

**WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST FORM**

**#9**

Date: 11/12/2020 Weekly Agenda Date: 11/17/2020

**ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN:** Kenny Schmitz/ Dennis Butler

**WORDING FOR AGENDA ITEM:**

LEC & 28th Street Projects- contract amendment

**ACTION REQUIRED:**

- |  |   |  |
|--|---|--|
| Approve Ordinance <input type="checkbox"/> | Approve Resolution <input type="checkbox"/>   | Approve Motion <input checked="" type="checkbox"/> |
| Public Hearing <input type="checkbox"/>    | Other: Informational <input type="checkbox"/> | Attachments <input checked="" type="checkbox"/>    |

**EXECUTIVE SUMMARY:**

An amendment is necessary to clarify the separation of the expenses relating to each project under different ownership.

**BACKGROUND:**

The LEC Project Authority construction management agreement stipulates a 3% over-site fee for the 28th Street Development. The 28th Street Development is a County project not an LEC Authority Project. An amendment is necessary to clarify the separation of the expenses relating to each project under different ownership.

**FINANCIAL IMPACT:**

Contact language previously approved stipulates that construction management service fee shall be 3% of direct job costs plus direct job costs of the City/ County 28E

**IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?**

Yes  No

**RECOMMENDATION:**

Motion to approve amendment as drafted

**ACTION REQUIRED / PROPOSED MOTION:**

Motion to approve amendment as drafted

## **AMENDMENT AND PARTIAL ASSIGNMENT OF CONTRACT**

This AMENDMENT AND PARTIAL ASSIGNMENT OF CONTRACT ("Amendment") made this \_\_\_\_ of November, in the year 2020, by and between Owner, Woodbury County Law Enforcement Center Authority ("Owner" or "Assignor"), Baker Mechanical, Inc. d/b/a Baker Group ("Construction Manager Adviser" or "Baker"), and Woodbury County, Iowa by and through the Woodbury County Board of Supervisors ("Assignee") (collectively "the Parties"), whereby the Parties covenant and agree as follows:

### **RECITALS**

WHEREAS, on or about July 17, 2020, the Owner entered into a contract, AIA Document C123 (2009 Edition) with Baker ("CM Adviser Agreement") whereby Baker agreed to provide certain Construction Manager Adviser services in conjunction with the construction of a New Law Enforcement Center that is to include the Sheriff's Department, County Jail, City offices and Courtrooms. Baker's scope of work involves two elements: First, serving as Construction Manager Adviser for the overall construction project and Second, providing Construction Manager Adviser services in connection with a separate contract known as "28E Agreement for Developmental Services," dated June 28, 2020 by and between the City of Sioux City, Iowa ("City") and Woodbury County, State of Iowa ("County"); and

WHEREAS, the Parties acknowledge and agree that the Woodbury County Board of Supervisors "County Supervisors" is responsible and has full authority to act on behalf of the County under the 28E Agreement and the Parties acknowledge and agree that Baker's Scope of Services under the CM Adviser Agreement partially involves CM services associated with the 28E Agreement; and,

WHEREAS, the Parties desire that all obligations of the Owner under the CM Adviser Agreement, as it pertains to the 28E Agreement shall be transferred and assigned to the Woodbury County Board of Supervisors acting on behalf of the County; and,

WHEREAS, the County consents and agrees to assume all obligations and liability of the Owner under the CM Agreement, including but not limited to obligations for payment to Baker for services rendered in connection with the 28E agreement; and,

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein , and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by and between the Parties that:

1. Owner, Woodbury County Law Enforcement Center Authority hereby transfers and assigns its rights and obligations under the CM Adviser Agreement to the County, in part, specifically limited to its rights and obligation of Owner, including all contractual, warranty indemnification, causes of actions, and/or other claims, which Owner has or may have against Baker under the CM Adviser Agreement, as they pertain to the 28E Agreement between the City and the County;
2. The County, by and through the County Supervisors consents to such assignment and agrees to assume all obligations of Owner under the CM Adviser Agreement as it

pertain to the 28E Agreement. In connection with its acceptance of such obligations, the County Supervisors represents that it has reviewed and approves of Owner's obligations under the CM Adviser agreement and further, the County, as Assignee, agrees that all rights and obligations of Baker, including all contractual, indemnification, causes of actions, and/or other claims against Owner under the CM Adviser Agreement shall remain in full force and affect and County shall remain responsible for same under this Assignment;

3. Baker, acknowledges and consents to the above transfer and assignment from the Owner to the County, however, all Parties agree that Baker retains all rights to pursue claims under the CM Adviser Agreement against either the Owner/Assignor or County as Assignee related to services it provides under the CM Adviser Agreement as it pertains to the 28E Agreement;
4. The Parties acknowledge that Baker's fees for services in conjunction with the 28E Agreement shall be 3% of the overall cost for the all construction work to be provided for the overall project under the CM Adviser Agreement and that County, by and through the County Supervisors shall be responsible for timely payment for such services under the CM Adviser Agreement.

This Amendment and Partial Assignment of Contract is entered into as of the day and year first written above.

**OWNER / ASSIGNOR:**

Woodbury County Law Enforcement Center Authority

By: \_\_\_\_\_  
*printed name and title*

**CONSTRUCTION MANAGER ADVISER:**

Baker Mechanical, Inc. d/b/a Baker Group

By: \_\_\_\_\_  
*printed name and title*

**ASSIGNEE:**

Woodbury County Board of Supervisors, as authorized representative for the County of Woodward, Iowa

By: \_\_\_\_\_  
*printed name and title*