

FIRST AMENDMENT OF CONSTRUCTION MANAGER SERVICES AGREEMENT FOR PHASE 2 – CONSTRUCTION SERVICES

THIS FIRST AMENDMENT to the Construction Manager Services Agreement dated [DATE], is made and entered into by and between Lee County, a political subdivision and charter County of the State of Florida, acting by and through its Board of County Commissioners (Owner); and [CM Name], a Florida corporation, duly licensed to conduct business in the State of Florida (the “Construction Manager” or “CM”), collectively, the “Parties”.

RECITALS

WHEREAS, the County desired to construct the [Project Name] Project (the “Project”) within Lee County, Florida; and,

WHEREAS, the CM and the County entered into Construction Manager Services Agreement dated [DATE] (“Agreement”) according to the selection of the CMAR pursuant to [Solicitation]; and,

WHEREAS, the CM and the Owner completed Pre-Construction Services for the Project; and,

WHEREAS, Section 3.01 CM’s Compensation of the Construction Manager Services Agreement provides that the Guaranteed Maximum Price (“GMP”) for construction of the Project will be established in a separate amendment to the Agreement; and,

WHEREAS, Section 3.02 The Project; Changes in the Project; Additional Fee of the Construction Manager Services Agreement provides that the CM is entitled to an additional fee if the Owner increases the GMP; and

WHEREAS, Section 3.03 Period of Construction; Additional Fee of the Construction Manager Services Agreement provided that the number of calendar days for the period of construction to substantial completion and the number of calendar days to final completion are to be established by amendment to the Agreement, and that the First Construction GMP payment and the subsequent monthly installments shall be determined after the GMP has been established; and

WHEREAS, Section 4.06 Project Schedule; Substantial Completion; Occupancy, Subsection (1) Establishment of Substantial Completion Date of the Construction Manager Services Agreement, provides that Liquidated Damages will be established by amendment to the Agreement; and

WHEREAS, except as is specifically amended or modified herein, all of the terms and conditions of the Agreement for the Project are hereby ratified and confirmed, and shall remain in full force and effect.

Commented [B11]: Please verify that this is the First Amendment; otherwise, update to Second, Third, etc.

Commented [B2]: Update the document header

Commented [B3]: Please confirm.

Commented [B4]: Insert the date of the **Pre-Construction** Agreement.

Commented [B5]: CM firm name; must match Sunbiz exactly (including punctuation).

Commented [B6]: If the CM is a foreign entity, please update this language to read:

a [state name] corporation authorized to conduct business in the State of Florida

Please verify that this CM is a corporation and not an LLC. If it’s an LLC/company, change this to “company.”

Commented [B7]: Enter project name

Commented [B8]: Insert the date of the **Pre-Construction** Agreement.

Commented [B9]: Insert the Solicitation number in this format (example only): Request for Proposal No. RFP270187

OPERATIVE PROVISIONS

NOW THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the CM, intending to be legally bound, covenant and agree as follows:

1. **Recitals**. The recitals set forth above are true and correct and incorporated herein as if set forth below.
2. **CM's Compensation**. The Parties hereby agree that the last sentence of Section 3.01 CM's Compensation is replaced in its entirety as follows:

The CM fee for Construction Services shall be **\$X**.

3. **Establishment of Guaranteed Maximum Price**. The Parties hereby agree that the GMP for construction of the Project shall be **\$X** and that this is a line item GMP. In no event shall the cost of construction of the Project and the CM's Fee exceed the GMP, as adjusted by any County approved change orders.

4. **Establishment of Period of Construction**. The Parties hereby agree that the first paragraph of Section 3.03 Period of Construction; Additional Fee is replaced in its entirety as follows:

Owner, AE and CM expect and believe that the period of construction or construction phase for the Project shall be **[spell out the number of days] (#)** calendar days to substantial completion from issuance of the Notice to Proceed and an additional **[spell out the number of days] (#)** calendar days to final completion. No work shall take place under this Amendment until the date specified in the Construction Phase Notice to Proceed.

5. **Liquidated Damages**. Under Section 4.06 Project Schedule; Substantial Completion; Occupancy, Subsection (1) Establishment of Substantial Completion Date, the Parties hereby agree that the amount of liquidated damages the CM shall be assessed is **\$X per calendar day** for each day completion is extended beyond the Project substantial completion date.

6. **Contract Documents**. The Construction Manager shall perform the services for the amount stated above in strict accordance with the following documents, all of which are attached hereto and incorporated by reference:

6.1 Exhibit A – Letter Dated **[Date]** Establishing the GMP and Schedule of Values from **[CM Name]**

Commented [IB10]: Insert the dollar amount of the CM fee for Construction Phase services. You do not need to write it in words, just numbers.

Commented [IB11]: Insert the dollar amount of the CM fee for Construction Phase services. You do not need to write it in words, just numbers.

Commented [IB12]: Insert the number of days to substantial completion. Write it in words and numbers. For example: "one hundred and eighty (180) days"

Commented [IB13]: Insert the number of days to substantial completion. Write it in words and numbers. For example: "two hundred and ten (210) days"

Commented [IB14]: Insert the dollar amount of the liquidated damages. You do not need to write it in words, just numbers.

Commented [IB15]: Date listed on the GMP letter

Commented [IB16]: CM name

[Solicitation #]

E1 Contract # _____

[Project Name]

Contract No. [X] – Amendment No. [Usually 1, but check to be sure.]

6.2 Exhibit B – [insert name of Exhibit B]

6.3 Exhibit C – [insert name of Exhibit C]

6.4 Exhibit D – [insert name of Exhibit D]

7. **Effective Date.** This Amendment shall become effective on the date it is approved by the Lee County Board of County Commissioners.

[The remainder of this page intentionally left blank.]

Commented [IB17]: Add or delete exhibits as needed. These exhibits should be all relevant, final (or 90%) drawings/plans and any additional, related documents for the project.

Be sure to label each exhibit!

[Solicitation #]
[Project Name]
Contract No. [X] – Amendment No. [Usually 1, but check to be sure.]

E1 Contract # _____

IN WITNESS WHEREOF, the parties have made and executed this Amendment on the day and year of the last signature below.

WITNESS: **[CM NAME]** _____
Signed By: _____ Signed By: _____
Print Name: _____ Print Name: _____
Title: _____
Date: _____

Commented [IB18]: Enter the CM firm's name in all capital letters as it appears on Sunbiz.org

**BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA**

Signed By: _____
Print Name: _____
Title: _____
Date: _____

ATTEST:
CLERK OF THE CIRCUIT COURT

BY: _____
DEPUTY CLERK

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

BY: _____
OFFICE OF THE COUNTY ATTORNEY

[Solicitation #]
[Project Name]
Contract No. [X] – Amendment No. [Usually 1, but check to be sure.]

E1 Contract # _____

EXHIBIT A
GMP LETTER

Insert GMP Letter and Backup from CMAR

[Solicitation #]
[Project Name]
Contract No. [X] – Amendment No. [Usually 1, but check to be sure.]

E1 Contract # _____

EXHIBIT B
CONSTRUCTION PLANS

Insert Construction Plans