

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

E1 Contract # \_\_\_\_\_

## **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” or “County”); 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

**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

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shall remain in full force and effect.

### 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~~. The CM Fee as outlined in the Exhibit A - GMP Letter shall be a flat fee only, and not percentage based. 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:

**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 [DG12]:** NOTE to Analyst: Please make sure their CM Fee is in fact a flat fee and NOT percentage based.

**Commented [IB13]:** Insert the number of days to substantial completion. Write it in words and numbers. For example: "one hundred and eighty (180) days"

**Commented [IB14]:** Insert the number of days to substantial completion. Write it in words and numbers. For example: "two hundred and ten (210) days"

**Commented [IB15]:** Insert the dollar amount of the liquidated damages. You do not need to write it in words, just numbers.

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

**Commented [IB16]:** Date listed on the GMP letter

6.2 Exhibit B – [insert name of Exhibit B]

**Commented [IB17]:** CM name

6.3 Exhibit C – **Trench Safety Affidavit**

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.
8. **Signature Authority Acknowledgement.** Each individual signing this Agreement directly and expressly warrants that he/she has been given and has received and accepted authority to sign and execute the Agreement on behalf of the Party for whom it is indicated he/she has signed, and further has been expressly given and received and accepted authority to enter into a binding agreement on behalf of such Party with respect to the matters contained herein and as stated herein.

[The remainder of this page intentionally left blank.]

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

WITNESS:

**[CM NAME]**

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

Signed By: \_\_\_\_\_

Signed By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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

Signed By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

CLERK OF THE CIRCUIT COURT

BY: \_\_\_\_\_

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

BY: \_\_\_\_\_  
OFFICE OF THE COUNTY ATTORNEY

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EXHIBIT A  
GMP LETTER

Insert GMP Letter and Backup from CMAR

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EXHIBIT B  
CONSTRUCTION PLANS

**Insert Construction Plans**

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EXHIBIT C  
TRENCH SAFETY

Construction Manager acknowledges that included in the appropriate solicitation items of the solicitation and in the Total solicitation price are costs for complying with the Florida Trench Safety Act (90 -96, Laws of Florida) effective October 1, 1990. The Construction Manager further identifies the costs of such compliance to be summarized below:

Trench Safety Measure (Description)	Units of Measure (LF, SF)	Unit (Quantity)	Unit Cost	Extended Cost
.....				
A. _____	_____	_____	_____	_____
B. _____	_____	_____	_____	_____
C. _____	_____	_____	_____	_____
D. _____	_____	_____	_____	_____
TOTAL \$ _____				

If applicable, the Construction Manager certifies that all trench excavation done within his control in excess of five (5') feet in depth shall be in accordance with the Florida Department of Transportation's Special Provisions Article 125-1 and Sub-article 125-4.1 (TRENCH EXCAVATION SAFETY SYSTEM AND SHORING, SPECIAL-TRENCH EXCAVATION).

Failure to comply with the provisions of this Affidavit may result in the termination of the Agreement at the discretion of the County.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Company Name)

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me, by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by \_\_\_\_\_ who has produced \_\_\_\_\_ (Print or Type Name)

\_\_\_\_\_ as identification.  
(Type of Identification)

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_  
Printed Name of Notary Public

\_\_\_\_\_  
Notary Commission Number/Expiration