

**AMENDMENT TWO TO AGREEMENT
BETWEEN THE COUNTY OF SAN MATEO AND
XL CONSTRUCTION CORPORATION ESTABLISHING THE GMP**

THIS AMENDMENT TO THE AGREEMENT, entered into this 12th day of March 2024, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and XL Construction Corporation, hereinafter called "Contractor";

Please include proper W I T N E S S E T H:

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, the Board of Supervisors on October 8, 2019, approved a preliminary project budget of \$26,924,887 and construction Agreement with XL Construction Corporation for \$3,955,887 leaving a remaining balance of 22.3 million; and

WHEREAS, on 01/27/2023 the parties via amendment one updated the Schedule of Proposal Prices page, 00400-2 on the original agreement between the County of San Mateo and XL Construction. Cost line items corrected were #6 Contingency, in the amount of \$669,000 and #7 Bonds, Insurance, and Taxes in the amount of \$669,000 for a new Total Proposal Price Sum and contract value of \$4,624,886.95; and

WHEREAS, the parties agreed through change order COR to 001 increase the Preconstruction Services budget by \$410,434 drawn down from uncommitted balance; and

WHEREAS the parties through change order COR 002 increased the preconstruction services budget by \$854,940 and drawn down from uncommitted balance; and

WHEREAS, the parties through change order COR 003 increased XL Construction contract by \$113,996 and drawn down by uncommitted balance. COR 003 will address the VOIP Relocation, specifically the installation of (2) 4" conduits, corresponding vaults, and construction support; and

WHEREAS, the parties through change order COR 004 increased XL Construction contract by \$13,276.59, drawn down from uncommitted balance, to address additional VOIP scope of work requested from AT&T; and

WHEREAS, the parties through change order COR 005 increased XL Construction contract by \$1,247,668.20 for added scope of work Probation Department Modular Office Trailers fully funded by Probation for a new total contract value of \$28,172,555.20; and

WHEREAS, the parties have agreed and wish to amend the Agreement increasing the contract value by \$69,008,978 and establishing the Guaranteed Maximum Price (GMP) of \$97,181,534; and

WHEREAS, the project team has established a 5 percent contingency for change orders in an amount not to exceed of \$4,859,076.70; and

WHEREAS, the parties have agreed to amend the following sections of the original Agreement, Definitions, Definition of Completion, Delays Covered, Delay Damages, and Adverse Weather Parameters as specified in the clarifications below:

01 4200 1.04.A – Definitions *(Contract Page 248 | 01 4200-13)*

The following definition of Substantial Completion shall be added as Definition No. 121:

“Substantial Completion: The stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.”

01 4200 1.04.A.21 – Definition of Completion *(Contract Page 242 | 01 4200-7)*

The defined term “Completion” shall be replaced by “Final Completion” and the amended definition shall read as follows:

“Final Completion: Final Acceptance of the Work by Owner”

00 5201 1.05.B Administration of Cost Item 6, Contingency (Contract Page 40 | 00 5201-3)

Append this Paragraph with “that cannot be charged back to the trade partner”. The amended paragraph shall read as follows:

Preventable changes and extra costs are those that the CMR could have prevented by proper performance of its Phase 1 services under Document 00 5251 (Pre-Construction and CMR Services), such as, for example, and not by way of limitation, constructability and coordination issues or reasonably foreseeable equipment/material replacements and substitutions. CMR may be entitled to charge preventable direct cost of construction (plus overhead and profit markup) to contingency in the same manner as Change Orders under Document 01 2600 (Contract Modification Procedures), by moving such amounts from Contingency (Cost Item 6) to Cost Items 3, 4, 5 and 7 as applicable, including direct costs that were incurred as a consequence of CMR’s ordinarily negligent errors and omissions; however, CMR may not charge any costs against Contingency which were incurred due to CMR’s gross negligence or intentional misconduct, or any for rework of defective work **that cannot be charged back to the trade partner.**

00 5201 1.05.D Administration of Cost Item 6, Contingency (Contract Page 41 | 00 5201-3)

~~Delete Item D. “Costs may not be charged to Contingency, however if such costs are either (i) within the scope of work of the plans and specifications on which the Proposal was submitted or subcontract packages awarded, or (ii) included within the scope of Cost Items 1 (Preconstruction Services), 3 (CMR GC) or 4 (CMR GR).”~~

00 5201 4.02.1 Delays Covered (Contract Page 44 | 00 5201-6)

Remove “or Final Completion” from this paragraph and the amended paragraph shall read as follows:

CMR failure to achieve Substantial Completion of any portion of the Work within the times required in the Contract Documents, plus any permitted extensions.

00 5201 4.02.2 Delays Covered (Contract Page 44 | 00 5201-6)

~~Delete Item 2. “Owner’s failure to respond to any CMR inquiry, submittal or other request in a timely manner.”~~

00 5201 4.01b – Delay Damages:

This section is replaced in its entirety by the new language below:

Except as otherwise expressly provided in this document 00 5201 (Agreement), Owner and CMR (including Subcontractors) agree that neither shall have the right to recover such defined delay damages other than the Owner's liquidated damages for delay.

00 7200 14.04.B – Adverse Weather Parameters:

This section is replaced in its entirety by the new language below:

Delays due to abnormal or adverse weather conditions will not be allowed for weather conditions that fall within the parameters listed or referenced immediately below in this subparagraph. Adverse weather delays may be allowed only if the number of workdays of adverse weather exceeds these parameters and Contractor proves adverse weather actually caused delays to work that is on the critical path. Contractor shall give written notice of intent to claim an adverse weather day within one (1) Day of an adverse weather day occurring. A weather allowance of 35 calendar days shall be included in the project schedule and reduced as qualifying weather days are claimed. Weather Delays beyond this allowance will be processed as a Change Order. In order to qualify as an adverse weather delay with respect to the weather allowance, daily rainfall must exceed .1 of an inch or more at the nearest station as measured by the National Oceanic & Atmospheric Administration, or be a result of a weather impact agreed upon by both parties, and Contractor shall prove that the rain actually caused delay to the Work, following the procedures in this paragraph and the Contract Documents. Notwithstanding the foregoing allowance, Contractor shall at all times employ all available mitigation measures to enable Work to continue.


NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Original document 00 4001 – 2 (dated 10/8/2019) and revised 1/27/2023 is now updated.

3. **All other terms and conditions of the agreement dated 10/8/2019, between the County and Contractor shall remain in full force and effect.**

In witness of and in agreement with this Agreement’s terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: XL CONSTRUCTION CORPORATION

<p>DocuSigned by:  <small>4D3D992F5667140B...</small></p> <hr/> <p>Contractor Signature</p>	<p>Mar-07-2024 13:17 PST</p> <hr/> <p>Date</p>	<p>Marcus Staniford</p> <hr/> <p>Contractor Name (please print)</p>
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For County:

COUNTY OF SAN MATEO

By:
President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:
Clerk of Said Board

GMP Amendment # 02 (Updated 03/6/2024)

Cost Item No.	Item	Subtotal											Subtotal		Total Contract Amount (Sum of J, K, & O)
		C	D	E	F	G	H	I	J	K	M	N	O		
		Original Contract	AMID 001 (01/27/23)	Original + AMID 001	COR 001 Precon NTP 1 (02/17/23)	COR 002 Precon NTP 2 (05/01/23)	COR 003 VOIP Trenching (06/26/23)	COR 004 VOIP Innerduct (10/02/23)	Pre-GMP (Includes COI-4)	COR 005 Temp Trailers (10/25/23)	GMP (03/06/2024)	GMP Adjustment (Minus Out Unused Original Contract)	Net GMP		
1	Pre-Construction Services (Lump Sum)	\$ 298,096	\$ -	\$ 298,096	\$ 389,284	\$ 807,068	\$ -	\$ -	\$ 1,494,446	\$ -		\$ -	\$ -	\$ 1,494,446	
2	CMR Fee (2.40% of General Conditions, General Requirements 1&2, and Direct Cost of Construction, Contingency)	\$ 676,829	\$ -	\$ 676,829	\$ 550	\$ 22,882	\$ 3,052	\$ 345	\$ 703,698	\$ 32,445	\$ 1,916,793	\$ (676,829)	\$ 1,239,964	\$ 1,976,067	
3	CMR General Conditions (Lump Sum)	\$ 2,156,942	\$ -	\$ 2,156,942	\$ (330,424)	\$ (854,940)	\$ (11,184)	\$ (722)	\$ 899,662	\$ -	\$ 5,325,558	\$ (899,662)	\$ 5,426,896	\$ 6,326,556	
4a	CMR General Requirements GR-1 (Lump Sum)	\$ 155,020	\$ -	\$ 155,020	\$ -	\$ 14,721	\$ 2,200	\$ -	\$ 171,941	\$ -	\$ 572,183	\$ (155,020)	\$ 417,163	\$ 589,104	
4b	CMR General Requirements GR-2 (Lump Sum)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,992,313	\$ -	\$ 2,992,313	\$ 2,992,313	
5a	Uncommitted Direct Cost	\$ 23,300,000	\$ -	\$ 23,300,000	\$ (20,000)	\$ -	\$ (102,812)	\$ (12,555)	\$ 22,164,633	\$ -	\$ -	\$ (22,164,633)	\$ (22,164,633)	\$ -	
5b	Direct Cost of Construction (Value of SA included in final GMP)	\$ -	\$ -	\$ -	\$ 20,000	\$ -	\$ 102,812	\$ 12,555	\$ 135,367	\$ 1,179,828	\$ 67,707,067	\$ -	\$ 67,707,067	\$ 69,022,262	
6a	Contingency (3% of Direct Cost of Construction & GR-2)	\$ -	\$ 669,000	\$ 669,000	\$ -	\$ -	\$ 3,150	\$ -	\$ 672,150	\$ -	\$ 2,120,981	\$ (669,000)	\$ 1,451,981	\$ 2,124,131	
6b	Design Contingency									\$ 147,295			\$ 147,295	\$ 147,295	
7	Bonds, Insurance and Taxes (Based on quoted rates)	\$ 669,000	\$ -	\$ 669,000	\$ 600	\$ 10,272	\$ 2,783	\$ 377	\$ 683,052	\$ 35,395	\$ 3,659,934	\$ (669,000)	\$ 2,990,934	\$ 3,709,361	
8a	Owner Soil Improvement Allowance									\$ 800,000			\$ 800,000	\$ 800,000	
8b	Owner Tenant Improvement Allowance									\$ 8,000,000			\$ 8,000,000	\$ 8,000,000	
	REVISED CONTRACT SUM	\$ 26,255,887	\$ 669,000	\$ 26,924,887	\$ -	\$ -	\$ 1	\$ (0)	\$ 26,924,888	\$ 1,247,668	\$ 94,243,122	\$ (25,234,144)	\$ 69,008,973	\$ 97,181,534	

Total Project GMP Price:
One hundred five million, one hundred eighty nine thousand, three hundred four