

## AGREEMENT FOR CONSTRUCTION MANAGER SERVICES

This Agreement is made on this \_\_\_\_ day of December, 2016, between the City of Burnsville (hereinafter “City”) whose business address is 100 Civic Center Parkway, Burnsville, Minnesota 55337-3867, and [NAME] (hereinafter “Firm” or “Construction Manager”), whose business address is [ADDRESS].

### PRELIMINARY STATEMENT

The purpose of this contract is to set forth terms and conditions for providing independent, professional construction manager services for the City’s facilities improvement project – City Hall/Police Department Remodel, Renovation and Expansion (hereinafter “Project”) by the Firm. The Firm or Construction Manager (hereinafter “CM”) represents it is thoroughly familiar with and understands the requirements of the Project and has all the construction education, skills, knowledge and experience required for the Project. In addition, the Firm represents that all its employees, officers or agents who are performing services under this Agreement shall have the applicable licenses required by the State of Minnesota to perform such services. The Firm shall provide sufficient organization, personnel and management to carry out the requirements of this agreement in an expeditious and economical manner consistent with the interests of the City and the Firm shall perform its services consistent with the skill and care ordinarily provided by construction managers within Minnesota and the metropolitan area on public projects under the same or similar circumstances.

1. General Services to be Provided by Firm. The CM agrees to provide pre-construction, bid and construction services set forth herein and required for completion of the Project based on the Firm’s Proposal (see Exhibit [#]) in response to the City’s Request for Proposals (see Exhibit [#]). Duties include but are not limited to onsite examination of materials, equipment and workmanship. The CM shall keep the City informed of the progress of the Work, shall guard the City against defects and deficiencies in such Work and may disapprove or reject Work failing to conform to the Construction Documents. The CM shall participate in, and cooperate with any necessary pre-construction activities, bid package preparation and coordination, construction-related activities and post-occupancy commissioning, validation and other quality assurance and quality control processes.

These tasks shall include but are not limited to the following items:

- a. Submit to City within thirty (30) calendar days from the execution of this Agreement:
  - i. Site management and logistics plan.
  - ii. Project reporting procedures.
  - iii. Quality control program.
  - iv. Safety program.
- b. Coordinate pre-construction activities. These tasks include but are not limited to the following items:

- i. Attend any necessary meetings/conferences to ensure a successful Project.
  - ii. Prepare a final cost estimate prior to going to bid.
  - iii. Collaborate with City and A/E on development of staging plan; coordinate staging including temporary construction needed to relocate affected personnel and ensuring continuity of operations throughout the duration of the Project.
  - iv. Identify decisions necessary to prepare accurate cost reports with the fewest assumptions, qualifications and exclusions.
  - v. Identify bid categories, make recommendations regarding bid-phasing, identify and promptly notify the City of conflicts or overlaps in the Work, design details affecting construction such as unusual or custom materials, long-lead materials that affect the construction schedule, availability of labor, and other factors affecting construction.
  - vi. Identify any other issues that the CM reasonably believes may have a negative impact of the Project schedule, budget or performance.
- c. Become familiar with approved program for the Project and actively participate as part of integrated team with City, A/E and other Project stakeholders.
- d. Coordinate start-up services including making provisions for Project security and logistics. Oversee the staging process that includes relocation of affected personnel within other City facilities (\*Note: The City has budgeted \$250,000 for staging).
- e. Ensure the overall safety of the Work Sites.
- f. Prepare and coordinate bid packages, including identification of any phasing. Tasks include but are not limited to the following items:
  - i. Prepare documents for use in bidding.
  - ii. Identify any bid-phasing/packageing of Work to maximize competition and involvement of local, small business including women- and minority-owned businesses.
  - iii. Pre-qualify perspective bidders, as necessary, which shall include at a minimum, proof of licensure, where applicable.
  - iv. Competitively bid each trade category or, if approved by City, assist in the negotiation for the performance of a particular trade category.
  - v. Conduct bid openings in the presence of the City's representatives and provide City with a copy of preliminary bid tabulation and copies of all bids.
  - vi. For each bid contract, trade or bid division, determine the final bid amounts, prepare and furnish to the City a final bid tabulation summary and provide the City a list of all potential Direct Purchase Materials (see Section 6 of this Agreement), if any.
  - vii. Make recommendations to the City in writing with regard to awards of contract(s).

- g. Administer the construction schedule exercising independent judgment concerning means, methods and sequences of construction. Review the progress schedule, drawing submissions and schedule of values prepared by the Contractor. City operations shall be maintained throughout the duration of the Project and CM shall work to minimize disruption and ensure operations are maintained. Tasks include but are not limited to the following items:
  - i. Review and manage progress schedule.
    - 1. Examine the Work sequence, durations, milestones and other appropriate scheduling features in accordance with the requirements of the Construction Documents. Prepare a summary of the review comments and meet and discuss the schedule comments with the City and other Project stakeholders.
    - 2. Review progress accomplished during the period and compare to the planned schedule. Discuss significant discrepancies with City and other Project stakeholders.
- h. Provide construction administration and quality control services throughout the Project to ensure the overall technical correctness of the construction phases and that specific procedures are being followed and schedules are being met. These tasks include but are not limited to the following items:
  - i. Serve as a liaison with Contractor working primarily through the Contractor's superintendent. Assist the City in obtaining additional details or information when required at the job Site for proper execution of the Work.
  - ii. Coordinate trade contractors and suppliers and supervise Site construction management services.
  - iii. Coordinate with regulatory and approving agencies and utilities as required.
  - iv. Work through the Contractor's Superintendent or his/her designee to coordinate work of specialty sub-contractors/sub-consultants assigned to the Project.
  - v. Prepare daily reports recording Contractor's work performed on the job site, major construction equipment onsite, weather conditions, data relative to questions, list of visitors (e.g. representatives of manufacturers, fabricators, suppliers and distributors), daily activities, decisions, sub-contractors/sub-consultants, inspections, testing, etc. and send report to City at least weekly throughout the duration of the Project.
- i. Conduct weekly construction progress meetings with the Contractor and sub-contractors/sub-consultants and prepare and distribute minutes of such meetings. Matters covered include but are not limited to the following items:
  - i. Jobsite safety.
  - ii. Job procedures.
  - iii. Construction progress and schedule.

- iv. Emerging/potential risks.
  - v. Drawings status.
  - vi. All other information necessary.
- j. Conduct weekly construction progress meetings with the City and A/E and prepare and distribute minutes of such meetings. Matters covered include but are not limited to the following items:
  - i. Construction progress and schedule.
  - ii. Emerging/potential risks.
  - iii. Drawings status.
  - iv. All other information necessary.
- k. Maintain and provide detailed Project records and documentation during construction phase and provide to City such records and documentation upon completion of construction phase:
  - i. Digital photographic file (in standard format such as .jpg) showing the progress of the construction activities throughout the Project and to serve as documentation of construction for future reference.
  - ii. Correspondence, schedules, submittals, test data, project data, payments, change orders, meeting minutes, clarification, mark-ups of drawings and specifications and other documentation.
  - iii. Status reports.
- l. Perform regular Site visits to perform field checks of materials and equipment and to observe, as an experience and qualified professional, the progress and quality of the executed Work and to determine if such Work is proceeding in accordance with the design intents.
- m. Issue instructions to the Contractor, necessary interpretations and clarification of the Construction Documents. Act as the initial interpreter of the requirements of the Construction Documents and judge the acceptability of the Work thereunder. The CM shall render interpretations or decisions in collaboration with the A/E in good faith and in accordance with the requirements of the Construction Documents.
- n. In collaboration with the A/E, respond to, clarify and/or interpret technical, design related questions. The CM shall respond to issues raised during construction regarding interpretation and clarification of the contractual administrative and technical requirements of the Construction Documents and assist the City in resolution of issues.
- o. Certify progress payments. The Contractor's approved schedule of values established its bid proposal in combination with field observation and the progress schedule shall be used by the CM to determine the appropriateness of the Contractor's request for payment. Tasks related to the certification of progress payments include but are not limited to the following items:

- i. Determine the amount owed to Contractor and recommend, in writing, payments to Contractor.
  - ii. Make recommendations of payment by City based on observations and review, validating that the Work has been progressed to the point indicating that to the best of the CM's knowledge, information and belief, the quality of such Work is in accordance with the Construction Documents and that payment of the amount recommended is due to the Contractor.
- p. Conduct inspections necessary to determine if the Project or Work associated with interim milestones is substantially complete in accordance with the Construction Documents. If the CM considers the Work substantially complete, the CM shall deliver to the City and Contractor, the Certification of Substantial Completion and the punch list, the date of completion for the punch list and recommend the division of responsibilities between the City and the Contractor.
- q. Upon completion of the punch list items, make final inspection to determine if the finished Work has been completed to the standard required by the Construction Documents and Contractor has fulfilled the obligations thereunder so that the CM may recommend in writing, final payment and may give written notice to the City and Contractor that the Work is acceptable.
- r. Establish and maintain a change order process. Perform tasks and services related to change orders to reflect changes requested by the City or Contractor, for evaluating substitutions proposed by Contractor and in any revisions to drawings and specifications resulting from significant delays, changes, or price increases. Changes and substitutions shall be limited to the scope of the Project as defined by the Construction Documents or additional Work may be requested by the City.
- s. Provide a monthly report in a search format summarizing the progress of the Project to the City. The report must include but is not limited to the following elements:
  - i. Percentage of the Work completed.
  - ii. Critical Path update.
  - iii. Current estimating.
  - iv. Updated critical path scheduling.
  - v. Project accounting reports.
  - vi. Digital progress/photographs.
  - vii. Logs.
  - viii. Submittals (e.g. drawings).
  - ix. Change orders including any cost change proposals.
  - x. Meetings (e.g. safety, progress) and respective minutes.
  - xi. Site visits scheduled (by officials, manufacturers, etc.).
  - xii. Deficiencies.
  - xiii. Weather conditions.

xiv. Any other pertinent Project information.

- t. At each phase of the Project, the CM shall Work with the City to reconcile and make recommendations on the differences between the estimates and the schedule of values. If final estimates differ materially, the CM and City shall meet promptly to reconcile the discrepancies and the CM shall submit to the City a final estimate on Construction Cost on which all Parties agree.
- u. Coordinate training and instruction materials for City personnel with regard to facility operations.
- v. Gather product data and other information as needed to assist the City in identifying sustainable materials, equipment, practices and assist the City with any application to achieve this including any energy rebates based on the materials and products installed in the facility.
- w. Provide Project close activities following the completion of the construction phase. These tasks include but are not limited to the following items:
  - i. Conduct warranty inspections during the 12-month guarantee/warranty period, or as otherwise noted for the guarantee/warranty period.
  - ii. Reporting of observed discrepancies under guarantees/warranties.
  - iii. Assist the City in resolving any defects to be corrected under warranty.

2. Project Schedule. The CM has provided the City with a preliminary schedule covering pre-construction and construction services for the Project. The preliminary schedule shall serve as the framework for subsequent development of all detailed construction schedules. The CM shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the Project schedule, subject to delays in the schedule not the fault of the CM or its subcontractors. The current Project Design schedule follows:

| PHASE                                       | APPROXIMATE DATE |
|---|------------------|
| Schematic Design                            | Complete         |
| Design Development (DD)                     | Complete         |
| DD Construction Cost Estimate               | A/E - Complete   |
| City Council Authorization to Bid           | December 2016    |
| Bid Opening                                 | January 2017     |
| City Council Award of Contracts             | February 2017    |
| Staging Construction (temporary relocation) | March 2017       |
| Construction                                | April 2017       |

- 3. Preparation. CM agrees to perform the following, when appropriate:
  - a. Provide full time site supervision throughout the construction period.

- b. Become familiar with local conditions under which the Project will be constructed and operated.
- c. Become familiar with all surveys and studies including the location of all existing buildings, utilities, conditions, streets, equipment, as-built and record drawings, plans and specifications, and other attributes that will or is likely to have an impact on the Project.
- d. Become familiar with programming needs, design requirements and documents, Project objectives and budget including staging (temporary relocation of staff) to maintain operations.
- e. Review and analyze all Project structural, environmental, electrical, mechanical and construction materials, tests, investigations and recommendations.
- f. Gather any and all other information necessary for a thorough understanding of the Project.

Claims by CM resulting from CM's failure to familiarize itself with the Project, Project Site or pertinent documents shall be deemed waived.

- 4. Limitations of Authority. Except upon written instruction from the City, the CM:
  - a. Shall not authorize deviations from the Construction Documents or approve substitute materials or equipment which may impact budget, timelines or design intent without approval from the City.
  - b. Shall not undertake the responsibilities of the Contractor, sub-contractor/sub-consultants.
  - c. Shall not advise on or issue directions relative to the means, methods, techniques, sequences or procedures of construction unless such is specifically called for in the Construction Documents.
  - d. Shall not authorize the City to occupy the Project in whole or in part.

5. Project Budget. The City has authorized a total Project budget of \$13.3 million. The Firm understands and acknowledges the City's intent that the Project will be completed within the budget set for the Project. Accordingly, the CM shall promptly inform the City in writing if it reasonably believes that the Project may not be completed within the budget, the reasons why it cannot be, and the CM's proposed solutions therefor.

6. Direct Purchase. The City may elect to directly purchase material and equipment included in any bid for a portion of the Work directly from the supplier of such materials or equipment or order to achieve sales tax savings. Such materials and equipment shall be referred to as "Direct Purchase Materials." If the City elects direct purchase, the City shall notify the CM in

writing and the terms of this paragraph shall govern, along with the City's policies on the subject in effect at the time the CM commences construction of the Project. The CM shall obtain Builder's Risk insurance on the Direct Purchase Materials naming the City as the insured or as an additional insured, provided the City shall reimburse the CM for the cost of such insurance as provided in this Agreement. The CM shall be responsible for safeguarding all Direct Purchase Materials on the Project site on behalf of the City.

7. Project Team. The CM will use the Project Team identified on Exhibit [#]. The CM shall not remove or replace any members of the Project Team except with the written approval of the City based upon good cause shown or as directed by the City. If any members of the Project Team discontinue service on the Project for any reason, the CM shall promptly replace such member with a qualified individual approved by the City, in writing, which approval will not be unreasonably withheld.

8. Performance of Services. The Firm shall perform independent, professional construction manager services as described in the Request for Proposal (RFP) for Independent Financial Advisory Services dated December 2016 identified as Exhibit [#]; Firm's Proposal in response to the City's RFP, identified as Exhibit [#]; and such other services as mutually agreed upon and authorized by the City.

9. Notice to Proceed. Upon execution of this Agreement and issuance of Notice to Proceed by the City, the CM shall commence performance of pre-construction services. The Parties acknowledge that pre-construction and construction phase services may overlap; construction phase services shall not commence until CM receives Notice to Proceed from the City. The Parties further acknowledge that the City may determine not to proceed with construction services, that construction services may be performed in separate phases, and that payment of the CM for pre-construction services shall be separate from payment for construction services.

10. Compensation for Services. The Firm agrees to receive and accept the prices set forth in the Proposal, as identified in the Firm's Proposal in Exhibit [#] of this Agreement, as full compensation for furnishing all materials, performing all Work and fulfilling all obligations hereunder. Said compensation shall cover all expenses, losses, damages and consequences arising out of the nature of the work during its progress or prior to its acceptance including those for well and faithfully completing the Work and the whole thereof in the manner and time specified.

[INSERT SPECIFIC COST INFORMATION FROM PROPOSAL]

11. Method of Payment.

- a. Firm agrees to receive and accept the prices set forth in the Proposal as listed in Exhibit [#] of this Agreement, as full compensation for furnishing all materials, performing all Work and fulfilling all obligations hereunder. Said compensation shall cover all expenses, losses, damages and consequences arising out of the nature of the Work during its progress or prior to acceptance including those for well and faithfully completing the Work in the manner and time specified.

*[These bullets are written assuming progress payments will be made. The final contract will be adjusted to reflect what has been agreed upon by both Parties]*

- b. Progress payments shall be made the last day of each month. The CM shall prepare the approximate measurement of Work performed through the Project closure date and submit it to the City by the tenth (10<sup>th</sup>) day of the following month.
- c. Authorized payments will be made within thirty (30) days following the receipt of invoice. Payments will be withheld pending receipt of any outstanding reports required or if payment is being disputed.
- d. When the Work is complete, the CM will determine the final quantities of the Work performed and prepare the final progress payment report.
- e. Final progress payment will not be made until the CM returns the control set of Plans and Specifications showing the as-built conditions.
- f. The Firm shall verify all statements submitted for payment in compliance with Minnesota Statutes Sections 471.38 and 471.391.

12. Term. The term of this Agreement shall commence upon execution of this contract, and continue until July 1, 2018 or upon completion of the Project, unless terminated earlier under Section 13 hereof.

13. Termination. This Agreement may be terminated by City or Firm at any time with or without cause upon thirty (30) days written notice by either the City or the Firm at the address written above. Upon termination under this provision, if there is no fault of the Firm, the Firm shall be paid for services rendered and reimbursable expenses until the effective date of termination. If, however, the City terminates the Agreement because the Firm has failed to perform in accordance with this Agreement, no further payment shall be made to the Firm, and the City may retain another Firm to undertake or complete the Work identified in Section 2. Upon notice of termination, the City may request and the Firm shall provide, continued services on an hourly basis until an appropriate transition to a new Firm is executed.

14. Successors or Assigns. The terms and provisions of this Agreement are binding upon and inure to the benefit of the City and the Firm and their successors or assigns.

15. Independent Contractor Status. Nothing contained in this Agreement is intended or should be construed as creating or establishing an employer-employee relationship, or the relationship of co-partners or joint ventures between the parties. The Firm will at all times remain independent contractors.

16. Conflict of Interest. It is possible that the Firm may have relations with public entities or private firms that may be part of the City's Project. The Firm will notify the City if it has perceived a conflict of interest when working on any project with the City. In addition, the

City may be aware of such conflicts on its own. The City shall have the discretion to determine the extent of the possible conflict and the best remedy. The City may ask for another representative of the Firm to assist with the project or seek assistance from a different outside consultant.

17. Assignment. No party shall assign this Agreement, nor any interest arising herein, without the written consent of all other parties.

18. Severability. The provisions of this Agreement are severable. If any portion hereof is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision shall not affect the remaining provisions of the Agreement.

19. Waiver. Any waiver by either Party of a breach of any provisions of this Agreement shall not affect, in any respect, the validity of the remainder of this Agreement.

20. Confidentiality; Disclosure of Information. All information, files, records, memoranda and other data of the City which the City provide to the Firm of which the Firm becomes aware of in the performance of its duties hereunder ("City Information") shall be deemed by the parties to be the property of the City. The Firm may disclose the City information to third parties in connection with the performance of its duties hereunder if the data is classified as public, or is otherwise authorized, under the Minnesota Government Data Practices Act.

The City acknowledges that in connection with the performance by the Firm of its duties hereunder, the City may become aware of internal files, records, reports, documents, drawings, correspondence, memoranda and other data, including without limitation computer programs of the Firm. The City acknowledges that all the Firm's information, except reports prepared by the Firm for the City and documents, data, files, etc. related to the City's Project, is the property of the Firm and considered confidential or trade secret information and agrees that the City will not, directly or indirectly, disclose the same or any part thereof to any person or entity except as required by the Minnesota Government Data Practices Act (MGDPA) and upon prior written notice to the Firm. The City agrees to cooperate with the Firm if the Firm determines to assert its rights under the MGDPA to prevent release of the data.

All data created, collected, received and maintained or disseminated by the Firm for any purpose in the course of this Agreement is governed by the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, any other applicable State statute, or any State rules adopted to implement the Act as well as federal regulations on data privacy.

All books, records, documents and procedures, data, reports and practices of the Firm and its (sub)contractor(s), if any, relative to this Agreement are subject to the examination by the City.

21. Audit Disclosure/Confidentiality/Records Access. Pursuant to Minn. Stat. § 16C.05, subd. 5, the Firm agrees that the City, the State Auditor or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt and transcribe any records which are pertinent to the Project and involve transactions relating to this Agreement for the term of this Agreement and for a period of three (3) years after the final payment and all other

pending matters related to this Agreement are closed. For purposes of this Agreement Firm's "records" means any and all information, materials, drawings, reports, data of every kind and character, whether hard copy or in electronic form, which may, in the City's judgment, have any bearing on or pertain to this Agreement including without limitation, books, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, logs, daily diaries, written policies and procedures, time sheets, payroll registers and records, cancelled payroll checks, sub-contractor files (including proposals, bid recaps), original estimates, estimating worksheets, correspondence, change order files, invoices and supporting documentation of invoices and related payment documentation, general ledgers, records, detailing cash and trade discounts earned, insurance rebates and dividends, superintendent reports, drawings, receipts, vouchers and memoranda.

The City shall have reasonable access to the Firm's facilities and shall be allowed to interview all current or former employees to discuss matters pertinent to this Project and Agreement.

If an audit discloses overpricing and overcharges, Firm shall promptly refund the overpayment.

Any reports, drawings, information, data, etc. given to, or prepared or assembled by, the Firm shall not be made available to any individual or organization without the City's prior written approval. All finished or unfinished documents, data, drawings, and reports prepared and/or retained by the Firm in relation to services rendered to the City shall become the property of the City upon termination of this Agreement, but the Firm may retain copies of such documents as records of the services provided.

22. Indemnification and Insurance. The Parties agree to hold harmless, indemnify and defend each Party's employees, agents, officers, directors, and elected officials against any and all claims causes of action, suits, liabilities, losses, charges, damages or costs and expenses arising or allegedly arising from or resulting directly or indirectly from any professional errors or omissions, or negligent or willful acts or omissions of the firm in the performance of this Agreement.

The Firm further agrees that in order to protect itself as well as the City, under the indemnity provision set forth above, it will at all times during the term of this Agreement keep in force:

- a. Commercial general liability insurance.
- b. Professional liability insurance.
- c. Workers' compensation insurance as required by Minnesota Statute.
- d. Builder's Risk insurance and Builder's Risk insurance on the Direct Purchase Materials naming the City as the insured or as an additional insured.

The insurance required under this section shall be subject to review and approval of the City, and shall meet statutory limits of liability for the City, state statutory requirements, the value

of property being insured, and the anticipated level of risk involved with the Project. The Firm will provide the City with certificates for the above policies, with the City named as an additional insured under the commercial general liability insurance, within sixty (60) days of execution of this Agreement and on or before January 1 each year for any policies that have changed during the previous calendar year. The City shall receive timely notification if any insurance policies required under the provisions of this Agreement are no longer maintained.

23. Force Majeure. A Party shall not be considered in default in performance of its obligations should their execution be delayed by any act or cause, which is beyond the reasonable control of such Party.

24. Non-Discrimination. During the performance of this Agreement, the Firm shall not discriminate against any employee or applicants for employment because of race, color, creed, religion, national origin, sex, marital status, familial status, sexual orientation, status with regard to public assistance, disability or age. The Firm shall post, in places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause and stating that all qualified applicants will receive consideration for employment. The Firm shall incorporate the foregoing requirements of this section in all of its subcontracts and will require all of its subcontractors to incorporate' such requirements in all subcontracts.

25. Controlling Law. This agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

26. Entire Agreement. The entire agreement of the Parties is contained herein. This Agreement supersedes all oral agreements and negotiations between the Parties relating to the subject matter hereof as well as any previous agreements presently in effect between the Parties relating to the subject matter hereof. Any alterations, amendments, deletions or waivers of the provision of the Agreement shall be valid only when expressed in writing and duly signed by the Parties unless otherwise provided herein.

CITY OF BURNSVILLE

FIRM

By \_\_\_\_\_  
Mayor

By \_\_\_\_\_  
[TITLE]

By \_\_\_\_\_  
City Manager

By \_\_\_\_\_  
[TITLE]