



Lee County Board of County Commissioners
PROCUREMENT MANAGEMENT DEPARTMENT

Construction Manager at Risk (CMAR) Request for Proposal

Solicitation No.:	CMR190502JJB		
Solicitation Name:	EOC Expansion Construction (CMAR)		
Open Date/Time:	Tuesday, November 19, 2019	Time:	2:30 PM
Location:	Lee County Procurement Management 1500 Monroe Street 4th Floor Fort Myers, FL 33901		
Procurement Contact:	Jake Bond	Title	Procurement Analyst
Phone:	(239) 533-8881	Email:	JBond@leegov.com
Requesting Dept.	Facilities Construction & Management		

Pre-Solicitation Meeting:	
Type:	Mandatory
Date/Time:	10/29/2019 10:00 AM
Location:	Lee County EOC Building: 2675 Ortiz Ave., Fort Myers, FL 33905

All solicitation documents are available for download at

www.leegov.com/procurement

Tuesday, October 15, 2019

Notice to Contractor / Vendor / Proposer(s)
CMR190502JJB EOC Expansion Construction (CMAR)

Construction Manager at Risk (CMAR) Request for Proposal

Lee County, Florida, is requesting proposals from qualified individuals/firms for
EOC Expansion Construction (CMAR)

Then and there to be publicly opened and read aloud for the purpose of selecting a vendor to furnish; all necessary labor, services, materials, equipment, tools, consumables, transportation, skills and incidentals required for Lee County, Florida, in conformance with proposal documents, which include technical specifications and/or a scope of work.

Those individuals/firms interested in being considered for (RFP) are instructed to submit, in accordance with specifications, their proposals, pertinent to this project prior to

2:30 PM Tuesday, November 19, 2019

to the office of the **Procurement Management Director**. The Proposal shall be **uploaded electronically to www.leegov.com/bid** or received in a sealed envelope at **1500 Monroe Street, 4th Floor, Fort Myers, Florida 33901**, prior to the time scheduled to receive Proposal(s), and shall be clearly marked with the solicitation name, solicitation number, Proposer name, and contact information as identified in these solicitation documents.

The Scope of Services for this RFP is available from www.leegov.com/procurement. Vendors who obtain scope of services from sources other than www.Leegov.com/procurement are cautioned that the solicitation package may be incomplete. The County's official bidders list, addendum(s) and information must be obtained from www.Leegov.com/procurement. It is the Proposer's responsibility to check for posted information. The County may not accept incomplete proposals.

A Mandatory Pre-Proposal Conference has been scheduled for the following time and location

10:00 AM Tuesday, October 29, 2019 Lee County EOC Building: 2675 Ortiz Ave., Fort Myers, FL 33905 for the purpose of discussing the proposed project. Prospective Proposers are required to attend. All prospective Proposers are encouraged to obtain and review plans, specifications, and scope of work for this proposal before the pre-proposal so that they may be prepared to discuss any question or concerns they have concerning this project. A site visit may follow the pre-proposal conference. Questions regarding this Request for Proposal are to be directed, in writing, to the individual listed below using the email address list below or faxed to (239) 485 8383 during normal working hours.

Jake Bond JBond@LeeGov.com

Sincerely,

Lindsay Cepero, CPPB
 Procurement Manager

*WWW.LeeGov.Com/Procurement is the County's official posting site

Terms and Conditions

Request for Proposal
Construction Manager at Risk (CMAR)

1. DEFINITIONS

- 1.1. **Addendum/Addenda:** A written change, addition, alteration, correction or revision to a bid, proposal or contract agreement. Addendum/Addenda may be issued following a pre-bid/pre-proposal conference or as a result of a specification or work scope change to the solicitation.
- 1.2. **Approved Alternate:** Solicitation documents may make reference of specific manufacturer(s) or product(s). These references serve only as a recommendation and a guide to minimum quality and performance. The references are not intended to exclude approved alternatives of other manufacturer(s) or product(s).
- 1.3. **Bid/Proposal Package:** A bid/proposal is a document submitted by a vendor in response to some type of solicitation to be used as a basis for negotiations or for entering into a contract.
- 1.4. **Bidder/Responder/Proposer:** One who submits a response to a solicitation.
- 1.5. **County:** Refers to Lee County Board of County Commissioners.
- 1.6. **Due Date and Time/Opening:** Is defined, as the date and time upon which a bid or proposal shall be submitted to the Lee County Procurement Management Department. Only bids or proposals received prior to the established date and time will be considered.
- 1.7. **Liquidated Damages:** Damages paid usually in the form of monetary payment, agreed by the parties to a contract which are due and payable as damages by the party who breaches all or part of the contract. May be applied on a daily basis for as long as the breach is in effect.
- 1.8. **Procurement Management:** shall mean the Director of Lee County's Procurement Management Department or designee.
- 1.9. **Responsible:** A vendor, business entity or individual who is fully capable to meet all of the requirements of the bid/proposal solicitation documents and subsequent contract. Must possess the full capability including financial and technical, to perform as contractually required. Must be able to fully document the ability to provide good faith performance.
- 1.10. **Responsive:** A vendor, business entity or individual who has submitted a bid or request for proposal that fully conforms in all material respects to the bid/proposal solicitation documents and all of its requirements, including all form and substance.
- 1.11. **Solicitation:** An invitation to bid, a request for proposal, invitation to negotiate or any document used to obtain bids or proposals for the purpose of entering into a contract.

2. ORDER OF PRECEDENCE

- 2.1. If a conflict exists between the "Terms and Conditions" the following order of precedents will apply:
 - 2.1.1. Florida State Law as applied to Municipal Purchasing in accordance with Title XIX, "Public Business", Chapter 287 "Procurement of Personal Property and Services."
 - 2.1.2. Lee County Procurement Management Department Ordinance 18-22
 - 2.1.3. Special Conditions and Supplemental Instructions
 - 2.1.4. Detailed Scope of Work
 - 2.1.5. These Terms and Conditions

3. RULES, REGULATIONS, LAWS, ORDINANCES AND LICENSES

- 3.1. It shall be the responsibility of the Proposer to assure compliance with all other federal, state, or county codes, rules, regulations or other requirements, as each may apply. Any involvement with Lee County shall be in accordance with but not limited to:
 - 3.1.1. Lee County Procurement Management Department Ordinance 18-22
 - 3.1.2. Florida State Statute 287.055: Consultant Competitive Negotiation Act (CCNA), (CN)
 - 3.1.3. Pursuant to FL § Section 119.071, Public Records, General exemptions from inspection or copying of public records, sealed bids or proposals received by the County. Pursuant to this, solicitations are exempt from public records request (s. 119.07(1) and s. 24(a), Art. I, of the Florida Constitution) until

such time as the agency provides notice of a decision or intended decision (pursuant to s. 119.071(2)) or within 30 calendar days after bid or proposal opening, whichever is earlier.

- 3.1.4. Florida Statute 218 Public Bid Disclosure Act.
 - 3.1.5. Florida Statute 337.168 Confidentiality of official estimates, identities of potential bidders, and bid analysis and monitoring.
 - 3.1.6. FL § Section 607.1501(1) states: A foreign corporation may not transact business in the State of Florida until it obtains a certificate of authority from the Department of State.
 - 3.2. **Local Business Tax:** If applicable, provide with proposal.
 - 3.3. **License(s):** Proposer should provide, at the time of the opening of the proposal, all necessary permits and/or licenses required for this product and/or service.
4. **RESPONSES RECEIVED LATE**
- 4.1. It shall be the Proposer's sole responsibility to deliver the proposal submission to the Lee County Procurement Management Department prior to or on the time and date stated.
 - 4.2. Any proposals received after the stated time and date will not be considered. The proposal shall not be opened at the public opening.
 - 4.3. The Lee County Procurement Management Department shall not be responsible for delays caused by the method of delivery such as, but not limited to; internet, United States Postal Service, overnight express mail service(s), or delays caused by any other occurrence.
5. **PROPOSER REQUIREMENTS (unless otherwise noted)**
- 5.1. **Responsive and Responsible:** Only proposals received from responsive and responsible Proposers will be considered. The County reserves the right before recommending any award to inspect the facilities and organization; or to take any other necessary action, such as background checks, to determine ability to perform is satisfactory, and reserves the right to reject submission packages where evidence submitted or investigation and evaluation indicates an inability for the Proposer to perform.
 - 5.1.1. Additional sources may be utilized to determine credit worthiness and ability to perform.
 - 5.1.2. Any Proposer or sub-Proposer that will have access to County facilities or property may be required to be screened to a level that may include, but is not limited to fingerprints, statewide criminal. There may be fees associated with these procedures. These costs are the responsibility of the Proposer or sub-Proposer.
 - 5.1.3. Proposers are responsible for ensuring that any required background screening are conducted in accordance with Chapter 435. Proposers shall be aware, understand, and ensure compliance with the statutory requirements regarding background checks. FL Statutes Chapter 435 governs required background screenings for any employees, contractors, subcontractors, or agents of the Proposer who will have contact with any vulnerable person, as defined by statute, or who otherwise are required to undergo a Level 1 or Level 2 background screening in accordance with Florida law. Such requirements shall flow down to sub-contractors/consultants of the prime Proposer and prime Proposer shall ensure compliance with Chapter 435 of such parties.
 - 5.1.3.1.1. Documentation of such completed background screenings must be maintained for a period of no less than five (5) years and are subject to audit by Lee County at any time during such five (5) year period.
 - 5.2. **Past Performance:** All vendors will be evaluated on their past performance and prior dealings with Lee County (i.e., failure to meet specifications, poor workmanship, late delivery, etc.). Poor or unacceptable past performance may result in Proposer disqualification.
 - 5.3. **Preparation Cost:** The Proposer is solely responsible for any and all costs associated with responding to this solicitation. No reimbursement will be made for any costs associated with the preparation and submittal of any proposal, or for any travel and per diem costs that are incurred by any Proposer.
6. **PRE-SOLICITATION CONFERENCE**
- 6.1. A pre-solicitation conference will be held in the location, date, and time specified on the cover of this solicitation. The cover will also note if the pre-solicitation conference is Non-Mandatory or Mandatory. All prospective Proposers are encouraged to obtain and review the solicitation documents prior to the pre-

proposal so they may be prepared to discuss any questions or concerns they have concerning this project. All verbal questions and answers are considered informal. All questions must be submitted formally in writing to the procurement staff noted on the first page of the solicitation document. A formal response will be provided in the form of an addendum (see “County Interpretation/Addendums” for additional information.) A site visit may follow the pre-proposal conference, if applicable.

- 6.2. **Non-Mandatory:** Pre-solicitation conferences are generally non-mandatory, but it is highly recommended that prospective Proposers participate.
- 6.3. **Mandatory:** Failure to attend a mandatory pre-solicitation conference will result in the proposal being considered **non-responsive**.

7. COUNTY INTERPRETATION/ADDENDUMS

- 7.1. Each Proposer shall examine the solicitation documents and shall judge all matters relating to the adequacy and accuracy of such documents. Any inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to the solicitation shall be **submitted in writing prior to 5:00 PM at least eight (8) calendar days prior to the date when the submission is due**.
- 7.2. Response(s) will be in the form of an Addendum posted on www.leegov.com/procurement. It is solely the Proposer’s responsibility to check the website for information. No notifications will be sent by Lee County Procurement Management Department associated with this solicitation.
- 7.3. All Addenda shall become part of the Contract Documents.
- 7.4. The County shall not be responsible for oral interpretations given by any County employee, representative, or others. Interpretation of the meaning of the plans, specifications or any other contract document, or for correction of any apparent ambiguity, inconsistency or error there in, shall be in writing. Issuance of a written addendum by the County’s Procurement Management Department is the only official method whereby interpretation, clarification or additional information can be given.

8. QUALITY GUARANTEE/WARRANTY (as applicable)

- 8.1. Proposer will guarantee their work without disclaimers, unless otherwise specifically approved by the County, for a minimum of twelve (12) months from final completion.
- 8.2. Unless otherwise specifically provided in the specifications, all equipment and materials and articles incorporated in the work covered by this contract shall be new, unused and of the most suitable grade for the purpose intended. Refurbished parts or equipment are not acceptable unless otherwise specified in the specifications. All warranties will begin from the date of final completion.
- 8.3. Unless otherwise specifically provided in the specifications, the equipment must be warranted for twelve (12) months, shipping, parts and labor. Should the equipment be taken out of service for more than forty-eight (48) hours to have warranty work performed, a loaner machine of equal capability or better shall be provided for use until the repaired equipment is returned to service at no additional charge to the County.
- 8.4. If any product does not meet performance representation or other quality assurance representations as published by manufacturers, producers or distributors of such products or the specifications listed, the vendor shall pick up the product from the County at no expense to the County. The County reserves the right to reject any or all materials, if in its judgment the item reflects unsatisfactory workmanship or manufacturing or shipping damage. The vendor shall refund, to the County, any money which has been paid for same.

9. ADDITIONS, REVISIONS AND DELETIONS

- 9.1. Additions, revisions, or deletions to the Terms and Conditions, Specifications, Bid Schedule, or other document provided by Lee County Procurement Management Department that changes the intent of the solicitation will cause the solicitation to be non-responsive and the proposal will not be considered. The Procurement Management Director shall be the sole judge as to whether or not any addition, revision, or deletion changes the intent of the solicitation.

10. CONFIDENTIALITY

- 10.1. Proposers should be aware that all proposals provided are subject to public disclosure and will **not** be afforded confidentiality, unless provided by Chapter 119 Florida Statute.

- 10.2. If information is submitted with a proposal that is deemed “Confidential” the Proposer must stamp those pages of the proposal that are considered confidential. The Proposer must provide documentation as to validate why these documents should be declared confidential in accordance with Chapter 119, “Public Records,” exemptions.
- 10.3. Lee County **will not reveal engineering estimates or budget amounts for a project** unless required by grant funding or unless it is in the best interest of the County. According to Florida State Statute 337.168: A document or electronic file revealing the official cost estimate of the department of a project is confidential and exempt from the provisions of s. 119.07(1) until the contract for the project has been executed or until the project is no longer under active consideration.

11. CONFLICT OF INTEREST

- 11.1. All Proposers are hereby placed on formal notice that per Section 3 of Lee County Ordinance No. 92-22: The County is prohibited from solicitation of a professional services firm to perform project design and/or construction services if the firm has or had been retained to perform the project feasibility or study analysis.

And:

- 11.2. A professional services firm who has performed or participated in the project feasibility planning, study analysis, development of a program for future implementation or drafting of solicitation documents directly related to this County project, as the primary vendor/consulting team, cannot be selected or retained, as the primary consultant/vendor or named a member of the consulting/contracting team, to perform project design, engineering or construction services for subsequent phase(s) or scope of work for this project. Pursuant to FS. S287.057 (17) the firm will be deemed to have a prohibited conflict of interest that creates an unfair competitive advantage.
- 11.3. Should your proposal be found in violation of the above stated provisions; the County will consider this previous involvement in the project to be a conflict of interest, which will be cause for immediate disqualification of the proposal from consideration for this project.
- 11.4. **Business Relationship Disclosure Requirement:** The award hereunder is subject to the provisions of Chapter 112, Public Officers and Employees: General Provisions, Florida Statutes. All Proposers must disclose with their proposal the name of any officer, director or agent who is also an employee of Lee County or any of its agencies. Further, all Proposers must disclose the name of any County employee who owns directly or indirectly, an interest of five percent (5%) or more in the Proposer’s firm or any of its branches.

12. ANTI-LOBBYING CLAUSE (Cone of Silence)

- 12.1. Following Florida Statute Section 287.057(23), Upon the issuance of the solicitation, prospective Proposers or any agent, representative or person acting at the request of such Proposer shall not have any contact, communicate with or discuss any matter relating in any way to the solicitation with any Commissioner, Evaluation Review Committee, agent or employee of the County other than the Procurement Management Director or their designee. This prohibition begins with the issuance of any solicitation, and ends upon execution of the final contract or when the solicitation has been cancelled. **If it is determined that improper communications were conducted, the Proposer maybe declared non- responsible.**

13. DRUG FREE WORKPLACE

- 13.1. Lee County Board of County Commissioners encourages Drug Free Workplace programs.

14. DISADVANTAGED BUSINESS ENTERPRISE (DBE’s)

- 14.1. The County encourages the use of Disadvantaged Business Enterprise Proposer(s) as defined and certified by the State of Florida Department of Transportation.
- 14.2. Bidder/Proposer is required to indicate whether the Firm and/or any proposed sub-consultants are Disadvantaged Business Enterprises (DBE). Lee County encourages the utilization and participation of DBEs in procurements, and evaluation proceedings will be conducted within the established guidelines regarding equal employment opportunity and nondiscriminatory action based upon the grounds of race, color, sex or national origin. Interested certified Disadvantaged Business Enterprise (DBE) firms as well as other minority-owned and women-owned firms are encouraged to respond.

15. ANTI-DISCRIMINATION/EQUAL EMPLOYMENT OPPORTUNITY

- 15.1. The Proposer agrees to comply, in accordance with Florida Statute 287.134, 504 of the Rehabilitation Act of 1973 as amended, the Americans with Disabilities Act of 1990 (ADA), the ADA Amendments Act of 2008 (ADAAA) that furnishing goods or services to the County hereunder, no person on the grounds of race, religion, color, age, sex, national origin, disability or marital status shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- 15.2. The Proposer will not discriminate against any employee or applicant for employment because of race, religion, color, age, sex, national origin, disability or marital status. The Proposer will make affirmative efforts to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, age, sex, national origin, disability or marital status.
- 15.3. The Proposer will include the provisions of this section in every sub-contract under this contract to ensure its provisions will be binding upon each sub-contractor. The Proposer will take such actions in respect to any sub-contractor, as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for non-compliance.
- 15.4. An entity or affiliate who has been placed on the State of Florida's Discriminatory Vendor List (This list may be viewed by going to the Department of Management Services website at <http://www.dms.myflorida.com>) may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a vendor, supplier, sub-contractor, or consultant under contract with any public entity, and may not transact business with any public entity.

16. SUB-PROPOSER/CONSULTANT

- 16.1. The use of Sub-Proposer/Consultant under this solicitation is not allowed without prior written authorization from the County representative.

17. RFP - PROJECT GUIDELINES

- 17.1. The County has established the following Guidelines, Criteria, Goals, Objectives, Constraints, Schedule, Budget and or Requirements which shall service as a guide to the Proposer(s) in conforming the professional services and work to provide pursuant to this Agreement/Contract:
 - 17.1.1. No amount of work is guaranteed upon the execution of an agreement/contract.
 - 17.1.2. Hourly rates and all other negotiated expenses will remain in effect throughout the duration of the agreement/contract period; inclusive of any renewals unless otherwise specified herein.
 - 17.1.3. This contract does not entitle any firm to exclusive rights to County agreements/contracts. The County reserves the right to perform any and all available required work in-house or by any other means it so desires.
 - 17.1.4. In reference to vehicle travel, mileage and person-hours spent in travel time, are considered incidental to the work and not an extra compensable expense.
 - 17.1.5. Lee County reserves the right to add or delete, at any time, and or all tasks or services associated with this agreement.
 - 17.1.6. Any Single Large Project: The County, in its sole discretion, reserves the right to separately solicit any project that is outside the scope of this solicitation, whether through size, complexity or the dollar value.
 - 17.1.7. Background Check(s): The County is committed to maintaining a safe and secure environment. The following shall apply to the contractor, contractor employees, employees hired through a third party staffing vendor, subcontractors and any other staffing that may be working in or around a County Facility, School, Library and other locations as deemed necessary.
Upon written request by Lee County Procurement Management, the contractor at its expense must conduct a background check for each of its employees, as well as for the employees of its subcontractors, who will provide services to the County or have access to the County computer systems, through either onsite or remote access. Contractor employees, for the purpose of this requirement, include such temporary staff as office support, custodial service and any third party vendor. Background checks shall be conducted through the Florida Department of Law Enforcement

and provided to Lee County Procurement Management Department at procurement@leegov.com. Background checks must be conducted prior to commencement of said project(s).

18. RFP – EVALUATION

- 18.1. **Ranking Method:** Lee County uses the Dense Ranking (1223” ranking). In Dense Ranking, items that compare equal, receive the same ranking number, and the next item(s) receive the immediately following ranking number. This ranking method is used for each individual committee member’s scores. Thus if A ranks ahead of B and C (which compare equal) which are both ranked ahead of D, then A is ranked number 1 (“first”), B is ranked number 2 (“joint second”), C is also ranked number 2 (“joint second”) and D is ranked number 3 (“third”).
- 18.1.1. Each Ranking is derived by the individual committee member’s scores being totaled and then ranked with the highest “score” being “ranked” first with each following in the same manner. For example: a score of 100 would rank 1, a score of 75 would rank 2, and continue until all proposals have been ranked.
- 18.1.2. Upon completion of this method for each individual committee member the individual rankings are then totaled for an “Over-all Ranking.” During the Over-all Ranking process, the lowest total would be deemed the highest ranked (1). Example: Proposer A individual rankings totaled 5 and Proposer B individual rankings totaled 7 making “Over-all Ranking” order as Proposer A ranked 1, Proposer B ranked 2.
- 18.1.3. In the event of a tie, please refer to the tiebreaker section of this solicitation.)
- 18.2. **Evaluation Meeting(s):**
- 18.2.1. Evaluation 1: The first evaluation will rank Proposers based on the scores from the selection criteria point values.
- 18.2.2. Evaluation 2: Following the initial evaluation process, the short-listed Proposer(s) will be required to provide an on-site interview/presentation.
- 18.2.2.1. Such subsequent evaluations will be accomplished by simply ranking the Proposers. Proposers will be ranked in sequential order with one (1) being the highest ranking. Proposers’ rankings will then be totaled with the total lowest scores receiving final rank order starting with one (1) - the highest ranking.
- 18.2.3. Proposed short-list and final selection meeting dates are posted on the Procurement Management web page: www.leegov.com/procurement (Projects, Award Pending.)

19. RFP – SELECTION PROCEDURE

- 19.1. The selection will be made in accordance with Lee County Procurement Policy and Chapter 287.055 FL § for Professional Services Contracts. Some or all of the responding Proposer(s) may be requested to provide interviews and/or presentations of their proposal, for the ranking process.
- 19.2. Agreement/Contract fees will be negotiated in accordance with Section 287.055 FL §.
- 19.3. The recommendation to award, negotiated rates and agreement/contract(s) will be submitted to the Board of County Commissioners for approval.
- 19.4. If a satisfactory agreement/contract(s) cannot be negotiated, in a reasonable amount of time, the County, in its sole discretion, may terminate negotiations with the selected Proposer(s) and begin agreement/contract negotiations with the next finalist.
- 19.5. The Procurement Management Director reserves the right to exercise their discretion to:
- 19.5.1. Make award(s) to one or multiple Proposers.
- 19.5.2. Waive minor informalities in any response;
- 19.5.3. Reject any and all proposals with or without cause;
- 19.5.4. Accept the response that in its judgment will be in the best interest of Lee County.

20. RFP – TIEBREAKER

- 20.1. In the event of a tie, two or more proposers that have the same ranking, the following steps will be taken to determine the highest ranked proposer. This method shall be used for all (RFP) ties.
- 20.1.1. Step 1: The proposer that has the highest number of 1st place rankings shall be deemed the first ranked proposer. In the event a tie still exists the proposer with the highest number of 2nd. place

rankings shall be the first ranked proposer. Should a tie still remain the method used above will continue with each ranking level, 3rd, then 4th, then 5th, etc. rank, will be counted until the tie is broken.

- 20.1.2. Step 2: At the conclusion of step 1, if all is equal, the proposer having a drug-free work place program, shall be deemed the first ranked proposer.
- 20.1.3. Step 3: In the event the tie exists then the highest ranked proposer from the first evaluation committee meeting, in which point values were applied, will win the award. One being the highest.
- 20.1.4. Step 4: At the conclusion of steps 1, 2, 3, if all are equal, the 1st place proposer shall be determined by the flip of a coin.
- 20.2. When the tiebreaker is determined the highest ranked Proposer shall be awarded the contract or receive the first opportunity to negotiate, as applicable.
- 20.3. If an award or negotiation is unsuccessful with the highest ranked Proposer, award or negotiations may commence with the next highest ranked Proposer.

21. RFP – EVALUATION/ SELECTION COMMITTEE

- 21.1. The selection shall be by a Selection Committee consisting of staff representatives from the appropriate County Departments as approved by the Procurement Management Director or designee.
- 21.2. The Selection Committee will receive and review written proposals in response to this Request for Proposal (RFP). Responses will be evaluated against a set of criteria to determine those Proposers/Firms most qualified and suited for this project, resulting in a short-list of at least three (3) Proposers/Firms to be interviewed.

22. WITHDRAWAL OF PROPOSAL

- 22.1. No proposal may be withdrawn for a period of **180 calendar days** after the scheduled time for receiving submissions. A proposal may be withdrawn prior to the proposal opening date and time. Withdrawal requests must be made in writing to the Procurement Management Director, who will approve or disapprove the request.
- 22.2. A Proposer may withdraw a proposal any time prior to the opening of the solicitation.
- 22.3. After proposals are opened, but prior to award of the contract by the County Commission, the Procurement Management Director may allow the withdrawal of a proposal because of the mistake of the Proposer in the preparation of the proposal document. In such circumstance, the decision of the Procurement Management Director to allow the proposal withdrawal, although discretionary, shall be based upon a finding that the Proposer, by clear and convincing evidence, has met each of the following four tests:
 - 22.3.1. The Proposer acted in good faith in submitting the proposal,
 - 22.3.2. The mistake in proposal preparation that was of such magnitude that to enforce compliance by the Proposer would cause a severe hardship on the Proposer,
 - 22.3.3. The mistake was not the result of gross negligence or willful inattention by the Proposer; and
 - 22.3.4. The mistake was discovered and was communicated to the County prior to the County Commission having formally awarded the contract/agreement.

23. PROTEST RIGHTS

- 23.1. Any Bidder that has submitted a formal Response to Lee County, and who is adversely affected by an intended decision with respect to the Award, has the right to protest an intended decision posted by the County as part of the Solicitation process.
- 23.2. Notice of Intended Decision is posted on the Lee County Department of Procurement Management website (www.leegov.com/procurement). Bidders are solely responsible to check for information regarding the Solicitation.
- 23.3. Refer to the “Procurement Protest” section of the Lee County Procurement Ordinance 18-22 for a complete description of the protest process and associated requirements. The ordinance is posted on the Lee County website or may be obtained by contacting the Procurement Management Director.
- 23.4. In order to preserve the right to protest, a written “**Notice Of Intent To File A Protest**” **must be filed with the Lee County Procurement Management Director within seventy-two (72) hours of Posting of the Notice of Intended Decision.**

- 23.4.1. The notice shall clearly indicate all grounds being claimed for the protest.
- 23.4.2. The notice must be physically received by the Procurement Management Director within the required time frame described above. No additional time will be granted for mailing.
- 23.5. Following receipt of the Notice of Intent to File a Protest, a “**Protest Bond**” and “**Formal Written Protest**” must be filed **within ten (10) business days** of Posting of the Notice of Intended Decision.
- 23.6. **Failure to follow the protest procedures requirement within the time frames as prescribed herein and in the Lee County Procurement Ordinance 18-22 shall constitute a waiver of the right to protest and shall bar any resulting claims.**
24. **AUTHORITY TO UTILIZE BY OTHER GOVERNMENT ENTITIES**
- 24.1. This opportunity is also made available to any government entity. Pursuant to their own governing laws, and subject to the agreement of the vendor, other entities may be permitted to make purchases at the terms and conditions contained herein. Lee County Board of County Commissioners will not be financially responsible for the purchases of other entities from this solicitation.
25. **CONTRACT ADMINISTRATION**
- 25.1. **Designated Contact:**
- 25.1.1. The awarded Proposer shall appoint a person(s) to act as a primary contact for all County departments. This person or back up shall be readily available during normal working hours by phone or in person, and shall be knowledgeable of the terms and procedures involved.
- 25.1.2. Lee County requires the awarded Proposer to provide the name of a contact person(s) and phone number(s), which will afford Lee County access 24 hours per day, 365 days per year, of this service in the event of major breakdowns or natural disasters.
- 25.2. **RFP – Term:**
- 25.2.1. The term of this project will be determined in the pre-construction phase.
- 25.2.2. The County’s performance and obligation to pay under this contract, and any applicable renewal options, is contingent upon annual appropriation of funds.
- 25.3. **RFP – Basis of Award:**
- 25.3.1. Award will be made to the most responsible and responsive Proposer based on the evaluation criteria.
- 25.4. **Agreement/Contract:**
- 25.4.1. The awarded Proposer will be required to execute an Agreement/Contract as a condition of award. A sample of this document may be viewed on-line at <http://www.leegov.com/procurement/forms>.
- 25.4.2. Agreement/Contracts may have more than one department participating. Each participant will issue its individual purchase order and will be billed separately.
- 25.5. **Records:**
- 25.5.1. Retention: The Proposer shall maintain such financial records and other records as may be prescribed by Lee County or by applicable federal and state laws, rules and regulations. Unless otherwise stated in the specifications, the Proposer shall retain these records for a period of five years after final payment, or until they are audited by Lee County, whichever event occurs first.
- 25.5.2. Right to Audit/Disclosure: These records shall be made available during the term of the contract as well as the retention period. These records shall be made readily available to County personnel with reasonable notice and other persons in accordance with the Florida General Records Schedule. Awarded Bidder/Proposer(s) are hereby informed of their requirement to comply with FL §119 specifically to:
- 25.5.2.1. Keep and maintain public records required by the County to perform the service.
- 25.5.2.2. Upon request from the County’s custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided or as otherwise provided by law.
- 25.5.2.3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of

the contract term and following completion of the contract if the contractor does not transfer the records to the County.

- 25.5.2.4. Upon completion of the contract, transfer, at no cost, to the County all public records in possession of the contractor or keep and maintain public records required by the County to perform the service. If the contractor transfers all public records to the County upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

- 25.5.3. **Public Record: IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES , TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, <http://www.leegov.com/publicrecords>.**

- 25.5.4. **Ownership:** It is understood and agreed that all documents, including detailed reports, plans, original tracings, specifications and all data prepared or obtained by the successful Proposer in connection with its services hereunder, include all documents bearing the professional seal of the successful Proposer, and shall be delivered to and become the property of Lee County, prior to final payment to the successful Proposer or the termination of the agreement. This includes any electronic versions, such as CAD or other computer aided drafting programs.

25.6. **Termination:**

- 25.6.1. Any agreement as a result of this solicitation may be terminated by either party giving **thirty (30) calendar days' advance written notice**. The County reserves the right to accept or not accept a termination notice submitted by the Proposer, and no such termination notice submitted by the vendor shall become effective unless and until the vendor is notified in writing by the County of its acceptance.
- 25.6.2. The Procurement Management Director may immediately terminate any agreement as a result of this solicitation for emergency purposes, as defined by the Lee County Procurement Management Department Ordinance 18-22.
- 25.6.3. Any Proposer who has voluntarily withdrawn from a solicitation without the County's mutual consent during the contract period shall be barred from further County procurement for **a period of 180 calendar days**. The vendor may apply to the Board for a waiver of this debarment. Such application for waiver of debarment must be coordinated with and processed by the Procurement Management Department.
- 25.6.4. The County reserves the right to terminate award or contract following any of the below for goods or services over \$1,000,000:
- 25.6.4.1. Contractor is found to have submitted a false certification as provided under FL § 287.135 (5);
- 25.6.4.2. Contractor has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List;
- 25.6.4.3. Contractor has engaged in business operations in Cuba or Syria;
- 25.6.4.4. Contractor has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel – beginning October 1, 2016.

26. WAIVER OF CLAIMS

- 26.1. Once this contract expires, or final payment has been requested and made, the awarded vendor shall have waived any claims against the County concerning this contract. After that period, the County will consider the vendor to have waived any right to claims against the County concerning this agreement.

27. LEE COUNTY PAYMENT PROCEDURES
 - 27.1. All vendors are requested to mail an original invoice to:
Lee County Finance Department
Post Office Box 2238
Fort Myers, FL 33902-2238
 - 27.2. All invoices will be paid as directed by the Lee County payment procedure unless otherwise stated in the detailed specification portion of this project.
 - 27.3. Lee County will not be liable for requests for payment deriving from aid, assistance, or help by any individual, vendor, Proposer, or bidder for the preparation of these specifications.
 - 27.4. Lee County is generally a tax exempt entity subject to the provisions of the 1987 legislation regarding sales tax on services. Lee County will pay those taxes for which it is obligated, or it will provide a Certificate of Exemption furnished by the Department of Revenue. All Proposers should include in their proposal, all sales or use taxes, which they will pay when making purchases of material or sub-contractor's services.

28. SAFETY DATA SHEETS (SDS) (if applicable)
 - 28.1. In accordance with Chapter 443 of the FL §, it is the vendor's responsibility to provide Lee County with Material Safety Data Sheets on bid materials, as may apply to this procurement.

29. DEBRIS DISPOSAL (if applicable)
 - 29.1. Unless otherwise stated, the Proposer shall be fully responsible for the lawful removal and disposal of any materials, debris, garbage, vehicles or other such items which would interfere with the undertaking and completion of the project. There shall not be an increase in time or price associated with such removal.

30. SHIPPING (if applicable)
 - 30.1. Cost of all shipping to the site, including any inside delivery charges and all unusual storage requirements shall be borne by the Proposer unless otherwise agreed upon in writing prior to service. It shall be the Proposers responsibility to make appropriate arrangements, and to coordinate with authorized personnel at the site, for proper acceptance, handling, protection and storage (if available) of equipment and material delivered. All pricing to be F.O.B. destination.
 - 30.2. The materials and/or services delivered under the proposal shall remain the property of the seller until a physical inspection and actual usage of these materials and/or services is accepted by the County and is deemed to be in compliance with the terms herein, fully in accord with the specifications and of the highest quality.

31. INSURANCE (AS APPLICABLE)
 - 31.1. Insurance shall be provided by the awarded Proposer. Upon request, a certificate of insurance (COI) complying with the attached guide shall be provided by the Proposer.

End of Terms and Conditions Section

INSURANCE REQUIREMENTS



**Lee County Insurance Requirements
including Builders Risk**

Minimum Insurance Requirements: *Risk Management in no way represents that the insurance required is sufficient or adequate to protect the vendors' interest or liabilities. The following are the required minimums the vendor must maintain throughout the duration of this contract. The County reserves the right to request additional documentation regarding insurance provided*

- a. **Commercial General Liability** - Coverage shall apply to premises and/or operations, products and completed operations, independent contractors, contractual liability exposures with minimum limits of:

\$1,000,000 per occurrence
 \$2,000,000 general aggregate
 \$1,000,000 products and completed operations
 \$1,000,000 personal and advertising injury

- b. **Business Auto Liability** - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$1,000,000 combined single limit (CSL)

- c. **Workers' Compensation** - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers Compensation exemptions may be accepted with written proof of the State of Florida's approval of such exemption. Employers' liability will have minimum limits of:

\$500,000 per accident
 \$500,000 disease limit
 \$500,000 disease – policy limit

- d. **Builders Risk Insurance** - This coverage will be provided by all contractors involved in the construction of a new building, or the improvement, alteration or renovation of an existing structure. This coverage should be considered automatic on projects involving new construction or major additions to existing structures and in addition to the general liability and workers' compensation requirements found in this manual.

**The required minimum limit of liability shown in a or b; may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."*



Verification of Coverage:

1. Coverage shall be in place prior to the commencement of any work and throughout the duration of the contract. A certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:
 - a. The certificate holder shall read as follows:

Lee County Board of County Commissioners
P.O. Box 398
Fort Myers, Florida 33902
 - b. *“Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials” will be named as an **“Additional Insured”** on the General Liability policy, including Products and Completed Operations coverage.*

Special Requirements:

1. An appropriate **“Indemnification”** clause shall be made a provision of the contract.
2. It is the responsibility of the general contractor to insure that all subcontractors comply with all insurance requirements.

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End of Insurance

SPECIAL CONDITIONS

These are conditions that are in relation to this solicitation only and have not been included in the County's standard Terms and Conditions or the Scope of Work.

1. **PROJECT TERM**

1.1. The following are the anticipated terms of both Phase I and Phase II of this project. These terms are subject to change following negotiations with Construction Manager at Risk ("CM") and shall be considered a guideline.

1.1.1. Phase 1: Pre-Construction Phase Services shall be completed within 315 calendar days of the date specified in the Pre-Construction Notice to Proceed.

1.1.2. Phase 2: From the Construction Notice to Proceed or the Purchase Order date, whichever applies: 390 calendar days to substantial completion, 30 calendar days following substantial completion to final completion for a total of 420 calendar days.

2. **PROJECT SCHEDULE**

2.1. Currently Lee County is in the process of contracting with a Consultant to design this project. It is anticipated that the issuance of 15% to 30% design by the Consultant will coincide with the contracting of the CM for this project.

3. **ALL RISK BUILDERS RISK OR INSTALLATION FLOATER:**

3.1. Upon execution of the Phase 2 Amendment, and prior to issuance of the Notice to Proceed for Construction Phase services, the CM shall also procure and maintain All Risk coverage, with the limits of insurance to equal 100% of the completed contract amount of such addition(s), building(s), or structure(s). Any deductible is the responsibility of the CM. The Owner shall be named as an additional insured only with respect to losses in connection with the contract.

4. **BOND/SURETY (CONSTRUCTION)**

4.1. Bonding/Surety is required in accordance with the Lee County Procurement Management Department Ordinance 18-22.

4.2. **Payment and Performance Bond:** In accordance with F.S. 255.05 and Lee County Procurement Management Ordinance 18-22, a Public Payment and Performance Bond is to be issued in a sum equal to one-hundred (100%) percent of the total awarded contract amount by a surety company considered satisfactory by Lee County and otherwise authorized to transact business in the State of Florida shall be required from the successful Proposer. This shall insure the faithful performance of the obligations imposed by the resulting contract and protect the County from lawsuits for non-payment of debts incurred during the successful Proposers performance under such Contract.

4.2.1. A public Payment and Performance bond must be properly executed, by the Surety Company and successful Proposer, and recorded with the Lee County Clerk of Court, within **seven calendar days** after notification by Lee County of the approval to award the Contract.

4.2.2. A **Clean Irrevocable Letter of Credit or Cash Bond** may be accepted by the County in lieu of the Public Payment and Performance Bond.

4.3. Only Lee County form(s) may be accepted. Forms are available at <https://www.leegov.com/procurement/forms>.

4.4. **Personal Checks are not acceptable to Lee County as a Bid Security.**

4.5. **Surety:** In order to be acceptable to the County, a Surety Company issuing Evidence of Bondability, Bid Guaranty Bonds or 100% Public Payment and Performance Bonds or Letters of Credit called for herein shall meet and comply with the minimum standards set forth in as part of the Contract Documents.

The surety company shall be authorized to do business and in good standing with the Florida Department of State. All such bonds shall be issued or countersigned by a local producing agent who is a Florida resident with satisfactory evidence of its authority to execute the bond being submitted.

5. **LIQUIDATED DAMAGES (CONSTRUCTION)**

5.1. Liquidated Damages will be negotiated with the awarded vendor for inclusion in the Phase 2 GMP amendment to the Agreement/Contract.

5.2. Liquidated Damages shall be negotiated between the County and the awarded Contractor resulting in the mutually agreed upon liquidated damages table being added to the contract. The following Liquidated damages table shall serve as a guideline for negotiations. Liquidated damages will be based on the entire project amount per calendar day for example as shown in the table below:

Estimated Project Cost Over	Estimated Project Cost But Less than	Daily Charge Per Calendar Day
\$0.00	\$50,000.00	\$645.00
\$50,000.00	\$250,000.00	\$760.00
\$250,000.00	\$500,000.00	\$970.00
\$500,000.00	\$2,500,000.00	\$1,500.00
\$2,500,000.00	\$5,000,000.00	\$2,400.00
\$5,000,000.00	\$10,000,000.00	\$3,300.00
\$10,000,000.00	\$15,000,000.00	\$4,600.00
\$15,000,000.00	\$20,000,000.00	\$4,300.00
\$20,000,000.00 over		\$5,700.00 plus .00005

6. **PERMITS**

6.1. Unless otherwise specified herein, the Construction Manager will secure and pay for all permits, impact fees, and licenses and will pay for all governmental charges and inspection fees necessary for the prosecution of the work. County permits and fees are required to be obtained and paid for by the Contractor.

6.2. The Construction Manager will also pay all public utility charges and connection fees, except as provided for in the Contract Documents.

6.3. Permits and licenses of regulatory agencies, which are necessary to be maintained after completion of the guarantee period, shall be secured and paid for by the County.

6.4. Pursuant to the requirements of Florida Statute 218.80, this is a disclosure of permits and fees to be paid by the Construction Manager to complete the scope of work as described herein. This list does not relieve the successful bidder/vendor of its responsibility to obtain and pay for permits required by other governmental entities as specified elsewhere in this document.

6.4.1. **Permits as required shall be responsibility of Construction Manager unless otherwise stated herein. County permit and associated fees are available at <http://www.leegov.com/permits>.**

6.5. Permits obtained by the Construction Manager will be reimbursed at cost, no mark-up.

End of Special Conditions

DETAILED SPECIFICATIONS

1. GENERAL SCOPE OF PROJECT

- 1.1. Lee County Board of County Commissioners seeks to contract with a qualified Construction Manager to provide pre-construction and construction phase services for the expansion of the County's existing Emergency Operations Center (EOC) by approximately 10,000 SF +/- to 15,000 SF +/-.
- 1.2. The project shall include:
 - 1.2.1. Moving the Emergency Dispatch Center into the EOC facility.
 - 1.2.2. Expanding the restroom facilities and adding showers and a kitchen.
 - 1.2.3. Expanding the office space to include additional offices for Emergency Management Staff and offices for additional 25-30 workstations.
 - 1.2.4. Adding a multi-purpose room for 150 people that includes movable partitions. (Note: Structure and foundations may be designed to accommodate future second floor expansion).
 - 1.2.5. A Bunkroom space and additional storage space.
 - 1.2.6. The expansion shall include a courtyard space between the existing EOC facility and EOC expansion.
 - 1.2.7. Add vehicular and pedestrian access from the current Dispatch Center to the EOC Facility and additional parking spaces.
 - 1.2.8. Add a county vehicle refueling dispenser to the existing fuel tank.
 - 1.2.9. All work pertinent this project shall comply with local, State, and Federal rules and regulations current at the time of permitting.

2. PROJECT OBJECTIVE

- 2.1. The overall objective of the CM selected under this Agreement shall be as follows:
- 2.2. During the Pre-construction Phase, the selected Proposer shall cooperate with Lee County Staff, and the Design Professional teams:
 - 2.2.1. To develop an optimum, minimum risk, and buildable design for the Project(s);
 - 2.2.2. To review and evaluate throughout this phase the design, as necessary, for constructability;
 - 2.2.3. Value engineering, as necessary, of the construction documents to insure that the cost to construct will be achieved within the available construction budget;
 - 2.2.4. Develop Guaranteed Maximum Price based on the final permitted construction documents and specifications;
- 2.3. During the Construction Phase, the CM shall:
 - 2.3.1. Successfully complete the Project in accordance with the Construction Contract Documents and within the Guaranteed Maximum Price (GMP);
 - 2.3.2. Provide and maintain adequate staff to oversee and manage the construction throughout the construction phase of these projects; Provide a construction team for each site (at a minimum: Project Manager, Superintendent).
 - 2.3.3. Successfully complete the construction within the approved construction schedule;
 - 2.3.4. Comply with the CM contract documents and its general conditions.
 - 2.3.5. The Construction Phase will be inclusive of obtaining necessary permits, the selection and subcontracting of companies/contractors for goods and services that bring quality, economic benefits and value engineering to the County.

3. PHASES

- 3.1. This project will consist of two phases.
 - 3.1.1. Pre-Construction Phase
 - 3.1.2. Construction Phase

4. **PRE-CONSTRUCTION PHASE**

- 4.1. **Prime Goal:** During the Pre-construction Phase, the CM shall assist the County and the Design Professional (DP) in developing an optimum, minimum risk and buildable design for the Project(s). During the Pre-construction Phase, the County, the DP, and the CM shall develop and complete a design for the Project that meets the County's needs and is within the portion of the County's Project Budget available for payment of costs of the construction work. During the Pre-construction Phase, the CM shall be paid a Pre-construction Phase Services Fee.
- 4.2. **Services:** The CM shall meet with the County to determine the schedule of meetings and the work required to provide value engineering. Services provided during the Pre-construction Phase of the project should include, but not limited to:
 - 4.2.1. Consulting with, advising, assisting, and making recommendations to the County and the DP.
 - 4.2.2. Reviewing all plans and specifications as they are being developed and making recommendations with respect to construction feasibility, availability of materials and labor, and time requirements for procurement and construction.
 - 4.2.3. Projected costs; developing, reviewing, and refining the Project's budget estimates based on the County's program and other available information.
 - 4.2.4. Making recommendations to the County and the DP regarding the division of work in the plans and specifications to facilitate the bidding process and awarding of contracts.
 - 4.2.5. Soliciting the interest of capable contractors and taking bids on the Project and analyzing the bids received.
 - 4.2.6. Preparing and maintaining a progress schedule during the Pre-construction Phase of the project and the preparation of a proposed construction schedule.
- 4.3. The following milestones shall be completed in the Pre-construction Phase before the Project can progress to the Construction Phase.
 - 4.3.1. The CM and County shall agree on a Guaranteed Maximum Price (GMP.)
 - 4.3.1.1. Through preparation and finalization of the GMP, the CM shall ensure that they remain in compliance with their contractual obligations, with respect to the GMP, as found within the Sample CM Agreement attached herein. In guaranteeing the maximum price to the County (Owner), the CM shall understand and accept that the GMP shall only be subject to modification for changes in the Project or as otherwise specifically provided for in the Agreement. As such the CM is responsible for completing proper due diligence during the course of their services under the Agreement to obtain a solid GMP; understanding that the CM will not be eligible to seek additional compensation for lack of proper review, coordination of drawings, specifications, schedules, costs, budget, value engineering, etc.
 - 4.3.2. The CM and County shall execute the Construction Contract with all attachments and exhibits.
- 4.4. The CM shall have no basis of claim against the County if the County elects to terminate or not construct the Project for any reason or at any time during the Pre-construction Phase. The County shall not be obligated to have the CM construct the Project nor shall the CM assume to have any rights to construct the Project.

5. **CONSTRUCTION PHASE**

- 5.1. **Prime Goal:** During the Construction Phase, the CM shall successfully complete the Project in accordance with the Construction Documents and within the Guaranteed Maximum Price (GMP).
 - 5.1.1. Services provided by the CM during the Construction Phase of the Project shall include, but not be limited to:
 - 5.1.1.1. Maintaining competent supervisory staff to coordinate and provide general direction of the work and progress of the sub-contractors on the Project.
 - 5.1.1.2. Directing the work as it is being performed for general conformance with construction drawings and specifications.
 - 5.1.1.3. Establish and implement procedures for the coordination among the CM, County, Design Professional, and sub-contractors with respect to all aspects of the Project.
 - 5.1.1.4. Maintain a record of local hires and hours worked as requested by the County.
 - 5.1.1.5. Maintain job site records and producing appropriate progress reports.

- 5.1.1.6. Implement a labor policy in conformance with the requirements of the County.
- 5.1.1.7. Review and provide recommendations regarding the safety and equal opportunity programs of each sub-contractor for conformance with the County's policies.
- 5.1.1.8. Review and process all pay applications and invoices for payment by involved sub-contractors and material suppliers in accordance with the terms of the Contract.
- 5.1.1.9. Make recommendations, process, and maintain records of requests for changes in the work through change orders.
- 5.1.1.10. Schedule and conduct regularly scheduled and non-scheduled job related meetings to ensure orderly progress of the work. Provide meeting minutes for each meeting.
- 5.1.1.11. Develop and monitor the project progress schedule, coordinate, and expedite the work of all contractors, and provide periodic status reports to the County and the DP.
- 5.1.1.12. Establish and maintain a cost control system.
- 5.1.1.13. Conduct meetings to review costs.

6. GUARANTEED MAXIMUM PRICE AND GMP SCHEDULE

- 6.1. The CM, with the assistance of the DP, shall commit to a Guaranteed Maximum Price (GMP) for all construction related activities regarding the Project. The contract will be Actual Cost plus a Fixed Fee not to exceed the Guaranteed Maximum Price. The project will be Open Book. All savings, including unused contingency, shall be returned to the County. The County reserves the right to request an alternative item for Furniture, Fixtures & Equipment (FF&E), which the County may ask to be included in the GMP. The County shall accept or reject this alternative item prior to finalizing the GMP. The CM shall competitively select all construction sub-contracts and other work appropriate for competitive selection using cost and other factors.
- 6.2. No Construction Work shall commence until a GMP for the entire construction work is mutually agreed upon in writing and formally executed by both the CM and County.
- 6.3. At a time determined by the County and the CM, but no later than the conclusion of the Pre-construction Phase, the CM shall propose a GMP for the construction of the entire Project. The proposed GMP shall not exceed the amount within the County's project budget available for cost of the construction work.
- 6.4. The CM shall also submit a detailed construction schedule for all construction work related to the successful, expeditious, and practicable completion of the Project. The schedule shall be consistent with any previously issued schedules approved by the County and shall not exceed time limits established in the Construction Phase Contract Documents. The schedule shall incorporate all construction work for the Project to the extent required by the CM Pre-construction Phase Contract Documents and the CM Construction Phase Contract Documents, if and when the latter are executed.

7. NEGOTIATED ITEMS

- 7.1. Any item not outlined in the CM Scope of Services may be subject to negotiations between the County and the CM.
- 7.2. If a fee for the Pre-construction Phase Services Contract cannot be agreed upon then the County is under no obligation to award a Pre-construction Phase Services Contract to the CM and may move to the next CM candidate on the selection list.
- 7.3. If a Guaranteed Maximum Price cannot be agreed upon then the County is under no obligation to award a Construction Management Services Contract to the CM and may move to the next CM candidate on the selection list.
- 7.4. All materials or plans, regardless of format or media used, created under the Pre-construction Phase shall be and remain the property of the County.

8. CONSTRUCTION MANAGER AT RISK REQUIREMENTS

- 8.1. Upon the award of a Construction Management Services Contract, the CM shall be contracted with the County to furnish his or her skill and judgment in cooperation with, and reliance upon, the services of the DP. CM will assist the County and DP in the management and administration of the Project. The County shall at all times retain complete contractual control of all prime CM and DP contracts, project funds, and disbursements.

- 8.2. The CM shall furnish administration and management of the construction process and other specified services to the County. The CM shall perform his or her obligations in an expeditious and economical manner consistent with the interests of the County. If it is in the County's best interest, the CM shall provide or perform basic services for which reimbursement shall be provided in the general conditions to the Construction Management Services Contract.
- 8.3. The CM will comply with all County, State, and Federal regulations, ordinances, and laws as they apply to this Project.
- 8.4. Ancillary Technical Services: The County may request that the CM perform Ancillary Technical Services that shall include, but not be limited to:
 - 8.4.1. Geo-technical, soil investigation, material and acceptance testing, and/or subsurface investigation services.
 - 8.4.2. Land Surveying.
 - 8.4.3. Other testing and consultant services that are determined by the County to be required for the Project.
- 8.5. Self-perform: The selected Proposer, at the County's discretion, may only be allowed to self-perform 25% or less of the overall project. The remaining 75% must be bid among subcontractors.
 - 8.5.1. If the Proposer discovers that self-performed services are more economically beneficial to the County then they may exceed the 25 % requirement with approval of the County.
 - 8.5.2. If the CM receives one or less bids from subcontractors in a selected specialty or field, then the CM may exceed the 25% self-performance with approval of the County.
- 8.6. Should have experience with the CM concepts and/or valued engineering concept.

End of Section

SUBMITTAL REQUIREMENTS & EVALUATION CRITERIA

1. SUBMITTAL REQUIREMENTS & EVALUATION CRITERIA

- 1.1 Interested firms shall include the following information in their submittal responses to this solicitation. The following format and sequence should be followed in order to provide consistency in the firm's responses and to ensure each proposal receives full consideration. Use 8 ½ x 11 sheet pages only with minimum font size of 10 points and with tabs or section dividers to separate sections as defined below. More than one section is permitted on one page unless otherwise indicated below. Undesignated information shall be inserted at the rear of each package. Place page numbers at the bottom of every page, excluding dividers. Proposal documents should not contain links to other web pages; such links will not be reviewed for evaluation purposes.
- 1.2 Submittal package may not exceed **10 pages** printed single-sided; **page restriction excludes required forms found herein and dividers**. **PLEASE INCLUDE PAGE TABS/SECTION DIVIDERS** so that those evaluating your submittal can easily compare each section with others that are submitted. If any of the information provided by the Proposer is found to be, in the sole opinion of the Evaluation Committee and Procurement Management Director, substantially unreliable their proposal may be rejected.
- 1.3 Proposers shall submit one (1) original hard copy (clearly marked as such) and one (1) electronic version on a USB flash drive set(s) containing the proposal submittal in an unlocked PDF format. The County may request specific files be submitted in specialty format (IE: Provide a Project Timeline in Excel format.) Vendor shall accommodate such specialty requests as stated within the submittal requirements describe herein. Should files not be provided in the format or quantity as requested Vendor may be deemed Non-Responsive and therefore ineligible for award. In case of any discrepancies, the original will be considered by the County in evaluating the Proposal, and the electronic version is provided for the County's administrative convenience only. Limit the color and number of images to avoid unmanageable file sizes.

Introduction

- Project CMR Number & Name
- Firm's Name & Address
- Firm's Contact Person & Information (phone, fax and email address)
- How many years has Proposer been in business under present name?
- Under what other former names has your organization operated?

Cover Page: Introduction does NOT count towards page restriction requested herein.

TAB 1: Qualifications of Firm

Provide a description of your firm, your firm's experience, and underlying philosophy in providing the services as described and requested herein. Description should include details such as: abilities, capacity, skills, strengths, number of years etc. Please include office location that will be responsible for this project.

TAB 2: Company Relevant Experience & Reference

- Provide details of a maximum of three (3) projects similar in scope and size to that being requested through this solicitation that your firm has completed recently. Details for each project example provided should include:
 - Project Name
 - Project Address
 - Customer Name
 - Customer Contact Information
 - Point of contact Name, Phone, and Email

- Brief description of work provided.
 - Initial cost of work
 - Final cost of work
 - Number of change orders
 - Total completion time (From Notice to Proceed to Final Invoice payment)
- Provide a statement of understanding that your firm recognizes the County reserves the right to evaluate the proposing Firm on their past performance and prior dealings with Lee County (i.e., failure to meet specifications, poor workmanship, late delivery, etc.) as part of their experience criteria.

TAB 3: Firm Plan of Approach

- Provide a detailed Plan of approach that explains how your firm intends to comply with and meet the anticipated deliverables as detailed within this solicitation. Valued engineering approach and quality control approach shall also be included.
- Further include within your Plan of Approach how your firm expects to present a GMP that they will confidently stand behind and as such shall not be subject to modifications without written authorization or request from the County or Project modifications as described within the associated Agreement. The County desires to see details that support your firm's clear understanding that the GMP to be received to the County is not expected to receive frivolous or repetitive requests for Change Orders due to lack of CM due diligence or quality services during the Pre-Construction Phase.

TAB 4: Personnel

- Provide a detailed description of the firm's **specific** project management team that will be assigned to the Lee County contract. Identify the roles and responsibilities of the primary team members as they pertain/apply to the Project Approach and include details that demonstrate individual's knowledge and understanding of the types of services to be performed as well as previous experience in similar or related work.
- Due to the nature of this project, the County desires to see a project management team with significant work experience such as approx. 10 years or more; specifically within the roles of Project Manager and Project Superintendent. With this in mind, indicate within details provided length of experience for each staff member proposed under their current working title. Length of experience may include experience gained under prior firms/employment, but should only be indicative/inclusive of positions of equivalent title currently held.
- Firm must identify staff member that will serve as Project Director that shall be authorized and responsible to act on behalf of the Consultant with respect to directing, coordinating and administering all aspects of the services to be provided and performed.
- Provide a statement acknowledging your firm's understanding that the project management team/key team members assigned to the Lee County contract, as described above, shall not be substituted without the expressed permission of Lee County.
- Provide resumes of proposed **specific** project management team to be assigned to the Lee County contract.
- *Resumes are not included within page restrictions, but should be limited to one (1) page per person.**

TAB 5: Required Forms

- Forms 1- 8

2. SCORING CRITERIA & WEIGHT

CRITERIA / TAB	CRITERIA DESCRIPTION	MAX. POINTS AVAILABLE
1	QUALIFICATIONS OF FIRM	30
2	COMPANY RELEVANT EXPERIENCE & REFERENCE	20
3	FIRM PLAN OF APPROACH	20
4	PERSONNEL	30
TOTAL POINTS		100
*Additional details and documents found within submittal package, although not located within tabs as listed above, may be reviewed and considered by evaluation committee when scoring Proposers.		

3. RFP SUBMISSION SCHEDULE

Submission Description	Date(s)	Time
Advertise Request for Proposal (CMR)	Tuesday, October 15, 2019	N/A
Pre-Proposal Meeting	Tuesday, October 29, 2019	10:00 AM
Proposal Question Deadline	8 Calendar days prior to submission deadline	Prior to 5:00 PM
Submission Deadline	Tuesday, November 19, 2019	Prior to 2:30 PM
First Committee Meeting & Discussion	Friday, December 13, 2019	TBD
Notify Shortlist Selection via e-mail (If applicable)	Friday, December 20, 2019	N/A
Final Scoring/Selection Meeting (If applicable)	Tuesday, January 7, 2020	TBD
Additional notes on Submission Schedule: <ul style="list-style-type: none"> • <i>Submission Schedule is provided as a guideline only and is subject to change at the discretion of Lee County authorized personnel.</i> • <i>Changes in closing date or other parameters may occur and will be posted to the Lee County Procurement website. It shall be the responsibility of Contractor to verify all dates through County website.</i> • <i>Unless otherwise stated, location of all openings and meetings will take place at 1500 Monroe Street, Fort Myers, FL 33901 – 4th Floor Procurement Management.</i> 		

End of Submittal Requirements & Evaluation Criteria Section

FORMS DESCRIPTION & INSTRUCTIONS
REQUEST FOR PROPOSAL CCNA
CONSTRUCTION MANAGER AT RISK (CMAR)

This table provides a brief list, description, and instructions regarding the standard requested forms that should be submitted with all bids or proposals. This is not intended to be an all-inclusive list of forms required for your submission, but rather a guide to assist in completion of the County's standard forms.

Form # **Title/Description**

1 ***Solicitation Response Form***

All signatures must be by a corporate authorized representative, witnessed, and corporate and/or notary seal (if applicable.) The corporate or mailing address must match the company information as it is listed on the Florida Department of State Division of Corporations. Attach a copy of the web-page(s) from <http://www.sunbiz.org> as certification of this required information. Sample attached for your reference.

Verify that all addenda and tax identification number have been provided.

******* ***Business Relationship Disclosure Requirement***

Sections 112.313(3) and 112.313(7), F.S., prohibit certain business relationships on the part of public officers and employees, their spouses, and their children. If this **disclosure is applicable, the Bidder must request the form** entitled "***INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS***" (Required by § 112.313(12)(b), F.S.) to be completed and **returned with the Solicitation Response**. **It is the Bidder's responsibility to request the form and disclose this relationship; failure to do so may result in being declared non-responsive.**

NOTICE: UNDER THE PROVISIONS OF § 112.317, F.S., A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR, AND MAY BE PUNISHED BY, ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.00.

2 ***Affidavit Certification Immigration Laws***

Form is acknowledgement that the Proposer is in compliance in regard to Immigration Laws.

3 ***Reference Survey***

Provide this form to reference respondents. This form **will be turned in with the proposal package**.

1. **Section 1:** Bidder/Proposer to complete with reference respondent's information prior to providing to them for their response. (This is **not** the Bidder/Proposer's information.)
2. **Section 2:** Enter the name of the Bidder/Proposer; provide the project information in which the reference respondent is to provide a response.
3. The reference respondent should complete "**Section 3.**"
4. **Section 4:** The reference respondent to print and sign name
5. **Three (3) Reference responses** are to be **returned with the proposal package**.
6. Failure to obtain reference surveys may make your company non-responsive.

4 ***Negligence or Breach of Contract Disclosure Form***

The form may be used to disclose negligence or breach of contract litigation that your company may be a part of over the past ten years. You may need to duplicate this form to list all history. If the Proposer has more than 10 lawsuits, you may narrow them to litigation of the company or subsidiary submitting the solicitation response. Include, at a minimum, litigation for similar projects completed in the State of Florida. Final outcome should include in whose favor the

litigation was settled and was a monetary amount awarded. The settlement amount may remain anonymous.

If you have **no litigation**, enter “None” in the first “type of incident” block of the form.

Please do not write N/A on this form.

5 *Affidavit Principal Place of Business*
Certifies Proposer’s location information

6 *Sub-Contractor List* (if applicable)
To be completed and returned when sub-contractors are to be utilized and are known at the time of the submission.
To be completed after award for CMAR solicitations

7 *Public Entity Crimes Form*
Any person or affiliate as defined by statute who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid or a contract to provide any goods or services to the County; may not submit a bid on a contract with the County for the construction or repair of a public building or public work; may not submit bids or leases of real property to the County; may not be awarded or perform works as a contractor, supplier, subcontractor, or consultant under a contract with the County, and may not transact business with the County in excess of \$25,000.00 for a period of 36 months from the date of being placed on the convicted vendor list.

8 *Trench Safety* (Required for Construction Projects Only)
Self-explanatory
To be completed after award for CMAR solicitations

* *Proposal Label* (Required)
Self-explanatory. Please affix to the outside of the sealed submission documents.

Include any licenses or certifications requested

Local Business Tax Account (as applicable) issued by City and/or County entity. This is necessary for all Florida vendors.

It is the Bidder/Proposer’s responsibility to insure the Solicitation Response is received no later than the specified opening date and time. (If the submission is not received prior to deadline it cannot be considered or accepted.)

Form 1 – Solicitation Response Form



LEE COUNTY PROCUREMENT MANAGEMENT
SOLICITATION RESPONSE FORM

Date Submitted: _____ Deadline Date: 11/19/2019

SOLICITATION IDENTIFICATION: CMR190502JJB

SOLICITATION NAME: EOC Expansion Construction (CMAR)

COMPANY NAME: _____

NAME & TITLE: (TYPED OR PRINTED) _____

BUSINESS ADDRESS: (PHYSICAL) _____

CORPORATE OR MAILING ADDRESS: _____

[] SAME AS PHYSICAL

ADDRESS MUST MATCH SUNBIZ.ORG

E-MAIL ADDRESS: _____

PHONE NUMBER: _____ FAX NUMBER: _____

NOTE REQUIREMENT: IT IS THE SOLE RESPONSIBILITY OF THE VENDOR TO CHECK LEE COUNTY PROCUREMENT MANAGEMENT WEB SITE FOR ANY ADDENDA ISSUED FOR THIS PROJECT. THE COUNTY WILL POST ADDENDA TO THIS WEB PAGE, BUT WILL NOT NOTIFY.

In submitting this proposal, Proposer makes all representations required by the instructions to Proposer and further warrants and represents that: Proposer has examined copies of all the solicitation documents and the following addenda:

No. _____ Dated: _____ No. _____ Dated: _____ No. _____ Dated: _____
No. _____ Dated: _____ No. _____ Dated: _____ No. _____ Dated: _____

Tax Payer Identification Number: _____

(1) Employer Identification Number -OR- (2) Social Security Number:

** Lee County collects your social security number for tax reporting purposes only

Please submit a copy of your registration from the website www.sunbiz.org establishing the Proposer/firm as authorized (including authorized representatives) to conduct business in the State of Florida, as provided by the Florida Department of State, Division of Corporations.

1 Collusion Statement: Lee County, Florida The undersigned, as Proposer, hereby declares that no person or other persons, other than the undersigned, are interested in this solicitation as Principal, and that this solicitation is submitted without collusion with others; and that we have carefully read and examined the specifications or scope of work, and with full knowledge of all conditions under which the services herein is contemplated must be furnished, hereby propose and agree to furnish this service according to the requirements set out in the solicitation documents, specifications or scope of work for said service for the prices as listed on the county provided price sheet or (CCNA) agree to negotiate prices in good faith if a contract is awarded.

2 Scrutinized Companies Certification: Section 287.135, FL § , prohibits agencies from contracting with companies, for goods or services over \$1,000,000, that are on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Both lists are created pursuant to section 215.473, FL § . As the person authorized to sign on behalf of Respondent, I hereby certify that the company identified above not listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. I understand that pursuant to section 287.135, FL § , the submission of a false certification may subject company to civil penalties, attorney's fees, and/or costs.

Form#1 – Solicitation Form, Page 2

3 Business Relationship Disclosure Requirement: Sections 112.313(3) and 112.313(7), FL §, prohibit certain business relationships on the part of public officers and employees, their spouses, and their children. See Part III, Chapter 112, FL § and/or the brochure entitled "A Guide to the Sunshine Amendment and Code of Ethics for Public Officers, Candidates and Employees" for more details on these prohibitions. However, Section 112.313(12), FL § (1983), provides certain limited exemptions to the above-referenced prohibitions, including one where the business is awarded under a system of sealed, competitive bidding; the public official has exerted no influence on bid negotiations or specifications; and where disclosure is made, prior to or at the time of the submission of the bid, of the official's or his spouse's or child's interest and the nature of the intended business. The Commission on Ethics has promulgated this form for such disclosure, if and when applicable to a public officer or employee.

If this disclosure is applicable request form "INTEREST IN COMPETITIVE BID FOR PUBLIC BUSINESS" (Required by 112.313(12)(b), Florida Statute (1983)) to be completed and returned with solicitation response. It is the Proposer's responsibility to disclose this relationship, failure to do so could result in being declared non-responsive.

Business Relationship Applicable (request form) **Business Relationship NOT Applicable**

4 Disadvantaged Business Enterprise (DBE) Proposer? If yes, please attach a current certificate. Yes No

ALL PROPOSALS MUST BE EXECUTED BY AN AUTHORIZED AUTHORITY OF THE PROPOSER. WITNESSED AND SEALED (IF APPLICABLE)

 Company Name (Name printed or typed)



 Authorized Representative Name (printed or typed)

 Authorized Representative's Title (printed or typed)

 Witnessed/Attested by: (Witness/Secretary name and title printed or typed)

 Authorized Representative's Signature

 Witness/Secretary Signature

Any blank spaces on the form(s), qualifying notes or exceptions, counter offers, lack of required submittals, or signatures, on County's Form may result in the submission being declared non-responsive by the County.

Detail by Entity Name

Florida Profit Corporation

Bill's Widget Corporation

Filing Information

Document Number 655555
 FE/EIN Number 5111111111
 Date Filed 09/22/1980
 State FL
 Status ACTIVE
 Last Event AMENDED AND RESTATED ARTICLES
 Event Date Filed 07/25/2006
 Event Effective Date NONE

Principal Address

555 N Main Street
 Your Town, USA 99999
 Changed 02/11/2012

Verify either Principal or Mailing address is on Form 1

Mailing Address

555 N Main Street
 MYour Town, USA 99999
 Changed 02/11/2012

Registered Agent Name & Address

My Registered Agent
 111 Registration Road
 Registration, USA99999
 Name Changed:12/14/2006
 Address Changed: 12/14/2006

Officer/Director Detail

Name & Address

Title P
 President, First
 555 AVENUE
 Anytown, USA99999
 Title V
 President, Second
 555 AVENUE
 Anytown, USA99999

IMPORTANT:

For corporations, ALL documents must be signed by the president of the company or an authorized individual. For any individual other than the president, we will need one of the following to confirm their authority to sign:

1. a corporate resolution by the Board of Directors, or
2. an extract of minutes, or
3. an extract of Vote by the Board of Directors

If the company's articles of incorporation identify additional positions that have the power to bind the corporation, we will accept the articles of incorporation with verification from the president that a certain individual serves in that role (e.g., the president confirms that John Doe is the CEO, and the articles of incorporation provide that the CEO has the power to bind the company).

With respect to an LLC, the authority to bind a limited liability company is controlled by Florida statutes. Managers or managing members have inherent authority to bind an LLC.

If the president of a corporation or a manager/managing member of an LLC delegates their authority, such delegation must be sent to us on company letterhead with the President's or manager's/managing member's original, wet signature.

v01/03/2018



AFFIDAVIT CERTIFICATION IMMIGRATION LAWS

SOLICITATION NO.: **CMR190502JJB** SOLICITATION NAME: **Construction Manager at Risk for EOC Expansion Construction (CMAR)**

LEE COUNTY WILL NOT INTENTIONALLY AWARD COUNTY CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) {SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT (“INA”).

LEE COUNTY MAY CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A(e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A(e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY LEE COUNTY.**

PROPOSER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Company Name: _____

Signature Title Date

STATE OF _____
COUNTY OF _____

The foregoing instrument was signed and acknowledged before me this _____ day of _____
20____, by _____ who has produced
(Print or Type Name)
_____ as identification.
(Type of Identification and Number)

Notary Public Signature

Printed Name of Notary Public

Notary Commission Number/Expiration

The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. **LEE COUNTY RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.**

**Lee County Procurement Management
Reference Survey**

Reference surveys submitted can be a maximum of twelve (12) months old. If using a previous reference, Proposers must clearly identify the project name and number the reference is being submitted for.

Project Name & Number: _____

Section 1 Reference Respondent Information	Please return completed form to:
FROM: _____ COMPANY: _____ PHONE #: _____ FAX #: _____ EMAIL: _____	Bidder/Proposer: _____ Due Date: _____ Total # Pages: 1 Phone #: _____ Fax #: _____ Bidder/Proposer E-Mail: _____

Section 2	Enter Bidder/Proposer Information , if applicable Similar Performed Project (Bidder/Proposer to enter details of a project performed for above reference respondent)		
Proposer Name:			
Reference Project Name:	Project Address:	Project Cost:	
Summarize Scope:			

You as an individual or your company has been given as a reference on the project identified above. Please provide your responses in section 3 below.

Section 3	Indicate: "Yes" or "No"
1. Did this company have the proper resources and personnel by which to get the job done?	
2. Were any problems encountered with the company's work performance?	
3. Were any change orders or contract amendments issued, other than owner initiated?	
4. Was the job completed on time?	
5. Was the job completed within budget?	
6. On a scale of one to ten, ten being best, how would you rate the overall work performance, considering professionalism; final product; personnel; resources. Rate from 1 to 10. (10 being highest)	
7. If the opportunity were to present itself, would you rehire this company?	
8. Please provide any additional comments pertinent to this company and the work performed for you:	

Section 4 Please submit non-Lee County employees as references

Reference Name (Print) _____

Reference Signature _____



**ALLEGED NEGLIGENCE OR BREACH OF CONTRACT
DISCLOSURE FORM**

Please fill in the form below. Provide each incident in regard to alleged negligence or breach of contract that has occurred over the past 10 years. Please complete in chronological order with the most recent incident on starting on page 1. Please do not modify this form (expansion of spacing allowed) or submit your own variation.

Company Name: _____

Type of Incident <i>Alleged Negligence or Breach of Contract</i>	Incident Date And Date Filed	Plaintiff <i>(Who took action against your company)</i>	Case Number	Court <i>County/State</i>	Project	Claim Reason <i>(initial circumstances)</i>	Final Outcome <i>(who prevailed)</i>

Make as many copies of this sheet as necessary in order to **provide a 10-year history** of the requested information. If there is no action pending or action taken in the last 10 years, complete the **company name and write "NONE" in the first "Type of Incident" box** of this page and return with your proposal package. This form should also include the primary partners listed in your proposal. Do not include litigation with your company as the plaintiff. Final outcome should include who prevailed and what method of settlement was made. If a monetary settlement was made the amount may remain anonymous.

Page Number: _____ Of _____ Total pages

Update the page number to reflect the current page and the total number of pages. Example: Page 3, of 5 total submitted pages of this form. Proposals may be declared "non-responsive" due to omissions of "Negligence or Breach of Contract" on this disclosure form. Additionally, proposals may be declared "not responsible" due to past or pending lawsuits that are relevant to the subject procurement such that they call into question the ability of the Proposer to assure good faith performance. This determination may be made by the Procurement Management Director, after consulting with the County Attorney.



LEE COUNTY

S O U T H W E S T F L O R I D A

AFFIDAVIT PRINCIPAL PLACE OF BUSINESS

Instructions: Please complete all information that is applicable to your firm

Company Name: _____

Printed name of authorized signer

Title

⇒ _____
Authorized Signature

Date

The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. **LEE COUNTY RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.**

Notary:
State of _____
County of _____

The foregoing instrument was signed and acknowledged before me this _____ day of _____

20 _____, _____ who has produced

_____ as identification (or personally known)
Type of ID and number

⇒ _____
Notary Public Signature

Notary Commission Number and expiration

1. Principal place of business is located within the boundaries of: _____ Lee County
_____ Collier County
_____ Non-Local

Local Business Tax License # _____

2. Address of Principal Place of Business: _____

3. Number of years at this location _____ years

4. Have you provided goods or services to Lee County on a regular basis within the past 3 consecutive years _____ Yes* _____ No *If yes, attach contractual history for past 3 consecutive years

5. Number of available employees for this contract _____

6. Does your company have a Drug Free Workplace Policy _____ Yes _____ No

To be determined and completed after award



SUB-CONTRACTOR/CONSULTANT LIST

Sub-contractor/consultant Name	Area Of Work	Point Of Contact Or Project Supervisor	Phone Number and Email	Qualified DBE Yes/No	Amount or Percentage of Total

Please include sub-contractor/consultant(s) name, area of work (i.e. mechanical, electrical, etc.) and a **valid** phone number and email. Also include the dollar value or percentage that the sub-contractor/consultant will be performing. If sub-contractor/consultant(s) qualify as Disadvantaged Business Enterprise (**DBE**), please attach a current certificate.

This form must be signed and sworn to in the presence of a notary public or other officer authorized to administer oaths.

1. This sworn statement is submitted to _____
(Print name of the public entity)

by _____
(Print individual's name and title)

for _____
(Print name of entity submitting sworn statement)

whose business address is _____

(If applicable) its Federal Employer Identification Number (FEIN) is _____

(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement: On the attached sheet.) Required as per IRS Form W-9.

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1) (g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or with the United States, including but not limited to, and bid or contract for goods or services to be provided to any public entity or agency or political subdivision or any other state or of the United States, and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
1. A predecessor or successor of a person convicted of a public entity crime:
or:
2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those offices, directors, executives, partners, shareholders, employees, members and agents who are active in the management of the affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not fair market value under an arm's length agreement, shall be a facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1) (c), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of the entity.

6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting those sworn statement. (Please indicate which statement applies.)

_____ Neither the entity submitted this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity nor affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, member, or agents who are active in management of the entity, or an affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, member, or agents who are active in management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearing and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OR ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

(Signature)

(Date)

STATE OF _____
COUNTY OF _____

PERSONALLY APPEARED BEFORE ME, the undersigned authority, _____
(Name of individual signing)

who, after first being sworn by me, affixed his/her signature in the space provided above on this _____ day of _____, 2____.

(NOTARY PUBLIC)

My Commission Expires: _____

Form#8: Trench Safety (Required for Construction Projects Only)

TRENCH SAFETY

Contractor/Vendor 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 contractor/vendor 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
To be determined and completed after award				
A. _____	_____	_____	_____	_____
B. _____	_____	_____	_____	_____
C. _____	_____	_____	_____	_____
D. _____	_____	_____	_____	_____
TOTAL \$ _____				

If applicable, the contractor/vendor 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 complete the above may result in the solicitation being declared non-responsive.

(Signature)

(Company Name)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____ by _____ *(name and title of corporate officer)* of _____ *(name of corporation)*, a _____ *(state or place of incorporation)* corporation, on behalf of the corporation. He/she is personally known to me or has produced _____ *(type of identification)* as identification.

(signature line for notary public)

(name of notary typed, printed or stamped)

(title or rank)

My commission expires: _____
_____ *(serial number, if any)*

Cut along the outer border and affix this label to your sealed solicitation envelope to identify it as a “Sealed Submission/Proposal”.

PROPOSAL DOCUMENTS • DO NOT OPEN	
SOLICITATION No.:	CMR190502JJB
SOLICITATION TITLE:	EOC Expansion Construction (CMAR)
DATE DUE:	Tuesday, November 19, 2019
TIME DUE:	Prior to: 2:30 PM
SUBMITTED BY:	_____
	(Name of Company)
e-mail address	Telephone
DELIVER TO:	Lee County Procurement Management 1500 Monroe 4 th Floor Fort Myers FL 33901
<i>Note: proposals received after the time and date above will not be accepted.</i>	



Lee County Procurement Management
1500 Monroe Street, 4th Floor
Fort Myers, FL 33901
(239) 533-8881
www.leegov.com/procurement

PLEASE PRINT CLEARLY

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

THIS AGREEMENT, is made by and between LEE COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter, "Owner," and **Click here to enter text.**, a Florida corporation, and Licensed to Conduct Business in the State of Florida, hereinafter, "CM."

WITNESSETH:

WHEREAS, on or about **Click here to enter a date.**, the Owner issued its Solicitation No. **Click here to enter text.** for **Click here to enter text.**; and

WHEREAS, the CM has timely submitted a proposal in response to the Owner's Request for Proposal, whereby the CM has offered to provide construction management services in accordance with the request contained in Owner's Request for Proposal; and

WHEREAS, on **Click here to enter a date.**, the Owner selected and designated **Click here to enter text.** to be the CM for the Construction Manager at Risk for the **Click here to enter text.**, hereinafter, "**PROJECT**," subject to the negotiation, preparation, approval and execution of a definitive agreement between Owner and CM; and

WHEREAS, the Owner and CM are desirous of entering into such a definitive agreement pursuant to which CM will provide construction management services, all as more fully set forth herein;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

ARTICLE 1. EXTENT OF AGREEMENT; DEFINITIONS

1.01 Agreement. This **PROJECT** is comprised of two distinct parts identified as follows; (1) Phase 1 - Preconstruction Services (exhibit D); (2) Phase 2 – Construction Services (to be established in a separate amendment). All phases, including preconstruction services and architect-engineering services, may not exceed the total Lee County Project Budget established by the Board of County Commissioners. The CM accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The CM covenants with the Owner to furnish its skill and judgment as a Construction Manager and General Contractor with specific expertise in the planning and construction of the **PROJECT** and to cooperate with the Owner and the Owner's representatives, including specifically the Project Architect-Engineer (hereinafter referred to as "AE"), in furthering the interests of the Owner. The CM agrees to furnish efficient business administration and superintendence and use its best efforts to complete

the **PROJECT** in the best and most expeditious and economical manner, consistent with the interests of the Owner. The CM agrees to provide the services required by this Agreement to complete such services consistent with the Owner's direction, the approved program, and the terms of this Agreement, in accordance with a standard of care which is ordinarily exercised by other construction managers and general contractors in similar circumstances.

1.02 Construction Team. The CM, Owner and AE shall be called the "Construction Team" and shall work together as a team from the date established by the Notice to Proceed through construction completion. The CM and AE shall work jointly during the preconstruction design phase and through final construction completion and shall be available thereafter should additional services be required. The CM shall provide leadership to the Construction Team on all matters relating to construction. The CM understands, acknowledges and agrees that the AE shall provide leadership to the Construction Team on all matters relating to design and engineering.

1.03 Extent of Agreement. This agreement for Construction Management Services for the **PROJECT** represents the entire agreement between the Owner and the CM and supersedes any prior negotiations, representations or agreements. This Agreement shall not be superseded by any provisions of the Project Plans and Specifications and may be amended only by written instrument signed by both Owner and CM. This Agreement is intended to be consistent with and implement the approved program for the **PROJECT** as set forth and further defined in that certain agreement between Owner and AE dated [Click here to enter a date](#).

1.04 Definitions. As used in this Agreement, the words and phrases described in Exhibit A attached hereto and incorporated herein, shall have the meanings as set forth in that Exhibit A.

1.05 Use of Words and Phrases. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the singular shall include the plural as well as the singular number, and the word "person" shall include corporations and associations, including public bodies, as well as natural persons. "Herein," "hereby," "hereunder," "hereof," "herein- before," and "hereinafter" and other equivalent words refer to this Agreement and not solely to the particular portion thereof in which any such word is used.

ARTICLE 2. PURPOSE; PROPOSAL; SCHEDULE

2.01 Purpose. The purpose of this Agreement is to provide for the provision of Construction Management Services for the **PROJECT** by the CM, and construction of the **PROJECT** by the CM in accordance with the Project Plans and Specifications. The further purpose of this Agreement is to define and delineate the responsibilities and obligations of the parties to this Agreement and to express the desire of all such parties to cooperate together to accomplish the purposes and expectations of this Agreement.

2.02 Response to Request for Proposal. CM's Response to the Request for Proposal for Construction Management Services submitted by CM to Owner is hereby found to be consistent with and in conformance with the provisions of Owner's Request for Solicitation No. **Click here to enter text.**, and is in the best interests of the citizens of Lee County, Florida. It is the intent of the parties that the CM's Response to the Request for Proposal for Construction Management Services be implemented pursuant to this Agreement, and, therefore, such Response is hereby merged into and is effectuated by this Agreement. Reference is hereby made to the response to the Request for Proposal for Construction Management Services submitted by CM to Lee County, as well as any supplementary representations and statements furnished by CM to Lee County during the CM selection process. The parties acknowledge that the representations and statements or information contained therein have been relied upon by the Owner and have resulted in the selection of CM as the construction manager for this **PROJECT**. However, Owner acknowledges that the terms and conditions for the performance of the CM and for the provision of its services are solely as contained within this Agreement.

2.03 Project Schedule. The development and equipping of the **PROJECT** shall be undertaken and completed in accordance with the Project Schedule. The construction services portion of the Project Schedule may be amended, revised and supplemented, and may thereafter be revised from time to time by and in the reasonable good faith discretion of the CM and AE, which revision shall be effective upon receipt by the Owner of a written notice of revision, provided, however, that absent an event of Force Majeure or a revision to the Project Schedule authorized by the execution of a Change Order, no revision to the Project Schedule which extends the preconstruction phase or the Project Substantial Completion Date shall be effective without the prior written approval of the Owner.

ARTICLE 3. COMPENSATION

3.01 CM'S Compensation. The Owner agrees to pay to the CM as compensation for all of its services and work provided for hereunder, including preconstruction and construction services. The fee for preconstruction services, as provided in Exhibit D, is **\$Click here to enter text.** and the sum of a CM fee to be negotiated at the time GMP* is established for Construction Services, as provided for in Exhibit B.

*The GMP will be established in a separate amendment to this Agreement.

(1) Preconstruction Services (Exhibit D) shall be payable as follows: **\$Click here to enter text.** thirty (30) calendar days following the start date established by the Notice to Proceed, and **\$Click here to enter text.** each thirty (30) calendar days thereafter, for an additional **Click here to enter text.** monthly installments for a total of **\$Click here to enter text.** The compensation set forth in this paragraph is designed to pay CM for its services rendered in connection with the preconstruction design phase of the **PROJECT**. If at any time during the preconstruction design phase, it can reasonably be concluded that CM's services are not being provided in accordance with the schedule of preconstruction services, CM shall be reimbursed based upon a percentage of the services performed during the prior month.

(2) CM fee. Not more often than once a month, and on a date established at the Project Pre-Construction Conference, the CM will submit to the Project Manager for review the Estimate and Requisition for Payment Form (EADOC Software). This form shall be filled out and signed by the CM covering the Work-In-Place as of the date of the Application and supported by such data as the Project Manager may reasonably require. In the event that the Project Substantial Completion Date occurs prior to expiration of the construction phase period as set forth in the Project Schedule, the entire remaining balance due under the terms of this Subparagraph (2) shall be due and payable on the Punch List Completion Date.

(3) Reimbursable Project Costs. Based on application for payment for the actual cost of work completed, submitted monthly, itemized to correspond to the basis of compensation as set forth in Exhibit B and Article 6.03, including supportive documentation.

3.02 The Project; Changes in the Project; Additional Fee. The Project is as established by the Owner and AE in that certain construction document entitled **ENTER THE TITLE OF THE OFFICIAL DRAWINGS** (“Schematic Design”). If the Project GMP is increased by Owner, the CM shall be entitled to receive an additional fee **to be negotiated and established by the Parties, in writing, at the time of such increase to the GMP.** Payment of CM’s additional fee shall be made in equal monthly installments calculated by dividing the additional fee by the months remaining in the construction phase of the Project schedule. Upon completion of the additional work and final payment to the subcontractors, the actual cost of such additional work shall be established and any adjustment in the fees paid to CM shall be made between Owner and CM. As an incentive for the CM to diligently pursue cost reducing alternatives no reduction in CM fee below the amount set in Article 3.01 will occur as a result of project cost savings including those resulting from recommendations of the CM.

3.03 Period of Construction; Additional Fee. Owner, AE and CM expect and believe that the period of construction or construction phase for the **PROJECT** shall be **(to be established with Phase 2 amendment)** calendar days to **substantial completion** and **(to be established with Phase 2 amendment)**, calendar days to **final completion.**

Pre-Construction Phase Services shall be completed within **Click here to enter text.** **calendar days** of the date specified in the Pre-Construction Notice to Proceed.

***First Construction GMP payment and the subsequent monthly installments to be determined after the GMP has been established with Phase 2 amendment.**

In the event that the construction schedule is extended by agreement of Owner and CM due to changes in the **PROJECT** requested by Owner, CM shall be entitled to additional CM fee as negotiated in the GMP Amendment less any fee increase as calculated in Section 3.02 for work resulting in the subject increase in construction period. Provided, however, CM shall not be entitled to receive any portion of such additional compensation to the extent that the delay in performance results from acts of commission, omission, negligence, or fault of the CM, its agents or employees.

3.04 Project Costs. Project Costs shall mean all costs incurred by the Owner and CM in planning, constructing and equipping the **PROJECT**, in accordance with the Project Plans and Specifications all of which Project Costs shall be paid by the Owner, all of which Project Costs shall be included within the GMP established by CM and are more specifically described in Exhibit B.

- (a) The Owner reserves the right to execute Direct Material Purchase(s) for any and all materials provided to the **PROJECT**.

3.04.1 Direct Material Purchases. The CM shall review the design for the purpose of identifying major equipment and/or material purchases that may be advantageous for the Owner to purchase directly from suppliers as a

cost saving measure. Once items have been identified and quantified by the CM, and approved by the Owner for direct purchase, the Owner will issue purchase orders and process payment for invoices approved by the CM.

The CM shall prepare and be responsible for all quantities, descriptions, specifications, guarantees, payment schedules, etc., and all other required information to be included in the Owner issued purchase order.

3.05 Items and Expenses Included in CM's Compensation. Except as specifically set forth in Paragraphs 3.03 and 3.04 above, CM's compensation includes full payment for services set forth in this Agreement, including but not limited to salaries or other compensation of CM's officers, partners and/or employees; general operating expenses incurred by CM and relating to this **PROJECT**, including the cost of management, supervision and data processing staff, job office equipment and supplies, and other similar items as shown in Exhibit B, Part I, and necessary for CM to perform its services hereunder, specifically excluding any items described on Exhibit B, Part II, attached hereto and incorporated herein, and including overhead and profit.

ARTICLE 4.

CONSTRUCTION MANAGER'S RESPONSIBILITIES AND SERVICES

4.01 All documentation is required to be submitted into the County's EADOC system.

4.02 **Project Management Information System.** Commencing immediately following the date established by the Notice to Proceed, the CM shall implement and shall utilize throughout the life of this Agreement all subsystems of the Project Management Information System hereinafter referred to as "PMIS." The reports, documents and data to be provided through PMIS shall represent an accurate assessment of the current status of the **PROJECT** and of the work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to the Owner and the AE monthly and shall accompany each pay request. If requested by the Owner, the CM shall conduct a comprehensive workshop in Lee County, Florida, for participants designated by the Owner and such additional seminars as are required to provide instruction. The workshop and the seminars shall facilitate each participant's and the Owner's representatives' use and understanding of PMIS. The PMIS shall be described in terms of the following major subsystems:

(1) Narrative Reporting. The CM shall prepare written reports as described hereunder. All such reports shall be in 8-2" x 11" or other convenient format. Copies shall be maintained at the Project Site and transmitted to the Owner and the AE. A bound copy of the complete narrative report shall be submitted to the Owner at the conclusion of the **PROJECT**. The narrative reporting subsystem shall include the following reports:

(a) A monthly executive summary which provides an overview of current and outstanding issues and pending decisions, primary party responsible for the decision, future developments and expected achievements, and any problems or delays, including code violations found by the Permitting Authority.

(b) A monthly cost narrative describing the current construction cost estimate and status of the **PROJECT**.

(c) A monthly scheduling narrative summarizing the current status of the overall Project Schedule. This report shall include an analysis of the various Project Schedules, a description of the critical path, and the analysis as necessary to compare planned performance with actual performance.

(d) A monthly accounting narrative describing the current actual cost and payment status of the **PROJECT** with supporting document. This report shall relate current encumbrances and expenditures to the budget allocations.

(e) A monthly construction progress report during the construction phase summarizing the work of the various subcontractors. This report shall include information from the weekly job site meetings as applicable such as general conditions, long lead supplies, current deliveries, safety and labor relations programs, permits, construction problems and recommendations and plans for the succeeding month.

(f) A daily construction diary during the construction phase describing events and conditions on the project site.

(2) Schedule Control. As soon as reasonably possible following execution of this Agreement, but not later than thirty (30) calendar days following full execution hereof, the CM shall prepare a Project Schedule using the critical path method, establishing a detailed schedule for preconstruction services, construction and Owner occupancy of the **PROJECT**, subject to review of Owner and AE, and approval or rejection by Owner within thirty (30) calendar days of delivery to Owner. The Project Schedule shall include a scheduled Construction Commencement Date and Project Substantial Completion Date, which dates shall accommodate known or reasonably anticipated geographic, atmospheric and weather conditions. The Project Schedule will serve as the framework for the subsequent development of all detailed schedules. The Project Schedule shall be produced and updated monthly throughout the **PROJECT**. In a manner consistent with the Project Schedule the CM shall prepare and submit to the AE a construction schedule in quadruplicate graphically depicting the activities contemplated to occur as a necessary incident to performance of the work required to complete the **PROJECT**, showing the sequence in which the CM proposes for each such activity

to occur as a necessary incident to performance of the work required to complete such activity to occur and duration (dates of commencement and completion, respectively) of each such activity. The AE shall determine whether the construction schedule delivered and submitted by the CM meets the requirements stated above and whether the construction schedule is consistent with the Project Schedule. Following development and submittal of the construction schedule, the CM shall, at the end of each calendar month occurring thereafter during the period of time required to finally complete the **PROJECT**, or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the work performed and the occurrence of all events which have affected the progress of performance of the work already performed or will affect the progress of the performance of the work yet to be performed in contrast with the planned progress of performance of such work, as depicted on the original construction schedule and all updates and/or revisions thereto as reflected in the updated and/or revised construction schedule last submitted prior to submittal of each such monthly update and revision. Each such update and/or revision to the construction schedule shall be submitted to the Owner and AE in duplicate. The CM shall prepare and incorporate into the schedule data base, at the required intervals, the following schedules.

(a) The CM shall prepare a construction schedule for work encompassed in each bid package. The schedule shall be sufficiently detailed as to be suitable for inclusion in the bid package as a framework for contract completion by the successful bidder. It shall show the interrelationships between the work of the successful bidder and that of other subcontractors, and shall establish initial completion objectives keyed to the Project Schedule.

(b) Upon the award of each subcontract, the CM shall jointly with the subcontractor, develop a schedule which is more detailed than the original construction schedule included in the specifications, taking into account the work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The construction schedule shall also show pertinent activities for material purchase orders, manpower supply, shop drawing schedules and material delivery schedules.

(c) The CM shall jointly develop with the AE and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The occupancy schedule shall be produced and updated monthly from its inception through final Owner occupancy.

(3) Work by Others. The Owner may perform additional Work related to the **PROJECT** by itself, or it may let other direct contracts which shall contain General Conditions similar to these.

The CM will afford the other Contractors who are parties to such direct contracts (or the Owner, if it is performing the additional Work itself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of the Work, and shall properly connect and coordinate his work with theirs. Should the Contract entail relocation of facilities not a part of this Contract, the CM will coordinate and cooperate with the applicable entity responsible for this portion of the work.

(4) Cost Control. The operation of this subsystem shall provide sufficient timely data and detail to permit the Construction Team to control and adjust the **PROJECT** requirements, needs, materials, equipment and systems by building and site elements so that construction will be completed at a cost which, together with all Project Costs, will not exceed the Project Budget. Based upon a quantitative material take-off with current local costs for each bid group by subcontract package, the CM shall provide its estimate of the total Project Costs for the **PROJECT**, detailed by line item budget within thirty (30) calendar days following the start date established by the Notice to Proceed at the following stages or phases:

- (a) At completion of the Design Development Phase 30%.
- (b) At completion of 60% of the Construction Documents Phase.
- (c) At completion of 90% of the Construction Documents Phase.
- (d) At completion of 100% of the Construction Documents Phase.
- (e) At establishment of the Guaranteed Maximum Price (GMP),

(5) Project Accounting. The operation of this subsystem shall enable the Construction Team to plan effectively and to monitor and control the funds available for the **PROJECT**, including information relating to cash flow, costs, change orders, payments and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced and amounts payable. A schedule of values for each line item in the Project budget shall be integrated into the Project accounting contemplated by this paragraph. This subsystem will be produced and updated monthly and accompany each pay request. Project accounting includes the following reports which together will serve as a basic accounting tool and an audit trail:

(a) The budget, estimate, and base commitment (awarded contracts and purchase orders) for any given contract or budget line item. It shall show approved change orders for each contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total estimated probable cost to complete the work.

(b) The value in place (both current and cumulative), the amount invoiced (both current and cumulative) and the balance remaining.

(c) The complete activity history of each item in the Project accounting structure. It shall include the budget, estimate, and base commitment figures for each contract. It shall give the change order history including change order numbers, description, proposed, and approved dates and the proposed and approved dollar amounts. It shall also show all pending or rejected change orders.

(d) A cash flow diagram showing the projected accumulation of cash payments against the **PROJECT**. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.

4.03 Design Review and Recommendations and Warranty

(1) Review and Recommendations. Immediately upon the start date established by the Notice to Proceed, CM shall familiarize itself thoroughly with the Schematic Design Construction Documents, and with the architectural, civil, mechanical, plumbing, electrical, and structural plans and specifications being developed by the AE for the **PROJECT**. CM shall follow and/or otherwise review, as appropriate, the development of the design for the **PROJECT** from the Schematic Design presently available up through and including the Construction Document Phase. The CM shall make recommendations with respect to the selection of systems and materials and cost reducing alternatives (i.e., value engineering and life cycle cost analysis) including assistance to the AE and Owner in evaluating alternative comparisons versus long-term cost effects. The evaluation shall speak to the benefits of the speed of erection and early completion of the **PROJECT**. The CM shall furnish pertinent information as to the availability of materials and labor that will be required. The CM shall submit to the Owner, Permitting Authority and AE such comments as may be appropriate concerning construction feasibility and practicality (i.e., constructability analysis). The CM shall call to the Owner's and the AE's attention any apparent defects in the design, drawings and specifications or other documents.

(2) Review Reports. Within thirty (30) calendar days after receiving the construction documents for each phase of the **PROJECT**, the CM shall perform a specific review thereof, focused upon factors of a nature encompassed in paragraph (1) above. Within the same 30-day period, the CM shall submit to the Owner and the AE a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as the CM may deem appropriate, and all actions taken by the AE with respect to same, any comments the CM may deem to be appropriate with respect to separating the work into separate contracts, and alternative materials. Prior to establishment of the GMP, CM shall warrant to Owner (without assuming any architectural or engineering responsibility) that the Project Plans and Specifications are practical, feasible, and constructible and that the construction of the improvements identified and described in the Project Plans and Specifications may be accomplished within the time frame identified and described in the Project Schedule.

(3) Long Lead Procurement. The CM shall review the design for the purpose of identifying long lead procurement items (machinery, equipment, materials, and supplies). When each item is identified, the CM shall notify the subcontractors, Owner and the AE of the required procurement and schedule. Such information

shall be included in the bid documents and made a part of all affected subcontracts. As soon as the AE has completed drawings and technical specifications and the CM has obtained permitting approval, the CM shall prepare invitations for bids. Copies shall be supplied to Owner in advance of the invitation to bid for Owner's information and comment. The CM shall keep itself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise Owner and AE of any problems or prospective delay in delivery.

(4) Separate Contracts Planning. The CM shall review the design and shall determine how it desires to divide the sequence of construction activities, and will determine the breakdown and composition of bid packages for award, based on the current schedule while the design is being completed and shall supply a copy for Owner for its review and approval. The CM shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, accesses and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner. The CM will supply the Owner a copy of the schedule for the Owner's information and comment. The CM will work in conjunction with the Owner's representatives, including the AE, to ensure that the bid list includes local, small and/or minority businesses.

(5) Interfacing.

(a) The CM shall take such measures as are necessary to ensure proper construction and delivery of the **PROJECT**, including but not limited to providing that all construction requirements will be covered in the separate procurement of long lead items, the separate construction subcontracts and the general conditions items performed without duplication or overlap to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package clearly identifies the work included in that particular separate subcontract, its scheduling for start and completion and its relationship to other separate contractors.

(b) Without assuming any design responsibilities for the AE, the CM shall include in the reports comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the AE may arrange for necessary corrections.

(6) Job Site Facilities. The CM shall arrange for all job site facilities required and necessary to enable the CM and AE to perform their respective duties and to accommodate any representatives of the Owner which the Owner may choose to have present on the job, the description of which shall be finalized prior to the establishment of the GMP.

(7) Weather Protection. The CM shall ascertain what temporary enclosures of building areas, if any, should be provided for and may be provided in order to assure orderly progress of the work in periods when extreme weather

conditions are likely to be experienced. The CM shall also be responsible for providing weather protection for work in progress and for materials stored on site.

(8) Market Analysis and Stimulation of Subcontractor Interest.

(a) The purpose of this subsection is to insure that the CM makes a genuine effort to stimulate interest in the **PROJECT** and maximize participation of potential qualified subcontractors in the selection process with emphasis placed on recruiting and using local, small and/or minority businesses. The CM shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the **PROJECT**; and make analysis as necessary to (i) determine and report on availability of labor, materials, equipment, potential subcontractors and possible impact of any shortages or surpluses of labor or material, and (ii) in light of such determination, make recommendations and take action as may be appropriate with respect to long lead procurement, separation of construction into subcontractor packages, sequencing of work, use of alternative materials, equipment or methods, other economies in design or construction and other matters that will promote cost savings and completion within the schedule time.

4.04 Establishment of Guaranteed Maximum Price for Construction. Prior to entering into any subcontracts, the CM will establish and submit in writing to the Owner for its approval a Guaranteed Maximum Price, guaranteeing the maximum price to the Owner, for the Project Cost. Such Guaranteed Maximum Price shall only be subject to modification for changes in the **PROJECT** or as otherwise specifically provided for in this Agreement. However, the actual price paid for the work by the Owner shall either be: (1) the actual Project Cost, or (2) the GMP, whichever is the lesser when the work is finally complete. Owner may request and will be provided by CM copies of documents relating to the development of Project cost and GMP.

(1) All amounts of monies resulting from actual Project Costs, as described above, totaling less than the GMP shall be and accrue to the benefit of the Owner.

(2) The GMP will include only those applicable taxes in the Project Cost which are legally enacted at the time the GMP is established. Should any applicable taxes be enacted after the GMP then the GMP shall be increased by the same amount.

(3) At the time of submission of a Guaranteed Maximum Price, the CM will verify the time schedule for activities and work which were adopted by the Construction Team and used to determine the CM's GMP. The GMP will include an agreed-upon sum as the construction contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The CM will be required to furnish documentation evidencing proposed expenditures to this contingency prior to written authorization for the release of funds by the Owner. Actual and contemplated expenditures from the contingency shall be displayed monthly in the PMIS. If bids are received below the applicable line items in the GMP, the surplus will be added to the contingency.

(4) If requested by the Owner, when 100% of the subcontracts have been executed, the contingency within the GMP shall be decreased in proportion to the percent of the work as it is completed. In other words, if 10% of the work has been completed and paid and all subcontracts have been executed, and the Owner requests that the contingency within the GMP be adjusted, then 10% of the contingency within the GMP will be removed from the GMP by Change Order.

(5) If any bid package consistent with the Project Plans and Specifications for which the lowest price submitted by a subcontractor is in excess of the amount allocated by the CM for such bid package (unless Owner through change order changes the Scope of Work and the Guaranteed Maximum Price (GMP)), one of the following may occur: (1) the price of the bid package may be negotiated with the lowest responsible bidder, or (2) at the CM's request and expense, and at the Owner's sole option, Owner may require the AE to make certain changes in the Project Plans and Specifications as are necessary to bring that particular package into line, consistent with Owner's program and the Project's financial feasibility, or (3) with the approval of the Owner, funds may be reallocated from the construction contingency within the GMP to pay the difference between the low bid price and the amount allocated for the bid package, but in no case shall such approval serve to increase the GMP of the **PROJECT**.

4.05 Performance Bond and Labor and Material Payment Bond. Prior to the Construction Commencement Date, the CM shall obtain for the benefit of and directed to the Owner, a labor and material payment and performance bond, satisfying the requirements of Section 255.05, Florida Statutes, covering the faithful performance by the CM of its obligations under this Agreement, including but not limited to, the construction of the **PROJECT** on the Project Site, and the payment of all obligations arising thereunder, including all payments to subcontractors, laborers and materialmen (the "Payment and Performance Bond"). The surety selected by the CM to provide the Payment and Performance Bond shall be approved by the Owner prior the issuance of such Bond, which approval shall not be unreasonably withheld.

4.06 Construction Phase; Building Permit; Code Inspection.

(1) Building Permit. The Owner shall pay for all permits. The Owner and AE shall be required to provide such information to the Permitting Authority as is necessary to obtain approval from the Permitting Authority to commence construction prior to beginning construction. The CM shall pull the Building Permit, and shall be responsible for delivering and posting the Building Permit at the Project Site prior to the commencement of construction. The Owner and AE shall fully cooperate with the CM when and where necessary.

(2) Code Inspections. All projects require detailed code compliance inspection during construction in disciplines determined by the Permitting Authority. These disciplines normally include, but are not necessarily limited to, structural, mechanical, electrical, plumbing, and general building. The CM shall

notify the appropriate inspector(s) and the AE's representative, no less than 24 hours in advance that the work is ready for inspection and before the work is covered up. All inspection shall be made for conformance with the applicable ordinances and building codes. Costs for all re-inspections of work found defective and subsequently repaired shall not be included as Project costs and shall be borne by the CM or as provided in the contract between CM and subcontractor.

(3) CM's Staff. The CM shall maintain sufficient off-site support staff and competent full-time staff at the Project Site authorized to act on behalf of the CM to coordinate, inspect and provide general direction of the work and progress of the subcontractors and the CM shall provide no less than those personnel during the respective phases of construction. The CM shall not change any of those persons unless mutually agreed to by the Owner and CM. In such case, the Owner shall have the right to approval of the qualifications of the replacement personnel. The Owner shall have the right to request to replace the staff at the Project site at any time during the construction. The CM shall comply with the CM Background Screening Affidavit attached hereto and incorporated herein as Exhibit E.

(4) Lines of Authority. The CM shall establish and maintain lines of authority for its personnel and shall provide this information to the Owner and all other affected parties, such as the code inspectors of the Permitting Authority, the subcontractors, and the AE to provide general direction of the work and progress of the various phases and subcontractors. The Owner and AE may attend meetings between the CM and his subcontractors.

(5) Schedule Provision - Construction Phase. The CM shall continue to provide current scheduling information and provide direction and coordination regarding beginning and finishing dates, responsibilities for performance and the relationships of the CM's work to the work of its subcontractors and suppliers to enable them to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall Project Schedule. The Project Schedule shall include all phases of procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. The CM shall advise the Owner, its representatives, and the AE of their required participation in any meeting or inspection giving each at least one week notice unless such notice is made impossible by conditions beyond its control. The CM shall hold job-site meetings at least biweekly with the Construction Team and at least once each week with the subcontractors and the AE's field representative, or more frequently as required by work progress, to review progress, discuss problems and their solutions and coordinate future work with all subcontractors. The CM shall prepare and maintain a record of such meetings and distribute copies as necessary.

(6) Solicitation of Subcontracts.

The Owner intends to bid, through the CM, all portions of this **PROJECT**.

(a) The CM shall prepare all documents for bidding procurement of long lead items, materials and services, and for subcontractor contracts. The solicitation and award process shall be consistent with the requirements of Article 6 hereof.

(b) As part of such bid preparation, the CM shall review the specifications and drawings prepared by the AE. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the CM shall be brought to the attention of the Owner and AE in written form.

(c) The CM shall, unless waived by Owner, conduct conferences with all prospective subcontractors, for the purpose of reviewing and approving awards. Invited will be the AE, Owner and Owner's representatives. In the event questions are raised which require an interpretation of the documents or otherwise indicate a need for clarification or correction, the CM shall transmit these to the AE and upon receiving clarification or correction in writing shall prepare an amendment to the document and issue same to all of the prospective subcontractors.

(d) Selection and award of subcontracts shall be consistent with Article 6 hereof.

(e) If requested and approved by the Owner, in accordance with the solicitation documents, the CM, when qualified, may only be allowed to self-perform 25% or less of the overall project where it is deemed advantageous due to schedule or economic benefit for the direct cost of the work. The remaining 75% must be bid among subcontractors. If the CM discovers that self-performed services are more economically beneficial to the County then they may exceed the 25 % requirement with approval of the County. If the CM receives one or less bids from subcontractors in a selected specialty or field, then the CM may exceed the 25% self-performance with approval of the County.

(f) Advertisement Timeframe

The CM shall publicly advertise the bidding for a period of time not less than the days provided in the schedule below. Such timeframes may only be waived or modified to a lesser time with approval of the County's Director of Procurement Management.

ESTIMATED CONSTRUCTION COSTS	CALENDAR DAYS FOR ADVERTISEMENT
\$100,000.00 - \$200,000.00	10 DAYS
\$200,000.01 - \$500,000.00	15 DAYS
\$500,000.01 +	20 DAYS

(g) Advertisement Location/Media

The CM shall publically advertise for the period listed above in a regionally circulated newspaper and on their company website or through a third party eProcurement system where available. The advertisement must run at least once 10-20 calendar days prior to the opening date following the above thresholds. The CM's advertisement must include the date and time of the submission deadline. The CM shall make every effort to receive maximum exposure and therefore receive adequate competition for their advertisement.

(h) Documentation Responsibility

The CM shall maintain files that adequately support the competitive solicitation process chosen and followed by the CM. At minimum, the CM shall provide to the County assigned Project Manager a summary bid tabulation depicting all bids received broken down by discipline and clear indication of the selected sub-contractor(s). Should the CM not select the lowest bidder in any instance, a written description as to why the lowest bidder was not selected must be provided within the bid tabulation summary.

The bid tabulation summary and the guaranteed maximum price documentation shall be provided to the County Project Manager for review. The GMP documentation shall also provide a breakdown of pricing by discipline.

(7) Quality Control. The CM shall develop and maintain a program acceptable to the Owner and AE to assure quality control of the construction. The CM shall be responsible for and supervise the work of all subcontractors, providing instructions to each when their work does not conform to the requirements of the Project Plans and Specifications and the CM shall continue to coordinate the work of each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should a disagreement occur between the CM and the AE over the acceptability of the work, the Owner, at its sole discretion and in addition to any other remedies provided herein, shall have the right to determine acceptability.

(8) Subcontractor. The CM shall solely supervise the subcontractors. The CM shall negotiate all change orders and field orders with all affected subcontractors and shall review the costs and advise the Owner and AE of their validity and reasonableness, acting in the Owner's best interest. Before any work is begun on any change order which is to be funded through contingency, approval for use of contingency funds must be secured from Owner and a written authorization from the Owner must be issued. However, when there is an imminent threat to health and safety, and Owner's concurrence is impractical, the CM shall act immediately to remove the threats to health and safety and shall subsequently fully inform Owner of all such action taken. The CM shall also carefully review all shop drawings and then forward the same to the AE and Owner for review and actions. The AE will transmit them back to the CM who will then issue the shop drawings to the affected subcontractor for fabrication or revision.

The CM shall maintain a suspense control system to promote expeditious handling. The CM shall request the AE to make interpretations of the drawings or specifications requested of him by the subcontractors and shall maintain a business system to promote timely response. The CM shall inform the AE which shop drawings or requests for clarification have the greatest urgency and need to be responded to first. The purpose shall be to enable the AE to prioritize requests coming from the CM. The AE shall timely respond. The CM shall advise the Owner and AE when timely response is not occurring on any of the above.

(9) Job Site Requirements.

(a) The CM shall provide each of the following activities as a part of its services hereunder:

(i) Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.

(ii) Maintain a roster of companies on the **PROJECT** with names and telephone numbers of key personnel.

(iii) Establish and enforce job rules governing parking, clean-up, use of facilities and work discipline.

(iv) Provide labor relationships management and equal opportunity employment for a harmonious productive **PROJECT**.

(v) Provide and administer a safety program for the **PROJECT** to meet OSHA requirements. Monitor for subcontractor compliance without relieving them of responsibilities to perform work in accordance with best acceptable practice.

(vi) Provide quality control program.

(vii) Provide miscellaneous office supplies that support the construction efforts which are consumed by its own forces.

(viii) Provide for travel to and from its home office to the Project Site and to those other places within Lee County as required by the **PROJECT**.

(b) The CM shall provide personnel and equipment or shall arrange for separate subcontractors to provide each of the following as a Project Cost:

(i) Distribution of all required bidding documents and shop drawings, including the sets required by the Permitting Authority's inspectors.

(10) Job Site Administration. The CM shall provide as part of its services, job site administrative functions during construction to assure proper documentation, including but not limited to the following:

(a) Job Meetings. Hold progress and coordination meetings to provide for a timely completed **PROJECT**. Implement procedures and assure timely submittals, expedite processing approvals and return of shop drawings, samples, etc. Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing(s), labor allocation, etc. Review and implement revisions to the Project Schedule. Monitor and promote safety requirements. The CM shall use the job site meetings as a tool for (i) preplanning of work and enforcing schedules and for establishing procedures, responsibilities and identification of authority for all to clearly understand; (ii) identify party or parties responsible for follow up on any problems, delay items or questions, and (iii) record course for solution. The CM shall visit each pending item at each subsequent meeting until resolution is achieved and shall require all present to make known any problems or delaying event known to those present for appropriate attention and resolution.

(b) Material and Equipment Expediting. Provide staff to closely monitor material and equipment deliveries, critically important checking and follow-up procedures on supplier commitments of all subcontractors and maintain a material and equipment expediting log.

(c) Payments to Subcontractors. Develop and implement a procedure for review, processing and payment of applications by subcontractors for progress and final payments.

(d) Document Interpretation. Refer all questions for interpretation of the documents prepared by the AE to the AE and the Owner.

(e) Reports and Project Site Documents. Record the progress of the **PROJECT**. Submit written progress reports to the Owner and the AE, including information on subcontractors' work, and the percentage of completion. Keep a daily log available to the Owner, the AE and the Permitting Authority inspectors.

(f) Subcontractors Progress. Prepare periodic punch lists for subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.

(g) Substantial Completion. The CM, AE, and Owner will conduct a pre-substantial completion inspection. The CM will prepare the pre-substantial completion punch list from which the CM and AE will develop a completion schedule. The CM shall ascertain when the work or designated portions thereof are ready for Owner and AE substantial completion inspection. The CM shall provide a complete list of incomplete or unsatisfactory items (preliminary punch

list) to the Owner and AE prior to this inspection. The Owner and AE shall add to this list additional incomplete or unsatisfactory item(s). The CM shall prepare a punch list of items to be completed and a schedule for their completion including completion dates for review and approval by the Owner and AE ("Punch List Completion Date").

(h) Final Completion. Monitor the subcontractors' performance on the completion of the **PROJECT** and provide notice to the Owner and AE that the work is completed and ready for final inspection. Secure and transmit three (3) copies to the Owner, through the AE, all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings and maintenance books including a final completion form.

(i) Startup. With the Owner's personnel, direct the check-out of utilities, operations, systems and equipment for readiness and assist in their initial start up and testing by the subcontractors.

(j) Record Drawings. The CM shall monitor the progress of its own forces or its subcontractors on marked up field prints so as to provide completed record drawings to be turned over to the AE for preparation of As-builts as required herein.

(k) Administrative Records. The CM will maintain at the job site and his principal office, originals or copies of, on a current basis, files and records, such as, but not limited to the following:

- Contracts or Purchase Orders
- Shop Drawings submittal/Approval Logs
- Equipment Purchase/Delivery Logs
- Contract Drawings and Specifications with Amendment
- Warranties and Guarantees
- Cost Accounting Records
- Labor Costs
- Material Costs
- Equipment Costs
- Cost Proposal Request
- Payment Request Records
- Meeting Minutes
- Cost Estimates
- Bulletin Quotations
- Lab Test Reports
- Insurance Certificates and Bonds
- Contract Changes
- Purchase Orders
- Material Purchase Delivery Logs
- Technical Standards
- Design Handbooks
- Record Drawing Marked Print
- Operating and Maintenance Instruction
- Daily Progress Reports
- Transmittal Records

Inspection Reports
Bid/Award Information
Bid Analysis and Negotiations
Punch Lists
PMIS Schedule and updates
Suspense (Tickler) Files of Outstanding Requirements
Documentation of Good Faith Effort
Correspondence Files

The **PROJECT** records shall be available at all reasonable times to the Owner and AE for reference, review or reproduction.

(11) Shop Drawings and Samples. After checking and verifying all field measurements, the CM will submit to the AE and Owner for approval, in accordance with the acceptable schedule of Shop Drawing submission, five copies of all Shop Drawings, which shall have been checked by and stamped with the approval of the CM and identified as the AE may require. The data shown on the Shop Drawings will be complete with respect to dimensions, design criteria, materials of construction and the like to enable the AE to review the information as required.

The CM will also submit to the AE for approval with such promptness as to cause no delay in the Work, all samples required by the Contract Documents. All samples will have been checked by and stamped with the approval of the CM, identified clearly as to material, manufacturer, any pertinent numbers and the use for which intended.

(a) At the time of each submission, the CM will in writing call the AE's attention to any deviations that the Shop Drawing or sample may have from the requirements of the Contract Documents and, in addition, shall cause a specific notation to be made on each shop drawing submitted for review and approval of each such variation.

The AE will review and approve with reasonable promptness Shop Drawings and Samples, but its review and approval shall be only for conformance with the design concept of the **PROJECT** and for compliance with the information given in the Contract Documents. The approval of a separate item as such will not indicate approval of the assembly in which the item functions. The CM will make any corrections required by the AE and will return the required number of corrected copies of Shop Drawings and resubmit new samples until approved. All cost incurred for the resubmitted shop drawing shall be the CM responsibility. The CM's stamp of approval on any Shop Drawing or sample shall constitute a representation to the AE that the CM has either determined and verified all quantities, dimensions, field construction criteria, materials, catalog numbers and similar data or he assumes full responsibility for doing so, and that he has reviewed or coordinated each Shop Drawing or sample with the requirements of the Work and the Contract Document.

No work requiring a Shop Drawing or sample submissions shall be commenced until the submission has been approved by the AE. Any related work

performed prior to review and approval by the Owner of the pertinent submission will be sole expense and responsibility of the CM. A copy of each approved Shop Drawing and each approved sample shall be kept in good order by the CM at the site and shall be available to the AE.

The AE approval of Shop Drawings or samples shall not relieve the CM from his responsibility for any deviations from the requirements of the Contract Documents, unless the CM has in writing called the AE's attention to such deviation at the time of submission and the Owner and the AE have given written approval to the specific deviation; or shall any approval by the AE relieve the CM from responsibility for errors or omissions in the Shop Drawings.

4.07 Project Schedule; Substantial Completion; Occupancy.

(1) Establishment of Project Substantial Completion Date. At the time a Guaranteed Maximum Price (GMP) is established, the Project Substantial Completion Date for completion of the construction may be amended by Owner upon recommendation of Construction Team, if reasonably necessary, which Project Substantial Completion Date shall be subject to Force Majeure. An amendment to Substantial Completion Date under this section will not necessarily involve additional CM compensation. The CM agrees to complete the construction prior to the Project Substantial Completion Date. The CM acknowledges that failure to complete the **PROJECT** prior to the Project Substantial Completion Date will result in substantial damages to the Owner. The CM shall be assessed liquidated damages in the amount, (****Liquidated Damages will be established with Phase 2 amendment**), per calendar day for each day completion is extended beyond the Project Substantial Completion Date, plus any fines and penalties directly imposed against Owner by any regulatory and/or governmental authority against Owner. Provided, however, CM and Owner shall cooperate with each other, and shall use best efforts and due diligence to avoid the imposition of any such fines and/or penalties.

(2) Completion of Construction. The date of Substantial Completion of the **PROJECT** or a designated portion thereof is the date when construction is sufficiently complete in accordance with the Project Plans and Specifications so the Owner can lawfully occupy or utilize the **PROJECT** for the use for which it is intended. The CM warranty shall commence on the Project Final Completion Date.

(3) Owner Occupancy. The CM shall provide services during the design and construction phases which will provide a successful and timely Owner occupancy of the **PROJECT**. The CM shall provide consultation and Project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the subcontractors; "on line" in such conditions as will satisfy Owner operations requirements. The CM shall catalog operational and maintenance requirements of the equipment to be operated by maintenance personnel and convey these to the Owner in such a manner as to promote their usability. The CM shall provide operations training, in equipment use, for building operators.

(4) Record Drawings. The CM shall continuously review Record Drawings and mark up progress prints. Upon receipt by CM of its final payment due hereunder, the CM shall provide to the AE and Owner an original of marked-up, Record Project Plans and Specifications showing the location and dimensions of the **PROJECT** as constructed, which documents shall be certified as being correct by the CM and the AE.

4.08 CM's Warranty. The CM warrants that all labor and materials will conform to the Project Plans and Specifications. The CM further warrants that all materials and equipment will be new, of good quality and free from any defects. With respect to the same work, the CM further agrees to correct or replace as necessary all work found by the Owner to be defective in material and workmanship or not in conformance with the Project Plans and Specifications for a period of one year from the Project Final Completion Date. CM shall use its best efforts and due diligence to ensure that, during the warranty period, those entities or individuals who have provided direct warranties to the Owner as required by the contract documents perform all required warranty work in a timely manner and at the sole cost and expense of such warranty providers. The direct cost of any warranty work shall be paid by CM. The CM shall collect and deliver to the Owner any specific written guaranties or warranties given by others as required by the contract documents. Also, the CM shall conduct, jointly with the Owner and the AE, a warranty inspection eleven (11) months after the Project Final Completion Date.

4.09 Lien Free Construction. All construction services provided by CM or any of the subcontractors in construction of the **PROJECT** on the Project Site shall be accomplished in a manner that will result in no liens, claims or encumbrances being imposed against the **PROJECT**.

ARTICLE 5. OWNER'S RESPONSIBILITY

5.01 Project Site; Title. The Owner hereby represents to the CM that it currently has, and will maintain up through and including the Project Substantial Completion Date, good title to all of the real property constituting the Project Site. Owner agrees to resolve, at its expense, any disputes relating to the ownership and use of the Project Site which might arise during the course of construction.

5.02 Permits. The CM shall be responsible for paying for all licenses. Owner shall be responsible for obtaining all necessary permits and governmental authorizations as may be necessary for the commencement of construction as contemplated by this Agreement, and through the completion of the **PROJECT**. Such permits and governmental authorizations shall include the Building Permit, temporary construction easements or right-of-ways if necessary, vacation of right-of-ways as may be required and any necessary variances, rezoning or other land use approvals. Upon receipt of all surveys, soils tests and other Project site information, CM shall promptly advise Owner of any inadequacies in such information and of the need for any additional surveys, soil or subsoil tests, or temporary construction easements or right-of-ways. Owner shall not be responsible for any delay or damages to the CM for any site conditions or deficiencies in the site and access to the site which could have been

identified by CM and corrected by Owner prior to the establishment of the GMP. Nothing contained herein shall be construed as creating any obligation of the Owner relating to the **PROJECT** which is inconsistent with the exercise of Owner's obligations and responsibilities as a governmental authority, nor shall anything contained herein be construed as obligating the Owner to be a partner or joint venture with CM. Nothing herein shall be construed or deemed to contractually or otherwise obligate Owner to approve any rezoning or variance petition, if such rezoning or variance is necessary or desirable for development and/or completion of the **PROJECT**.

5.03 Project Plans and Specifications; Architect. The parties hereto acknowledge and agree that owner has previously entered into an agreement between Owner and AE dated [Click here to enter a date.](#) Pursuant to the terms of such agreement, the AE, as an agent and representative of Owner, is responsible for the preparation of Project Plans and Specifications which consist of drawings, specifications and other documents setting forth in detail the requirements for the construction of the **PROJECT**. All of such Project Plans and Specifications shall be provided either by Owner or the AE and CM shall be under no obligation to provide same and shall be entitled to rely upon the accuracy and completeness of the Project Plans and Specifications provided by the AE, and all preliminary drawings prepared in connection therewith. The CM shall be notified of any written modification in the agreement between Owner and AE. By execution hereof, CM represents and warrants that it has reviewed the agreement between Owner and AE, and finds that such agreement between Owner and AE is consistent and compatible with the obligations and requirements of CM as more fully set forth in this Agreement.

5.04 Surveys; Soil Tests and Other Project Site Information. Owner shall be responsible for providing a legal description and certified land survey of the Project Site in a form and content, and with such specificity as may be required by the AE and CM to perform their services. To the extent deemed necessary by Owner and AE, and solely at Owner's expense, Owner may engage the services of a Geotechnical Consultant to perform test borings and other underground soils testing as may be deemed necessary by the AE or the CM. CM shall not be obligated to provide such surveys or soil tests and shall be entitled to rely upon the accuracy and completeness of the information provided to CM. Owner shall provide CM as soon as reasonably possible following the execution of this Agreement all surveys or other survey information in its possession describing the physical characteristics of the Project Site, together with soils reports, subsurface investigations, utility locations, deed restrictions, easements and legal descriptions then in its possession or control.

5.05 Information; Communication; Coordination. The Owner hereby designates the County Administrator or the County Administrator's designee as Project Coordinator, to act in the Owner's behalf with respect to the **PROJECT**. The Project Coordinator shall examine all documents or requests for information submitted by the CM and shall advise CM of Owner's decisions pertaining thereto within a reasonable period of time to avoid unreasonable delay in the progress of the CM's services. CM shall indicate if any such documents or requests warrant priority consideration. However, decisions pertaining to approval of the Project Schedule as it relates to the date of Substantial Completion, the Project cost, CM's compensation, documentation relating to use of contingency, approving or changing the GMP shall only be effective when approved in writing by the Owner.

Owner reserves the right to designate a different Project Coordinator provided CM is notified in writing of any such change. Owner and AE may communicate with subcontractors, materialmen, laborers or suppliers engaged to perform services on the **PROJECT**. Neither the Owner nor the AE shall attempt to direct the work of or otherwise interfere with any subcontractor, materialmen, laborer or supplier or otherwise interfere with the work of the CM.

5.06 Construction Inspections and Coordination. Owner, AE and CM agree to cooperate and coordinate with each other and all Permitting Authorities, including specifically: **Lee County Codes and Building Services**

5.07 Acknowledgment. The CM recognizes and acknowledges that Owner is a governmental body with certain procedural requirements to be satisfied. CM has and will make reasonable allowance in its performance of services for such additional time as may be required for approvals and decisions by the Owner and any other necessary government agency. Specific directions and approval made by the Owner shall be in writing authorized at its regular or special Board Meetings, or as otherwise consistent with authorities granted to the Project Coordinator.

ARTICLE 6. SUBCONTRACTOR SELECTION AND PAYMENT PROCESS

6.01 Definition. A subcontractor is a person or organization who has a direct contract with the CM to perform any work at the Project Site. Except as specifically set forth herein with respect to direct materials acquisitions by Owner, nothing contained in this Agreement or in any contract document does or shall create any contractual relation between the Owner or AE and any subcontractor. Specifically, the CM is not acting as an agent of the Owner with respect to any subcontractor.

6.02 Subcontracts. The CM shall provide a copy of all proposed subcontracts, including general supplementary conditions to the Owner. Owner and CM understand, acknowledge and agree that Owner is in the process of evaluating its requirements for the procurement of subcontractor services necessary to construct the **PROJECT**. Prior to establishment of the GMP and CM's solicitation from subcontractors and/or suppliers, Owner and CM shall agree upon a procurement methodology and process which shall comply with the legal requirements and expectations of Owner. CM agrees to cooperate with Owner in any procurement methodology and process which is required by law, and also cooperate with Owner in any such methodology or process desired by Owner (and not otherwise legally required) provided that such cooperation does not result in any extension of the Project Substantial Completion Date established by the Project Schedule.

6.03 Application for Progress Payments.

(1) Not more often than once a month, nor less often than specified in the approved payment schedule, and on a date established at the Project Preconstruction Conference, the CM will submit to the AE and Owner for review an Estimate and Requisition for Payment Form (EADOC Software) (see Exhibit C for required forms) filled out and signed by the CM covering the actual Work completed as of the date of the Application and supported by such data. Also, if

payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to and authorized in writing, the application for Payment shall also be accompanied by such supporting data, satisfactory to the Owner, as well establish the Owner's title to the material and equipment and protect its interest therein, including applicable insurance. All progress payments will be subject to the retainage percentage. Such retainage shall be paid and will be issued in the final payment after acceptance by the Owner of the Work.

The Estimate and Requisition for Payment form shall list individually, each instrument of change to the Guaranteed Maximum Price or Project Contingency, its approved value, the amount previously requisitioned, the amount sought in the current requisition, the total value of completed work and, if requested by the Owner, the Estimate and Requisition for Payment form shall, for each instrument of change to the Guaranteed Maximum Price or Project Contingency, be further detailed to provide a breakdown, by trade, of the values and requisition amounts for each trade, for each change instrument.

(2) Approval of Payments. The AE will, within ten (10) calendar days after receipt of each Application for Payment, either indicate his approval of payment and deliver the application to the Owner or return the Application to the CM indicating in writing the reason for refusing to approve payment. In the latter case, the CM may make the necessary corrections and resubmit the Application. The Owner will, within five (5) calendar days after receipt of each approved application for payment, either indicate their approval of payment and within fifteen (15) calendar days pay the CM ninety percent (90%) of the portion of the GMP properly allocated to labor, materials and equipment incorporated in the Work and ninety percent (90%) of the portion of the GMP properly allocated to materials and equipment suitably stored at the site or at some other location or return the application to the CM through the AE indicating in writing the reason for refusing to approve payment. In the latter case, the CM may make the necessary corrections and resubmit the application to the AE.

At 50% project completion, the amount of retainage withheld from payments shall be reduced to 5%.

The AE's approval of any payment requested in an Application for Payment shall constitute a representation by him to the Owner, based on the AE's on-site observations of the Work in progress and on his review of the Application for Payment and the supporting data that the CM is entitled to payment of the amount approved.

The AE may refuse to approve the whole or any part of any payment if in his opinion, he is unable to make such representations to the Owner. He may then refuse to approve any such payment because of subsequently discovered evidence or the results of subsequent inspections or test, nullify any such payment previously approved, to such extent as may be necessary in his opinion to protect the Owner from loss because:

- 1) The Work is defective;
- 2) A portion of such payment is the subject of a dispute or claim that has been filed.
- 3) The amount has been reduced because of Modifications;
- 4) The Owner has been required to correct defective Work or complete the Work in accordance with the guarantee and warranty.
- 5) Of unsatisfactory prosecution of the Work, including failure to clean up.

(3) The CM shall pay each subcontractor, upon receipt of payment from the Owner, out of the amount paid to the CM on account of such subcontractor's work, the amount to which the subcontractor is entitled in accordance with the terms of the CM's contract with such subcontractor. The CM shall, by appropriate agreement with each subcontract, require each subcontractor to make payments to subcontractors in a similar manner. After receipt of payment from Owner, if the need should arise to withhold payments to subcontractors for any reason, as solely determined by CM, the CM shall promptly restore such monies to the owner, adjusting pay requests and Project bookkeeping as required.

Commencing with second application of the Estimate and Requisition for Payment form, the Owner may require, as a condition of payment, the submission of releases of lien from any or all subcontractors. Where the Owner so requires, the releases furnished shall be original copies, properly executed and notarized, in a form acceptable to the Owner.

(4) The CM warrants that upon payment of any retainage, materials and equipment covered by a partial payment request will pass to Owner either by incorporation in construction or upon receipt of payment by the CM, whichever occurs first; (a) work, materials and equipment covered by previous partial payment requests are free and clear of liens, claims, security interests or encumbrances, hereinafter referred to as "liens"; and (b) no work, materials or equipment covered by a partial payment request will have been acquired by the CM, or any other person performing work at the site or furnishing materials or equipment for the **PROJECT** is subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the CM or other such person.

6.04 Application for Final Payment.

(1) Final Inspection. Upon written notice from the CM that the **PROJECT** is complete, the AE and Owner will make a final inspection with the CM and will notify the CM in writing of any particulars which this inspection reveals that the Work is defective. The CM shall immediately make such corrections as are necessary to remedy the defects within a reasonable time.

(2) Final Inspection for Payment. After the CM has completed any such corrections to the satisfaction of the AE and Owner and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection and other documents as required by the Contract Documents, he may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by legally effective final

releases or waivers of liens from the CM and all subcontractor(s) which performed services for the CM pursuant to the Contract Documents and the consent of surety, if applicable to final payment.

(3) Approval of Final Payment. If, on the basis of its observations and review of the Work during construction, its final inspection and its review of the final Estimate and Requisition for Payment, all as required by the Contract Documents, the AE is satisfied that the Work has been completed and the CM has fulfilled all of his obligations under the Contract Documents, it will, within ten (10) calendar days after receipt of the final Application for Payment, indicate in writing its approval of payment and deliver the application to the Owner. Otherwise, it will return the Application to the CM, indicating in writing its reason for refusing to approve final payment, in which case the CM will make the necessary corrections and resubmit the Application. The Owner will, within fifteen (15) calendar days after receipt of approved application for final payment, either indicate their approval of the estimate and requisition application for payment and within fifteen (15) calendar days pay the CM the amount approved by the Owner and issue a Certificate of Final Completion or return the application through the AE indicating in writing the reason for refusing to approve payment. In the latter case, the CM may make the necessary corrections and resubmit the application to the AE.

If, after substantial Completion of the Work, final completion is materially delayed through no fault of the CM, and the AE so confirms, the Owner shall and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted, shall be submitted by the CM to the AE, prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

If liquidated damages are to be deducted from the final payment, the Owner shall so notify the CM in writing at least ten (10) calendar days prior to the Owner's submittal to Finance.

The CM will be required to submit with his final payment documents a DBE Participation Certification, Form No. CMO:017 indicating all DBE subcontractor(s) and amount(s) utilized for the **PROJECT**.

At the final completion of the construction **PROJECT** the Owner's Project Manager will prepare a Contractor Performance Evaluation, Form No. CMO:018 and forward to the CM for review, comment and signature.

Upon receipt of the Contractor Performance Evaluation the CM will have seven (7) calendar days, from the date received, to review, comment, sign and return back to the Project manager. If the evaluation has not been received back from the CM within the seven (7) calendar days, the Owner will assume the CM fully agrees with and has no comments to the evaluation.

(4) Final Accounting Costs. Final accounting of costs of the work shall be provided by the CM in the form of a detailed cost report showing vendor, invoice number and date of invoice for all costs, all sorted by trade division cost code as is maintained by the CM in his accounting system. Upon receipt of the detailed cost report final accounting, the Owner may have access to all accounting records at the CM's place of business for review and reporting purposes by the Owner's accountant, whether external or internal.

SAMPLE

ARTICLE 7 CHANGES IN THE PROJECT

7.01 Amending and Supplementing Contract Documents. The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- (a) a formal Written Amendment,
- (b) a Change Order, or
- (c) a Field Directive Change.

The Contract price and the Contract Time may only be changed by the Change Order or a Written Amendment.

In addition, the requirements of the Contract Documents may be supplemented and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

- (a) a Field Change Order,
- (b) the AE approval of a Shop Drawing or sample, or
- (c) the AE written interpretation or clarification.

7.02 Changes in Work. Without invalidating the Agreement, the Owner may unilaterally and at any time or from time to time order additions, deletions or revisions in the Work; these will be authorized by Change Orders or Field Directive Change. Upon receipt of a Change Order on form (EADOC Software) or Field Directive Change on form CMO:012, the CM will proceed with the Work involved (See Exhibit C for required forms).

All such Work shall be executed under the applicable conditions of the Contract Documents.

If any Change Order or Field Directive Change causes an increase or decrease in the Guaranteed Maximum Price (GMP) or any extension or shortening the Contract Time, an equitable adjustment will be made.

Additional Work performed by the CM without written authorization of a change in the form of an approved Change Order will not entitle him to an increase in the Guaranteed Maximum Price (GMP) or any extension of the Contract Time, except in the case of an emergency.

It is the CM's responsibility to notify the Surety of any changes affecting the general scope of the Work or change of the Guaranteed Maximum Price (GMP) and the amount of the applicable Bonds shall be adjusted accordingly. The Surety's Acceptance must be submitted to the AE, by the CM, within ten (10) calendar days of the initiation of the change.

7.03 Change of Guaranteed Maximum Price. The Guaranteed Maximum Price (GMP) constitutes the total compensation payable to the CM for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the CM shall be at his expense without change in the Guaranteed Maximum Price.

The Guaranteed Maximum Price (GMP) may only be changed by a Change Order (EADOC Software). Any claim for an increase or decrease in the Guaranteed Maximum Price (GMP) shall be in writing and delivered to the AE within fifteen (15) calendar days of the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within fifty (50) calendar days after such occurrence (unless Owner allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the CM's written statement that the amount claimed covers all known amounts (direct, indirect, and consequential) to which the CM has reason to believe it is entitled as a result of the occurrence of said event. No claim for an adjustment in the Guaranteed Maximum Price (GMP) will be valid if not submitted in accordance with this paragraph. All claims for adjustment in the Guaranteed Maximum Price (GMP) shall be reviewed by the AE. Any change in the Guaranteed Maximum Price (GMP) shall be incorporated in a Change Order and approved by the Owner. No claim by the CM for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Guaranteed Maximum Price shall be determined in one of the following ways:

(a) Where the Work involved is covered by unit prices contained in the Contract Documents or subsequently agreed upon, by application of unit prices to the quantities of the items involved.

(b) By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.

(c) By cost of the Work and mutually acceptable fixed amount for overhead and profit agreed upon by the parties.

In such cases the CM will submit in the form prescribed by the Owner an itemized cost breakdown together with supporting data. The amount of credit to be allowed by the CM to the Owner for any such change which results in a net decrease in cost will be the amount of the actual net decrease as determined by the Owner. When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase or decrease, if any.

Regardless of how the value of Work covered by a Change Order or any other claim for an increase or decrease in the Guaranteed Maximum Price is determined, in no case shall the total amount of overhead and profit, including all tiers of subcontractors, exceed 15% of the cost of the Work, unless otherwise approved by the Owner. Such 15% limit shall not include the cost of the Construction Manager's General Conditions or CM Fees where due.

7.04 Change of Contract Time. The Contract Time may only be changed by a Change Order (EADOC Software). Any claim for an extension in the Contract Time shall be in writing and delivered to the AE within fifteen (15) calendar days of the occurrence of the event giving rise to the claim and stating general nature of the claim. Notice of the extent of the claim with supporting data (analysis and documentation) shall be delivered within sixty (60) calendar days after such occurrence (unless the AE allows an additional period of time to ascertain in more accurate data in support of the claim) and shall be accompanied by the CM's written statement that the adjustment claim is the entire adjustment to which the CM has reason to believe it is entitled as a result of the occurrence of said event. If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that the weather conditions had an adverse effect on the scheduled construction. No claim by the CM under this provision shall be allowed unless the CM has given the notice and the analysis and documentation required in this paragraph. All claims for adjustment in the Contract Time resulting from any such claim shall be incorporated in a Change Order.

The Owner shall not be responsible for any delay in the completion of the **PROJECT** where the delay is beyond the control or without fault or negligence on behalf of the Owner. The Owner shall not be held accountable for extra compensation or an extension of time due to default by the CM, subcontractors, or suppliers in the furnishing of labor or materials for the **PROJECT**, or having to replace defective materials.

The CM shall be entitled to a claim for an extension of time when a delay or hindrance is caused by an act of God, or any act or omission on the part of the Owner, provided the CM gives notice to the AE within fifteen (15) calendar days of the occurrence of the event giving rise to the claim and having stated the general nature of the claim. The CM's sole remedy shall be an extension of Contract Time.

No extension of Contract Time or increases in Guaranteed Maximum Price (GMP) shall be granted for any delay caused either by (1) inadequate crewing, default or bankruptcy of lower tier contract, slow submittals, etc., or (2) by severe though not unusual weather conditions (other than hurricanes and tornadoes) or (3) any delay impacting a portion of the Work within the available total float or slack time and not necessarily preventing completion of the Work within the Contract Time unless otherwise agreed to by the Owner in its sole discretion or (4) for any delay which is caused by the CM having to replace defective material or (5) delays attributable to the lack of performance by subcontractors regardless of the reasons.

ARTICLE 8. RELATIONSHIP BETWEEN CM AND ARCHITECT-ENGINEER (AE)

8.01 Administration. The AE will provide administration of this Agreement as it relates to inspection of the **PROJECT** during construction and shall at all times have access to the work wherever it is in preparation and progress. Owner shall, in accordance with this Agreement and Owner's Agreement with AE, use its best efforts to maintain cooperation between the AE and CM.

8.02 Inspection of the Work. The AE will visit the Project Site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the work and to determine in general if the work is proceeding in accordance with this Agreement and the Project Plans and Specifications. On the basis of the AE's on-site observations as the design professional, the AE will keep the Owner informed of the progress of the work, and will endeavor to protect the Owner against defects and deficiencies in the work of the CM. The AE will not have control or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work which shall be the obligation of CM.

8.03 Interpretation of Project Plans and Specifications. The AE will be the interpreter of the requirements of the Project Plans and Specifications. Upon receipt of comments or objections by CM or Owner, the AE will make decisions on all claims, disputes or other matters pertaining to the interpretation of the plans and specifications. The AE's decisions in matters relating to artistic effect will be final if consistent with the Project Plans and Specifications.

8.04 Rejection of Nonconforming Work. The AE and Owner have the authority to reject work which does not conform to the Project Plans and Specifications.

8.05 Uncovering of Work.

(1) If any portion of the work should be covered contrary to the written request of the AE, it must, if required in writing by the AE, be uncovered for his observation and shall be recovered at the CM's expense.

(2) If any other portion of the work has been covered which the AE has not specifically requested to observe prior to being covered, the AE may request to see such work and it shall be uncovered by the CM. If such work be found to be in accordance with the Project Plans and Specifications, the cost of uncovering and replacement shall, by appropriate Change Order, be added to the Project Cost.

8.06 Correction of Work. The CM shall promptly correct all work rejected by the AE for being defective or as failing to conform to the Project Plans and Specifications whether observed before or after the Project Completion Date and whether or not fabricated, installed or completed. The CM shall bear all costs of correcting such rejected work, including compensation for AE additional services made necessary thereby.

8.07 Timely Performance of AE. Owner, CM and AE understand, acknowledge and agree that timely performance and response by AE to certain information requested by CM is an important aspect of joint cooperation between and among the Construction Team. The CM shall identify which requests for information or response from the AE have the greatest urgency, and the CM shall identify those items which require prioritizing in response by the AE. The CM shall also identify the preferred time period for response and shall request a response time which is reasonably and demonstrably related to the needs of the **PROJECT** and CM. In the event that the period of time identified by CM for response is demonstrably unfair, AE shall communicate such information to CM, in writing, and AE shall identify the time necessary for response and a date upon which the AE's response will be made. In the event that the AE believes that any such information provided by CM is incomplete or otherwise inadequate to provide its response, AE shall immediately inform CM of such fact, in writing, with a copy to the Owner's Project Coordinator. In the event that the CM believes that AE is not providing timely services or responses as required by this paragraph, CM shall immediately inform AE of such fact, in writing, with a copy to the Owner's Project Coordinator.

ARTICLE 9 CONTRACTOR'S LIABILITY INSURANCE

9.01 Contractor's Liability Insurance. The CM will purchase and maintain such insurance as will protect him from claims under Worker's Compensation laws, disability benefit laws or other similar employee benefit laws; from claims for damages because of bodily injury, occupational sickness or disease, or death of his employees including claims insured by usual personal injury, sickness and disease, or death of any person other than his employees including claims insured by usual personal injury liability coverage; and from claims for injury to or destruction of tangible property including loss of use resulting therefrom any or all of which may arise out of or result from the CM's operations under the Contract Documents, whether such operations be by himself or any subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be legally liable. This insurance shall be written for no less than the limits of liability specified in the Contract Documents or required by law, whichever

is greater, and shall include contractual liability insurance. As a prerequisite to the Owner signing the Contract, the CM will file with the Owner certificates of such insurance, acceptable to the Owner; these certificates shall contain a provision for cancellation.

9.02 Insurance Requirements. Before final execution of the Agreement and until acceptance of the Work by the Owner, the CM shall procure and maintain insurance of the types and of the limits specified below.

An Insurance Certificate shall be required from the CM. Such form must be properly executed and submitted by an authorized representative of the insurance company and CM. Such certificate of insurance state that the coverage is primary, and shall be in the types and amounts stated below.

9.03 Certificate of Insurance. Lee County Board of County Commissioners, its officers and employees is to be specifically included as an Additional Insured on the Commercial General Liability coverage.

It shall be the responsibility of the CM to ensure that all subcontractors carry General Liability Insurance, Automobile Liability, and Workers' Compensation in compliance with statutory limits.

The Certificate of Insurance must contain the following limits:

(a) Worker's Compensation: Coverage to apply for all employees for Statutory Limits in compliance with the applicable state and federal laws. The policy must include Employers' Liability with a minimum limit of \$500,000.00 each accident. The certificate shall include a waiver of subrogation from the carrier.

(b) Commercial General Liability: Shall have minimum limits of \$1,000,000.00 per occurrence. Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Premises and/or Operations, Independent Contractors and Products and/or Completed Operations, Broad Form Property Damage, and a Contractual Liability Endorsement. Said coverage must be on an occurrence basis. Lee County Board of County Commissioners, its officers and employees shall be included as an Additional Insured.

(c) Business Automobile Policy: Shall have minimum limits of \$1,000,000.00 per occurrence. Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall include Owned Vehicles, Hired and Non-owned Vehicles, and Employees Non-Ownership and be based on occurrence basis.

(d) All Risk Builders Risk or Installation Floater: Upon execution of the Phase 2 Amendment, and prior to issuance of the Notice to Proceed for Construction Phase services, the CM shall also procure and maintain All Risk coverage, with the limits of insurance to equal 100% of the completed contract amount of such addition(s), building(s), or structure(s). Any deductible is the

responsibility of the CM. The Owner shall be named as an additional insured only with respect to losses in connection with this contract.

The CM agrees that the requested insurance coverage(s) are not intended to and shall not, in any manner, limit or reduce the liabilities and obligations assumed by the CM, it's agents, employees, subcontractors, etc.

ARTICLE 10. FORCE MAJEURE, FIRE OR OTHER CASUALTY

10.01 Force Majeure.

(1) Delays in any performance by any party contemplated or required hereunder due to: fire, flood, earthquake or hurricane, acts of God, war, declaration of hostilities, revolt, civil strife, altercation or commotion, strike, labor dispute, or epidemic, or any law, order, proclamation, regulation or ordinance of any government or any subdivision thereof, or for any other similar cause to those enumerated, beyond the reasonable control and which with due diligence could not have been reasonably anticipated and without the fault or negligence of the party seeking excuse from performance, shall be deemed to be events of Force Majeure and any such delays shall be excused. In the event such party is delayed in the performance of any work or obligation pursuant to this Agreement for any of the events of Force Majeure and any such delays shall be excused. In the event such party is delayed in the performance of any work or obligation pursuant to this Agreement for any of the events of Force Majeure, the date for performance required or contemplated by this Agreement shall be extended by the number of calendar days such party is actually delayed in such substantial completion.

(2) The party seeking excuse for nonperformance on the basis of Force Majeure shall promptly give written notice to the Owner, if with respect to the CM, or to the CM, if with respect to the Owner, specifying its actual or anticipated duration, and weekly thereafter, if such delay shall be continuing, written notice stating whether the condition continues and giving its actual or then anticipated duration. Each party seeking excuse from nonperformance on the basis of Force Majeure shall use its best efforts to rectify any condition causing a delay and will cooperate with the other party, except that neither party shall be obligated to incur any unreasonable additional costs and expenses, to overcome any loss of time that has resulted.

10.02 Casualty; Actions by Owner and CM. During the Construction Period, if the **PROJECT**, or any part thereof, shall have been damaged or destroyed, in whole or in part, the CM shall promptly make proof of loss and Owner and CM shall proceed promptly to collect, or cause to be collected, all valid claims which may have arisen against insurers or others based upon such damage or destruction. The CM shall diligently assess the damages or destruction and shall prepare an estimate of the cost, expenses and other changes, including normal and ordinary compensation to the CM, necessary for reconstruction of the **PROJECT** substantially in accordance with the Project Plans and Specifications. Within fifteen (15) calendar days following satisfaction of the express conditions described in subsections (1), (2) and (3) below, the CM covenants and agrees diligently to commence reconstruction and to complete the reconstruction or repair of any loss or damage by fire or other casualty to the **PROJECT** to substantially the same size, floor area, cubic content and general appearance as prior to such loss or damage:

(1) receipt by the Owner or the Trustee of the proceeds derived from collection of all valid claims against insurers or others based upon such damage or destruction; and receipt of other sums from any source such that the funds necessary to pay the Project Cost and any additions to the Project Cost necessitated for repair or reconstruction are available;

(2) written agreement executed by the CM and the Owner, by amendment to this Agreement or otherwise, authorizing and approving the repair or reconstruction and any additions to the Project Cost necessitated thereby, including any required amendment to the GMP; and

(3) final approval by the Owner of the Project Plans and Specifications for such repair or reconstruction and issuance of any required Building Permit.

10.03 Approval of Plans and Specifications. The Owner agrees to approve the plans and specifications for such reconstruction or repair if the reconstruction or repair contemplated by such plans and specifications is economically feasible, and will restore the **PROJECT**, or the damaged portion thereof, to substantially the same condition as prior to such loss or damage and such plans and specifications conform to the applicable laws, ordinances, codes and regulations. The owner agrees that all proceeds of any applicable insurance or other proceeds received by the owner or the CM as a result of such loss or damage shall be used solely for payment of the costs, expenses, and other charges of the reconstruction or repair of the **PROJECT**.

10.04 Notice of Loss or Damage. The CM shall promptly give the Owner written notice of any significant damage or destruction to the **PROJECT**, defined as loss or damage which it is contemplated by CM will increase the GMP or extend the date of substantial completion, stating the date on which such damage or destruction occurred, the then expectations of CM as to the effect of such damage or destruction on the use of the **PROJECT**, and the then proposed schedule, if any, for repair or reconstruction of the **PROJECT**. Loss or damage which the CM determines will not affect the GMP or date of substantial completion will be reported to Owner and AE immediately and associated corrective actions will be undertaken without delay.

ARTICLE 11 INDEMNIFICATIONS

11.01 Indemnification by CM. The CM shall indemnify, save harmless and defend the Owner and all of its officers, agents, consultants and employees from and against all losses, claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recoverable against it or them by reason of any act or omission of the CM, his agent, consultants, employees, subcontractors etc., in the execution of the work or in consequence of any negligence or carelessness in guarding the same and agrees to assume any related cost.

The CM shall assume all risk and bear any loss or injury to property or persons occasioned by neglect or accident during the progress of work until the same shall have been completed and accepted. The CM agrees to repair, restore or rebuild any damages he causes to any property of the Owner. He shall also assume all blame or loss by reason of neglect or violation of any state or federal law or municipal rule, regulation or order. The CM shall give to the proper authorities all required notices relating to the work, obtain all official permits and licenses and pay all proper fees. He shall repair any damage that may have occurred to any adjoining building, structure, utility or private property in the course of this work.

11.02 Exculpation. Nothing contained in this Article or in this Agreement shall be construed as creating or otherwise resulting in the CM assuming any liability or responsibility for the services provided to Owner by AE, his agents, employees, subcontractors, or otherwise, including, but not limited to those services involved in the preparation or approval of maps, drawings, opinions, reports, surveys, design or specifications, or the giving of, or the failure to give, directions or instructions by the AE, his agents, employees, subcontractors or otherwise, providing that such giving or failure to give is the primary cause of the injury or damage.

11.03 CONSEQUENTIAL DAMAGES. The CM and Owner waive claims against each other for consequential damages arising out of or relating to this Contract with the limited exception of liquidated damages as provided in Section 4.06(1) of this Agreement. This mutual waiver includes:

- (1) Damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- (2) Damages incurred by the CM for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

ARTICLE 12.

DEFAULT; TERMINATION

12.01 Termination by Owner Without Cause. The Owner reserves the exclusive right to terminate this Agreement without cause as provided herein. In the event that Owner exercises its rights of termination, Owner shall provide written notice to CM of termination and the termination shall become effective upon delivery to CM of such written notice. As a condition of Owner's termination rights provided for in this paragraph, CM shall be released and discharged from all obligations arising by, through or under the terms of this Agreement, and the Payment and Performance Bond shall be terminated. In the event of any such termination by Owner, Owner shall assume and become liable for obligations, commitments and unsettled contractual claims that CM has previously undertaken or incurred in connection with the **PROJECT** and as authorized under this agreement. In addition, Owner shall pay CM the additional compensation described below:

(1) Termination by Owner for Certain Identified Events. After the establishment of the GMP, if the final cost estimates make the **PROJECT** no longer reasonably feasible from the standpoint of the Owner, Owner shall provide written notice to CM of termination prior the Construction Commencement Date. Owner shall pay CM all compensation earned or accrued by CM up to and including the date of termination.

(2) Termination Based Upon Abandonment, Casualty or Force Majeure. If, after the Construction Commencement Date (i) Owner abandons the **PROJECT** (which for purposes of this paragraph shall mean the cessation of all construction and other activities relating to the **PROJECT**, excluding those which are necessary to wind down or otherwise terminate all outstanding obligations with respect to the **PROJECT**, and no recommencement of same within 12 months following the date of termination), or (ii) the **PROJECT** is stopped for a period of 60 consecutive calendar days due to an instance of force majeure or the result of a casualty resulting in a loss that cannot be corrected or restored within 120 calendar days (excluding the time required to assess the damage and complete the steps contemplated, the Owner shall have the right to terminate this Agreement and pay the CM its compensation earned or accrued to date.

(3) Owner's Termination for Owner Convenience. Notwithstanding anything contained herein to the contrary, Owner may without cause, terminate this agreement at any time upon delivery of written notice to the CM. In the event Owner delivers such notice to the CM, CM agrees to withdraw its employees and its equipment, if any, from the work site on the effective date of the termination as specified in said notice (which effective date shall not be less than two (2) business days after the date of delivery of the notice), regardless of any claim the CM may or may not have against the Owner. In the event of such termination, CM shall be entitled to any unpaid Cost of the **PROJECT** incurred to the effective date of such termination, and to no compensation other than the fees owed or accrued through the date of termination.

12.02 Termination by the CM. In the event that the **PROJECT** is stopped for a period of sixty (60) calendar days by the CM for the Owner's failure to make

payments thereon, or in the event that Owner shall have otherwise defaulted in its obligations under the terms of this Agreement, the CM, upon giving fourteen (14) calendar days written notice of such event of nonpayment or default to the Owner, and upon the expiration of such fourteen (14) calendar day period, if such nonpayment or other event of default has not been cured, the CM may terminate this Agreement and demand payment of all of the CM's compensation hereof and Owner shall assume and become liable for obligations, commitments and unsettled contractual claims that CM has previously undertaken or incurred pursuant to this Agreement.

12.03 Owner's Right to Perform CM's Obligations and Termination by Owner for Cause.

(1) If the CM fails to timely perform any of his obligations under this Agreement, including any obligation the CM assumes to perform work with his own forces, the Owner may, after seven (7) calendar days' written notice, during which period the CM fails to perform such obligation, make good such deficiencies and perform such actions. The GMP, or the actual cost of the **PROJECT**, whichever is less, shall be reduced by the cost to the Owner of making good such deficiencies and the CM's compensation shall be reduced by an amount required to manage the deficiencies, provided, however, nothing contained herein shall limit or preclude Owner from pursuing additional damages from CM as a result of its breach.

(2) If the CM is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors or if a receiver is appointed on account of its insolvency, or if it persistently or repeatedly refuses or fails, except in case for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or fails, without being excused, to maintain an established schedule (failure to maintain schedule shall be defined as any activity on the critical path that falls thirty (30) calendar days or more behind schedule) which has been adopted by the Construction Team, or if it fails to make prompt payment to subcontractors for materials or labor, or disregards laws, rules, ordinances, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of substantial violations of a provision of the Agreement, then the Owner may, without prejudice to any other right or remedy, and after giving the CM and its surety, if any, fourteen (14) calendar days' written notice, and during which period the CM fails to cure the violation, terminate the employment of the CM and take possession of the Project Site and of all materials, equipment, tools, construction equipment, and machinery thereon owned by the CM, and may finish the **PROJECT** by whatever method the Owner may deem expedient. In such case, the CM shall not be entitled to receive any further payment. Owner shall be entitled to recover all costs and damages arising as a result of failure of CM to perform as provided in this Agreement, as well as reasonable termination expenses and costs and damages incurred by the Owner may be deducted from any payments left owing the CM.

12.04 Obligations, Rights and Remedies Cumulative. The specific rights and remedies to which either the Owner or the CM are entitled are not exclusive and are intended to be in addition to any other remedies or means of redress to which the Owner or the CM may lawfully be entitled and are not specifically prohibited by this Agreement.

12.05 Non-action on Failure to Observe Provisions of This Agreement. The failure of the Owner or the CM to promptly insist upon strict performance of any terms, covenant, condition or provision of this Agreement or any exhibit or any other Agreement contemplated hereby, shall not be deemed a waiver of any right or remedy that the Owner or the CM may have, and shall not be deemed a waiver of any subsequent default or nonperformance of such term, covenant, condition or provision.

12.06 Litigation. All claims, disputes, or other matters in question between the Owner and the CM, arising under the terms of this Agreement and performance hereunder shall be decided by a court of competent jurisdiction, and shall not be the subject of arbitration. The parties agree that with respect to any Agreements executed by and between themselves relating to the **PROJECT** and any other persons or entities performing work on the **PROJECT**, that such agreements will contain a provision such that any disputes shall be resolved in a court of competent jurisdiction, it being the intention of all parties that any dispute be resolved in one consistent forum.

12.07 Attorney's Fees. In any litigation between the parties hereto arising out of this Agreement, the prevailing party shall be entitled to recover all fees and costs incurred in such litigation, including reasonable attorney's fees, through appeals.

ARTICLE 13. MISCELLANEOUS

13.01 Harmony. CM is advised and hereby agrees that it will exert every reasonable and diligent effort to assure that all labor employed by it and its subcontractors for work on the **PROJECT** shall work in harmony with and be compatible with all other labor being used by building and construction contractors now or hereafter on the site of the **PROJECT**. CM further agrees that this provision will be included in all subcontracts of the subcontractors as well as the CM's own contract; provided, however, that this provision shall not be interpreted or enforced so as to deny or abridge on account of membership or non-membership in any labor union or labor organization, the right of any person to work of the Florida Constitution. Owner's liability for obligations, commitments and unsettled contract claims in the event of termination of this Agreement, shall be limited in accordance with an agreed to subcontract termination clause approved by Owner.

13.02 Ownership of Products and Documents. All documents, reports, analysis maps, blueprints, drawings and other papers and products prepared or received by CM in connection with this Agreement ("CM's work"), upon payment by Owner

of fees accrued and owing at the time of CM's work shall be the property of Owner and Owner shall have the right to use CM's work subsequently without restriction or limitation.

13.03 Minority Participation Policy. The CM is advised that the Lee County Board of County Commissioners has adopted a Resolution establishing an overall 10% goal for local Disadvantaged Business Enterprise (DBE) participation in County procurement's. CM will take all reasonable and necessary affirmative steps to assure that local DBE firms will be utilized for this **PROJECT**. This specific **PROJECT** will attempt to meet a 10% goal for Local DBE participation.

13.04 Successors and Assignment. No transfer or assignment of the rights and/or obligations of Owner under this Agreement shall be effective without the written consent of the CM. No transfer or assignment of the rights and/or obligations of the CM under this Agreement shall be effective without the written consent of the Owner. The terms herein contained shall bind and inure to the benefit of the Owner, its successors and assigns, and the CM, its successors and assignments, except as may be otherwise specifically provided herein.

13.05 Notices. All notices, demands, requests for approvals or other communications which may be or are required to be given by either party to the other in writing shall be deemed given and delivered on the date received by the person listed below or the Authorized Representative, or, if notice is by mail, on the date mailed to the address below or, if by hand delivery, on the date delivered to the address below:

To the CM

Click here to enter text.
Click here to enter text.
Click here to enter text.
Click here to enter text.

With a copy to:

And;

To the Consultant:

Click here to enter text.
Click here to enter text.
Click here to enter text.
Click here to enter text.

With a copy to:

And;

To the Owner

Lee County Board of County Commissioners
P.O. Box 398
Fort Myers, FL 33902-0398

Department of
Project Manager

Facilities Construction and Management
,Project Manager

The addresses to which notice is to be sent may be changed from time to time by a written notice delivered to each party to this Agreement. Until notice of change of address is received, a party may rely upon the last address given.

13.06 Severability. If any provision of this Agreement is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the requirements of applicable laws and if the remainder of this Agreement can substantially be reasonably performed without material hardship, so as to accomplish the intent and the goals of the parties hereto.

13.07 Applicable Law and Construction. The laws of the State of Florida shall govern the validity, performance and enforcement of this Agreement. This Agreement has been negotiated by the Owner and the CM, and this Agreement, including the Exhibits, shall not be deemed to have been prepared by either the Owner or the CM, and each of them shall be deemed to have participated equally in the preparation hereof.

13.08 Submission to Jurisdiction.

(1) Each party to this Agreement hereby submits to the Jurisdiction of the courts of the State of Florida with venue in Lee County, Florida, and to the jurisdiction of the United States District Court for the Middle District of Florida, with venue in Fort Myers, Florida, for the purposes of any suit, action or other proceeding arising out of or related to this Agreement and hereby agrees not to assert by way of a motion as a defense or otherwise that such action is brought in an inconvenient forum or that the venue of such action is improper or that the subject matter thereof may not be enforced in or by such courts.

(2) The present registered agent of **Click here to enter text.** is **Click here to enter text.**, the individual designated for service of process by the corporation which is CM under the terms of this Agreement, with an address of **Click here to enter text.** If at any time during the term of this Agreement, the CM is not a resident of the State of Florida or has no partner, officer, employee or agent thereof available for service of process as a resident of the State of Florida, or if any permitted assignee thereof shall be a foreign corporation, partnership or other entity or shall have no officer, employee or agent available for service of process in the State of Florida, CM hereby designates the Secretary of State, State of Florida, its agent for the service of process in any court action between it and the Owner, arising out of or related to this Agreement and such service shall be made as provided by the laws of the State of Florida for service upon a nonresident; provided, however, that at the time of service on the Secretary of State, a copy of such service shall be mailed by prepaid, registered mail, return receipt requested, to the CM at the address for notices.

13.09 Estoppel Certificates. The CM and the Owner shall at any time and from time to time, upon not less than twenty-one (21) calendar days prior notice by the other party, execute, acknowledge and deliver to the other a statement certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications that the same as modified is in full force and effect and setting forth such modifications), the dates to which any changes have been paid in advance,

if any, and, to the knowledge of such party, neither it nor the other party is then in default hereof, it being intended that any such statement delivered may be relied upon by any prospective purchaser, mortgagee, assignee of any mortgage or assignee of the respective interests in the **PROJECT**, if any, of either party made in accordance with the provisions of this Agreement.

13.10 Complete Agreement. The written form of this Agreement and the Exhibits supersede and control over any and all prior agreements, understandings, representations and statements, whether written or oral, specifically including, but not limited to the Proposal, made with regard to the matters addressed by this Agreement.

13.11 Captions. The section headings and captions of this Agreement and the table of contents preceding this Agreement are for convenience and reference only and in no way definite, limit or describe the scope or intent of this Agreement, or any part thereof, or in any way affect this Agreement, or construe any article or section hereof.

13.12 Holidays. It is hereby agreed and declared that whenever the time period for a notice or performance under the terms of this Agreement is seven (7) days or greater, and would be made or given or done on a Saturday or Sunday or on a legal holiday observed by the Board of County Commissioners of Lee County, Florida, it shall be postponed to the next following business day, not a Saturday, Sunday or legal holiday.

13.13 Exhibits. Each Exhibit referred to in and attached to this Agreement is an essential part of this Agreement. The Exhibits, and any amendments or revisions thereto, even if not physically attached hereto, shall be treated as if they are part of this Agreement.

13.14 Authorized Representatives. Within three (3) business days following the Effective Date of this Agreement, the Owner and the CM shall each designate an initial authorized representative (the Project Coordinator as to the Owner) to act on its behalf to the extent and for the duration of the **PROJECT** and shall provide to the other the name, address and specimen signature of such authorized representative. Unless otherwise designated by Owner to the contrary. Thereafter, subsequent or replacement designations may be made as deemed necessary and appropriate by the designating party. Upon such subsequent or replacement designation being made, the designating party shall promptly notify the other party hereto.

13.15 Nondiscrimination. At all times during the construction of the **PROJECT**, including the receipt, evaluation, negotiations and approval of all bids for work to be performed on the **PROJECT**, and the hiring and discharge of all employees or

other personnel, the CM shall not discriminate against any person or entity on the basis of race, creed, sex or national origin.

13.16 No General Obligation. In no event shall any obligation of the Owner under this Agreement be or constitute a pledge of the ad valorem taxing power of the Owner within the meaning of the Constitution of the State of Florida or any other applicable laws. Neither the CM nor any other party under or beneficiary of this Agreement shall ever have the right to compel the exercise of the ad valorem taxing power of the Owner, in any form on any real or personal property to pay the Owner's obligations or undertakings hereunder.

13.17 Members of the Owner Not Liable.

(1) All covenants, stipulations, obligations and agreements of the Owner contained in this Agreement shall be deemed to be covenants, stipulations, obligations and agreements of the Owner to the full extent authorized by the Constitution and laws of the State of Florida.

(2) No covenant, stipulation, obligation or agreement contained herein shall be deemed to be a covenant, stipulation, obligation or agreement of any present or future member of the Governing Body or agent or employee of the Owner in its, his or their individual capacity, and neither the members of the Governing Body of the Owner, nor any official executing this Agreement shall be liable personally or shall be subject to any accountability by reason of the execution by the Owner of this Agreement or any act pertaining hereto.

13.18 Relationship of the Parties. No party to this Agreement shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by the other party to third parties, and nothing in this Agreement shall be deemed to contemplate either party as a partner, agent or local representative of the other party, or relationship between the parties or to create the relationship of employer/employees.

13.19 Maintenance of Records. The CM shall keep adequate records and supporting documents applicable to this contractual matter. Said records and documentation will be retained by the CM for a minimum of five (5) years from the date of termination of this Agreement. The Owner and its authorized agents shall have the right to audit, inspect and copy records and documentation as often as the Owner deems necessary during the period of this Agreement and during the period of five (5) years thereafter; provided, however, such activity shall be conducted only during normal business hours. The Owner, during the period of time expressed by the preceding sentence, shall also have the right to obtain a copy of and otherwise inspect any audit made at the direction of the CM as concerns the aforesaid records and documentation.

CM specifically acknowledges its obligations to comply with §119.0701, F.S., with regard to public records, and shall:

- 1) keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services required under this Agreement;
- 2) upon request from the County, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 Florida Statutes or as otherwise provided by law;
- 3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
- 4) meet all requirements for retaining public records and transfer, at no cost to the County, all public records in possession of CM upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology system of the County.

IF THE CM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CM'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, <http://www.leegov.com/publicrecords>.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.

Signed, sealed, and delivered in the presence of:

WITNESS:

[CM NAME]

Signed By: _____

Signed By: _____

Print Name: _____

Print Name: _____

Title: _____

Date: _____

LEE COUNTY

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____

CHAIR

DATE: _____

ATTEST:
CLERK OF THE CIRCUIT COURT
Linda Doggett, Clerk

BY: _____

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

BY: _____
OFFICE OF THE COUNTY ATTORNEY

EXHIBIT A

DEFINITIONS

1. "Agreement" means this Agreement between Owner and Construction Manager, including any Exhibits attached hereto, and any amendments or revisions to this Agreement or any of the exhibits.
2. "Authorized Representative" means the person designated by the Owner and CM, respectively, to act on its behalf, pursuant to the terms of this Agreement. The Authorized Representative is referred to herein in this Agreement as Project Coordinator.
3. "Change Order" means a written order to the CM signed by the Owner, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Guaranteed Maximum Price or the Contract Time. The Guaranteed Maximum Price and the Contract Time may be changed only by a Change Order. A Change Order signed by the CM indicates his agreement therewith, including the adjustment in the Guaranteed Maximum Price or the Contract Time.
4. "Completion (Final)" means acceptance of the Project by the Owner as evidenced by its signature upon a final payment Certification form No. CMO:505(3) and approval thereof by the Board of County Commissioners or their designee. The final payment Certification shall be signed only after the Owner has assured itself by tests, inspections, or otherwise that all of the provisions of the Contract have been carried out as required.
5. "Completion (Substantial)" means an acceptance of the Work by the Owner when construction is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the work or designated portion thereof for the use for which it is intended. A certificate of occupancy or compliance, when applicable, issued by the Building Official is required concurrent with or prior to issuance of the Certificate of Substantial Completion.
6. "Construction Commencement Date" means the date specified in the Construction Phase Notice to Proceed.
7. "Effective Date of the Agreement" means the date on which the agreement is signed and delivered by the latter of the two parties.
8. "Exhibits" means those agreements, forms of agreements, instruments and other documents attached hereto and designated as exhibits to this Agreement or incorporated by reference into this Agreement.
9. "Field Change Order" is a written change order requested by the AE, accepted by the CM, and approved by the Project Coordinator for minor changes in the Work,

not involving the adjustments in the Guaranteed Maximum Price or an extension of Time, and not inconsistent with the overall intent of the Contract Documents.

10. "Field Directive Change" is a written directive to the CM, issued on or after the effective date of the Agreement ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed or to emergencies. A Field Directive Change may not change the Guaranteed Maximum Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Field Directive Change will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Guaranteed Maximum Price or the Contract Time.
11. "Force Majeure" means those conditions constituting excuse from performance as described in and subject to the conditions described in Paragraph 10.01 hereof.
12. "Guaranteed Maximum Price (GMP)" is established by the CM guaranteeing the maximum price to the Owner, for the construction cost of the project.
13. "Owner" means Lee County, Florida, a political subdivision of the State of Florida, and any successor in interest thereto.
14. "Permitting Authority" means Lee County and any other applicable governmental authority acting in its governmental and regulatory capacity, which is required to issue or grant any permit, certificate, or other approval which is required to issue or grant any permit, certificate, or other approval which is required as a condition precedent to the commencement of any construction of the Project, or any part thereof, including the Building Permit.
15. "Project" means the design, construction and equipping of the Project established in the "Agreement between Owner and Construction Manager" and related or appurtenant facilities thereto, in accordance with the Project Plans and Specifications.
16. "Project Architect" or "AE" means Architect or Engineer established in the "Agreement between Owner and Construction Manager" and their successors and assigns, who have been selected by and retained by the Owner to provide the services of licensed architect-engineer for the Project as contemplated by this Agreement.
17. "Project Budget" means the compilation of identified costs for all services to be provided by CM, Project Architect and Subcontractors in connection with the planning, design, construction and equipping of the Project in accordance with the Project Plans and Specifications.
18. "Project Plans and Specifications" means the construction drawings and final specifications prepared by the Project Architect and any changes, supplements, amendments or additions thereto approved by the Owner and CM, which shall

also include any construction drawings and final specifications required for the repair or construction of the Project.

19. "Project Schedule" means the estimated and approximate schedule and sequence of events for the commencement, progression and completion of the Project, and as such schedule may be amended as provided for in the Agreement.
20. "Punch List Completion Date" means the date upon which all previously incomplete or unsatisfactory items, as identified by CM, Project Architect and/or Owner are completed in a competent and workmanlike manner, consistent with standards for renovation of this type and with good building practices in the State of Florida.
21. "Subcontractor" means any person or organization as defined in Paragraph 6.01 hereof.

End of Exhibit A

SAMPLE

EXHIBIT B

PROJECT COSTS

"Project Costs" mean all of the costs incurred by the Owner and CM [excluding Part II, below] in planning, constructing and equipping the Project, all of which Project Costs are to be incorporated within the GMP established by the CM, and without excluding any cost not listed but which is specifically identified in the Agreement, shall include the following:

PART I

Part IA - Costs Included Within CM Fees

Proportion related to this project of:

Salaries or other compensation of the CM's officers, partners and/or employees at its principal office and branch offices unless otherwise indicated in Part IB.

CM's general operating and overhead expenses of the CM's principal and branch offices, and all CM profit.

The costs of all data processing staff and data processing equipment.

Licenses.

Principal and branch office supplies including paper, pencils, paper clips, file folders, staples, etc.; janitorial supplies.

Costs for copies of documents created within the PMIS Reporting System and copies of all documents furnished to Owner.

Part IB – Reimbursable Project Costs Not Included within CM Fee

Wages and salaries of the Construction Manager's Project Manager and Superintendent when stationed at the site with the Owner's agreement.

Expenses such as telephone and facsimile service at the site, long-distance telephone charges, expressage, and postage.

Contractors public liability and property damage insurance; and Worker's Compensation insurance.

Construction or other work performed by CM or otherwise, which, when CM is permitted to bid pursuant to this agreement, shall be for the bid price or where such work is performed pursuant to emergency or similar circumstances, shall be for the wages paid for labor in the direct employ of the CM (as opposed to wages paid to management or supervisory personnel), and such fringe benefits, if any, as may be payable with respect thereto.

Blueprint/Printing Copies - Costs of all reproductions used for bidding or information which may be distributed to vendors and the public.

Electrical Power consumption (monthly) - temporary construction use only.

Water consumption (monthly) - temporary construction use only.

Cleanup at the job site.

Barricades and safety equipment at the job site.

Temporary fencing and gates at the job site.

Signs at the job site, only sign permitted on site is project sign as defined in construction specification.

Weather protection at the job site.

Construction office trailer at the job site.

Record Drawings.

Progress Photographs/Video.

Owner's Insurance, including Builders Risk and Completed Products and Operations insurance

Cost of all materials, supplies and equipment incorporated by CM in the Project, including costs of transportation and storage thereof.

Cost including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, which are employed or consumed in the performance of the work and cost less salvage value on such items used but not consumed which remain the property of the CM.

No costs shall be paid by the Owner to the CM for any expenses made necessary to correct defective workmanship or to correct any work not in

conformance with the Plans and Specifications or to correct any deficiency or damage caused by negligent acts by the CM.

Surveys; layout equipment and materials.

Temporary Toilets/holding tanks.

Dumpsters at the job site.

Watchmen at the job site.

All costs directly incurred in the performance of the Project for the benefit of the Project and not included in the CM's fees as set forth in the Agreement.

PART II

Owner's Expenses

The Agreement includes items designated or contemplated as items to be provided by Owner, but excluded for the purposes of determination of the project costs or GMP. These items include but may not be limited to the following:

Site conditions (such as hazardous materials, concealed subsurface conditions and assorted tests and corrective measures).

Additional surveys, except construction layout.

Easements and temporary construction easements.

Land use approvals, if required.

Impact Fees.

Blue Print/Printing copies of the construction documents, plans and specifications.

Permits.

Additional insurance, if any.

Any additional consultant fees as may be required, additional AE fees, additional CM fees.

All furniture, equipment and materials purchased and installed by Owner or other than CM.

Previously approved AE fees.

Already paid site acquisition costs.

Already completed Geotechnical and site studies.

Services provided by the Owners employees in planning, constructing and equipping the project.

End of Exhibit B

SAMPLE

EXHIBIT C
PROJECT FORMS

1. Proposal Request (EADOC Software)
2. Field Change Order CMO:010
3. Change Order (EADOC Software)
4. Field Directive Change (2 sheets) CMO:012
5. Estimate & Requisition for Payment (EADOC Software)
6. Certificate of Substantial Completion (2 sheets) CMO:014
7. Warranty CMO:015
8. Owner's Representative Certificate of Final Completion CMO:016
9. Disadvantaged Business Enterprise Participation Cert. CMO:017
10. Contractor Performance Evaluation (2 sheets) CMO:018
11. Contingency Transfer Approval (EADOC Software)

Forms are available at <https://www.leegov.com/procurement/forms>

End of Exhibit C

EXHIBIT D
PRE-CONSTRUCTION PROPOSAL

Insert Letter from CM

SAMPLE

EXHIBIT E
CM'S BACKGROUND SCREENING AFFIDAVIT



**CM'S BACKGROUND
SCREENING AFFIDAVIT**

Florida Statutes Chapter 435 governs required background screenings for any employees, contractors, subcontractors, or agents of the CM who will have contact with any vulnerable person, as defined by statute, or who otherwise are required to undergo a Level 1 or Level 2 background screening in accordance with Florida law.

The CM is responsible for ensuring that such required background screenings are conducted in accordance with Florida Statutes Chapter 435. Documentation of such completed background screenings must be maintained for a period of no less than five (5) years and are subject to audit by Lee County at any time during such five (5) year period.

Under penalty of perjury, I declare that I have read and understand the requirements stated above, and that all required background screenings shall be conducted in accordance with this affidavit. I further understand that there may be additional local, state, and federal regulations that may require background screening, and that the CM will be solely responsible for complying with such legal requirements. Furthermore, the CM shall indemnify and hold Lee County harmless from any and all claims or actions resulting from failure to comply with this affidavit.

Date: _____

Signature

STATE OF _____
COUNTY OF _____

Name/Title

On the date set forth above, the foregoing instrument was sworn to (or affirmed) and subscribed before me by the above-named person and in their stated capacity, and is either personally known to me or who has produce the following as identification: _____
_____.

[Stamp/seal required]

Signature, Notary Public

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.

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**. 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 and **[spell out the number of days] (#)** calendar days to final completion from issuance of the Notice to Proceed. 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:

[Solicitation #]

[Project Name]

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

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

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.]

SAMPLE

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

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: _____

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

BY: _____
CHAIR

DATE: _____

ATTEST:
CLERK OF THE CIRCUIT COURT
Linda Doggett, Clerk

BY: _____

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

BY: _____
OFFICE OF THE COUNTY ATTORNEY