

**FIRST AMENDMENT**  
**PROFESSIONAL SERVICES - CONSTRUCTION MANAGER-AT-RISK**  
Clerk Tracking No. 2018 - 00001

**THIS FIRST AMENDMENT** (the "First Amendment") to the Contract for Professional Services is made and entered into this **17th day of January 2018** by and between the **CITY OF NAPLES**, a Florida Municipal Corporation (the "CITY"), and **MANHATTAN CONSTRUCTION (FLORIDA), INC.**, a Florida Corporation authorized to do business in Florida (the "CONTRACTOR").

**WHEREAS**, the CITY and the CONTRACTOR entered into that certain Agreement on May 3, 2017; **Bid No. 17-007 and Clerk Tracking No. 2017-00056** (the "Original Agreement") to furnish **Construction Manager-at-Risk Baker Park: Construction Phase - Guaranteed Maximum Price (GMP)** (the 'Project'); and

**WHEREAS**, the parties desire to amend the Original Agreement by this First Amendment so that the CONTRACTOR will provide additional services pursuant to the terms and conditions contained herein.

**WHEREAS**, the parties are required by **119.0701 F.S.** to amend the Original Agreement so that the CITY and CONTRACTOR will abide by the terms and conditions contained herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the mutual covenants, promises and conditions herein set forth, it is hereby acknowledged and agreed as follows:

1. The above recitals are true and correct and are incorporated herein by this Reference.
2. "Article Three Section 3.1, Time" shall be amended for the provision of time for the Contractor to perform mobilization and construction services with a substantial completion date of 546 calendar days from the issuance of a Notice-to-Proceed (NTP) and 556 calendar days to final completion with a 60-day Project Close-out time frame. Project has an estimated completion date of July 31, 2019. City authorization to specifically purchase materials may be issued prior to the Notice-to-Proceed (NTP) and will not start the clock towards the indicated completion days.

3. 3.5 Liquidated Damages: Services to be rendered by the CONTRACTOR shall be commenced subsequent to the execution of this First Amendment upon written Notice-to-Proceed from the CITY for all or any designated portion of the Project must be completed by the contract dates specified within the Notice-to-Proceed for construction. Should CONTRACTOR fail to complete the project within this timeframe, daily liquidated damages in an amount consistent with the current Sec. 8-10.2 (FDOT) Florida Department of Transportation Standard Specifications will be assessed.
4. "Article Four, Compensation" shall be amended for the provision of additional fees for Project Services: Construction Manager-at-Risk Baker Park by the CONTRACTOR, to construct Baker Park, in the amount of **\$10,653,591 which includes a City controlled contingency of \$932,245** as indicated in **Attachment A-1 Basis of Compensation**, attached and made a part of this First Amendment. This is the Guaranteed Maximum Price (GMP).
5. Retainage of (10%) ten percent, on each invoice will be retained by the City until the project is accepted by the City. This provision will be a part of said First Amendment and future payments. Except, The City shall not retain and funds from the CONTRACTOR's invoice of \$50,750 for completing the GMP. Invoice to be submitted after the NTP is issued by the City.
6. Manhattan has reviewed the 90% plans provided by Kimley-Horn and Associates (KHA) and agrees the plans are complete and acknowledge there will be no change orders to complete the park as designed in the 90% plans. Changes between 90% and 100% will not have any material changes that will affect the cost of the project.
7. Attached and made part of this First Amendment include the 90% Construction documents, as indicated in **Attachment A-2** that were developed by Kimley-Horn and Associates, Inc., and issued on August 24, 2017.
8. Manhattan recognizes that Fire Station 1 is operating on the Baker Park site and, that construction on Phase 4 cannot begin until the new fire station is construction on 8<sup>th</sup> Ave. S. and all Fire Department operations have ceased on the Baker Park site. The City shall not be charged any additional expenses for demobilization and remobilization due to delays in relocating the Fire Department and therefore delays in park construction.
9. Manhattan acknowledges that all procurement for goods and services related to the Baker Park project are to be procured through an open-book procurement process and all bidding information shall be shared with the City. Manhattan recognizes that a portion of the project shall be paid from grant funds and agrees to competitively bid materials and services through DemandStar or other industry procurement services. Manhattan shall retain all procurement records for goods and services as required by the City.

10. **"Article Five, Maintenance of Records"** shall be amended to **add Articles 5.2 and 5.3** as indicated below and made a part of this Amendment.

**5.2 119.0701 F.S. CONTACT INFORMATION FOR CITY OF NAPLES CUSTODIAN OF PUBLIC RECORDS, CITY CLERK'S OFFICE.**

If the CONTRACTOR has questions regarding the application of Chapter 119, Florida Statutes, to the contractor's duty to provide public records relating to this contract, contact the City Clerk, City of Naples Custodian of Public Records, at Telephone: 239-213-1015, Email: [PublicRecordsRequests@naplesgov.com](mailto:PublicRecordsRequests@naplesgov.com); Address: 735 8th Street South; Naples, Florida 34102. Mailing address: same as street address.

**5.3 The CONTRACTOR shall:**

1. Keep and maintain public records required by the CITY to perform the service.
2. Upon request from the CITY'S custodian of public records, provide the CITY 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 this chapter 119.0701 F.S. 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 for the duration of the contract term and following completion of the contract if the CONTRACTOR does not transfer the records to the CITY.
4. Upon completion of the contract, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the service. If the CONTRACTOR transfers all public records to the CITY 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 CITY, upon request from the CITY'S custodian of public records, in a format that is compatible with the information technology systems of the CITY.

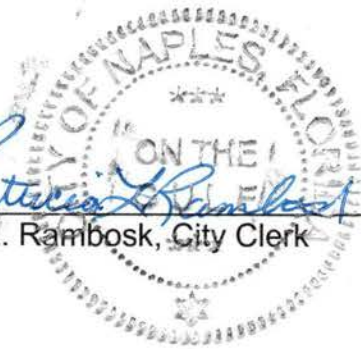
11. The terms of this First Amendment shall control and take precedence over any and all terms, provisions and conditions of Original Agreement which might vary, contradict or otherwise be inconsistent with the terms and conditions hereof.
12. All of the other terms, provisions and conditions of Original Agreement, except as expressly amended and modified by this First Amendment, shall remain unchanged and are hereby ratified and confirmed and shall remain in full force and effect.
13. This First Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original as against any part whose signature appears thereon and all of which shall together constitute one and the same instrument.

**END OF PAGE**

**IN WITNESS WHEREOF**, the CITY and the CONTRACTOR have caused this First Amendment to be duly executed by their duly authorized officers, all as of the day and year first above written.

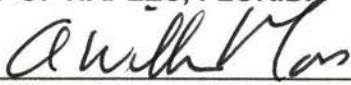
**ATTEST:**

By:   
Patricia L. Rambosk, City Clerk

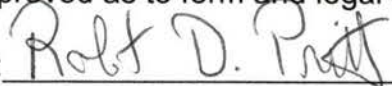


**CITY:**

**CITY OF NAPLES, FLORIDA**

By:   
A. William Moss, City Manager

Approved as to form and legal sufficiency:

By:   
Robert D. Pritt, City Attorney

**CONTRACTOR:**

**MANHATTAN CONSTRUCTION (FLORIDA), INC.**  
3705-1 Westview Drive; Naples, Florida 34104  
Attention: **Gordon Knapp**, Senior Vice President

  
Witness (Signature)

By:   
(Signature)

Printed Name: Mary Stein

Printed Name: Gordon Knapp

Title: Senior Vice President

FEI/EIN Number: On File  
A Florida Profit Corporation (FL)

## Addendum to the Baker Park GMP Agreement - Clarifications & Assumptions

1. This GMP includes the scope of work required by the Documents Listed in Exhibit A-2 and as further clarified below.

### **GENERAL ITEMS**

1. It is understood that acceptance of the GMP hereby approves the staff rates and rates for insurance and Subcontractor default insurance as provided in the project cost summary.
2. In accordance with the design this GMP does not include the removal of unsuitable soils, removal of unforeseen debris and/or structures that may be encountered.
3. In accordance with the design this GMP does not include the removal of hazardous materials or mitigation, or Tiff Fees for contaminated soils. Should hazardous materials or mitigation be required, associated fees will be paid directly by the Owner.
4. Since a FDEP permit is not yet in place, the GMP does not include any unforeseen permit requirements or stipulations. No unforeseen permit requirements are anticipated.
5. All independent laboratory testing and threshold inspections are not included and are provided by Owner.
6. The GMP includes the construction of the "knoll" as described by the 90% document package, which shows the knoll surcharged with existing onsite soil.

### **BP01A GENERAL CONDITIONS / GENERAL REQUIREMENTS**

1. Sales tax is included, with the exception of the Playground Equipment that the City of Naples has already accepted a Municipality discount savings of \$55,790. The City reserves the right to direct purchase additional materials for the project if it is in the best interest of the City and receive a credit from the Contractor.

### **BP02A SITE DEMOLITION / SITE WORK**

1. Earthwork has been calculated using the elevations and geotechnical information provided. A 4" strip loss has been accounted for in the earthwork quantity. A post clearing survey will be provided and has been included to provide a more accurate estimate of dirt quantities. An allowance has been included for possible use of added additional fill.
2. Boardwalks are included as design/build by the boardwalk subcontractors for pile length, compressive and lateral resistance.

### **BP05C ORNAMENTAL RAILINGS & METALS**

1. In order to reduce cost and in accordance with Owner instructions, trellis swings (2EA) structures include Berridge Deep deck Roofing panels in 032 aluminum with kynar finish.

### **BP11A RUBBER SURFACING / PLAYGROUND EQUIPMENT**

1. Splash pad included as an allowance with a target savings based on 34 jet design with no LED lighting (refer to Allowance Log)

### **BP16A ELECTRICAL**

1. Landscape Lighting is only included along the primary pathway.

## Allowances

The GMP is based on 90%. Therefore an allowance has been included in the GMP until the design is completed. A final value for each allowance item will be provided when the design is completed. Each allowance includes labor, materials, equipment, subcontractor overhead and subcontractor fee unless noted as "Material Allowances".

Bid Package	Allowance Description	Cost
General	Permitting	\$18,602
02A	Allowance for 20,000 cy of additional potential required fill	\$449,000
02B	Allowance for over excavate and replace fill with #57 stone at site utilities	\$100,000
02E	Cap Rock	\$50,000
02G	Top Soil Allowance	\$150,000
05C	F-102 Native Plant Garden perimeter fence (per 1/H-10) (Allowance \$75 per lineal foot)	\$21,075
15B	Methane Gas System Post Test and Updates	\$2,500
16A	Supply empty conduit for future IT use	\$25,000