shall notify owners of adjacent utilities when prosecution of the construction Work may affect them. The CMAR shall remedy, at its sole cost, any and all damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by the CMAR, any Subcontractor of the CMAR, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

The CMAR shall, prior to commencing on-site work, accurately locate above- and below-ground utilities and structures that may be affected by the construction Work by contacting North Carolina 811, Inc. (No Cuts) to identify all such utilities. For known utilities, CMAR shall have Subcontractors utilize "pot holing" to locate all existing utilities. The CMAR shall mark, or have marked, the location of existing utilities and structures, not otherwise readily visible, with flagging, stakes, barricades, or other suitable means, and shall preserve and protect all utilities and their placement during construction. The CMAR shall notify the Owner, or the Project Designer, promptly on discovery of any conflict between the Contract Documents or the Construction Documents and any existing facility, including utilities. All existing utilities, both public and private, including sewer, gas, water, electrical, and telephone services, etc., shall be protected, and their operation shall be maintained, throughout the course of the construction Work.

- b. Site Conditions and Safety - The CMAR shall manage the construction Work and its Subcontractors so as to provide a safe work area at all times. Any holes are to be properly protected from access by others when the Project workers are not on the job site. All areas of potential hazard shall be fenced, barricaded, or appropriately marked with other devices to ensure that adequate notice is provided of potential danger. All equipment shall be locked or otherwise protected to prevent the equipment from being started or otherwise impacted by people other than the CMAR and its Subcontractors when the job site is vacated. All hazardous materials located on the job site shall be kept under lock-and-key except when in use. The storage of all such hazardous materials shall be in a protected area and a list of the materials stored shall be properly posted on the trailer, fence, or other device used to secure the materials.

The CMAR shall follow industry and OSHA standards for all construction Work at the Project site. All construction Work shall be in compliance with the on-site Safety Program approved by the Project Designer and the Owner as is required by Section 29, above. The CMAR shall coordinate work activities at the Project site with the Owner, its Subcontractors and any other separate contractors hired by the Owner for work on the Project.

#### 43. CHANGES IN THE WORK

- a. The CMAR shall develop and implement a system for review, negotiation, and processing of all Change Order Proposals and Cost Change Proposals. The CMAR shall, with complete supporting data, recommend necessary or desirable changes to the Project to the Owner and the Project Designer for approval.
- b. The Owner, at any time, and without invalidating this Master Agreement, may direct changes be made in the Work covered by this Master Agreement, including but not limited to changes:

- (1). in the CMAR's Pre-construction Services, the CMAR's Construction Management Services, and/or the Project scope of work;
- (2). in the specifications, drawings, and other Construction Documents;
- (3). in the sequence, method, or manner of performance of the construction Work;
- (4). in the Owner-furnished facilities, equipment, materials, services or site; and/or
- (5). directing acceleration in the performance of the construction Work.

Furthermore, it is understood and agreed that refinement and detailing may be accomplished from time-to-time with respect to the drawings, specifications, and other Construction Documents. The CMAR's entitlement to an increase in an Interim GMP and/or Final GMP or an extension of time, or both, for any changes contemplated under this Subsection 43.b. shall be determined in accordance with this Master Agreement, and the CMAR hereby acknowledges that any increase in an Interim GMP or Final GMP shall require the prior approval of the Owner's governing body before becoming effective.

- c. No adjustment in an Interim GMP, the Final GMP, the Substantial Completion date, and/or the Final Completion date shall be made unless a change, refinement, or detailing results in an actual increase or decrease in the scope of construction Work to be performed and/or a material modification to the Project's design, all as determined by the Owner in its sole discretion.
- d. The Owner's Representative has the authority to order minor changes in the construction Work not inconsistent with the intent of the Construction Documents and not involving an adjustment in an Interim GMP, the Final GMP, the time for Substantial Completion, or the time for Final Completion. Such changes shall be affected by written order and shall be binding on the Owner and the CMAR. The CMAR shall not perform any changes in the construction Work, including but not limited to minor changes in the Work, unless authorized in writing by the Owner. The CMAR's performance of minor changes pursuant to this Subsection 43.d. shall not constitute a waiver of any claim the CMAR may have for additional compensation and/or time. Any claim the CMAR may have, however, shall be made in strict conformance with this Master Agreement and the other Contract Documents.
- e. No Change Order shall be issued for the resolution of conflicts in the Construction Documents covered by the CMAR Contingency.
- f. Except in an emergency endangering life or property, no change in an Interim GMP, the Final GMP, the Substantial Completion date, and/or the Final Completion date shall be made by the CMAR except upon receipt of an approved Change Order or Field Order from the Project Designer, countersigned by the Owner authorizing such change. No claim for increases in a GMP shall be honored or valid unless this procedure is followed. A Field Order, transmitted by fax or hand-delivered, may be used where the change involved impacts the critical path of the construction Work, in which case a formal Change Order shall be issued within the time stated in the Field Order or as expeditiously as possible.
- g. The CMAR shall notify the Owner promptly in writing, with a copy to Project Designer, if the CMAR believes that a change in scope or design will require a change in any GMP and/or extension of applicable contract time. The Owner shall have the right to require the performance of changed construction Work on a lump sum basis, a unit price not-to-exceed basis, or a time and material not-to-exceed basis.
- h. To the maximum extent possible, the CMAR shall notify the Project Designer and the Owner of any proposed changes in scope or design before bids for the construction Work associated therewith are requested from potential First-Tier Subcontractors. The Owner and the CMAR shall reach agreement on the nature of the subject change, and upon the Owner's written direction,

eliminate the circumstances of the change or negotiate a mutually agreed cost change to be made to the applicable GMP, subject to approval by the Owner's governing body.

- i. Upon receipt of an Owner-requested change in, addition to, or reduction of the construction Work (collectively, "Owner-Requested Change Order"), the CMAR shall submit to the Owner and the Project Designer a cost change or Change Order Proposal within ten (10) business days of the CMAR's receipt from the Owner of a request for a proposal arising from an Owner-Requested Change. Alternatively, within five (5) business days of its receipt of a request for a proposal arising from an Owner-Requested Change, the CMAR shall provide the Owner and the Project Designer a written justification for why additional time to submit such a Change Order Proposal is needed.
- j. All Change Order Proposals and Cost Change Proposals submitted by the CMAR shall be itemized and segregated by labor, equipment, and materials for the various components of the Change Order Proposal or Cost Change Proposal; no aggregate proposals lacking such cost itemization and segregation will be accepted by the Owner. Each of the CMAR's Change Order Proposals and Cost Change Proposals shall be accompanied by signed proposals from any Subcontractor(s) who will perform any portion of such Change Order Proposal or Cost Change Proposal, as well as from any other persons or entities who will furnish the materials or equipment for incorporation therein. The CMAR's Change Order Proposals and Cost Change Proposals shall also include the CMAR's estimate of the time required to perform the Change Order Proposal or Cost Change Proposal, but only if the CMAR is seeking an extension to the pertinent contract time.
- k. There shall be no CMAR mark-up or CMAR Fee included in any single Change Order Proposal covering construction Work under this Master Agreement and/or any amendment thereto. Rather, Change Order Proposals will consist of anticipated Subcontractor costs and General Conditions items (if applicable) only. All costs saved by scope reductions shall revert to the Owner in full. Any increase in the CMAR Fee shall be calculated separately from individual Change Orders, pursuant to the terms of Subsection 4.e., above.
- l. All Change Order Proposals and Cost Change Proposals shall be supported by a breakdown showing the CMAR's method for arriving at net cost as defined herein. The Owner and the Project Designer will review the CMAR's analysis and cost data and advise the CMAR of their findings. The CMAR shall provide such supporting data in suitable format. The Project Designer shall verify the correctness and completeness of each Change Order Proposal and Cost Change Proposal in its sole discretion, and shall return any incorrect proposal to the CMAR for resubmission.
- m. Within fourteen (14) days after receipt of the CMAR's Change Order Proposal, the Owner shall either direct the Project Designer to prepare the Change Order and forward to the CMAR for its signature or otherwise respond, in writing, to the CMAR's proposal. Within fourteen (14) days after receipt of the CMAR's Cost Change Proposal, the Owner and the Project Designer shall either indicate their assent to same by forwarding to the CMAR a counter-signed version of the approved Cost Change Proposal or otherwise respond, in writing, to the CMAR's proposal. If the CMAR requires a response to a Change Order Proposal or Cost Change Proposal sooner than fourteen (14) days so as not to delay the Project, the CMAR shall request that the Owner and the Project Designer expedite their response, including in any such request a detailed explanation regarding how a response outside the CMAR's requested time period could impact the Project schedule.
- n. Within seven (7) days after receipt of a Change Order executed by the CMAR, the Project Designer shall certify the Change Order by its signature and forward same and all supporting data to the Owner for the Owner's signature. The Owner shall endeavor to execute the Change Order within seven (7) days of receipt, or in accordance with the Owner's standard procedures when City Council approval is required. Upon approval by the Owner, copies of the Change Order shall be sent to the Project Designer, the CMAR, and its Surety. In case of emergency or extenuating circumstances, approval of changes may be obtained by email or Field Order

approved by all parties, then shall be substantiated in writing as set forth in this Master Agreement.

- o. The portions of a Change Order Proposal or Cost Change Proposal relating to labor and materials may include the reasonably anticipated net cost to any of the CMAR's Subcontractors for labor and materials to be purchased for incorporation into the change in the construction Work, plus transportation and applicable sales and use taxes. The term "net cost" as used herein shall mean the difference between all proper cost additions and deductions. The term "cost" as used herein shall be limited to the following:
  - (1). The actual costs of materials and supplies incorporated or consumed as part of the Project;
  - (2). The actual costs of labor expended at the Project site;
  - (3). The actual costs of labor burden, limited to the costs of social security (FICA) and Medicare/Medicaid taxes; unemployment insurance costs; health/dental/vision insurance premiums; paid employee leave for holidays, vacation, sick leave, and/or petty leave, not to exceed a total of 30 days per year; retirement contributions; worker's compensation insurance premiums; and the costs of general liability insurance when premiums are computed based on payroll amounts, the total of which shall not exceed thirty percent (30%) of the actual costs of labor;
  - (4). The actual costs of rental for tools, excluding hand tools; equipment; machinery; and temporary facilities required for the Project;
  - (5). The actual costs of premiums for bonds, insurance, permit fees, and sales or use taxes related to the Project;
  - (6). Overtime and extra pay for holidays and weekends may be a cost item only to the extent approved by the Owner in writing;
  - (7). The CMAR may include from five percent (5%) up to a maximum of fifteen percent (15%) of said costs as overhead and profit for its Subcontractors. A breakdown of the requested overhead and profit costs shall be provided for the Subcontractor. Recent audit results shall be provided to support such overhead costs. In the case of deductive Change Orders, the CMAR shall deduct no less than five percent (5%) profit for its Subcontractors, but shall not be required to deduct overhead.
- p. If any of the items included in a lump sum Change Order Proposal or Cost Change Proposal are covered by unit prices, the Owner may, if it requires the change in the construction Work to be performed on a lump sum basis, elect to use these unit prices in lieu of the similar items included in the lump sum Change Order Proposal or Cost Change Proposal, in which event an appropriate deduction will be made in the lump sum proposal amount prior to the application of any allowed overhead and profit percentages. No additional Subcontractor overhead and profit shall be applied to any unit prices.
- q. In the event that the CMAR fails to submit its Change Order Proposal or obtain approval for additional time to submit within the designated period pursuant to Subsection 43.i. above, the Owner may order the CMAR to proceed with the Owner-Requested Change and the CMAR shall so proceed. The Owner shall unilaterally determine the reasonable cost and time to perform the construction Work in question, subject to the dispute resolution provisions set forth in Section 70, below. This procedure shall only apply to changes to the construction Work that do not require approval from the Owner's governing body.
- r. The Owner reserves the right to reject any proposal from the CMAR for a change in the construction Work and to elect to perform said portion of the construction Work using a separate

contractor. Under such circumstances, the CMAR shall coordinate the performance of this portion of the construction Work by the separate contractor hired by the Owner.

- s. If the Owner and the Project Designer conclude that the terms of a Change Order Proposal or Cost Change Proposal are unacceptable, the Owner may require the CMAR to perform such construction Work on a time and material basis. If the Owner elects to have the change in the construction Work performed on a time and material basis, the CMAR shall submit to the Owner daily time and material tickets, to include the identification number assigned to the change in the construction Work, the location and description of the change in the construction Work, the classification of labor employed (and names and social security numbers), the materials used, the equipment rented (not tools), and such other evidence of cost as the Owner may require. The Owner may require authentication of all time and material tickets and invoices by persons designated by the Owner for such purpose. Labor authentication may also require certified payrolls be provided to support all time invoiced. The failure of the CMAR to secure any required authentication shall constitute a waiver by the CMAR of any claim for the cost of that portion of the change in the construction Work covered by a non-authenticated ticket or invoice.
- t. In the event that the parties are unable to agree as to the reasonable cost and time to perform an Owner-Requested Change based upon the CMAR's Change Order Proposal and the Owner does not elect to have the change performed on a time and material basis, the Owner shall have the right to direct in writing that the CMAR perform the change in the construction Work and the CMAR shall so proceed subject to its right to do so under protest. Failure of the parties to reach agreement regarding the cost and time of performing the change in the construction Work, regardless of any resulting protest by the CMAR, shall not relieve the CMAR from performing the change in the construction Work, and any of the other construction Work, promptly and expeditiously, subject to the dispute resolution procedures set forth in this Master Agreement and/or the other Contract Documents.
- u. A Change Order or approved Cost Change Proposal when issued, shall constitute full compensation or full credit for the construction Work included, omitted, or substituted therefor. Each such Change Order or approved Cost Change Proposal shall show on its face the adjustment in time, if any, for achieving Substantial Completion and/or Final Completion of the Project as a result of the change in the construction Work. All Change Orders and approved Cost Change Proposals shall constitute a full resolution of the change or Cost Event in question. No Change Orders or approved Cost Change Proposals containing a reservation of rights for later settlement of time extensions or delays shall be accepted by the Owner.
- v. No Change Order or approved Cost Change Proposal will invalidate, relieve, or release the CMAR from any guarantee given by it pertinent to the Master Agreement or any of the other Contract Documents. No changes will affect the validity of the performance bond or relieve the CMAR's Surety on said bond.
- w. In the event of an emergency endangering life or property, the CMAR and its Subcontractors may be directed to proceed on a time and material basis by the Owner's Representative, whereupon the CMAR shall proceed and keep accurately on such form as may be required, a correct account of costs incurred, together with all proper invoices, payrolls, and supporting data. Upon completion of this emergency construction Work, a Change Order Proposal shall be submitted, and a Change Order shall be prepared and settled, as outlined in this Section 43.

#### 44. CLAIMS FOR EXTRA COST

- a. If the CMAR or any of its Subcontractors asserts that any instruction, event, occurrence, or other circumstance has caused a change in or addition to the construction Work that allegedly causes an increase or decrease in a GMP and/or in the time required for the performance of any part of the construction Work, including construction Work not affected directly by the change, then the CMAR shall, within ten (10) days of the CMAR receiving notice of such instruction, event, occurrence, or other circumstance, give the Owner and the Project Designer written notice of its intention to submit a statement of claim for an increase in a GMP and/or extension of contract time. Such notice shall include a detailed description of the instruction, event, occurrence, or

other circumstance that is the basis for the claim and the CMAR's best initial estimate of the cost and time involved. The CMAR shall thereafter submit its statement of claim to the Owner and the Project Designer no later than twenty-one (21) days after the CMAR received notice of the instruction, event, occurrence, or other circumstance that is the basis for the claim, which statement shall include all direct, indirect, and impact costs associated with the change, as well as the CMAR's estimate of any associated schedule impacts. The CMAR's statement of claim may be included in its initial notice as required above.

The CMAR and its Subcontractors shall not be entitled an increase in an Interim GMP, an increase in the Final GMP, and/or an extension of any applicable contract time for any claims that are not made in strict conformance with this Section 44. Any claim made contrary to the requirements of this Section 44 will not be considered by the Owner and shall be deemed irrevocably waived.

The CMAR shall not proceed with the construction Work affected by an instruction, event, occurrence, or other circumstance that is the basis for a claim until further advised, except in an emergency involving the safety of life or property. The Project Designer shall review and offer to the Owner a written recommendation on a statement of claim within seven (7) days of its receipt of same from the CMAR. The final decision concerning the claim will be made by the Owner. Notwithstanding anything herein to the contrary, there shall be no increase in an Interim GMP or Final GMP without the prior approval of the Owner's governing body.

- b. The CMAR shall not act on instructions received by it from persons other than the Project Designer, and any claims for extra compensation or extension of time on account of such instruction will not be honored. The Project Designer shall not be responsible for misunderstandings claimed by the CMAR of verbal instructions which have not been confirmed in writing, and in no case shall instructions be interpreted as permitting a departure from the Contract Documents unless such instruction is confirmed in writing and supported by a properly authorized Change Order or amendment to this Master Agreement, whichever shall apply.
- c. Under no circumstances shall a claim for extra cost include a claim for an increase in the CMAR Fee. Approved claims for extra cost, however, will be considered Change Orders for purposes of determining if the CMAR is entitled to an increase in its CMAR Fee under Subsection 4.e., above.
- d. If the parties are unable to agree to the reasonable cost and time to perform the construction Work associated with an instruction, event, occurrence, or other circumstance that is the basis for a claim, if the parties are unable to agree as to whether a change to the construction Work occurred, or if the Owner rejects a statement of claim for any other reason, then the Owner's Representative shall make a unilateral determination regarding the basis for proceeding, subject to dispute resolution at a later time pursuant to the dispute resolution provisions set forth in Section 70, below. The CMAR shall proceed with the construction Work as directed by the Owner's Representative.

#### 45. DIFFERING SITE CONDITIONS

Should the CMAR encounter subsurface or latent conditions, or both, at the Project site that differ materially from those shown on the drawings or indicated in the specifications or differ materially from those ordinarily encountered and generally recognized as inherent in construction Work of the character provided for in this Master Agreement and in the other Contract Documents, then the CMAR shall immediately, and in no event later than thirty (30) days thereafter, give written notice to the Owner of such conditions before they are disturbed. The Owner and the Project Designer shall thereupon promptly investigate the conditions, and if they find that they materially differ from those shown on the drawings and/or indicated in the specifications, they shall at once make such changes in the drawings and/or specifications as they may find necessary. Any increase or decrease in the Cost of the Work and/or any extension of contract time shall be treated as an Owner-Requested Change pursuant to Section 43, above, with any increase in an Interim GMP or the Final GMP subject to prior approval from the Owner's governing body. However, neither the Owner nor the Project Designer shall be liable or responsible for any cost or time impacts arising from conditions that should have been reasonably determined from any

geotechnical, soils and other reports, surveys, and analyses made available for the CMAR's review or that should have been reasonably discovered by the CMAR through the performance of its obligations pursuant to this Master Agreement.

46. CORRECTION OF WORK BEFORE FINAL PAYMENT

- a. Any construction Work, materials, fabricated items or other parts of the construction Work which have been condemned or declared not in accordance with the Contract Documents by the Project Designer shall be promptly removed from the Project site by the CMAR and shall be immediately replaced by new construction Work in accordance with the Contract Documents at no additional cost to the Owner. Work or property of the Owner, damaged or destroyed by virtue of such faulty construction Work, shall be made good at the sole expense of the CMAR.
- b. Correction of condemned or defective construction Work as described above shall commence within seventy-two (72) hours after the CMAR's receipt of notice from the Project Designer, and the CMAR shall make satisfactory progress until such corrective work is completed.
- c. Should the CMAR fail to proceed with the required corrections, then the Owner shall have the right to complete the applicable construction Work pursuant to the terms of this Master Agreement, including without limitation Section 49, below.

47. CORRECTION OF WORK AFTER FINAL PAYMENT

Neither the issuance of a certificate of Substantial Completion, a certificate of Beneficial Occupancy, a certificate of compliance, or of final payment, nor occupancy of the premises by the Owner, nor any provision of the Contract Documents, nor any other act or instrument of the Owner or the Project Designer, shall relieve the CMAR from responsibility for negligence, faulty material, poor workmanship, breach of any warranty or guarantee, or failure to comply with the Construction Documents. The CMAR shall correct or make good any deviations from the Construction Documents and repair any damage resulting therefrom that may appear during the warranty and guarantee period set forth in Subsection 22.a., above. The Owner will report to the CMAR any defects as they may appear and establish a time limit for completion of corrections by the CMAR. The Owner will be the sole judge as to the responsibility for correction of defects and the sufficiency of the corrective work performed.

48. UNCORRECTED FAULTY WORK

Should the correction of faulty or damaged construction Work be considered inadvisable or inexpedient by the Owner and the Project Designer, the Owner shall be equitably reimbursed by the CMAR. The reimbursement may be deducted from any amounts due or to become due the CMAR. Should the cost of such reimbursement exceed the amount due or to become due the CMAR, then the CMAR or its Surety, or both, shall be liable for and shall pay to the Owner the amount of said deficiency. The CMAR may, in turn, deduct such reimbursements from amounts due to responsible Subcontractors, including funds retained by the Owner during the warranty period.

49. OWNER'S RIGHT TO DO WORK

If, during the progress of the construction Work or during the period of any warranty or guarantee, the CMAR fails to prosecute the construction Work properly or to perform any provision of this Master Agreement and/or the other Contract Documents, then the Owner, after fifteen (15) days' written notice to the CMAR and the Project Designer, may perform or have performed that portion of the construction Work. The cost of such construction Work may be deducted from any amounts due or to become due the CMAR, such action and cost of same having been first approved in writing by the Project Designer. Should the cost of such action of the Owner exceed the amount due or to become due the CMAR, then the CMAR or its Surety, or both, shall be liable for and shall pay to the Owner the amount of said excess.

50. TERMINATION FOR CONVENIENCE

- a. The Owner may terminate this Master Agreement at any time and for any reason including, without limitation, failure of the parties to reach agreement on any GMP, including the Final GMP and any estimated GMP determined during the CMAR Pre-Construction Services Scope of Work attached hereto as Attachment A. For the avoidance of doubt, if during the pre-construction phase

of the Project the CMAR submits an estimate of probable construction costs based on the Project's design that exceeds the Total Construction Budget, then the Owner may terminate this Master Agreement without cause. The Owner also may terminate this Master Agreement without cause in the event the Cost of the Work, per the bids that have been received in response to the trade Bid Packages advertised and solicited by the CMAR, together with the projected CMAR Cost Elements and the Owner's Contingency and Allowances, exceed the Project's Total Construction Budget.

If this Master Agreement is terminated pursuant to this Section 50 during the pre-construction phase and prior to commencement of the construction Work, then the CMAR shall only be entitled to that portion of the agreed-upon not-to-exceed lump sum contract amount for Pre-Construction Services, as established in the CMAR Pre-Construction Services Scope of Work attached hereto as Attachment A, that CMAR has earned through the date of termination.

In the event this Master Agreement is terminated pursuant to this Section 50 after the construction Work has commenced, the CMAR shall, as requested by the Owner, cancel all contracts for construction Work or, at the Owner's election, cooperate with the Owner to assign such contracts for construction Work to the Owner or the Owner's designee. The Owner shall pay the CMAR all Costs of the Work incurred by the CMAR through the date of termination, including cancellation costs, settlement costs, demobilization costs, and restocking fees, until all contracts with the CMAR can be canceled or assigned. Otherwise, the CMAR shall only receive its CMAR Fee and General Conditions costs incurred through the date of termination, plus a reasonable period for demobilization. Under no circumstances will a termination for convenience entitle the CMAR to recover purported lost profit on unperformed construction Work.

- b. Termination under this Section 50 shall not release either the CMAR or its Surety from liability or responsibility for any default or other transaction or occurrence prior to the date of termination and demobilization from the Project.

## 51. TERMINATION FOR DEFAULT

- a. If the CMAR fails to begin the Work under the Master Agreement within the time specified, fails to perform the Work described herein, or fails to provide adequate staff and resources required to properly execute said Work in a workmanlike or safe manner; or if the CMAR fails to maintain the progress of the Work on-schedule or fails to complete the Work or any portion thereof within the time specified; or if the CMAR allows the Work to be performed unsuitably or discontinues the prosecution of the Work; or if the CMAR shall become insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against it unsatisfied for a period of seventy-two (72) hours; or if the CMAR shall make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the Work in an acceptable manner, then the Owner may give notice and opportunity to cure in writing, sent by certified mail, return receipt requested, to the CMAR and, with regard to the construction phase of the Project, the CMAR's Surety, of such delay, neglect, or other default, specifying the same, and if the CMAR, within a period of thirty (30) days after receipt of such notice of default shall not proceed in accordance therewith, then upon the Owner's issuance of notice of termination, the Surety, with regard to the construction phase of the Project, shall promptly take over the construction Work and complete the construction phase of this Master Agreement in a manner and within the time frame specified.

In the event the Surety shall fail to take over the construction Work to be done under this Master Agreement after being so notified and shall fail to notify the Owner in writing, sent by certified mail, return receipt requested, that it is taking the same over and stating that it will diligently pursue and complete the same within the Substantial Completion date and Final Completion date, all within fifteen (15) days of the Surety's receipt of the Owner's notice of termination, sent to the Surety via certified mail, return receipt requested, then the Owner shall have full power and authority, without violating the Master Agreement, to take the prosecution of the construction Work out of the hands of said CMAR and its Surety, to effectuate assignment of any and all subcontracts, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable, and/or to enter into an agreement, either by public letting or

negotiation, for the completion of the construction Work according to the terms and provisions of the Contract Documents, or use such other methods as in its opinion shall be required for the completion of the construction Work in an acceptable manner.

All costs and charges incurred by the Owner as a result of a termination of the CMAR for default, together with the costs of completing the Work, shall be deducted from any monies due or which may become due to the CMAR (and its Surety, in the event of a termination during the construction phase of the Project. In the event the expenses so incurred by the Owner are less than the sum otherwise payable under this Master Agreement had no termination occurred, then the CMAR (and, if applicable, its Surety) shall be entitled to receive the difference; but in the event such expenses shall exceed the sum which would have been payable under the Master Agreement, then the CMAR (and, if applicable, its Surety) shall be liable and shall pay to the Owner the amount of said excess.

- b. It is further mutually agreed between the parties hereto that if at any time after the execution of this Master Agreement and the issuance of performance bond(s) the Owner shall deem the Surety or Sureties upon such bonds to be unsatisfactory, or if for any reason such bonds cease to be adequate to cover the performance of the construction Work, the CMAR, within five (5) days after the receipt of written notice from the Owner, shall furnish an additional bond or bonds in such form and amount, and with such Surety or Sureties, as shall be satisfactory to the Owner. In such event no further payment to the CMAR shall be deemed to be due under this Master Agreement until such new or additional security for the faithful performance of the construction Work shall be furnished in a manner and form satisfactory to the Owner.
- c. In the event it is determined by a court of law that termination under this Section 51 was not justified, then the termination of the CMAR shall be treated as if it were a termination for convenience pursuant to Section 50, above.

## 52. CMAR RIGHT TO STOP WORK OR TERMINATE THE MASTER AGREEMENT

- a. Should the Work be stopped for a period of six (6) months or more by order of a court having jurisdiction, or by order of any other public authority due to cause(s) beyond the fault or control of the CMAR, or if the Owner should fail or refuse to make payment on account of a certificate of payment issued by the Project Designer within forty-five (45) days after the Owner's receipt of same, then the CMAR, after fifteen (15) days' written notice and opportunity to cure sent by certified mail, return receipt requested, to the Owner and the Project Designer, may suspend operations on the Work or terminate the Master Agreement. Notwithstanding any other term or provision of this Master Agreement, the election of the Owner's Representative to withhold payment, in whole or in part, pursuant to Section 54, below, shall not entitle the CMAR to suspend operations on the Work or terminate the Master Agreement.
- b. In the event the CMAR terminates the Master Agreement as permitted by Subsection 52.a., above, during the Pre-Construction Services phase of the Work, then the Owner shall be liable to the CMAR for the CMAR Pre-Construction Services that have been delivered and performed to the satisfaction of the Owner under this Master Agreement through the date of termination, and the Owner shall make payment on account of same. The CMAR, upon receipt of such payment, shall assign or otherwise transfer to the Owner the portion of the Pre-Construction Services Work that CMAR has completed as of the date of termination.
- c. In the event the CMAR terminates the Master Agreement as permitted by Section 52.a., above, during the construction phase of the Work, then the Owner shall be liable to the CMAR for (i) the Cost of the Work delivered and performed to the satisfaction of the Owner under this Master Agreement through the date of termination, (ii) all General Conditions costs incurred through the date of termination, and (iii) its CMAR Fee earned through the date of termination, and the Owner shall make such payment after the Project Designer determines and certifies the correctness of such payment. The CMAR, upon receipt of such payment, shall assign or otherwise transfer to the Owner the portion of the construction Work that CMAR has completed as of the date of termination, including without limitation all materials that have been purchased for the Project, but not yet incorporated into the construction Work.

53. PROGRESS PAYMENTS

Based on satisfactory applications for payment submitted by the CMAR monthly to the Project Designer and based on certificates for payment issued by the Project Designer to the Owner, the Owner shall make progress payments to the CMAR as provided in this Section 53 and elsewhere in the Contract Documents, subject to the right of the Owner's Representative to withhold payment, in whole or in part, pursuant to Section 54, below. No certificate of payment issued, and no payment made, shall constitute an acceptance of the Work or any part thereof.

- a. Prior to the issuance of a progress payment by the Owner, the Project Designer shall review and approve the CMAR's application for payment. The Project Designer may withhold a certificate of payment, in whole or in part, pursuant to Section 54, below. The Project Designer shall have seven (7) days from its receipt of an application for payment to review same, and shall take one of the following actions in response to same:
  - (1). approve the application and issue to the Owner a certificate of payment to the Owner in the full amount of the application;
  - (2). issue to the Owner a certificate of payment for such amount as the Project Designer determines is properly due, notifying the CMAR and the Owner of the Project Designer's reasons for withholding certification in part as permitted by Section 54, below;
  - (3). withhold certification of the entire application for payment, notifying the CMAR and the Owner of the Project Designer's reasons for withholding certification in whole as permitted by Section 54, below; or
  - (4). reject and return such application to the CMAR for correction, completion, and resubmission as documented by the Project Designer.
- b. The period covered by each application for payment shall be one calendar month ending on the last day of the month or such other date as agreed to in writing and established by the parties during the pre-construction conference.
- c. No advance payments or interim payments will be made by the Owner except for special circumstances. On a case-by-case basis, special deposits may be authorized by the Owner for critical and/or long lead and/or specialty items consistent with industry standards as identified in writing by the CMAR.
- d. Provided a proper and completed application for payment is received and certified by the Project Designer, and approved by the Owner not later than the 1<sup>st</sup> day of the month, the Owner shall make payment to the CMAR not later than thirty (30) days after the date such certificate of payment has been approved by the Owner, subject to the Owner's right to withhold its acceptance of a certificate of payment as set forth in Section 54, below. In accordance with GS 143-134.1, the CMAR shall pay its First-Tier Subcontractors based on work completed or service provided under the subcontracts within seven (7) days of receipt of its payment from the Owner. Interest on such payments due the CMAR shall be as outlined in GS 143-134.1 at the rate of one (1%) percent per month. The same interest shall be paid by the CMAR if any payment to a First-Tier Subcontractor is delayed by more than seven days after CMAR's receipt of payment from the Owner.
- e. With each application for payment for General Conditions and construction Work performed directly by the CMAR and such Subcontractors as the Owner may specify, the CMAR shall submit transaction summaries, certified payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner and/or Project Designer to demonstrate that cash disbursements already made by the CMAR on account of General Conditions and the Cost of the Work equal or exceed progress payments already received by the CMAR less (i) that portion of those payments attributable to the CMAR's Fee plus (ii) payrolls and costs for the period covered by the present application for payment.

- f. The CMAR shall submit a schedule of values that allocates the Final GMP among the various portions of the construction Work, provided that the CMAR Fee shall be shown as a separate line item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Project Designer may require. This schedule of values, unless objected to by the Project Designer in writing, shall be used as a basis for reviewing the CMAR's applications for payment. The Project Designer may also use the Project CPM schedule when reviewing the CMAR's applications for payment.
- g. Applications for payment shall be accompanied by such data and supporting evidence as the Project Designer or Owner may require, including, but not limited to items as follows:
- (1). Updated reports of MWBE subcontracting status and payments, using forms as approved by the Owner.
  - (2). Evidence of daily and weekly progress reports of construction provided.
  - (3). Lien releases.
  - (4). Progress photos for the payment period.
  - (5). Copies of any building code or regulatory permits or required licenses obtained during the month.
  - (6). Updated CPM schedule and updated schedule of values.
  - (7). New or updated insurance certificates as may be required.
  - (8). Bonding as may be required for Subcontractors.
  - (9). Updated Change Order register, RFI register, CDN register, submittal log register as may be required.
  - (10). Sales and use tax reports.
  - (11). Field testing documents as may be required.
  - (12). Silver LEED documents as required.
  - (13). Commissioning documents as required.
  - (14). Environmental inspection documents as required.
  - (15). Evidence of updated as-built drawings as required.
  - (16). Other data or supporting evidence as may be required.
- h. Each application for payment shall be compared to the most recent schedule of values submitted by the CMAR. Applications for payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the application for payment. The percentage completion shall be the percentage of that portion of the Work which has actually been completed.
- i. Subject to other provisions of the Master Agreement, the amount of each progress payment for construction Work performed shall be computed as follows:
- (1). Take that portion of the Interim GMP or Final GMP properly allocable to completed construction Work as determined by multiplying the percentage completion of each portion of the construction Work by the share of the Interim GMP or Final GMP allocated to that portion of the construction Work in the schedule of values.
  - (2). Add that portion of the Interim GMP or Final GMP properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation into the construction Work or, if approved in advance by the Owner in writing, suitably stored off site at a location agreed upon in writing.

- (3). Add the CMAR Fee earned to date: the earned portion of the CMAR Fee shall be ninety (90%) of the fixed-sum CMAR Fee, pro-rated over the duration of the Project until Final Completion. The remaining ten percent (10%) portion of the CMAR Fee shall be paid to the CMAR upon Final Completion of the Project.
  - (4). Subtract the aggregate of previous payments made by the Owner.
  - (5). Subtract the amount, if any, by which the CMAR has been previously overpaid, as evidenced by the Owner's review of the CMAR's documentation required herein or by any audit of the CMAR records.
  - (6). Subtract amounts, if any, for which the Project Designer has withheld or nullified a certificate of payment.
- j. Subtract retainage as provided below:
- (1). Except with the Owner's prior written approval, payments allocated to that portion of the construction Work being completed by the Subcontractors shall be subject to a retention of five (5%) of the value of the construction Work being performed by the Subcontractors. Whenever any item of construction Work indicated on the CMAR's schedule of values is completed on or before a target date mutually agreed upon by the Owner, the Project Designer, and the CMAR, and the Project Designer and Owner agree the Work is completed, the Owner may reduce the amount of retainage on that item by fifty percent (50%) for the remainder of the Project, so that two and one-half percent (2-1/2%) of the contract price is retained.
  - (2). Provided, however, that after fifty percent (50%) of the construction Work has been satisfactorily completed on-schedule, with written approval of the Owner and written consent of the Surety, further requirements for retainage will be waived only so long as the construction Work continues to be completed satisfactorily and on-schedule.
  - (3). The Project shall be deemed fifty percent (50%) complete when the CMAR's gross Project invoices of the Cost of the Work, excluding the value of materials stored off-site, equal or exceed fifty percent (50%) of the value of the Cost of the Work, except that the value of materials stored on-site shall not exceed twenty percent (20%) of the CMAR's gross project invoices for the purposes of determining whether the Project is fifty percent (50%) complete.
  - (4). If progress or performance is, or becomes, unsatisfactory after the Project is deemed fifty percent (50%) complete, the Owner may reinstate retainage for each subsequent application for payment as authorized up to the maximum amount of five percent (5%).
  - (5). Full payment, less authorized deductions, shall also be made for those trades that have reached one hundred percent (100%) completion of their contracts by or before the Project is fifty percent (50%) complete, so long as such performance is satisfactory to the Project Designer and the Owner. However, payment to the early finishing trades is contingent upon the Owner's receipt of an approval or certification from the Project Designer and/or the CMAR that the work performed by the Subcontractor(s) is acceptable and in accordance with the Contract Documents. At that time, the Owner shall reduce the retainage for any such trade to five-tenths percent (0.5%) of that trade's invoiced work. Payments under this Subsection 53.j.(5). shall be made no later than 60 days following receipt of a Subcontractor's request or immediately upon receipt of the Surety's consent, whichever occurs later. Early finishing trades under this Subsection 53.j.(5). shall include structural steel, piling, caisson, and demolition. Should any other trades be afforded line-item release of retainage, each such trade shall be listed in the original bid documents. Each bid document shall list the inspections required before accepting the work, and any financial information required by the Owner to release payment to the trades, except the failure of the bid documents to contain this information

shall not obligate the Owner to release the retainage if it has not received the required certification from the Project Designer and/or CMAR.

- k. Reserved.
- l. Nothing in this Section 53 shall prevent the CMAR or Project Designer, at the time of the application and certification to the Owner, from withholding application and certification to the Owner for Subcontractor work because of the following: unsatisfactory job performance by Subcontractor(s); defective construction; disputed work; third party claims filed or reasonable evidence the claim will be filed against Subcontractor(s); damage to the construction Work caused by Subcontractor(s); failure of the Subcontractor(s) to make timely payments for labor, equipment, and materials; damage to the CMAR or another Subcontractor; reasonable evidence the Subcontractor's contract cannot be completed for the unpaid balance of the contract sum or a reasonable amount for retainage not to exceed the percentage that the CMAR is required to retain by the Owner.
- m. Retainage as set forth in Subsection 53.j. shall not be held on the CMAR Fee. Instead, ten percent (10%) of the CMAR Fee for Construction Management Services shall be held by the Owner until Final Completion and closeout of the Project. Final Completion and closeout of the Project mean that the Owner and Project Designer are satisfied that the Project has been completed in accordance with the Construction Documents and within the Final GMP, that all terms of the Contract Documents pertaining to close out have been satisfied, and that all Subcontractors have satisfactorily completed their respective contracts.
- n. Except with the Owner's prior written approval, the CMAR shall not make advance payments to suppliers for any approved materials or equipment that have not been delivered and satisfactorily stored at the site.
- o. The Project Designer shall take action on the CMAR's application for payment in accordance with the contract between the Owner and Project Designer. The Project Designer's certification for payment shall be based upon the Project Designer's on-site observation, its participation in the bi-monthly progress meetings, the documentation submitted in support of the CMAR's application for payment, and the requirements of this Section 53.
- p. For prompt payment of Pre-construction Services phase invoices only, the CMAR may email all invoices to [megan.walsh@raleighnc.gov](mailto:megan.walsh@raleighnc.gov) and [name.name@raleighnc.gov](mailto:name.name@raleighnc.gov) or mail all invoices to City of Raleigh, Engineering Services Department, Stormwater Management, ATTN: Megan Walsh, PO Box 590, Raleigh NC 27602-0590. All invoices must include the Purchase Order Number: \_\_\_\_\_. Invoices will be approved or rejected by the Owner's Representative. During the Construction Management Services phase of the Project, all applications for payment must be submitted to the Project Designer in accordance with the requirements of this Section 53.

#### 54. PAYMENTS WITHHELD

- a. The Project Designer may withhold a certificate of payment in whole or in part, to the extent reasonably necessary to protect the Owner. If the Project Designer is unable to certify payment in the amount of the CMAR's application for payment, the Project Designer will notify the CMAR and the Owner in writing. If the CMAR and Project Designer cannot agree on a revised amount, the Project Designer will promptly issue a certificate of payment for the amount for which the Project Designer is able to make such representations to the Owner. In the event the Project Designer revises the certificate of payment, the Project Designer shall provide to the CMAR and the Owner a written itemized list of all changes. The Project Designer may also withhold a certificate of payment, in whole or in part, to such extent as may be necessary in the Project Designer's opinion to protect the Owner from loss for which the CMAR or the Subcontractor(s) is responsible, including loss resulting from acts and omissions because of:

- (1). Defective Work not remedied;

- (2). Third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the CMAR;
  - (3). Failure of the CMAR or its First-Tier Subcontractor(s) to make payments properly to Subcontractors or sub-Subcontractors for labor, materials or equipment;
  - (4). Reasonable evidence that the construction Work cannot be completed for the unpaid balance of the Final GMP;
  - (5). Damage to the Owner, one or more of the Owner's separate contractor(s), or the Project Designer;
  - (6). Reasonable evidence that the construction Work will not be substantially completed within the contract time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - (7). Failure to carry out the construction Work in accordance with the Contract Documents;
  - (8). Failure to provide sales tax documentation as required by the Owner;
  - (9). Failure or refusal of the CMAR or its First-Tier Subcontractors to submit the required information on minority business enterprises;
  - (10). Failure to submit CPM schedules in accordance with the requirements of this Master Agreement;
  - (11). Any other reason deemed necessary by the Project Designer to protect the Owner unless arbitrary and unreasonable; or
  - (12). Subsequently discovered evidence that construction Work previously approved was not performed in accordance with the Contract Documents.
- b. When the above reasons for withholding a certificate are removed to the Project Designer's and the Owner's satisfaction, certification will be made by the Project Designer for amounts previously withheld.
- c. The Owner's Representative may reject a certificate of payment, in whole or in part, to the extent reasonably necessary to protect the Owner, including to protect the Owner from loss arising from one or more of the actions or omissions listed in this Section 54. The Owner shall provide the CMAR with an explanation for its rejection of a certificate of payment within the time that the Owner would otherwise be required to make payment to the CMAR pursuant to Section 53, above. Any such rejection shall be subject to the dispute resolution procedures set forth in Section 70, below.

## 55. FINAL PAYMENT

- a. The Owner reserves the right, prior to making final payment to the CMAR, to conduct a final audit of the expenditures by the CMAR on the Project for assurances that the final payment to the CMAR does not exceed the amounts properly payable to the CMAR for the Cost of the Work, General Conditions, CMAR Fee, any special allowances, and CMAR Contingency savings. In the event an audit determines that the CMAR has been paid more than it is entitled to be paid under this Master Agreement, the CMAR shall refund the overpayment to the Owner.
- b. The making and acceptance of final payment shall constitute a waiver of all claims by the Owner except for:
  - (1). Claims arising from unsettled liens or claims against the CMAR, including Liquidated Damages and claims arising out of, or resulting from, the CMAR's failure to complete, or arrange to have completed, warranty work within the time period established herein.
  - (2). Faulty Work or materials appearing after final payment.
  - (3). Failure of the CMAR to perform the construction Work in accordance with the Construction Documents, such failure appearing after final payment.

- (4). As conditioned in the performance bond and the payment bond provided by the CMAR's Surety or Sureties.
- c. The making and acceptance of final payment shall constitute a waiver of all claims by the CMAR except those claims previously made and remaining unsettled.
- d. Prior to submitting request for final payment to the Project Designer for approval, the CMAR shall fully comply with all requirements specified in the "Project Closeout" section(s) of the specifications and in the other Contract Documents. These requirements include, but are not limited to, the following:
  - (1). Submittal of Product and Operating Manuals, Warranties and Bonds, Guarantees, Maintenance Agreements, As-Built Drawings, and Certificates of Inspection or Approval from agencies having jurisdiction, all to be approved by the Project Designer prior to delivery to the Owner. The date when Operating Manuals for mechanical and electrical equipment shall be submitted to the Owner is set forth in Subsection 40.g. above.
  - (2). Transfer to the Owner of required attic stock material, extra owner materials, spare parts, tools, and all keys in an organized manner.
  - (3). Record of satisfactory completion of Owner's training.
  - (4). Resolution of any final inspection discrepancies.
- e. The CMAR shall forward to the Project Designer the final application for payment along with the following documents:
  - (1). List of minority business Subcontractors and material suppliers showing breakdown of contract amounts.
  - (2). Contractor's Affidavit, as described in Section 56, below.
  - (3). Affidavits of First-Tier Subcontractors of payment to material suppliers and sub-Subcontractors.
  - (4). Consent of Surety to final payment.
  - (5). Certificates of state agencies as required by state law.
- f. The Project Designer will not authorize final payment until the construction Work under this Master Agreement and the other Contract Documents has been certified by Project Designer as complete in accordance with the Contract Documents, all required certificates of compliance have been issued, and the CMAR has complied with the Project Closeout requirements in the specifications and in the other Contract Documents. The Project Designer shall forward the CMAR's final application for payment to the Owner along with respective certificate(s) of compliance as required by law.

56. CONTRACTOR'S AFFIDAVIT

The final payment of retained amounts due to the CMAR on account of this Master Agreement shall not become due until the CMAR has furnished to the Owner through the Project Designer an affidavit signed, sworn, and notarized to the effect that all payments for materials, services, and/or contracted construction Work to First-Tier Subcontractors in connection with this Master Agreement have been satisfied, and that no claims or liens exist against the CMAR in connection with this Master Agreement. In the event that the CMAR cannot obtain similar affidavits from First-Tier Subcontractors to protect the CMAR and the Owner from possible liens or claims against the CMAR, the CMAR shall state in its affidavit that no claims or liens exist against any Subcontractor to the best of its (the CMAR's) knowledge, and if any appear afterward, the CMAR's indemnity, defense and hold harmless obligations to the Indemnified Parties under Section 62, below, shall apply as to any and all claims made by any Subcontractor or other claimant for payment or any other compensation for construction Work on the Project, when the Fault of the CMAR or its Derivative Parties is a proximate cause of the claims indemnified. Notwithstanding the foregoing, nothing herein shall require CMAR to indemnify the Indemnified Parties against any such claims,

damages, liabilities, lawsuits, losses or expenses arising out of, resulting from, or in connection with any negligent acts of one or more of the Indemnified Parties.

#### 57. PAYMENT FOR STORED MATERIALS

- a. In the review and approval of applications for payment, the Project Designer and the Owner may authorize material delivered to the Project site and preparatory work done to be taken into consideration, subject to the CMAR's satisfaction of each of the following requirements:
- (1). The materials have been submitted and approved for use on the Project.
  - (2). The materials are satisfactorily stored to protect the materials for their intended use.
  - (3). The CMAR has provided a detailed paid bill of sale or invoice that notes the type and quantity of material included on the invoice, complete with a schedule of unit price values.
  - (4). The CMAR has provided a separate inventory control schedule with each partial payment request that reflects the type of stored material, quantity, unit prices, a schedule noting opening, quantity of material used that period and ending inventory of such material, and total summary of stored material amount being requested on the payment estimate.
  - (5). The CMAR has provided a statement with the application for payment certifying that it is responsible for the safety and security of subject materials and assumes all risk for loss of such materials.
- b. Materials delivered to the CMAR at locations other than the Project site may also be taken into consideration in the review and approval of applications for payment if, in addition to the requirements above, the CMAR satisfies the additional requirement listed below:
- (1). The materials are being stored in a secured, protected, and bonded facility and environment pre-approved by the Owner in writing.

#### 58. AUDIT OF RECORDS

- a. The CMAR's and the Subcontractors' records, as that term is defined in Subsection 58.b., below, shall upon reasonable notice be open to inspection and subject to audit and/or reproduction by the Owner during normal business hours. Such audits may be performed by the Owner's Representative, designee thereof, or by an outside auditor engaged by the Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this Master Agreement and for a period of three years after final payment (or, alternatively, for a period of three years after termination of this Master Agreement as may be applicable) or longer if required by law. The CMAR and the Subcontractors shall preserve all records, cooperate with the Owner, and allow audit access to their records during the Project's Pre-Construction Services phase, the Project's Construction Management Services phase, and for a period of three years after final payment or termination, whichever may apply. The Owner's representatives may, without limitation, conduct verifications such as counting employees at the Work site, witnessing the distribution of payroll, and verifying information and amounts through interviews and written confirmations with CMAR employees, field and agency labor, Subcontractors, and vendors. Furthermore, CMAR shall, upon request, provide any records associated with this engagement to the North Carolina State Auditor that are necessary to comply with the provisions of G.S. § 147-64.7
- b. The CMAR's "records," as that term is used in this Master Agreement, shall include any and all information, materials, and data of every kind and character, including without limitation, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and records that may, in the Owner's judgment, have any bearing on or pertain to any matters, rights, duties, or obligations under or covered by this Master Agreement or any of the other Contract Documents. Such records shall be made available to the Owner in hard copy and in electronic/computer readable format and shall include without limitation the following: written

policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; Subcontract files (including proposals of successful and unsuccessful bidders, bid tabulations and recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; Change Order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; invoices and related payment documentation; general ledger information detailing cash and trade discounts earned, insurance rebates, and dividends; and any other CMAR records which may have a bearing on matters of interest to the Owner in its sole discretion in connection with the CMAR's dealings with the Owner, including, but not limited to:

- (1). The CMAR's compliance with the terms and conditions of the Master Agreement and the other Contract Documents, including without limitation requirements for deliverables.
  - (2). The CMAR's compliance with the Construction Documents.
  - (3). The CMAR's compliance with the Owner's business ethics expectations.
  - (4). The CMAR's compliance with this Master Agreement's terms and conditions regarding the pricing of Change Orders.
  - (5). The accuracy of the CMAR's representations contained in its applications for payment.
  - (6). The accuracy of the CMAR representations concerning any and all claims submitted by the CMAR or any of its Subcontractors and other payees.
- c. The CMAR shall require all of its payees, including without limitation its Subcontractors, material suppliers, and insurance carriers, to comply with the provisions of this Section 58 by including the requirements hereof in each written contract between the CMAR and a payee.
- d. The Owner's Representative, designee, and/or outside auditor shall have reasonable access to the CMAR's facilities during normal business hours, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Master Agreement, and shall be provided adequate and appropriate work space at the CMAR's facilities, all in order to facilitate the Owner's conducting of audits in compliance with this Section 58.
- e. If an audit inspection or examination in accordance with this Section 58 discloses overpricing or overcharges of any nature by the CMAR in excess of one percent (1%) of the CMAR's total contract billings, in addition to making adjustments for the overcharges, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the CMAR. Any adjustments and/or payments which must be made as a result of any such audit shall be made to the Owner within a reasonable amount of time, not to exceed 90 days from the Owner's presentation of its findings to the CMAR.
- f. The CMAR agrees to maintain all information pertaining to Bid Packages and billing for services performed under this Master Agreement in accordance with all state laws governing public records. The CMAR shall afford the Owner access to these records for audit during the Project's Pre-Construction Services phase and Construction Management Services phase at such intervals as may be desired by the Owner. The CMAR shall also preserve and make available such records in accordance with Subsection 58.a., above.
- g. The rights established under this Section 58 shall survive the expiration or termination of this Master Agreement, and shall not be deleted, circumvented, limited, confined, or restricted by contract or any other section, clause, addendum, attachment or subsequent amendment to this Master Agreement or any of the other Contract Documents.

## 59. TAXES

- a. North Carolina sales tax and use tax, as required by law, apply to materials incorporated into municipal work, and such costs shall be included in all bid proposals and contract sums.

- b. Local option sales and use taxes, as required by law, apply to materials incorporated into municipal work, and such costs shall be included in all bid proposals and contract sums.
- c. In addition to other conditions precedent to the release of progress payments and/or final payment as set forth in Sections 53 and 55, above, the CMAR shall give the Owner a tax statement signed by the CMAR containing the information listed in G.S. 105-164.14(e) before any application for payment submitted by the CMAR shall become due and payable.
- d. The Department of Revenue has agreed that in lieu of obtaining copies of sales receipts from contractors, an agency may obtain a certified statement from the contractor setting forth the date, the type of property and the cost of such property purchased from each vendor, the county in which the vendor made the sale, and the amount of local sales and use taxes paid thereon. If the property was purchased out-of-state, the county in which the property was delivered shall be listed. The contractor shall also be notified that the certified statement may be subject to audit.
- e. In the event the CMAR makes several purchases from the same vendor, such certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, the counties in which the vendor made the sale, and the county sales and use taxes paid thereon. The place of a sale is the retailer's place of business located within a taxing county where the vendor becomes contractually obligated to make the sale. Therefore, it is important that the county tax be reported for the county of sale rather than the county of use. When property is purchased from out-of-state vendors and the county tax is charged, the county shall be identified where delivery is made when reporting the county tax. The CMAR's certified statement must also include the cost of any tangible personal property withdrawn from the CMAR's warehouse stock and the amount of county sales or use tax paid thereon by the CMAR.
- f. Similar certified statements by the CMAR's Subcontractors must be obtained by the CMAR and furnished to the Owner; provided, however, that the CMAR shall not be required to certify the Subcontractors' certified statements.
- g. The CMAR and its Subcontractors shall not include any tax paid on supplies, tools, and equipment that they use to perform their contracts and shall include only those building materials, supplies, fixtures, and equipment which actually become a part of or annexed to a building, structure, and/or other component of the construction Work.
- h. Any sales tax refunds paid to the Owner shall be exclusively for the Owner's use and shall not in any way reduce the cost of the Project or impact the Final GMP.
- i. The CMAR is advised that all applications for payment, whether partial or final, for construction Work completed under this Master Agreement must include a sales tax report submitted in accordance with the requirements set forth in this Section 59.

60. INSURANCE FOR PRE-CONSTRUCTION SERVICES.

The CMAR, in its performance of Pre-Construction Services, shall provide documentation evidencing that it maintains insurance in strict accordance with the requirements of this Section 60.

- a. The Owner shall not be required under this Master Agreement to procure or maintain any insurance for the Project or for the benefit of the Project Team and/or other Project participants. It is the intent of this Master Agreement that the CMAR will implement insurance and purchase insurance policies to protect the Work and to insure against liabilities of the CMAR and its Subcontractors and suppliers of any tier. Such insurance shall be of the kinds and have limits of liability and coverage not less than the minimum limits specified in this Section 60 or required by law, whichever is greater. The Owner's separate contractors that may be working at the Project site contemporaneously with the CMAR will include the CMAR as an additional insured.
- b. The CMAR shall, without limiting its obligations or liabilities, procure, pay for, and maintain such insurance as is required by law and as is required by this Master Agreement and/or the other Contract Documents to protect the CMAR, the Owner, and the Project Designer from claims for

damages for bodily injury, including without limitation death, and from claims for property damage, including the loss of use resulting therefrom, which may arise out of or result from the CMAR's or its representatives', consultants', Subcontractors', agents', or employees' operations under this Master Agreement. Such insurance shall be of the kinds and have limits of liability and coverage not less than the minimum limits specified in this Section 60 or required by law, whichever is greater. The Owner makes no representation as to the adequacy or sufficiency of such coverage. The requirements of this Section 60 shall in no way be construed to limit or eliminate the liability of the CMAR that arises from performance of Work under this Master Agreement. The CMAR is strictly responsible for any losses, claims, and costs of any kind which exceed the CMAR's limits of liability, or which may be outside the coverage scope of the policies.

- (1). The obligations of the CMAR under this Section 60 shall not extend to liability arising out of the negligence of the Owner or the Project Designer or their respective representatives, consultants, Subcontractors, agents, and/or employees. The obligations of the CMAR under this Section 60 shall not extend to liability arising out of professional services unless performed by the CMAR, including defects in design performed by the Owner or the Project Designer or their respective representatives, consultants, subcontractors, agents, and /or employees.
- c. The insurance required by this Section 60 shall be provided by an insurer approved by the Owner, authorized to do such business in the State of North Carolina, and on terms approved by the Owner. All insurance companies utilized by the CMAR shall have a minimum rating of A- and Class VII as evaluated by the most current A.M. Best Rating Guide. All agents and brokers of the CMAR's insurers shall hold valid licenses from the State of North Carolina. The CMAR shall furnish to the Owner a certificate or certificates of insurance for its Subcontractors in a form satisfactory to the Owner contemporaneously with the executed contracts with the Subcontractors. Upon request of the Owner, the CMAR shall provide the Owner with redacted copies of the insurance policies required by this Section 60, including without limitation declaration pages, conditions, exclusions, and additional insured endorsements, and shall confirm that each policy premium has been paid for the required term of this Master Agreement. Certificates of insurance shall be signed by a person authorized by that insurer to bind coverage on its behalf.
- d. All insurance policies required by this Section 60 shall provide that the insurance carrier shall not initiate cancellation, non-renewal, or material limitation of coverage without at least thirty (30) days prior written notice to the Owner (or 10 days in the case of cancellation due to non-payment of premium). A Direct Notice of Cancellation endorsement is to be attached to corresponding certificates of insurance. In the event of any such cancellation, non-renewal, or material limitation, the CMAR is obligated to replace such insurance within seven (7) days without a gap in coverage and file accordingly such notice with the Owner and other interested parties. Failing immediate receipt of evidence of such replacement of insurance, the Owner reserves the right to procure such insurance as the Owner considers desirable, and the CMAR shall pay or reimburse the cost of the premium arising therefrom without any rights to seek subsequent reimbursements from the Owner.
- e. No action or inaction on the part of the Owner shall in any way change or reduce the CMAR's responsibilities and liabilities under this Master Agreement. Self-funded, policy fronting, or other non-risk transfer insurance programs or mechanisms are not acceptable without prior written approval of the Owner. Full disclosure of such a program must be made prior to the CMAR's commencing mobilization to the Project site. Failure to make a full disclosure constitutes a material breach of this Master Agreement.
- f. The CMAR shall ensure that it and all its Subcontractors name the Owner as additional insured under all insurance policies required by this Master Agreement to be procured and maintained during the pre-construction phase of the Project (except workers' compensation, employers liability, and professional liability) with respect to and including liability for bodily injury and property damage caused, in whole or in part, by the willful misconduct, negligent act, or omission of the CMAR or those acting on the CMAR's behalf (including without limitation Subcontractors) under this Master Agreement, products and completed operations of the CMAR, and automobiles

owned, hired, leased, or borrowed by the CMAR. Additional insured status is not intended to extend to liability caused by the Owner's or the Project Designer's negligence.

- g. For any claims related to this Project, the CMAR's insurance or self-insurance shall be primary and noncontributory with respect to any of the Owner's insurance to the extent of the CMAR's liability under this Section 60. Any insurance or self-insurance maintained by the Owner shall be excess and noncontributory with respect to the CMAR's insurance.
- h. All policies of insurance required under this Section 60 shall contain a clause or endorsement waiving rights of subrogation against the Owner.
- i. Limits of coverage are not to be amended by deductible clauses of any nature without the express written consent of the Owner. The CMAR shall be solely responsible for any deductible assumptions that may exist in any insurance policies required under this Master Agreement. In addition, the CMAR shall be responsible and shall not be reimbursed for any losses arising from any risk or exposure not insured as required by this Section 60, or not covered as a result of normal policy exclusion or that falls within the self-insured retention, if the CMAR is self-insured.

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

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

- j. The CMAR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- k. The claim provisions in the CMAR's insurance policies must specifically state the insurance company or CMAR's third party administrator. If self-insured, the CMAR has both the right and the duty to adjust a claim and provide defense.
- l. If any of the policies procured pursuant to this Section 60 contain any warranty stating that coverage is null and void (or words to that effect), or if the CMAR does not comply with the most stringent regulations governing the Work, then the policies shall be modified so that coverage shall be afforded in all cases except for the CMAR's willful or intentional noncompliance with applicable government regulations.
- m. Any failure by any person to comply with reporting or other provisions of any insurance policy, including without limitation breach of warranties, shall not affect coverage provided to the Owner and its respective representatives, officials, and employees. The Builders Risk coverage does not include a Separation of Insured's provisions.
- n. The insolvency or bankruptcy of the insured or of the insured's estate shall not relieve the insurance companies of their obligations under these policies. Any clauses to the contrary are unacceptable and must be stricken.
- o. Reserved
- p. The Work under this Master Agreement shall not commence until the CMAR has verified to the Owner that all required insurance coverages as described in this Section 60 have been obtained and further verified that appropriate certificates of insurance have been approved in writing by the Owner. The Owner's review and/or acceptance of such certificates of insurance shall neither relieve CMAR of any requirement to provide the specific insurance coverages set forth herein nor constitute a waiver or acknowledgment of satisfaction of the specific insurance coverage requirements set forth in this Master Agreement.

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

The Certificate Holder address should read:  
City of Raleigh  
Post Office Box 590  
Raleigh, NC 27602-0590

- q. Worker's Compensation and Employer's Liability: The CMAR shall ensure that it and all of its Subcontractors procure and maintain Workers' Compensation Insurance in the amount and type required by the State of North Carolina and federal law for all employees employed under this Master Agreement who may come within the protection of Workers' Compensation Laws and covering all operations under this Master Agreement, whether performed by the CMAR or by its Subcontractors. In jurisdictions not providing complete Workers' Compensation protection, the CMAR shall ensure that it and its Subcontractors shall maintain employers' liability insurance in an amount, form, company, and agency satisfactory to the State of North Carolina and the Owner for the benefit of all employees not protected by Workers' Compensation Laws and covering all operations under this Master Agreement whether performed by the CMAR or by its Subcontractors.

- (1). The CMAR shall pay such assessments as will protect the CMAR and the Owner from claims under the Workers' Compensation Laws, workers' or workmen's compensation disability benefits, and other similar employee benefit acts. The current Experience Modification Factor shall be indicated on the certificate of insurance.

- (2). Coverage under this Section 60 shall be as required by federal and state Workers' Compensation and Occupational Disease Statutes, and shall have minimum limits as follows:

- Coverage A: Statutory, State of North Carolina
- Employers' Liability: Each Accident: \$1,000,000
- Disease - Policy Limit: \$1,000,000
- Disease - Each Employee: \$1,000,000

- (3). Such insurance shall include Voluntary Compensation coverage, a Waiver of Subrogation in favor of the Owner, as well as other endorsements that may be required by applicable jurisdictions, i.e. United States Longshoremen and Harbor Workers Act and maritime coverage (Jones Act).

- r. Automobile Liability Insurance: The CMAR shall ensure that it and all of its Subcontractors procure and maintain automobile insurance against liability for bodily injury, death, and property damage as described below, that may arise out of or result from the Work being performed under this Master Agreement, and will provide protection from claims which may arise out of or result from the CMAR's performance of the Work and the CMAR's other obligations under this Master Agreement, whether such performance of the Work is by the CMAR; by any representative of the CMAR; by any of the CMAR's Subcontractors; by anyone employed directly or indirectly by the CMAR or any of its Subcontractors; or by anyone else for whose acts the CMAR or any of its Subcontractors may be liable.

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

Combined Single Limit: \$1,000,000

- (2). The policy of insurance shall contain or be endorsed to include the use of any automobile, including owned, hired, and non-owned automobile liability.

(3). If the policy contains a warranty stating that coverage is null and void (or words to that effect) if the transporter does not comply with the most stringent regulations governing the Work, the policy shall be modified so that coverage shall be afforded in all cases except for the transporter's willful or intentional noncompliance with applicable government regulations.

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

- General Aggregate per project: \$5,000,000.00
- Products/Completed Operations Aggregate: \$5,000,000.00
- Bodily Injury & Property Damage /each occur: \$5,000,000.00
- Personal Injury and Advertising Injury: \$2,000,000.00

The policy of insurance shall contain or be endorsed to include the following:

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

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

The CMAR shall ensure that it and all of its Subcontractors provide the Owner additional insured endorsements CG 20 10 10 01 or CG D3 61 03 05 for ongoing and premise operations and CG 20 37 10 01 for completed operations, except as may otherwise be approved by the Owner to meet MWBE goals.

Umbrella or Excess Liability insurance coverage may be used to meet or exceed the minimum insurance limits in this Master Agreement using a follow-form coverage form for all layers. Coverage shall remain continuously in effect and without interruption for at least six (6) years after Substantial Completion and shall include coverage for exposures arising from operations that have been completed. The CMAR shall furnish the Owner and each other additional insured listed in this Master Agreement to whom the certificates of insurance have been issued, evidence satisfactory to the Owner of continuation of such insurance at the date of Substantial Completion and each year thereafter.

t. Property Insurance: In the event any construction work is to be performed in connection with the CMAR's Pre-Construction Services, then prior to the commencement of any such construction work being performed, the CMAR shall be responsible for purchasing and

maintaining builder's risk insurance to protect the Project from perils of physical loss. The Builder's Risk policy must be an "All Risk" (Special Perils) coverage form, have no coinsurance penalty provisions, and be endorsed to increase the limit of insurance for all Change Orders. The Builder's Risk policy shall contain no exclusion for theft, collapse, or damage to foundations or underground structures, pipes, or conduits.

The insurance required by this Subsection 60.t. shall provide for the full cost of replacement for the construction work at the time of any loss. The insurance shall insure against the loss from the perils of fire and all risk coverage for physical loss or damage due to theft, vandalism, riot, civil commotion, collapse, malicious mischief, transit, flood, earthquake, testing, damages resulting from defective design, negligent workmanship, blasting and explosion, windstorm, hail, lightning, vehicle impact, aircraft, smoke, mechanical breakdown, boiler explosion, artificial generated electrical current, or defective material, or water damage other than caused by flood. The Owner, the Project Designer, and all tiers of Subcontractors shall be additional insureds on the Builder's Risk policy. The CMAR shall be the named insured (responsible for premium payments, policy changes, etc.). The CMAR shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost of the Project.

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

(1). **WAIVERS OF SUBROGATION:** The Owner and the CMAR waive all rights against (1) each other and any of their Subcontractors, sub-Subcontractors, agents, and employees, each of the other, and (2) the Project Designer, its consultants, separate subconsultants, agents, and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance pursuant to this Subsection 60.t. or other property insurance applicable to the construction Work. The Owner or CMAR, as appropriate, shall require of the Project Designer, its consultants, separate subconsultants, agents, and employees, if any, and of the Subcontractors, separate sub-Subcontractors, agents, and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise; did not pay the insurance premium directly or indirectly; and whether or not the person or entity had an insurable interest in the property damaged.

u. **Aviation/Aircraft:** If required by Owner, the CMAR shall ensure that the operator of an aircraft of any kind, including without limitation drones and/or other forms of unmanned aircraft, utilized in the performance of this Master Agreement, must maintain liability insurance covering bodily injury and property damage on a combined single limit basis, each occurrence limit and in the aggregate (including passenger liability) with liability limits in an amount not less than Five Million and 00/100 Dollars (\$5,000,000). If non-employee passengers are carried, the policy procure must not include a per-passenger sublimit. Prior to commencing operations, the operator of any aircraft covered by this Subsection 60.u. must provide the Owner with a certificate of insurance naming the Owner as additional insured on a primary and non-contributory basis. The operator of the aircraft and its insurer(s) must hold the Owner harmless and waive subrogation with respect to damage to the aircraft. If the aircraft is to be used to perform lifts at the Project site, a "slung cargo" endorsement must be included to cover the full replacement value of any equipment being lifted.

v. **Professional Liability:**

(1). The CMAR shall ensure that it and all of its Subcontractors provide and maintain professional liability insurance coverage to protect the Owner from liability arising out of or resulting from the performance of professional services if any, by the CMAR and/or its Subcontractors under this Master Agreement or any amendments thereto. Such coverage shall be in the sum of not less than Ten Million Dollars (\$10,000,000.00).

- (2). Throughout the term of this Master Agreement, the professional liability policy shall contain full prior acts coverage. Coverage should be continuously maintained during the term of the Master Agreement. Coverage shall not include any exclusions or limitations related to (i) scope of professional services; (ii) delays in Project completion or cost overruns; (iii) who is authorized to notify the carrier of a claim or a potential claim; and (iv) mold, fungus, asbestos, pollutants, or hazardous substances.
- (3). Claims-made coverage is permitted provided the policy retroactive date is continuously maintained prior to the Effective Date of this Master Agreement and coverage is continuously maintained during all periods in which the CMAR performs professional services for the Owner and for an additional period of one (1) year after termination of this Master Agreement or the last date such services are performed, whichever comes later.
- w. Deductible: Any deductible, if applicable to loss covered by any insurance policy required by this Section 60, is to be borne by the CMAR and/or its Subcontractors.
- x. Proof of Coverage: The CMAR shall ensure that it and all its Subcontractors furnish the Owner with satisfactory proof of carriage of the insurance required above before written approval of the CMAR's insurance for its Subcontractors is granted by the Owner.
- y. Claims: The CMAR shall notify the Owner within twenty-four (24) hours of any claims or alleged claims received by the CMAR, or by any of its Subcontractors, that are covered by any of the policies of insurance required of the CMAR and/or its Subcontractors under this Master Agreement. The CMAR shall provide a written copy of the claim or alleged claim to the Owner within three (3) days of the CMAR's receipt of the claim or alleged claim. If a claim is settled to the satisfaction of the claimant, the CMAR shall submit a copy of the claimant's release to the Owner.

If a claim or alleged claim is rejected by the CMAR and/or its insurance company, the CMAR shall immediately report this fact to the Owner. Should thirty (30) days elapse after the claim or alleged claim has been received by the CMAR, and the CMAR is not able to report a settlement or rejection of the claim, it shall report to the Owner the steps being taken with respect to the claim. Without limiting the foregoing, the CMAR shall notify the Owner in writing of any paid or incurred claims which may impair annual aggregate or general liability insurance coverage limits.

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

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

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

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

Completed Operations coverage for six (6) years following completion of construction Work.

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

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

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

The CMAR shall provide the costs of "Pollution Legal Liability" and "Builder's Risk insurance" coverages to the Owner in order to facilitate the Owner's decision whether to obtain these coverages in lieu of the CMAR procuring them.

#### 61. INSURANCE FOR CONSTRUCTION MANAGEMENT SERVICES

The construction Work associated with the construction phase of this Master Agreement shall not commence until the CMAR has verified to the Owner that all required insurance coverages as described in this Section 61 have been obtained and further verified that certificates of insurance have been approved in writing by the Owner. These certificates shall contain a provision that coverage afforded under the policies will not be cancelled, reduced in amount or, eliminated until at least thirty (30) days after mailing written notice, by certified mail, return receipt requested, to the insured and the Owner of such alteration or cancellation. It is understood by the parties that one or more of the limits of liability provided in this Section 61 for the insurance coverages to be obtained and maintained by the CMAR during the construction phase of the Work may be increased by the parties in agreed-upon construction scope(s) of Work to be attached hereto and incorporated herein by reference as amendment(s) to this Master Agreement. Notwithstanding anything herein to the contrary, under no circumstance shall any amendment to this Master Agreement reduce any of the limits of liability that are established in this Section 61.

All insurance companies must be licensed in North Carolina and be acceptable to the City of Raleigh's Risk Manager.

The CMAR, in the performance of its Construction Management Services, shall provide documentation evidencing that it maintains the insurance in strict accordance with the requirements of this Section 61:

- a. The Owner shall not be required under this Master Agreement to procure or maintain any insurance for the Project or for the benefit of the Project Team and/or other participants. It is the intent of this Master Agreement that the CMAR will purchase and implement a Contractor Controlled Insurance Program (CCIP) insurance program to protect the construction Work and to insure against liabilities of the CMAR and all Subcontractors or suppliers at any level. Such insurance shall be of the kinds and have limits of liability and coverage not less than the minimum limits specified in this Section 61 or as required by law, whichever is greater. The Owner's separate contractors that may be working at the Project site contemporaneously with the CMAR will include the CMAR as an additional insured, subject to identification of such contractors to the CMAR by the Owner.
- b. The CMAR shall, without limiting its obligations or liabilities, procure, pay for and maintain such insurance as is required by law and as is required by this Master Agreement and/or other Contract Documents to protect the CMAR, the Owner, and the Project Designer from claims for damages

for bodily injury, including without limitation death, and from claims for property damage, including the loss of use resulting therefrom, which may arise out of or result from the CMAR's or its representatives', consultants', Subcontractors', agents', or employees' operations under this Master Agreement. Such insurance shall be of the kinds and have limits of liability and coverage not less than the minimum limits specified in this Section 61 or required by law, whichever is greater. The Owner makes no representation as to the adequacy or sufficiency of such coverage. The requirements of this Section 61 shall in no way be construed to limit or eliminate the liability of the CMAR that arises from performance of construction Work under the Master Agreement. The CMAR IS strictly responsible for any losses, claims, and costs of any kind which exceed the CMAR's limits of liability, or which may be outside the coverage scope of the policies.

- (1). The obligations of the CMAR under this Section 61 shall not extend to liability arising out of the negligence of the Owner or the Project Designer or their respective representatives, consultants, subcontractors, agents and /or employees. The obligations of the CMAR under this Section 61 shall not extend to liability arising out of professional services, unless performed by the CMAR (including defects in design), performed by the Owner or the Project Designer or their respective representatives, consultants, subcontractors, agents and/or employees.
- (2). The insurance required by this Section 61 shall be provided by an insurer approved by the Owner, licensed to do such business in the State of North Carolina, and on terms approved by the Owner. All insurance companies utilized by the CMAR shall have a minimum rating of A- and Class VII as evaluated by the most current A M Best Rating Guide. All agents and brokers of the CMAR's insurers shall hold valid licenses from the State of North Carolina. The CMAR shall furnish to the Owner a certificate or certificates of Insurance for their Subcontractors in a form satisfactory to the Owner contemporaneously with the executed Contract with the Subcontractors. Upon request of the Owner, the CMAR shall provide the Owner with redacted copies of the insurance policies required by this Section 61, including without limitation declaration pages, conditions, exclusions and additional insured endorsements, and shall confirm that each policy premium has been paid for the required term of this Master Agreement. Certificates of insurance shall be signed by a person authorized by that Insurer to bind coverage on its behalf.
- (3). All insurance policies required by this Section 61 shall provide that the insurance carrier shall not initiate cancellation, non-renewal, or material limitation of coverage, without at least thirty (30) days prior written notice to the Owner (or 10 days for cancellation due to non-payment of premium). A Direct Notice of Cancellation endorsement is to be attached to corresponding Certificates of Insurance. In the event of any such cancellation, non-renewal or material limitation, the CMAR IS obligated to replace such Insurance within seven (7) days without a gap in coverage and file accordingly such notice with the Owner and other interested parties. Failing immediate receipt of evidence of such replacement of insurance, the Owner reserves the right to procure such Insurance as the Owner considers desirable and the CMAR shall pay or reimburse the cost of the premium arising therefrom without any rights to seek subsequent reimbursements from the Owner.
- (4). No action or inaction on the part of the Owner shall in any way change or reduce the CMAR's responsibilities and liabilities under this Master Agreement. Self-funded, policy fronting, or other non-risk transfer insurance programs or mechanisms are not acceptable without prior written approval of the Owner. Full disclosure of such a program must be made prior to the CMAR's commencing mobilization to the Project site. Failure to make a full disclosure constitutes a material breach of this Master Agreement.
- (5). The CMAR shall name the Owner as additional insured under all its insurance contracts that it is obligated by this Master Agreement to procure and maintain during the construction phase of the Project (except workers' compensation, employers liability, and professional liability) with respect to and including liability for bodily Injury and property damage, including the loss of use resulting therefrom, caused, in whole or in part, by the

willful misconduct, negligent act, or omission of the CMAR or those acting on the CMARs behalf (including without limitation Subcontractors) under this Master Agreement, products and completed operations of the CMAR, and automobiles owned, hired, leased, or borrowed by the CMAR. Additional insured status is not required to extend to liability caused by the Owner's or the Project Designers' negligence.

- (6). For any claims related to this Project, the CMAR's Contractor Controlled "wrap up" insurance or self-insurance shall be primary and non-contributory with respect to the Owner's insurance to the extent of the CMAR's liability under this Section 61. Any insurance or self-insurance maintained by the Owner shall be excess and non-contributory with respect to the CMAR's Insurance
- (7). All policies of insurance required under this Section 61 shall contain a clause or endorsement waiving rights of subrogation against the Owner.
- (8). Limits of coverage are not to be amended by deductible clauses of any nature without the express written consent of the Owner. The CMAR shall be solely responsible for any deductible or self-insured retention assumptions that may exist in any insurance policies required under this Master Agreement. In addition, the CMAR shall be responsible and shall not be reimbursed for any losses arising from any risk or exposure not insured as required by this Section 61, or not covered as a result of normal policy exclusion or that falls within the self-insured retention, if the CMAR is self-insured.
- (9). The CMAR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the Insurer's liability.
- (10). The claim provisions in the CMAR's insurance policies must specifically state the insurance company or CMAR's third party administrator. If self-insured, the CMAR has both the right and the duty to adjust a claim and provide defense.
- (11). If any of the policies procured pursuant to this Section 61 contain any warranty stating that coverage is null and void (or words to that effect), or if the CMAR does not comply with the most stringent regulations governing the construction Work, then the policies shall be modified so that coverage shall be afforded in all cases except for the CMAR's willful or intentional non-compliance with applicable government regulations.
- (12). Any failure by any person to comply with reporting or other provisions of any insurance policy, including without limitation breach of warranties, shall not affect coverage provided to the Owner and its respective representatives, officials, and employees. The Builder's Risk coverage does not include a Separation of Insured's provisions.
- (13). The insolvency or bankruptcy of the insured or of the insured's estate shall not relieve the insurance companies of their obligations under these policies. Any clauses to the contrary are unacceptable and must be stricken.
- (14). Reserved.
- (15). The construction Work under this Master Agreement shall not commence until the CMAR has verified to the Owner that all required insurance coverages as described in this Section 61 have been obtained and further verified that appropriate certificates of insurance have been approved in writing by the Owner. The Owner's review and/or acceptance of such certificates of insurance shall neither relieve CMAR of any requirement to provide the specific insurance coverages set forth herein nor shall it constitute a waiver or acknowledgment of satisfaction of the specific insurance coverage requirements set forth in this Master Agreement.

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

The Certificate Holder address should read:  
City of Raleigh  
Post Office Box 590  
Raleigh, NC 27602-0590

- c. Worker's Compensation and Employer's Liability: The CMAR shall ensure that It and all of its Subcontractors shall procure and maintain Workers' Compensation Insurance in the amount and type required by the State of North Carolina and federal law for all employees employed under this Master Agreement who may come within the protection of Workers' Compensation Laws and covering all operations under this Master Agreement whether performed by the CMAR or by its Subcontractors. In jurisdictions not providing complete Workers' Compensation protection, the CMAR shall ensure that it and its Subcontractors shall maintain employers' liability insurance in an amount, form, company, and agency satisfactory to the State of North Carolina and the Owner for the benefit of all employees not protected by Workers' Compensation Laws and covering all operations under this Master Agreement whether performed by the CMAR or by its Subcontractors.

- (1). The CMAR shall pay such assessments as will protect the CMAR and the Owner from claims under the Workers' Compensation Laws, workers' or workmen's compensation disability benefits, and other similar employee benefit acts. The current Experience Modification shall be indicated on the certificate of insurance.

- (2). Coverage under this Section 61 shall be as required by federal and state Workers' Compensation and Occupational Disease Statutes, and shall have minimum limits as follows:

- Coverage A: Statutory, State of North Carolina
- Employers' Liability: Each Accident: \$1,000,000
- Disease - Policy Limit: \$1,000,000
- Disease - Each Employee: \$1,000,000

- (3). Such Insurance shall Include Voluntary Compensation coverage, a Waiver of Subrogation in favor of the Owner, as well as other endorsements that may be required by applicable jurisdictions, i.e., United States Longshoremen and Harbor Workers Act and maritime coverage (Jones Act).

d. Automobile Liability Insurance:

The CMAR shall ensure that it and all of its Subcontractors procure and maintain automobile insurance against liability for bodily injury, death and property damage as described below, that may arise out of or result from the construction Work being performed under this Master Agreement, and will provide protection from claims which may arise out of or result from the CMAR's performance of the construction Work and the CMAR's other obligations under this Master Agreement, whether such performance of the construction Work is by the CMAR; by any representative of the CMAR; by any of the CMAR's Subcontractors; by anyone employed directly or indirectly by the CMAR or any of its Subcontractors; or by anyone else for whose acts the CMAR or any of its Subcontractors may be liable.

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

Combined Single Limit - \$1,000,000

- (2). The policy of insurance shall contain or be endorsed to include the use of any automobile, including owned, hired, and non-owned automobile liability.

- (3). If the policy contains a warranty stating that coverage is null and void (or words to that effect) if the transporter does not comply with the most stringent regulations governing the construction Work, the policy shall be modified so that coverage shall be afforded in all cases except for the transporter's willful or intentional non-compliance with applicable government regulation.

e. General Liability:

- (1). The CMAR shall ensure that it and all of its Subcontractors procure and maintain commercial general liability insurance against liability for bodily injury, death and property damage, including the loss of use resulting therefrom, as described below, that may arise out of or result from the Construction Management Services being performed under this Master Agreement, and will provide protection from claims which may arise out of or result from the CMAR's performance of the Construction Management Services and the CMAR's other obligations under this Master Agreement, whether such performance of the Construction Management Services is by the CMAR; by any representative of the CMAR; by any of the CMAR's Subcontractors; by anyone employed directly or indirectly by the CMAR or any of its Subcontractors; or by anyone else for whose acts the CMAR or any of its Subcontractors may be liable.

- (2). This policy must be written on an occurrence basis, with the following minimum Limits of Liability:

• General Aggregate per project	\$10,000,000
• Products/Completed Operations Aggregate	\$10,000,000
• Bodily Injury & Property Damage/each occurrence	\$10,000,000
• Personal Injury and Advertising Injury	\$10,000,000

- (3). The policy of insurance shall contain or be endorsed to include the following:

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

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

The CMAR shall ensure that it and all of its Subcontractors shall provide the Owner additional insured endorsements CG 20 10 10 01 or CG D3 61 03 05 for ongoing and premise operations and CG 20 37 10 01 for completed operations, except as may otherwise be approved by the Owner to meet MWBE goals.

Umbrella or Excess Liability insurance coverage written on an occurrence policy form at least as broad as the primary General Liability policy may be used to meet or exceed the minimum insurance limits under this Master Agreement using a follow-form coverage form for all layers and coverage shall remain continuously in effect and without interruption from the date of commencement of the construction phase of this Master

Agreement until six (6) years from Substantial Completion and shall include coverage for exposures arising from operations that have been completed. The CMAR shall furnish the Owner and each other additional insured listed in this Master Agreement to whom the certificates of insurance have been issued, evidence satisfactory to the Owner of continuation of such insurance at the date of Substantial Completion and each year thereafter.

f. Property Insurance:

- (1). The CMAR shall be responsible for purchasing and maintaining Builder's Risk insurance to protect the Project from perils of physical loss. The Builder's Risk policy must be an "All Risk" (Special Perils) coverage form, have no coinsurance penalty provisions, and be endorsed to increase the limit of insurance for all Change Orders. The Builder's Risk policy shall contain no exclusion for theft, collapse, or damage to foundations or underground structures, pipes, or conduits.
- (2). The insurance required by this Subsection 61.f. shall provide for the full cost of replacement for the construction Work at the time of any loss. The insurance shall insure against the loss from the perils of fire and all risk coverage for physical loss or damage due to theft, vandalism, collapse, malicious mischief, transit, flood, earthquake, testing, damages resulting from defective design, negligent workmanship, or defective material. The Owner, the Project Designer, and all tiers of Subcontractors shall be additional insureds on the Builder's Risk policy. The CMAR shall be the named insured (responsible for premium payments, policy changes, etc.). The CMAR shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost of the Project.
- (3). Cold Testing will be automatically included in the policy. Hot Testing exposures will apply to the Project, and as such this exposure is required to be added to the Builders Risk insurance policy.
- (4). **WAIVERS OF SUBROGATION:** The Owner and the CMAR waive all rights against (1) each other and any of their Subcontractors, sub-Subcontractors, agents, and employees, each of the other, and (2) the Project Designer, its consultants, separate subconsultants, agents, and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance pursuant to this Subsection 61.f. or other property insurance applicable to the construction Work. The Owner or CMAR, as appropriate, shall require of the Project Designer, its consultants, separate Subcontractors, agents, and employees, if any, and of the Subcontractors, separate sub-Subcontractors, agents, and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise; did not pay the insurance premium directly or indirectly; and whether or not the person or entity had an insurable interest in the property damaged.

- g. Aviation/Aircraft: If required by Owner, the CMAR shall ensure that the operator of an aircraft of any kind, including without limitation drones and/or other forms of unmanned aircraft, utilized in the performance of this Master Agreement, must maintain liability insurance covering bodily injury and property damage on a combined single limit basis, each occurrence limit and in the aggregate (including passenger liability) with liability limits in an amount not less than Five Million and 00/100 Dollars (\$5,000,000). If non-employee passengers are carried, the policy procure must not include a per-passenger sublimit. Prior to commencing operations, the operator of any aircraft covered by this Subsection 61.g. must provide the Owner with a certificate of insurance naming the Owner as additional insured on a primary and non-contributory basis. The operator of the aircraft and its insurer(s) must hold the Owner harmless and waive subrogation with respect to damage to the aircraft. If the aircraft is to be used to perform lifts at the Project site, a "slung

cargo" endorsement must be included to cover the full replacement value of any equipment being lifted.

h. Professional Liability:

- (1). The CMAR shall ensure that it and all of its Subcontractors provide and maintain professional liability Insurance coverage to protect the Owner from liability arising out of or resulting from the performance of professional services, if any, by the CMAR and/or its Subcontractors under this Master Agreement or any amendments thereto. Such coverage shall be in the sum of not less than Ten Million Dollars (\$10,000,000.00).
- (2). Throughout the term of this Master Agreement, the professional liability policy shall contain full prior acts coverage. Coverage should be continuously maintained during the term of the Master Agreement. Coverage shall not include any exclusions or limitations related to (i) scope of professional services; (ii) delays in Project completion or cost overruns; (iii) who is authorized to notify the carrier of a claim or a potential claim; and (iv) mold, fungus, asbestos, pollutants, or hazardous substances.
- (3). Claims-made coverage is permitted provided the policy retroactive date is continuously maintained prior to the Effective Date of this Master Agreement and coverage is continuously maintained during all periods in which the CMAR performs professional services for the Owner and for an additional period of six (6) years after termination of this Master Agreement or the last date such services are performed, whichever comes later.

i. Pollution Liability:

- (1). The CMAR shall ensure that it and all of its Subcontractors provide and maintain pollution legal liability (PLL) insurance coverage. Coverage must include Asbestos Legal Liability and Errors and Omissions due to potential environmental hazards with limits no less than \$5,000,000 per occurrence or claim, and \$10,000,000 policy aggregate. Coverage shall apply to the scope of work described under this Master Agreement including transportation and shall include coverage for bodily injury, property damage (including loss of use of damaged property), clean-up costs, mold, defense costs, and investigative costs. The CMAR shall maintain Completed Operations coverage for six (6) years following completion of construction Work.
- (2). Claims Made Policies: If any coverage required is written on a claims-made coverage form, the retroactive date must be shown, and this date must be before the Effective Date of the Master Agreement or the beginning of the construction Work. Insurance must be maintained, and evidence of insurance must be provided for at least six (6) years after completion of the construction Work.
- (3). If coverage is canceled or non-renewed, and not replaced with another claims made policy form with a retroactive date prior to the Effective Date of the Master Agreement or date of commencement of the construction phase of the Master Agreement, the CMAR must purchase an extended period coverage for a minimum of five (5) years after completion of construction Work. A copy of the claims reporting requirements must be submitted to Owner for review. Pollution Liability shall not contain lead-based paint or asbestos exclusions.

j. Deductibles and Self-Insured Retentions:

Any deductible or self-insured retention, where applicable to loss covered by any insurance policy required by this Section 61, is to be borne by the CMAR and/or its Subcontractors.

k. Proof of Coverage:

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

l. Claims:

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

(2). If a claim or alleged claim is rejected by the CMAR and/or its insurance company, the CMAR shall immediately report this fact to the Owner. Should thirty (30) days elapse after the claim or alleged claim has been received by the CMAR, and the CMAR is not able to report a settlement or rejection of the claim, it shall report to the Owner the steps being taken with respect to the claim. Without limiting the foregoing, the CMAR shall notify the Owner in writing of any paid or incurred claims which may impair annual aggregate or general liability insurance coverage limits.

m. Contractor as Joint Venture:

If the CMAR is completing this Project on a joint venture basis, both joint venture partners shall retain all liabilities assumed by this Master Agreement, individually and collectively, and will be listed as the named insured on all required policies. Liabilities may include, but are not limited to, all premiums due, deductibles/self-insured retentions, coinsurance provisions, claim provisions, insurance policy conditions, and indemnification provisions hereunder.

n. The Owner may elect to purchase certain insurance, specifically Pollution Legal Liability and/or Builder's Risk Insurance covering the Owner, the CMAR, all Subcontractors, and all sub-Subcontractors. In this event, the CMAR and its Subcontractors shall not be required to purchase insurance provided by the Owner. If the Owner elects to purchase either Pollution Legal Liability and/or Builder's Risk Insurance, this Master Agreement shall be amended accordingly. The CMAR shall provide the costs of the "Pollution Legal Liability" and "Builder's Risk Insurance" coverages to the Owner in order to facilitate the Owner's decision whether to obtain these coverages in lieu of the CMAR procuring them.

o. The Owner may elect to purchase insurance covering the CMAR, all Subcontractors, and all sub-Subcontractors through an Owner-Controlled Insurance Program (OCIP) sponsored by the Owner. Under such program, the CMAR and its Subcontractors shall not be required to purchase insurance as provided by this Section 61. If the Owner is participating in an OCIP program, this Master Agreement shall be amended to reflect the program's terms in lieu of this Section 61.

62. INDEMNIFICATION

a. To the fullest extent allowed by law, the CMAR shall indemnify, defend, and hold harmless the Owner, its officers, officials, employees, agents, or indemnities (collectively referred to as the "Indemnified Parties") from and against those Losses, liabilities, damages, and costs proximately caused by, arising out of, or resulting from the sole negligence of the CMAR, the CMAR's agents, and/or the CMAR's employees.

b. In matters other than those covered by Subsection 62.a., above, and to the fullest extent allowed by law, the CMAR shall indemnify, defend, and hold harmless the Indemnified Parties from and against those Losses, liabilities, damages, and costs caused by, arising out of, resulting from, or in connection with the execution of the Work provided for in this Master Agreement when the

Fault of the CMAR or its Derivative Parties is a proximate cause of the Loss, liability, damage, or expense indemnified.

- c. Costs and expenses shall include attorneys' fees, litigation or arbitration expenses, or court costs actually incurred by the Indemnified Parties to defend against third-party claims alleged in any court, tribunal, or alternative dispute resolution procedure required of any of the Indemnified Parties by law or by contract, only if the Fault of the CMAR or its Derivative Parties is a proximate cause of the attorney's fees, litigation or arbitration expenses, or court costs to be indemnified.
- d. The CMAR's duty to indemnify, defend, and hold harmless described hereinabove shall survive the termination or expiration of this Master Agreement.
- e. Notwithstanding the provisions herein, no Design Professional shall be required to defend the Indemnified Parties against liability or claims for damages or expenses, including attorney's fees, proximately caused or allegedly caused by the Professional Negligence, in whole or in part, of the Design Professional when providing Design Professional Services as part of or in connection with a construction agreement, whether the claim is alleged or brought in tort or contract. As used herein, "Professional Negligence" shall mean negligence in the practice of architecture, landscape architecture, engineering, land surveying, geology, or soil science by an individual or entity holding a valid license to practice in the State of North Carolina.
- f. Definitions:
  - (1). For the purposes of this Section 62, the term "Fault" shall mean any breach of contract; negligent, reckless, or intentional act or omission constituting a tort under applicable statutes or common law; or violation of applicable statutes or regulations.
  - (2). For the purposes of this Section 62, the term "Loss" or "Losses" shall include, but not be limited to, fines, penalties, and/or judgments issued or levied by any local, state, or federal governmental entity.
  - (3). For the purposes of this Section 62, the term "Derivative Parties" shall mean any of the CMAR's Subcontractors, agents, employees, or other persons or entities for which the CMAR may be liable or responsible as a result of any statutory, tort, or contractual duty.
  - (4). For the purposes of this Section 62, the term "Design Professional" shall mean a person or entity who is licensed under and provides professional services regulated by Chapters 83A, 89A, 89C, 89E, or 89F of the General Statutes.
  - (5). For the purposes of this Section 62, the term "Design Professional Services" shall mean service or work performed by a Design Professional for which licensure is required under Chapters 83A, 89A, 89C, 89E, or 89F of the General Statutes.

### 63. PERFORMANCE BOND AND PAYMENT BOND

- a. The CMAR shall furnish a performance bond and a payment bond executed by a Surety or Sureties authorized to do business in North Carolina. The bonds shall be in the full contract amount, which ultimately shall be the amount of the Final GMP for the construction of the Project.
- b. Within fourteen (14) days of the establishment of any GMP and otherwise at the time the parties enter into amendment(s) of this Master Agreement for the purpose of attaching hereto and incorporating herein by reference agreed upon construction scope(s) of Work for the Project, the CMAR shall provide a performance bond and payment bond, each in the amount of the sum of all agreed upon Interim GMPs as of that date, including the Owner's allowances, so that at all times a single performance bond and a single payment bond shall be in effect for the entire Construction Management Services phase of the Project as such is under contract at that time.
- c. All bonds shall be countersigned by an authorized agent and attorney-in-fact for the Surety who is licensed to do business in North Carolina. The title "Licensed Resident Agent" shall appear

after the signature. There shall be attached to each copy of the bond a certified copy of power of attorney properly executed and dated. The seal of the bonding company shall be impressed on each signature page of the bonds.

64. ASSIGNMENTS

This Master Agreement may not be assigned without the express written consent of the Owner.

65. APPLICABLE LAW AND VENUE

The parties hereto, for themselves and their respective agents, officials, employees, and servants, hereby acknowledge and agree that this Master Agreement shall be governed and construed in accordance with the applicable laws of the State of North Carolina, without regard to its choice of law provisions, and no other.

The proper, sole, and exclusive venue for any civil action arising out of or in any way related to this Master Agreement shall be the federal or state courts sitting in Wake County, North Carolina.

66. ENTIRE AGREEMENT

- a. This Master Agreement, and any subsequent amendments thereto, and the other Contract Documents, as may be amended by the parties from time to time, represent the entire and integrated agreement between the Owner and the CMAR and supersedes all prior negotiations, representations, or agreements, either written or oral. This Master Agreement may only be amended in writing by consent of the Owner and the CMAR.
- b. Each party represents that it is authorized to execute this Master Agreement and agrees to be bound by its terms and provisions.
- c. This Master Agreement has been negotiated and prepared by the parties and their respective counsel. As such, and should any provision of this Master Agreement require judicial interpretation, the court interpreting or construing the provision shall not apply the rule of construction that a document is to be construed more strictly against one party, it being agreed upon by the parties that this Master Agreement has been jointly drafted by the Owner and the CMAR.

67. ATTACHMENTS

To the extent the attachments to the Master Agreement require the CMAR to take any action or refrain from taking any action, the requirements of said attachments shall apply with equal force to the requirements set forth in this Master Agreement.

68. LAWS AND REGULATIONS

- a. The CMAR and its Subcontractors, their officers, managers, employees, representatives, agents, assigns and others acting on behalf of the CMAR in connection with the Project, agree to comply with all applicable laws, ordinances, statutes, building codes, rules, and regulations pertinent to the Work to be performed under this Master Agreement and the other Contract Documents. The CMAR shall be responsible for ensuring that all requirements of G.S. 143-128.1 are adhered to in its operations under this Master Agreement and the other Contract Documents.
- b. The CMAR's attention is directed to the fact that all applicable federal, state, and local laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the Project shall apply to the Master Agreement throughout, and they will be deemed to be included in the Master Agreement and the other Contract Documents the same as though herein written out in full. The CMAR shall keep itself fully informed of all laws, ordinances, and regulations of federal, state, and local governments in any manner affecting those engaged or employed in the Work or the materials used in the construction Work or in any way affecting the conduct of the Work and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over same. If any discrepancy or inconsistency should be discovered in this Master

Agreement or the other Contract Documents in relation to any such law, regulation, ordinance, order, or decree, the CMAR shall promptly report the same, in writing, to the Project Designer and the Owner. The CMAR shall at all times observe and comply with all such laws, ordinances, and regulations, and the CMAR's indemnity, defense and hold harmless obligations under Section 62 above shall apply and extend to any and all claims, damages, liabilities, lawsuits, civil penalties, losses and expenses, including without limitation attorneys' fees, that arise out of, result from, or are connected with any violations of such law, ordinance, regulation, order, or decree, whether such violations are the Fault of the CMAR or its Derivative Parties, so long as such Fault of the CMAR or its' Derivative Parties is a proximate cause of the claim, damage, liability, lawsuit, civil penalty, loss, or expense indemnified hereunder. Notwithstanding the foregoing, nothing herein shall require the CMAR to indemnify the Indemnified Parties against any such claims, damages, liabilities, lawsuits, civil penalties, losses, or expenses arising out of, resulting from, or in connection with any negligent acts of one or more of the Indemnified Parties.

69. FORCE MAJEURE

Except as otherwise provided in any laws, rules, regulations, or ordinances applicable to the parties and the services performed or to be performed under this Master Agreement, neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event, governmental orders related to a public health condition, or act of God. Either party to the Master Agreement must take reasonable measures and implement reasonable protections when a weather event otherwise defined as a force majeure event is forecast in order to be eligible to be excused from the performance otherwise required under this Master Agreement by this provision.

70. DISPUTE RESOLUTION

In the event that a dispute of any nature cannot be resolved by the Project Team pursuant to the terms and conditions herein, the parties shall endeavor to resolve the dispute pursuant to the Rules Implementing Mediated Settlement Conferences in North Carolina Public Construction Projects, as adopted by the State Building Commission on February 26, 2002, as amended and in effect when the procedures are invoked, which are attached hereto as Attachment D and incorporated herein by reference. The rules relating to non-State projects shall apply. Mediation in accordance with those procedures shall be a condition precedent that must occur before any party may bring a civil action against the Owner, the CMAR, or the Project Designer.

71. HAZARDOUS MATERIALS

The Project site may contain substances defined as a hazardous material by any federal, state, or local law or authority ("Hazardous Materials"). In the event there are Hazardous Materials located on or under the Project site as of the Effective Date that are encountered by the CMAR during the construction Work, the CMAR shall have no liability or responsibility for any such pre-existing Hazardous Materials, except to the extent that the remediation of pre-existing Hazardous Materials is part of, or added to, the scope of the construction Work. In such event, CMAR's only responsibility and liability shall be for proper performance of the construction Work in accordance with all applicable contract requirements and federal, state, and local laws. Otherwise, as between the Owner and the CMAR, the Owner shall be responsible for all claims and damages arising out of such pre-existing Hazardous Materials, and, to the extent permitted by law, shall defend and indemnify CMAR from any and all claims and damages arising out of the presence of such pre-existing Hazardous Materials on or under the Project site, except to the extent that such claim or damage arises out of the Fault of the CMAR or its Derivative Parties in failing to perform the construction Work in accordance with contract requirements and/or federal, state, and local laws. The indemnification obligations of this paragraph shall survive the expiration or termination of this Mater Agreement.

The CMAR shall develop an Environmental Management Plan (EMP) for approval by the Owner and its consultants. The EMP shall become part of the Bid Packages and shall identify procedures that the Owner, the CMAR, and all Subcontractors shall follow should pre-existing Hazardous Materials be encountered onsite. In the event that the CMAR discovers any such pre-existing Hazardous Materials, which have not been rendered harmless, the CMAR shall immediately report the condition to the Owner

in writing and follow such procedures as are outlined in the EMP and the Bid Packages. The CMAR shall not report environmental conditions to governmental agencies without prior consultation with the Owner unless legally required to do so.

**Hazardous Materials for Which the CMAR is Responsible**. Notwithstanding anything set forth in this Master Agreement to the contrary, CMAR shall be solely responsible for the remediation, disposal, and transport of all Hazardous Materials brought to, or created at, the Project site by the CMAR, its agents, officials, employees, Subcontractors, the Subcontractors' agents, officials, and/or employees, or anyone else working under or on behalf of the CMAR. The CMAR's obligation to indemnify, defend, and hold harmless the Indemnified Parties pursuant to Section 62, above, shall apply and extend to any and all claims, damages, liabilities, lawsuits, civil penalties, losses, and expenses, including without limitation attorneys' fees, that arise out of, result from, or are connected in any way with the presence of Hazardous Materials on or under the Project site when such Hazardous Materials are either brought to, or created at, the Project site by the CMAR or its Derivative Parties and where the Fault of the CMAR or its Derivative Parties is a proximate cause of the claim, damage, liability, lawsuit, civil penalty, loss, or expense to be indemnified. Notwithstanding the foregoing, nothing herein shall require the CMAR to indemnify the Indemnified Parties against the negligent acts of one or more of the Indemnified Parties.

**Pollution Insurance**. To the extent that CMAR is required to carry pollution insurance coverage, the Owner shall be named as an additional insured only to the extent of the CMAR's liability under this Section 71.

72. CONTRACTOR EVALUATION

The CMAR's overall work performance on the Project shall be fairly evaluated for determining qualifications to bid on future City of Raleigh capital improvement projects. In addition to a final evaluation, interim evaluation(s) may be prepared during the progress of the Project. The Owner may request the CMAR's comments to evaluate the performance of the Project Designer.

73. E-VERIFY

The CMAR shall comply with the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies and/or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with G.S. §64-25 et seq. In addition, the CMAR shall ensure that its Subcontractors will act in compliance with the requirements of E-Verify and G.S. §64-25 et seq.

74. IRAN DIVESTMENT ACT CERTIFICATION

The CMAR certifies that, as of the date listed below, it is not on the Final Divestment List as created by the State Treasurer pursuant to G.S. § 147-86.55, et seq. In compliance with the requirements of the Iran Divestment Act and G.S. § 147-86.59, the CMAR shall not utilize in the performance of this Master Agreement any Subcontractor that is identified on the Final Divestment List.

75. ADVERTISING

The CMAR shall not use the existence of this Master Agreement, or the name of the City of Raleigh, as part of any advertising or marketing materials without the prior written approval of the Owner.

76. EMPLOYEE EDUCATION AND TRAINING

The CMAR shall provide all education and training as may be required by applicable OSHA standards to all employees of the CMAR and all of the CMAR's Subcontractors before any of them are exposed to potential workplace or other hazards.

77. MISCELLANEOUS

The CMAR shall be considered to be an independent contractor and as such shall be wholly responsible for the Work to be performed and for the supervision of its employees. Nothing herein is intended or will be construed to establish any agency, partnership, or joint venture. The CMAR represents that it has or will secure, at its own expense, all personnel required in performing the services under this Master Agreement. Such employees shall not be deemed to be employees of or have any individual contractual relationship with the Owner.

78. COMPANIES BOYCOTTING ISRAEL DIVESTMENT ACT CERTIFICATION

The CMAR certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to G.S. 147-86.81.

79. INCORPORATION OF DOCUMENTS/COMPLETE CONTRACT

This Master Agreement, and any documents incorporated below, represent the entire contract between the parties and suspend all prior oral or written statements, agreements, or contracts.

Specifically incorporated into this Master Agreement are the following attachments, or if not physically attached, are incorporated fully herein by reference:

- a. City of Raleigh Request for Qualifications dated (INSERT DATE) (reference)
- b. CMAR's Response to the RFQ dated (INSERT DATE) (reference)
- c. Attachment A – CMAR Pre-Construction Services Scope of Work
- d. Attachment B – CMAR's Proposal dated (INSERT DATE)
- e. Attachment C – City of Raleigh Reimbursable Expenses Guidelines and (INSERT YEAR) GSA Per Diem Rates
- f. Attachment D-- Rules Implementing Mediated Settlement Conferences in North Carolina Public Construction Projects, Adopted February 26, 2002

Except as otherwise provided herein, in the event of a conflict between this Master Agreement and any of the attachments or references recited in this Section 79, the terms of this Master Agreement shall prevail.

80. ACKNOWLEDGMENT OF CITY BRAND AND TREE LOGO OWNERSHIP AND RESTRICTIONS

The Owner has developed proprietary branding (the "City Brand") centered around the Raleigh tree mark logo (the "Tree Logo"). The Owner's exclusive rights and ownership in and to the Tree Logo are protected under trademark and copyright, including U.S. Copyright Reg. No. VAu1-322-896, N.C. State Trademark Registration Reg. No. T-23070 and Federal Trademark Registration Reg. No. 5,629,347, as well as under other federal and state laws. CMAR acknowledges and understands that the Owner is not conferring any license to CMAR under the Master Agreement, as amended hereunder, to use or depict the Tree Logo or other aspects of the City Brand. CMAR shall not make any use or depiction of the Tree Logo or other aspects of the City Brand without the prior express written approval of the Owner. In this regard, should any materials being produced by CMAR for the Owner under the Master Agreement, as amended hereunder, contemplate use or depiction of the Tree Logo, including, but not limited to, printed materials, digital media, signage and/or display materials, CMAR shall proceed under the auspices and direction of the Owner's Communications Department and shall comply with all guidelines and restrictions governing use or depiction of the Tree Logo.

81. COMMUNICATIONS

If communications to the public and/or Owner employees are required as part of the scope of construction Work under the Master Agreement then CMAR shall work with the Owner in the development of a

communications plan (“Communications Plan”) that must first be approved by the Owner in writing before any such communications are delivered to the public and/or Owner employees.

For purposes of this Section 81, such written approval by the Owner shall be provided by electronic mail by the applicable Owner Communications Department employee who is responsible for reviewing and approving the Communications Plan, such electronic mail to be sent to the electronic mail addresses listed in Section 82, below, as part of the contact information for the CMAR representative(s) identified in Section 82, below.

Among other things, the Communications Plan must establish whether the Owner or the CMAR will be responsible for sending any such communications to the public and/or Owner employees as required either by the Master Agreement or the Communications Plan. The Communications Plan also shall include, but not be limited to, communications objectives, target audience, and deliverables (print, video, website, social, direct, or digital). CMAR shall comply with the Communications Plan when communicating to the public and/or Owner employees pursuant to the Master Agreement and the Communications Plan. All such communications shall comply with the Owner’s brand and communications guidelines, as the same may be amended or modified from time to time.

Owner’s current brand and communications guidelines are incorporated into this Master Agreement by reference and can be found on the City’s website here: <https://raleighnc.gov/doing-business/city-brand-guidance-vendors>.

For purposes of this Section 81, “Communications” is defined as any public or Owner employee facing information presented in channels such as, but not limited to, a website, mobile applications, social media, printed materials, vehicles, billboards, and videos.

Communications Plan Approval: Any materials, messaging or outreach from CMAR related to marketing and communications of any service or effort under this Master Agreement must first be reviewed and approved by the Owner’s Communications Department. This is to ensure that the Communications Plan: (i) complies with the Owner’s brand and communication guidelines; (ii) integrates with the Owner’s other communications channels and digital strategy; (iii) meets accessibility guidelines; and (iv) conforms to communications best practices with respect to general user experience.

Accessibility Requirements: For web content that CMAR is to make accessible to the public and/or Owner employees as part of an approved Communications Plan that is included in the scope of construction Work under this Master Agreement, all web materials including, but not limited to, tools, mobile applications, and websites, generated by, or on behalf of, CMAR must meet at least the mid-range conformance level, AA compliance of the current Web Content Accessibility Guidelines, as the same may be amended from time to time.

Any such web content generated by, or on behalf of CMAR, as part of a Communications Plan associated with this Master Agreement shall meet all standards of good cognitive web accessibility, which include the following:

- Using proper headings and lists
- Using unique links
- Using alternative text and captions
- Using more white space
- Dividing content into more manageable pieces
- Making forms manageable by breaking them into multiple, sequential steps
- Providing a logical reading order
- Being consistent with fonts, colors and locations of page elements
- Offering keyboard access
- Offering content in multiple formats
- Understanding minimum contrast

Languages: Digital sites/ tools that are for public use/consumption, including for use by Owner employees, under a Communications Plan associated with this Master Agreement must have translation

module (e.g., G-translate, Weglot) so that the service is available in all languages. At minimum, Spanish translation is required on all such digital sites/tools based on low English proficiency requirements:

In most cases, entities that are recipients of federal financial assistance through U.S. Department of Health and Human Services (HHS) must provide language assistance services in order to comply with their legal obligation to take reasonable steps to ensure meaningful access to their programs by persons with Limited English Proficiency (LEP).

Content: For any communications content that CMAR is required to generate, or have generated, as part of its scope of construction Work under this Master Agreement, CMAR shall send such content to Owner Communications Department staff in raw, high-resolution format for inclusion in communications materials to be made accessible to the public and/or Owner employees as set forth in the Communications Plan that arises from this Master Agreement (i.e., websites, mobile applications, printed materials collateral, and social media). PDF attachments shall be used only as a last resort and only after written approval by the Owner, with such written approval to be provided by the Owner in electronic mail format as described elsewhere in this Section 81.

CMAR shall only provide to the Owner communications materials for which the Owner has rights to use, with written documentation of such use rights being provided to the Owner as requested from time to time by the Owner in its sole discretion.

All working files agreed upon for the specific Communications Plan shall be provided to the Owner Communications Department, i.e., text, graphics, charts and data, infographics, and original native files such as Illustrator, Excel, ArcGIS, etc. Following are the file format specifications:

- Images: At least 300dpi for printing at actual size; 96dpi and at least 1920x1080px for digital/Web.
- Video: Any video should be no less than Standard HD (1920x1080) but preferable 4k.
- Text: Word document using accessibility best practices (heading structure, table of contents, and tables).

i. NOTICE

Except as otherwise specifically provided elsewhere in this Master Agreement, whenever any notice or other communication is required or permitted under the Master Agreement, such notice or other communication shall be in writing and shall be delivered by hand, by nationally-recognized overnight express delivery service, by U.S. registered or certified mail, return receipt requested, postage prepaid, or by electronic transfer with prompt telephone confirmation to the addresses set out below or at such other addresses as are specified by written notice delivered in accordance herewith:

If to Owner:

City Manager  
City of Raleigh  
222 W. Hargett Street  
Raleigh, NC 27601  
(919) 996-3070  
citymanager@raleighnc.gov

Copies to:

c/o Raleigh City Attorney  
City of Raleigh  
One Exchange Plaza, Suite 1020  
Raleigh, NC 27601  
(919) 996-6560  
karen.mcdonald@raleighnc.gov

c/o Stormwater Management

City of Raleigh  
One Exchange Plaza, Suite 801  
Raleigh, NC 27601  
(919) 996-5587  
Megan Walsh@raleighnc.gov

c/o City Engineering Services Director  
City of Raleigh  
One Exchange Plaza, Suite 801  
Raleigh, NC 27601  
(919) 996-5576  
richard.kelly@raleighnc.gov

c/o City Parks, Recreation, and Cultural Resources Director  
City of Raleigh  
222 W. Hargett St.  
Raleigh, NC 27601  
(919) 996-4784  
stephen.bentley@raleighnc.gov

If to CMAR:

(INSERT)

(INSERT)

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## **ATTACHMENT A – CMAR PRE-CONSTRUCTION SERVICES SCOPE OF WORK**

This Attachment A establishes the specific scope of work that the CMAR has agreed to perform associated with the Pre-Construction Services phase of the Project. Any and all capitalized terms used in this Attachment A but not defined herein shall have the same meaning given to such terms in the Master Agreement. Attached hereto as Appendix 1 to this Attachment A, and incorporated herein by reference, is CMAR's standard form subcontract, with all such contracts between CMAR and First-Tier Subcontractors to be in form and substance substantially similar to the attached form of CMAR's standard form subcontract as is required by Subsection 17.p. of the Master Agreement.

The CMAR shall exercise reasonable care in the performance of its Pre-Construction Services, and the Owner and the Project Designer shall be entitled to rely upon, and shall not be responsible for, the accuracy, completeness, and timeliness of the services and information furnished by the CMAR during the Project's pre-construction phase.

### **1. PRE-CONSTRUCTION SERVICES AND PROJECT REVIEW**

- a. The CMAR shall meet with the Owner, the Project Designer, the Project Designer's consultants, and any other Project Team members at various intervals as may be required by the Owner to better understand the Project, the design documents, the Total Construction Budget, the Project scope, and all other pertinent aspects of the Project. The CMAR shall become an integral part of the Project Team that shall coordinate the development and progress of the Project's design and construction processes. The CMAR's Pre-Construction Services shall be performed throughout the design sub-phases itemized in Subsection 8.d. below, and shall include, but not be limited to, pre-construction and project review services as required to assist design development and as set forth in this Attachment A. The CMAR shall continue to provide Pre-Construction Services through the approval by the Owner of the Final GMP submitted by the CMAR.
- b. Within thirty (30) days of the Effective Date of the Master Agreement, the CMAR shall review any and all available schematic and/or other designs, as well as any and all other Project documents available at the time of the CMAR's commencement of Pre-Construction Services, for the purpose of obtaining an understanding of the Owner's program and the Project Designer's design intent and to provide a preliminary evaluation of the feasibility of the Owner's program, schedule, and budget requirements, each in terms of the other.
- c. As the Project design progresses, the CMAR shall provide Value Engineering services and offer cost savings suggestions and best value recommendations to the Owner, all as outlined further in Section 5, below. All evaluations and recommendations required by this Subsection 1.c. and by Section 5, below, shall be in writing and must be fully reviewed with the Project Designer and Owner, and must first be approved in writing by the Owner prior to implementation by the CMAR.
- d. Reserved.
- e. The CMAR shall develop written project management procedures prior to advertisement of any construction Work, as set forth in this Attachment A and in the Master Agreement, in cooperation with the Owner and Project Designer. Such procedures will be used as an operational guide for the management and coordination of this Project throughout the life of the Project.
- f. Throughout the Project's pre-construction phase, the CMAR shall confer regularly with the Project Designer and its consultants during their preparation of the Project's plans and specifications for the following purposes: to advise them on matters of cost, schedule, site use, utility relocations, on-site and off-site improvements, maintenance of traffic and traffic control during construction, selection of materials, building methods, construction details, building and site systems and equipment, phasing, and sequencing; to identify and eliminate conflicts, discrepancies, errors, omissions, and/or ambiguities within the Construction Documents; to provide recommendations on constructability, operability, biddability, and maintainability of proposed construction systems, components, and/or Work; to advise them on the availability of materials and labor and the time requirements for procurement of materials and equipment, including but not limited to identification of long-lead items

needed well in advance of construction; to develop cost models and identify potential cost savings opportunities; and to develop the initial baseline schedule for the construction Work and identify potential time saving measures. Such conferences and /or meetings shall include, but not be limited to, the following:

- (1). Phone and other site conferences throughout the design phase;
  - (2). Meetings at the Project Designer's or the Owner's offices;
  - (3). Progress and other report updates;
  - (4). Upon establishment of the first Interim GMP, if any, on-site meetings as approved by the Owner. If no Interim GMPs are utilized for the Project, then upon establishment of the Final GMP, on-site meetings as approved by the Owner; and
  - (5). Additional consultations required to maintain the Project schedule and/or to achieve Total Construction Budget compliance shall be provided at no additional cost to the Owner.
- g. As set forth in greater detail in Subsection 6.a., below, the CMAR shall review the Project drawings, specifications, and other Construction Documents as they are being prepared by the Project Designer and its consultants, recommending alternative solutions whenever design details affect costs, quality, construction feasibility, constructability, and/or schedules for Substantial Completion. As set forth in greater detail in Subsection 6.b., below, the CMAR shall provide to the Owner and the Project Team a thorough interdisciplinary coordination review of the Construction Documents before trade contract bidding.
- h. As set forth in greater detail in Subsection 5.f., below, the CMAR shall conduct a major value analysis study at the end of the design development sub-phase, utilizing the 100% design development documents. The CMAR shall produce a formal written value analysis report, including a summary of analysis items, applicable cost savings, and selected items and their corresponding cost savings, and such report shall be presented to the Owner and the Project Designer at the end of the design development sub-phase. As required by Subsection 5.f., below, this value analysis report shall include a review of the Project Designer's life cycle cost analysis to assist the Project Designer in achieving an appropriate balance between costs, aesthetics, and function. Further, and as set forth in greater detail in Subsection 5.g., below, the CMAR shall conduct a major value analysis study at the end of the Construction Documents sub-phase, utilizing in-progress Construction Documents. As with the major value analysis study to be performed at the end of the design development sub-phase, the CMAR shall produce a formal written value analysis report, including a summary of analysis items, applicable cost savings, and selected items and their corresponding cost savings, and such report shall be presented to the Owner and the Project Designer at the end of the Construction Documents sub-phase. As required by Subsection 5.g., below, this value analysis report shall include a review of Project Designer's life cycle cost analysis to assist the Project Designer in achieving an appropriate balance between costs, aesthetics, and function. All Value Engineering efforts by the CMAR shall take into consideration applicable constructability issues. Value Engineering studies performed by the CMAR also must be provided on a timely basis within the design schedule. Value Engineering studies shall be continuous as the design is developed. See Section 5 below, entitled "Value Analysis", for further requirements applicable to the CMAR performing major value analysis studies and presenting to the Owner and the Project Designer formal written value analysis reports.
- i. The CMAR acknowledges that the Owner is relying upon the CMAR's experience and expertise in the identification and selection of Project systems and products that are consistent with the Owner's program, meet the Project Designer's performance requirements, are competitively priced, and can be procured so as to ensure the timely completion of the construction Work. The CMAR shall assist with the selection of systems and products by providing market intelligence to the Project Designer during the design development sub-phase and the construction documents sub-phase of the Project's pre-construction services phase. The CMAR shall develop detailed cost estimates for special system comparisons and shall research different construction materials and report findings to the Owner and Project Designer as needed.
- j. Prior to advertising or otherwise soliciting any Bid Packages for the performance of any construction Work, the CMAR shall develop a detailed construction site management plan, logistics plan, and

utility installation plan in conjunction with the Project Designer. These plans shall be presented and coordinated with the Owner and other regulatory entities and must be approved in writing by the Owner before such plans may be utilized by the CMAR. These plans shall include details concerning Project site offices and construction vehicle parking, crane and other equipment operations, material deliveries and storage, safety stations and site security fencing, temporary utility services, street and sidewalk closures and detours, traffic and vehicle movements, utility routing and signage, and other items as needed to accomplish the construction Work.

- k. The CMAR shall develop a project management plan and schedule for management of the Project prior to construction of each phase of the construction Work, including but not limited to the following: (i) early hazardous or environmentally-sensitive material (e.g. chemicals, asbestos, petroleum, etc.) handling, management, or abatement, all in compliance with the approved EMP; (ii) demolition of existing facilities; (iii) site development, including excavation and shoring; (iv) utility relocations; (v) geological and environmental investigations; (vi) GMP packages; (vii) safety; (viii) quality control; and (ix) other items to complete the Project. The CMAR shall provide and update this management plan and schedule, updated for each phase of the Project, as construction Work progresses.
- l. The CMAR shall implement a system for tracking and reporting all changes or potential changes to the construction Work. At a minimum, such system shall identify each potential change; track the review and evaluation of the potential change by the various members of the Project Team; estimate the cost and/or time impacts of the potential change; and record the Owner's final resolution of, decision concerning, and/or direction regarding the potential change. The CMAR's system shall track, but not be limited to, the following items: potential use of allowances for their intended purposes; potential back charges between trade Subcontractors; potential use of the CMAR Contingency; potential use of the Owner's Contingency; potential impacts of concealed conditions; and potential Owner-Requested Changes. The CMAR's tracking reports shall be available for auditing as requested by the Owner.
- m. In furtherance of and not to the exclusion of the CMAR's obligations under Section 19 of the Master Agreement, the CMAR shall develop and implement Minority Women Business Enterprise (MWBE) procedures and policies and shall prepare the MWBE participation plan to meet the requirements in G.S. 143-128.2, "Minority Business Participation Goals," perform MWBE outreach, and compile an MWBE database that includes, at minimum, the following information: full and legal name, physical address, telephone number, email address, discipline/area(s) of expertise, date(s) contacted, and confirmation of attendance at outreach events. The CMAR shall participate in and lead meetings regarding issues concerning MWBE, HUB, and DBE recruitment and participation, including but not limited to contracting, outreach, and partnering. The CMAR shall document all aspects of its MWBE activities as required by this Subsection 1.m., as required by Section 19 of the Master Agreement, and as needed for reporting under all applicable State of North Carolina and City of Raleigh requirements.
- n. The CMAR shall review any and all project sustainability goals and prepare reports on schedule and cost impacts of sustainability implementation options for the Project.
- o. The CMAR shall develop material for public presentations as may be requested by Owner and assist with those presentations as needed.

## 2. PROJECT SCHEDULE

- a. Within twenty (20) days of the Effective Date of the Master Agreement, the CMAR shall establish an initial critical path method (CPM) schedule for the Project, which shall include the Pre-Construction Services to be performed by the CMAR and shall also incorporate the design development schedule as developed by the Project Designer.
- b. The CMAR's Project schedule shall be updated monthly, during the design phase to refine and include the overall schedule for completion of all design, bidding, and construction Work for the Project, including any early Bid Packages that may be issued. As required by Section 8, below, the CMAR shall submit its updated Project schedules to the Owner at the same time it submits its monthly invoices. Notwithstanding anything herein to the contrary, the Project Designer's schedule shall

control during the Pre-Construction Services phase of the Project, including up to and through the initial bid opening for First-Tier Subcontractor contracts, and the CMAR's schedule shall include and incorporate the milestones, deadlines, and other information set forth in the Project Designer's schedule. Upon the CMAR's award of the first contract to a First-Tier Subcontractor, the CMAR's CPM schedule, as required by Section 34 of the Master Agreement, shall control for the remainder of the Project.

- c. The CMAR shall be responsible for monitoring its Project schedule during the pre-construction and construction phases of the Project, ensuring that this schedule is updated monthly, and advising the Owner of any deficiencies in any party's adherence to its schedule.
- d. The CMAR's scheduling software shall allow for integration of all aspects of the design and construction processes and provide for coordination of all Work to be performed, including but not limited to identifying the critical path for regulatory agency approvals and permitting; development and approval of the site logistics plan; development and approval of the site utility construction and sequencing plan; and development and approval of a construction material delivery, staging, and site utilization plan.
- e. The CMAR's scheduling software shall be compatible with e-Builder construction management software unless otherwise approved in writing by the Owner, and shall be capable of producing and coordinating logic developed network diagrams and tabular format reports. The CMAR shall provide the Owner with a non-password protected electronic copy of the schedule as well as a PDF print copy with each schedule update.
- f. The CMAR's Project schedule shall be sufficiently detailed to allow for a realistic projection of design activity sequences and durations and shall be updated in increasing detail as the construction plans and specifications are revised and finalized. It shall include and incorporate, but not be limited to, the following: indicating methods of sequencing of procurement, permitting, construction and close out of the Project; time requirements for sequences and durations; milestone dates for receipt and approval of design documents; receipt of regulatory approvals and permits; preparation and processing of shop drawings and samples; delivery schedules for procurement of long-lead time materials and/or equipment;; deadlines for Substantial Completion and Final Completion; and critical milestone dates for Owner-procured and installed fixtures and furnishings.
- g. In addition to providing monthly updates to its Project schedule, the CMAR shall update its schedule at the end of each design phase established by the contract between the Owner and Project Designer, and after major Value Engineering decisions. All of the CMAR's schedule updates shall be reviewed by the Project Designer and must be approved in writing by the Owner before being utilized by the CMAR. The Project Designer's schedule shall be shared with the CMAR for inclusion in the CMAR's Project schedule.
- h. Prior to the completion of the 70% design development sub-phase, the CMAR shall provide the Owner with an initial monthly cash flow analysis and spreadsheet setting forth anticipated monthly expenditures for the Project based upon the CMAR's CPM schedule and the Total Construction Budget. In addition to showing the CMAR's projected monthly billings for completed construction Work in place, the cash flow analysis also shall include and incorporate all Project costs to be incurred by the Owner and the Project Designer so as to incorporate all anticipated Project costs contained within the Total Construction Budget. The cash flow analysis shall be updated during each subsequent pre-construction sub-phase or other phase of services.

### 3. CONSTRUCTABILITY REVIEW

In order to achieve the most efficient, timely, and cost-effective installation of the construction Work, and in addition to the CMAR's responsibilities set forth in Section 6, below, the CMAR shall review the Project design throughout the pre-construction phase for the purpose of evaluating and verifying the constructability, operability, biddability, and maintainability of the drawings and specifications as such are developed and refined over the course of the Project's pre-construction phase. At the end of the schematic design sub-phase, at the end of the 70% design development sub-phase, at the end of the 100% design development sub-phase, and at the end of the 70% construction documents sub-phase, the CMAR shall provide the Owner

and the Project Designer with written reports identifying any and all issues which, in the CMAR's opinion, may potentially generate Change Orders or Cost Change Proposals, disrupt the Project schedule, and/or otherwise negatively impact the construction Work. Each such written report shall address the overall coordination of the drawings and specifications and contain the following information with respect to any and all potential issues identified by the CMAR: (1) a description of the constructability, operability, biddability, and/or maintainability issue with comprehensive background information and a thorough explanation of the bases for the CMAR's concerns; (2) a detailed summary of the CMAR's in-depth study/research of the issue; and (3) the CMAR's written recommendation(s) for addressing the issue.

#### 4. CONSTRUCTION COST MODEL/ESTIMATES

- a. At the end of the concept design phase, the CMAR shall develop a Project budget/cost model, independent from any similar cost estimates the Owner may require from the Project Designer, which shall be updated as needed but which shall not exceed the Total Construction Budget as approved by the Owner (hereinafter, the "CMAR Cost Model Update"). The CMAR Cost Model Update shall be reconciled to the Total Construction Budget at the completion of the design development sub-phase and the construction document sub-phase.
- b. Due to variability in economic conditions, all cost models are to be construction-based, not data based; that is, the CMAR shall obtain pricing of trade work directly from the marketplace to the maximum extent practical. The CMAR Cost Model Update will be replaced by construction phase budgets and cost reports as the Interim GMP for each construction phase or the Final GMP is approved. Each CMAR Cost Model Update must contain a statement of the total amount determined under that construction cost model to be the total construction costs for the Project (including alternates, General Conditions, CMAR Fee, and CMAR Contingency). The CMAR shall also take actual and projected cost information and provide a statement of probable construction costs, indicating in each CMAR Cost Model Update whether or not the Project is anticipated to be constructed within the Total Construction Budget. If the CMAR concludes that the Project as currently designed is not anticipated to be constructed within the Total Construction Budget, the CMAR shall submit written recommendations to the Owner and the Project Designer regarding actions to be taken to reduce Project costs to an amount within the Total Construction Budget.
- c. Financial and quality analysis of different construction methods in each major trade group shall be provided to the Owner by the CMAR for potential quality, cost, and schedule enhancements. Meetings and discussions between the Owner, the Project Designer, and the CMAR will be held as necessary to resolve questions and differences that may occur between the estimates by the Project Designer, the Total Construction Budget, and the CMAR Cost Model Update. The Owner shall make the final decision after receiving recommendations from the CMAR and the Project Designer. In the event that the Project Designer's Project estimate indicates an overrun, the Owner may direct the CMAR to work in conjunction with the Project Designer to revise the Project as necessary to maintain the Total Construction Budget, and the CMAR shall do so without additional compensation to the CMAR.
- d. Each CMAR Cost Model Update and the Project Designer's Project estimate will be reviewed by the Project Designer and the Owner for reasonableness and compatibility with the Total Construction Budget. Meetings and discussions between the Owner, the Project Designer, and the CMAR will be held to resolve questions and differences that may occur between the Project estimate and the CMAR Cost Model Update. The CMAR shall work with the Owner and Project Designer to reach an acceptable estimate of probable construction cost, all within the Total Construction Budget, subject to the Owner's final decision. The CMAR shall, as requested by the Owner and at no additional cost, provide assistance and recommendations in estimating all elements of the Total Construction Budget.

#### 5. VALUE ANALYSIS

- a. As required by Subsection 1.c above, and as the Project design progresses, the CMAR shall provide Value Engineering services and offer cost savings suggestions and best value recommendations to the Owner. All evaluations and recommendations shall be in writing and must be fully reviewed with the Project Designer and Owner, and must first be approved by the Owner in writing prior to implementation by the CMAR.

- b. The CMAR's value analysis efforts shall focus on achieving a final Project design that is most effective in initial costs as well as long-term operational costs relative to issues of energy use and facility maintainability. The CMAR's value analysis efforts shall include participation and support by the CMAR in the Project Designer's life cycle analysis to achieve an appropriate balance between costs, aesthetics, and function.
- c. The CMAR's value analysis efforts shall take into consideration applicable constructability issues and concerns.
- d. All value analysis studies shall be provided by the CMAR on a timely basis within the Project Designer's design schedule.
- e. Value analysis studies shall be continuous as the design and Construction Documents are developed and pre-construction Work is performed.
- f. The CMAR shall conduct a major value analysis study at the end of the design development sub-phase, utilizing the 100% design development documents. This analysis shall include, but not be limited to, the items noted below:
  - (1). Site Development and Geotechnical
  - (2). Storm Drainage System
  - (3). Environmental Protection
  - (4). Building Structures
  - (5). Foundation Systems
  - (6). Subsurface Remediation
  - (7). Structural Framing Systems
  - (8). Reserved
  - (9). Reserved
  - (10). Engineered Systems (such as specialized aquatic and mechanical systems)
  - ~~(11). Plumbing Systems, Equipment, and Materials~~
  - ~~(12). HVAC Systems, Equipment, and Materials~~
  - (13). Reserved
  - (14). Reserved
  - ~~(15). Emergency Power Systems~~
  - ~~(16). Fire Protection Systems and Equipment~~
  - (17). Electrical Systems and Equipment
  - ~~(18). Data, Network and Communication Systems~~
  - ~~(19). Automation and Control Systems~~
  - ~~(20). Fire Detection and Burglar Alarm Systems and Equipment~~
  - (21). Utilities

All value analyses shall be coordinated with the Project Designer's life cycle cost analysis and be provided to the Owner.

- g. The CMAR shall conduct a major value analysis study at the end of the Construction Documents sub-phase, utilizing in-progress Construction Documents. This analysis shall include, but not be limited to, the items noted below:

- (1). Site Development, Geotechnical, Environmental Issues, Stormwater, Pavement Structures, and Utilities
  - (2). Reserved
  - (3). Engineering Systems —such as:  
~~Plumbing Fixtures and Fittings, HVAC Devices and Controls, Emergency Power, Fire Protection Devices, Electrical Fixtures and Controls, Data Network and Communication Systems, Fire Detection and Alarm Devices, Burglar Alarm Devices, Automation, and System Controls~~
  - (4). All value analyses, to be coordinated with the Project Designer's life cycle cost analysis and updates, shall be performed and provided to the Owner.
- h. The CMAR shall, at the Owner's request, develop a value analysis study for consideration at the session(s) noted below.
- (1). Brainstorming session(s) with the Project Team.
  - (2). Written cost studies prepared by the CMAR shall be produced and submitted to the Owner within one (1) week of the final brainstorming session.
  - (3). Written pro/con evaluation of the cost studies shall be provided to the Owner within one (1) week after submission of the cost studies to the Owner and shall be prepared by the CMAR in collaboration with the Project Designer.
  - (4). Formal presentation of the written cost studies to the Owner shall be conducted by the CMAR in coordination with the Project Designer.
  - (5). At the end of the design development sub-phase, the CMAR shall prepare a formal written value analysis study report, including a summary of value analysis items, applicable cost savings, and selected items and their corresponding cost savings, which written value analysis study report the CMAR shall present to the Owner and Project Designer.
- i. Should the Owner request that the CMAR conduct any additional value analysis studies not contemplated in this Section 5, the CMAR may be entitled to request and justify a Change Order allowing payment for additional time and monies needed by the CMAR to prepare such value analysis studies.

6. REVIEW AND COORDINATION OF CONSTRUCTION DOCUMENTS

- a. As set forth in Subsection 1.g above, and in Section 9 of the Master Agreement, the CMAR shall review the drawings, specifications, and other Construction Documents as they are being prepared by the Project Designer and its consultants, recommending alternative solutions whenever design details affect costs, quality, construction feasibility, constructability, and/or schedules for Substantial Completion. The CMAR shall make recommendations to the Owner and Project Designer regarding phased issuance of the drawings and specifications to facilitate phased construction where such phasing is deemed appropriate by the CMAR.
- b. As also established in Subsection 1.g above, and prior to advertising or otherwise soliciting any Bid Packages for the performance of any construction Work, the CMAR shall provide to the Owner and the Project Team a thorough interdisciplinary coordination review of the Construction Documents, to be performed by a qualified outside firm or qualified CMAR personnel approved by the Owner. Such review shall be performed utilizing a structured, industry-accepted process. The CMAR shall review the Final Construction Documents for each phase of design to ensure that all of the CMAR's comments have been incorporated.

- c. The CMAR shall notify the Project Designer and the Owner in writing within seven (7) business days of its observation that any features in the drawings, specifications, or other Construction Documents appear to be ambiguous, confusing, conflicting, erroneous, unfeasible, non-constructible, or otherwise not in the best interests of the Owner. If, after reviewing the CMAR's comments and consulting with the Project Designer, the Owner agrees that corrections or modifications should be made to any of the Construction Documents by the Project Designer, the Owner shall require that the Project Designer incorporate such changes and/or corrections as directed by the Owner into the Construction Documents to allow the CMAR to incorporate any associated cost impacts into the CMAR Cost Model Update.

## 7. BIDDING AND CONTRACTING

The CMAR, acting as the Owner's fiduciary, shall be responsible for preparing Bid Packages (with the support of the Project Designer), soliciting bids from potential First-Tier Subcontractors, and entering into contracts with First-Tier Subcontractors, all as set forth more fully in Section 10 of the Master Agreement.

## 8. COMPENSATION

For Pre-Construction Services to be performed as described hereunder, the Owner shall pay the CMAR a sum not-to-exceed the total contract amount of **XXX** dollars (\$ **XXX**), which includes lump sum fees, hourly fees, and sub-consultant services plus markup, unless changed by a duly authorized amendment to the Master Agreement. This total contract amount for Pre-Construction Services is the sum of the lump sum amounts to be paid for each of the Pre-Construction Services sub-phases that are identified and described in Subsection 8.d., below, including a Reimbursables Allowance and Printing Allowance. Payment is due to the CMAR only as Work progresses on each of these Pre-Construction Services sub-phases, and full payment for each such sub-phase shall be due to the CMAR only upon its completion of that sub-phase to the satisfaction of the Owner in its sole discretion. The Owner's standard payment term is NET 30 days from the date the Owner's Representative has approved the invoice.

For prompt payment, the CMAR should email all invoices to [megan.walsh@raleighnc.gov](mailto:megan.walsh@raleighnc.gov) and NAME.NAME@raleighnc.gov or mail all invoices to City of Raleigh, Engineering Services Department, Stormwater Management Division, ATTN: Megan Walsh and NAME, PO Box 590, Raleigh NC 27602-0590. All invoices must include the Purchase Order Number; invoices submitted without the correct purchase order number will result in delayed payment. Invoices will be approved or rejected by the Owner's Representative. Each invoice will be reviewed for accuracy. The CMAR shall have five (5) days from receiving written notice from the Owner that there are errors in the invoice to make the necessary corrections to same or the invoice will be rejected by the Owner and returned to the CMAR for resubmittal.

Unless otherwise provided in the Master Agreement or in this Attachment A, and any amendments thereto, the CMAR shall obtain and provide, at no additional cost to the Owner, any and all labor, materials, equipment, transportation, facilities, services, permits (included as an allowance), and licenses necessary to perform all Pre-Construction Services under this Attachment A. The Owner shall pay the CMAR for Pre-Construction Services, expenses, and costs only when payment or reimbursement for such items is specifically provided for in the Master Agreement or in this Attachment A, and any amendments thereto. The Owner shall not be obligated to pay any expenses or costs not specifically identified in the Master Agreement or in this Attachment A, and any amendments thereto.

Billing Frequency. Invoices for all compensation owed for the CMAR's Pre-Construction Services, including but not limited to hourly fees, lump sum payments, periodic payments, and all specifically identified reimbursable costs and expenses, shall be submitted to the Owner on a monthly basis, or on such other schedule as may be provided in the Master Agreement, this Attachment A, and/or any amendment to this Attachment A. Invoices shall provide sufficient detail to process the invoice for payment and for a proper pre-audit and post audit thereof in accordance with the Owner's standards.

Disputed Items. In the event that CMAR's invoices and receipts are submitted in compliance with the requirements of the Master Agreement and this Attachment A, and any amendments thereto, and if the Owner disputes any items in any invoices submitted by the CMAR, then the Owner shall notify the CMAR of any disputed item and request clarification and/or remedial action. Objections by the Owner are to be corrected by the CMAR, or satisfactory response provided by the CMAR in writing relating to the objections, or the invoice shall continue unpaid. Once corrections satisfactory to the Owner are provided, or an explanation satisfactory to the Owner is provided, the disputed items or invoice shall be reviewed within ten (10) days and, unless further objections are raised by the Owner, shall be immediately deemed approved by the Owner's Representative, subject to the Owner's standard payment term of NET 30 days from the date of the

Owner's Representative's approval of the disputed items or invoice. After this point, the CMAR may not include the disputed item(s) in its regular invoices, but instead shall provide a separate invoice for the disputed item only.

Format. The form and content of the pay application by the CMAR shall be on appropriate form and in such detail as desired by the Owner. AIA, EJCDC, AGC or Owner standard forms for pay application are generally suitable. Requests shall be signed and certified by appropriate CMAR representative(s). Requests for payment shall include, as applicable, updated reports of MWBE and sub-consultant payments, daily or other reports as may be requested by the Owner, lien releases, permits, photos, licenses, test data, certificates, updated CPM schedules, updated reports of submittals/requests for information/changes, progress updates and other items as may be required by the Master Agreement and this Attachment A, by law, or by the Owner's written request. Requests for payment shall also include adequate back up and supporting materials to document the payment request, and shall generally follow the task and deliverable item payment format as outlined in the Master Agreement and this Attachment A, or as approved by the Owner.

- a. Total compensation to the CMAR for Pre-Construction Services under the Master Agreement and this Attachment A is agreed to be for a total not to exceed amount of \$**XXX**, as established elsewhere in this Section 8 of Attachment A.
- b. The not to exceed amount may include, subject to Owner approval, a Reimbursables Allowance of \$ **XXX**.
- c. Payment for services rendered will be payable to CMAR monthly upon the Owner's evaluation of monthly payment requests and after consultation with the Project Designer.
- d. The CMAR's Pre-Construction Services shall be compensated based upon the design sub-phases itemized in the compensation schedule below, with each sub-phase representing a critical decision point for the Owner in the Project's pre-construction phase. The schedule below itemizes the total compensation to be paid to the CMAR for its Pre-Construction Services during each sub-phase. Monthly payments to the CMAR shall be based upon the Pre-Construction Services actually performed by the CMAR during the period for which payment is sought and shall correlate to the compensation schedule below. Under no circumstances shall the CMAR become entitled to payment in-full for any sub-phase until the CMAR's Pre-Construction Services for that sub-phase are complete to the satisfaction of the Owner in its sole discretion. Payment to the CMAR shall be authorized by the Owner via written letter signed by the Owner's Representative.

<del>Pre-Construction Services thru concept sub-phase:</del>	<del>\$ <b>XXX</b></del>
<del>Pre-Construction Services thru schematic sub-phase:</del>	<del>\$ <b>XXX</b></del>
Pre-Construction Services thru 70% design development sub-phase:	\$ <b>XXX</b>
Pre-Construction Services thru 100% design development sub-phase:	\$ <b>XXX</b>
Pre-Construction Services thru 70% construction documents sub phase:	\$ <b>XXX</b>
Pre-Construction Services thru 100% construction documents/ bidding sub-phase:	\$ <b>XXX</b>
Pre-Construction Services meetings and design assistance:	\$ <b>XXX</b>
Subtotal:	\$ <b>XXX</b>
Reimbursables Allowance:	\$ <b>XXX</b> .
Owner's Contingency	\$ <b>XXX</b>

Total: \$ XXX

The general outline and schedule of deliverables to be provided pursuant to this Attachment A are as follows, and shall follow the general schedule established in the Project Designer's contract with the Owner, or as otherwise approved in writing by the Owner:

<u>Tasks</u>	<u>Concept</u>	<u>Schematic</u>	<u>70% DD</u>	<u>100% DD</u>	<u>70% CD</u>	<u>100% CD</u>
Prelim. Evaluation	Initial	Update	Update	Update	Update	FINAL
Value Analysis	Initial	Update	Update	Update	Update	FINAL
Issues List	Initial	Update	Update	Update	Update	FINAL
Cost Models/Estimate	Initial	Update	Update	Update	Update	FINAL
Life Cycle Review	Initial	Update	Update	Update	Update	FINAL
Project Schedule	Initial	Update	Update	Update	Update	FINAL
Cash Flow Plan	Initial	Update	Update	Update	Update	FINAL
MWBE Plan	Initial	Update	Update	Update	Update	FINAL
Site Mgmt. Plan	Initial	Update	Update	Update	Update	FINAL
Environ. Mgmt. Plan	Initial	Update	Update	Update	Update	FINAL
Project Mgmt. Plan	Initial	Update	Update	Update	Update	FINAL
LEED Report	Initial	Update	Update	Update	Update	FINAL
Bidding, Pre-Qualification Procedures	Initial	Update	Update	Update	Update	FINAL
Bidding Documents	Initial	Update	Update	Update	Update	FINAL
GMP Bid Packages	Initial	Update	Update	Update	Update	FINAL
Final GMP	Initial	Update	Update	Update	Update	FINAL

## APPENDIX VI

### **Contractor Safety Evaluation Questionnaire and Safety Record Information**

The Contractor's safety record shall be reviewed and evaluated in addition to other quality and performance criteria as part of the evaluation process. Failure to provide the requested information and documentation may result in rejection as non-responsive. Accordingly, all company's must submit the following information regarding their safety record.

The following definitions shall apply to this section:

"DART incident rate" – Acronym for "Days Away, Restrictions and Transfers". The DART incident rate may be used to show the relative level of injuries and illnesses within a firm compared to the industry. It is based only on those injuries and illnesses severe enough to warrant "Days Away, Restrictions and Transfers". The DART incident rate is calculated using OSHA's Form 300 and the following formula:

(Number of entries (days away from work column) + (job transfer or Restriction column) x 200,000) / (Number of hours worked by all employees) = DART Incident rate.

"EMR" – Acronym for "Experience Modification Rate," is an indicator of a contractor's past safety performance, widely used by the insurance industry as an equitable means of determining premiums for workers' compensation insurance. The rating system considers the average workers' compensation losses for a given firm's type of work and amount of payroll and predicts the dollar amount of expected losses to be paid by that employer in a designated rating period, usually three years. The rating is based on comparison of firms doing similar types of work, and the employer is rated against the average expected performance in each work classification. Losses incurred by the employer for the rating period are then compared to the expected losses to develop an experience rating.

"OSHA" – Acronym for the Federal Occupational Health and Safety Administration. The term "OSHA" as used in this Policy also refers to any state or local agency having jurisdictional authorization to enforce worker safety requirements and assess fines or warnings for violation of worker safety standards.

1. **OSHA DART Incident Rate.** Provide the bidder's DART Incident Rate calculated from OSHA's Form 300 for the last three years and the other required information shown in the example table below. The bidder/proposer must attach all supporting documentation and calculations including certified OSHA forms.

Year	Contractor DART Incident Rate	MOST CURRENT INDUSTRY FIELD DART INCIDENT RATE**	NAISC CODE


\*\* the "Industry Dart Incident Rate" for your industry field and code may be found at the following website: <http://www.bls.gov/iif/oshsum.htm>. Scroll down to Summary Tables and click "PDF" for most current available data.

(a) If your DART Incident Rate is above the industry average for any year, attach a written explanation of the actions you have taken to reduce your DART Incident Rate.

**2. Experience Modification Rate (EMR).** Provide the proposer's most recent Experience Modification Rate (EMR) based on insurance claims history. The bidder must provide the source of the EMR information and contact information of insurer entity providing the EMR.

Year	CONTRACTOR EMR	INDUSTRY FIELD AND CODE	NAME AND CONTACT INFO FOR EMR INFORMATION

(a) If your EMR is greater than 1.0, attach a written explanation of the actions you have taken to reduce your EMR.

**3. Answer the following OSHA Specific Questions:**

(a) Within the last 2 years, has the Contractor received any citations classified by OSHA as being (1) serious, (2) willful and/or (3) repeat violations where your company operates?

Yes \_\_\_\_\_ No \_\_\_\_\_

*(If yes, attach a copy of each such citation and include violation description.)*

(b) Has the Contractor experienced any major work-related injuries or work-related fatalities within the last five (5) years?

Yes \_\_\_\_\_ No \_\_\_\_\_

(c) Has the Contractor had any citations issued by OSHA as a result of work related injuries or fatalities within the past five (5) years?

Yes \_\_\_\_\_ No \_\_\_\_\_

(d) Is the Contractor under investigation for any work-related injuries or fatalities?

Yes \_\_\_\_\_ No \_\_\_\_\_

(e) If your answer is "yes" to 1(b), (c) or (d), provide a copy of the citation(s), list of number(s) of serious injuries and/or fatalities and documented explanation of the incident(s) and injuries/fatalities.

2. Safety Plan:

(a) Does the company have a written comprehensive safety program that includes and indicates responsibility for all aspects of safety management (i.e. overall company policy and individual responsibilities, site inspections, first aid, fall protection, injury and illness prevention, fleet safety, Personal Protective Equipment (PPE), aerial lift, fire protection procedures etc.)?

Yes \_\_\_\_\_ No \_\_\_\_\_

(b) Does the company have a written plan for safety training of new employees and ongoing training of existing personnel and supervisors?

Yes \_\_\_\_\_ No \_\_\_\_\_

(c) Are all trades and laborers made aware of, receive instruction and regularly updated on safety compliance, best practices and operational requirements to ensure safe conditions are maintained on the job site?

Yes \_\_\_\_\_ No \_\_\_\_\_

(d) Does the company have documented evidence of safety training that they have conducted?

Yes \_\_\_\_\_ No \_\_\_\_\_

(e) Does the company have and maintain documented safety plan information?

Yes \_\_\_\_\_ No \_\_\_\_\_

(f) Is there a specific safety plan implemented for each project including pre-job safety inspections, measures for corrective actions and means for documenting and correcting unsafe conditions?

Yes \_\_\_\_\_ No \_\_\_\_\_

(g) Does the company hold regular safety meetings for employees and subcontractors at each job site throughout duration of project construction?

Yes \_\_\_\_\_ No \_\_\_\_\_

(h) Does the company provide notice at the job site that indicates to all staff where safety equipment is available onsite and clearly indicates the locations of safety equipment storage locations?

Yes \_\_\_\_\_ No \_\_\_\_\_

(i) If the company has employees with limited English ability, does the company have a written plan for ensuring that their employees understand the training they are being given?

Yes \_\_\_\_\_ No \_\_\_\_\_

(j) Do all supervisors have an appropriate documented level of OSHA training (e.g., a minimum of 30-hour OSHA construction safety training)?

Yes \_\_\_\_\_ No \_\_\_\_\_

(k) Do employees have documented basic OSHA 10-hour construction safety training?  
Yes \_\_\_\_\_ No \_\_\_\_\_

(l) Does the company have a documented Hazard Communication Program?  
Yes \_\_\_\_\_ No \_\_\_\_\_

3. Storm and Inclement Weather Safety Planning:

(a) Does the company have a written Storm Hazard Awareness and Preparedness Plan and site monitoring/notification means to provide proper safety measures at the project site in the event of inclement or extreme weather? (i.e. site evacuation procedures, damage protection, securement of equipment and materials, removal of debris and scrap materials, protection of incomplete underground storm drain system against sand and silt infiltration etc.)?  
Yes \_\_\_\_\_ No \_\_\_\_\_

4. Required Written Explanation of Safety Record. If the Contractor has any of the following:

(a) answered "yes" to any of the OSHA Specific Question above, or  
(b) answered "no" to any of the Safety Plan or Storm Safety questions,  
the Contractor shall then provide the City, in its bid, a detailed written explanation of its safety record and the reasons why such safety history is NOT representative of its future performance and an explanation of what specific actions it has taken to improve its overall safety record. Failure to provide a written explanation of its safety record pursuant to this paragraph may deem a Contractor as non-responsive by the City.