SECOND AMENDMENT AND RESTATED
AGREEMENT
between
BROWARD COUNTY
and
Cummings-Balfour Beatty, A Joint Venture
for
CONSTRUCTION MANAGER AT RISK SERVICES

TERMINAL 4 GATE REPLACEMENT - WESTERN EXPANSION
at the
Fort Lauderdale-Hollywood International Airport

IN BROWARD COUNTY, FLORIDA
RLI # R0787918R1
SECOND AMENDMENT AND RESTATED AGREEMENT

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CONSTRUCTION MANAGER AT RISK SERVICES

TERMINAL 4 GATE REPLACEMENT – WESTERN EXPANSION
AT THE FORT LAUDERDALE-HOLLYWOOD INTERNATIONAL AIRPORT
IN BROWARD COUNTY, FLORIDA

This Second Amendment and Restated Agreement, made and entered into by and between: Broward County, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, hereinafter referred to as COUNTY,

AND

Cummings-Balfour Beatty, A Joint Venture, hereinafter collectively referred to as CONTRACTOR.

WITNESSETH

Whereas, on September 28, 2010, Broward County and Cummings-Balfour Beatty, A Joint Venture, entered into an agreement for Construction Manager At Risk Services for Terminal 4 Gate Replacement – Western Expansion at the Airport (“Agreement”); and

Whereas, the parties desired to amend the Agreement, September 28, 2010, and the First Amendment to Agreement, June 12, 2012, to provide for complete early construction work activities related to the Terminal 4 Gate Replacement – West Expansion Project at Fort Lauderdale-Hollywood International Airport.

NOW, THEREFORE, in consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, County and the CONTRACTOR agree as follows:

CM @ Risk Agreement R0787918R1
August 21, 2013
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CONSTRUCTION AGREEMENT
Construction Manager at Risk Services Contractor

Broward County, Florida

AGREEMENT made as of the _______day of ________________, 20__.

BY AND BETWEEN: Broward County, a political subdivision of State of Florida (COUNTY)
and the Construction Manager at Risk (CONTRACTOR):

Cummings-Balfour Beatty, A Joint Venture
Federal Identification No. 65-0746297

Project Summary
The following summary (the Project Summary) identifies the construction project which is the subject of this Agreement, including certain financial terms and deadlines. All terms in this Project Summary are more fully defined or referenced in Article 2 of this Agreement.

The Project is: Terminal Four (T-4) Gate Replacement – Western Expansion at the Fort Lauderdale-Hollywood International Airport
Broward County, Florida
300 Terminal Drive
Fort Lauderdale, Florida 33315

The Contract Administrator is: Steven T. Wiesner, P.E.
Director AEP
Broward County Aviation Department
2200 SW 45th Street, Suite 101
Dania Beach, Florida 33312

The Program Manager is: Jim Pantina
Program Director
DMJM Aviation, Inc.
4101 Ravenswood Road, Suite 401
Fort Lauderdale, Florida 33312
Terminal 4 - Gate Replacement – Western Expansion

The **Construction Manager at Risk** is: Cummings-Balfour Beatty, A Joint Venture
3575 NW 53rd Street
Fort Lauderdale, Florida 33309

The Construction Project Manager is:

Turner Construction Company
3550 SW 2nd Avenue, Suite 5A
Fort Lauderdale, Florida 33315

The **Consultant** is:

Ian Nestler and Bernard Zyscovich
Pierce Goodwin Alexander and Linville, Inc. and
Zyscovich, Inc. (a Joint Venture)
791 Park of Commerce Boulevard
Suite 400
Boca Raton, Florida 33487

The **Contract Time** is:

664 Calendar days to Substantial Completion
90 Calendar days to Final Completion

**ARTICLE 1 - THE PROJECT AND PROJECT TEAM**

1.1 CONTRACTOR hereby agrees to furnish all of the labor, materials, equipment services and
incidentals necessary to perform all of the work described in the Contract Documents
Including drawings, specifications and addenda thereto for the Project known as the T4
Gate Replacement – Western Expansion (Project Number: 3300), prepared by Pierce
Goodwin Alexander and Linville, Inc. and Zyscovich, Inc. (a Joint Venture).

1.1.1 Location of Work: The T-4 Gate Replacement - Western Expansion, which is
located at 300 Terminal Drive, Fort Lauderdale, Florida 33315 in Broward County,
Florida.

1.2 The CONTRACTOR accepts the relationship of trust and confidence established between it
and the COUNTY by this Agreement. CONTRACTOR covenants with the COUNTY to
furnish its best skill and judgment and to cooperate with the other members of the Project
Team in furthering the interests of the COUNTY.

1.3 CONTRACTOR agrees to provide efficient business administration and superintendence,
and to use its best efforts to complete the Project in the most expeditious and economical
manner, consistent with the COUNTY's interests.
ARTICLE 2 - DEFINITIONS

Whenever the following terms appear in the Contract Documents, the intent and meaning shall be interpreted as follows:

2.1 Agreement: means this document, Articles 1 through Article 35, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.

2.2 Airport: The Fort Lauderdale-Hollywood International Airport, Broward County, Florida, as described in the Master Plan Update, including such additional property that may be acquired to implement development as described therein.

2.3 Aviation Department (or BCAD): The Broward County Aviation Department, or any successor agency.

2.4 Baseline Schedule: A project schedule accepted by the CA that is the standard by which Project performance is measured. The Baseline Schedule must include all contractual start and finish dates and critical interim milestones, and demonstrate how these dates are achieved through the sequencing of project activities. The Baseline Schedule requirements are further described in Division 1 Specifications or other contract provisions within the Contract Documents.

2.5 Board: The Board of County Commissioners of Broward County, Florida, its successors and assigns.

2.6 Broward County Aviation Department Project Manager (BCAD PM): An employee of Broward County Aviation Department assigned to manage consultant and construction contracts, as a representative of the Contract Administrator (CA).

2.7 Change Order: A written document, properly executed by the County, ordering a change in the Contract Price or Contract Time or a material change in the Work.

2.8 Construction Project Manager (CPM): means a firm, joint venture, or entity selected by the COUNTY to perform construction management services as defined by the COUNTY and as an agent of the COUNTY. The CPM typically serves as the CONTRACTOR’s primary point of contact during the construction phase to the CA through the PMO.

2.9 Consultant: Architect(s) or Engineer(s) under contract with COUNTY for the particular Work or Phase of the Project, providing professional design services for this Project.

2.10 Contract Administrator (CA): means the Director of the Broward County Aviation Department, or designee, pursuant to written delegation by the Director of the Broward County Aviation Department, or some other employee expressly designated as Contract Administrator in writing by the County Administrator. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instruction or determination made by the Contract Administrator, provided, however, that such instruction and determination do not change the Scope of Services or any of the express terms of the Contract Documents.

2.11 Contract Documents: This Agreement and its exhibits, attachments and forms, drawings and specifications, the Request For Letters of Interest and CONTRACTOR’s response thereto
(as negotiated and accepted by the COUNTY), any amendments and Addenda to the Contract Documents, the record of the contract award by the Board of County Commissioners, the Performance Bond and Payment Bond, the Notice of Award, the Notice(s) to Proceed, the Purchase Order and all agreed upon modifications issued after execution of the Agreement are the documents which are collectively referred to as the Contract Documents. A detailed enumeration of the applicable drawings and specifications are provided in Exhibit 5 to this Agreement.

2.12 **Contract Price**: The maximum amount established in the Agreement as the amount the COUNTY may pay for full and complete performance of the Work required by the Contract Documents.

2.13 **Contract Price Element Adjustment Memorandum (CPEAM)**: A document issued by CA to memorialize the reallocation of sums between contract price elements included within the Contract Price.

2.14 **Contract Time**: The time between the Project Initiation Date specified in the Notice to Proceed after the GMP is established and authorizes the GMP work to begin and Final Completion, including any milestone dates thereof, established in the Agreement, as may be amended by Change Order.

2.15 **CONTRACTOR**: The Managing General Contractor, Construction Manager-at-Risk (CM @ Risk), Cummings Balfour Beatty, a joint venture.

2.16 **Controlling Items of Work**: Activities shown on the Baseline Schedule identified with a milestone date.

2.17 **COUNTY or Owner**: Broward County, Florida, the public body which is a party hereto and for which this Agreement is to be performed. In all respects hereunder, COUNTY’s performance is pursuant to COUNTY’s position as the owner of a construction project. In the event COUNTY exercises its authority as a governmental body, the exercise of such authority and the enforcement of any rules, regulations, laws and ordinances shall be deemed to have occurred pursuant to COUNTY’s authority as a governmental body and shall not be attributable in any manner to COUNTY as a party to this Agreement.

2.18 **Critical Path**: A sequence of Work activities shown in the Baseline Schedule, which establish the total duration of time for the construction of the Work, and if such activities were delayed or extended, would change the construction duration established in the accepted Baseline Schedule.

2.19 **Early Construction Work Activities**: Work performed by the Contractor immediately following the issuance of the Notice To Proceed for early work and prior to the establishment of the Guaranteed Maximum Price. Such activities may include, but are not limited to select demolition, excavation, foundations, utility construction, and all permits necessary to perform Early Construction Work.

2.20 **Field Order or Supplemental Instruction**: A written order which further describes details or provides interpretations necessary to complete the Work of the Contract Documents in accordance with Section 7.2 but which does not involve a change in the Contract Price or Contract Time.
2.21 Final Completion: The date certified by CPM and Consultant in the Final Certificate of Payment, and as finally determined by Contract Administrator’s (CA’s) sole discretion, upon which all conditions and requirements of any permits and regulatory agencies have been satisfied; any documents required by the Contract Documents have been received by CPM; any other documents required to be provided by CONTRACTOR have been received by CPM; and to the best of CPM’s and Consultant’s knowledge, information and belief the Work defined herein has been fully completed in accordance with the terms and conditions of the Contract Documents.

2.22 General Conditions: The provision of facilities or performance of work by the CONTRACTOR for items, which do not lend themselves readily to inclusion in one of the separate trade contracts. The General Conditions may include, but are not limited to, those items listed on Exhibit 2. Payment for the General Conditions will be as set forth in section 9.1 and included as part of the GMP.

2.23 Guaranteed Maximum Price (GMP): The dollar amount negotiated by COUNTY and the CONTRACTOR as payment for the complete construction of the Project, which amount shall include, but not be limited to, all profit, overhead, on-site and off-site conditions (known and unknown as set forth in Section 3.7), and administrative costs. The GMP is made up of the following contract price elements:

- CONTRACTOR’s Direct Construction Cost
- CONTRACTOR’s General Conditions
- CONTRACTOR’s Management Services
- CONTRACTOR’s Fixed Fee
- Document Completion Contingency*
- CONTRACTOR’s Contingency
- CONTRACTOR’s Early Construction Work
- CONTRACTOR’S Early Construction General Conditions
- CONTRACTOR’s Pre-Construction Services
- COUNTY’s Contingency *
- COUNTY’s Early Work Contingency*

*As authorized by the Contract Administrator

The total maximum price potentially payable by COUNTY to CONTRACTOR shall be no more than the GMP.

2.24 County Business Enterprise (CBE): A firm duly certified as a small county business enterprise by the COUNTY under criteria and eligibility requirements of the Broward County Business Opportunity Act of 2012.

2.25 Notice(s) to Proceed (NTP): One or more written notices from the Contractor Administrator to CONTRACTOR authorizing the commencement of Work, or some portion of Work as defined in the NTP.

2.26 Owner Controlled Insurance Program (OCIP): A centralized insurance program under which the COUNTY procured specified insurance coverage on behalf of all contractors and subcontractors performing work on various capital improvement projects, as described in Article 12, and in Exhibits 6 and 7 to this Agreement.
2.27 **Plans or Drawings**: The official graphic representations of the Project which are a part of the Contract Documents.

2.28 **Pricing Documents**: The set of drawings and specifications upon which the GMP is negotiated as enumerated in Exhibit 5.

2.29 **Program Manager**: The Program Management Office (PMO) is the professional organization the COUNTY has contracted to provide program management services to the Project, or such other entity designated by the COUNTY.

2.30 **Project**: The construction of Terminal 4 Gate Replacement – Western Expansion (Project Number 3300) for COUNTY pursuant to those Contract Documents as enumerated in Exhibit 5 and Exhibit 16.

2.31 **Project Initiation Date**: The date upon which the Contract Time commences, as established in a Notice To Proceed.

2.32 **Project Manager**: Employee of BCAD representing the CA on this project.

2.33 **Project Plan**: A written description of the resources and equipment CONTRACTOR intends to use at the time of pricing, in coordination with the Baseline Schedule, to complete the Work. The plan will describe the staging of materials, placement of equipment, use of temporary utilities, and other factors necessary to allow COUNTY to maintain the Airport in operating condition.

2.34 **Subcontractor**: A person, firm or corporation having a direct contract with CONTRACTOR including one who furnishes material worked to a special design according to the Contract Documents for this work, but does not include one who merely furnishes material not so worked.

2.35 **Substantial Completion**: That date, as certified in writing by CPM and Consultant and as finally determined by Contract Administrator’s sole discretion, the Work, or a portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that all conditions of permits and regulatory agencies have been satisfied and the COUNTY or its designee can enjoy use or occupancy and can use or operate it in all respects for its intended purpose. A Certificate of Occupancy (or a Temporary Certificate of Occupancy (TCO) or other alternate municipal/county authorization for limited or conditional occupancy acceptable to the Contract Administrator) must be issued for Substantial Completion to be achieved, however, the issuance of a Certificate of Occupancy or the date thereof are not to be determinative of the achievement or date of Substantial Completion.

2.36 **Surety**: The company or individual which is bound by the performance bond and payment bond with and for CONTRACTOR, who is primarily liable, and which surety company or individual is responsible for CONTRACTOR’s acceptable and timely performance and completion of the work under the Agreement and for the payment of all debts pertaining thereto in accordance with Section 255.05, Florida Statutes.

2.37 **Work**: The totality of the obligations, including but not limited to administration, procurement, materials, equipment, labor, construction and other services necessary for the CONTRACTOR, or its agents, to fulfill the CONTRACTOR’s obligations under this Agreement.
ARTICLE 3 – THE WORK

3.1 The CONTRACTOR shall perform all of the Work required by the Contract Documents and as generally described in Article 3.1.1, below, and which may be revised or added to from time to time to reflect clarifications, budget revisions, and approved changes.

3.1.1 CONTRACTOR shall oversee the construction of the Terminal 4 Gate Replacement – Western Expansion (Project). The scope includes, but is not limited to, the following:
- repositioning/relocation of certain Concourse H gates;
- western expansion of Concourse G (specifically, construction of a minimum of six (6) new gates);
- a secure connector between Terminal 3 and Terminal 4, including required modifications to Terminal 3 to accommodate the connection;
- a sterile corridor (bridge and vertical circulation core) from the western expansion to serve the existing Federal Inspections Services;
- new office space for BCAD (including an Operations Communication Center and FLL Emergency Operations Center);
- space development for an in-line baggage system; and
- Covering the existing bag make-up area.

3.1.2 The scope of work may include additions, modifications and renovations in Terminal 4 to support the Gate Replacement and in Terminal 3 to support the secure connection. The Project requires close coordination with other projects that are not in the CONTRACTOR’s scope of services, including: terminal apron reconstruction, passenger pick-up and drop-off areas, expansion of the Explosives Detection Systems (EDS), and modifications to site utilities including the hydrant fueling system.

3.1.3 COUNTY has indicated that a Project goal is to achieve basic certification under the U.S. Green Building Council’s (USGB) Leadership in Energy and Environmental Design (LEED®) green building-rating system.

3.1.4 COUNTY understands that construction and renovating buildings in an environmentally responsible manner requires a great deal of planning and innovation. LEED certification will require input and effort from COUNTY, Consultant, CPM, CONTRACTOR, and other parties associated with the Project that are not parties to this Agreement.

3.1.5 COUNTY understands that the Project will be subject to the LEED-certification process and procedures as determined by the USGBC. These procedures are outside the control of CONTRACTOR, may not be uniformly implemented and may be subject to change at any time.

3.1.6 CONTRACTOR cannot guarantee LEED certification or the actual performance of the building based on CONTRACTOR’s efforts nor can it guarantee certain performance levels anticipated through the LEED-certification process.

3.1.7 Notwithstanding the preceding paragraphs, Consultant shall remain responsible for submitting complete and thorough documents and materials to the USGBC in a timely manner. While the LEED certification of the Project cannot be guaranteed, the
CONTRACTOR shall carry out all of the responsibilities as the contractor on a LEED project for the COUNTY and will continue throughout the LEED certification process including commissioning for LEED purposes. Only decisions made by the COUNTY that prevent the CONTRACTOR from obtaining LEED certification shall be grounds for not obtaining LEED certification of the Project.

3.2 It is the intent of COUNTY to describe in the Contract Documents a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied by CONTRACTOR, whether or not specifically called for by the Contract Documents. When words, which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of permit issuance. COUNTY shall have no duties other than those duties and obligations expressly set forth within the Contract Documents.

3.3 The CONTRACTOR agrees that the Work shall be performed in a good and professional manner, free from defects in materials and workmanship, and that all materials shall be new and approved by the Consultant and all workmanship shall be acceptable to the CPM, except as otherwise expressly provided for in the Contract Documents. The CONTRACTOR shall cause all materials and other parts of the Work to be readily available as and when required or needed for or in connection with the construction, furnishing and equipping of the improvements.

3.4 The CONTRACTOR shall plan, record, and update, at least monthly through Final Completion, the construction Baseline Schedule of the Project compatible or convertible to Primavera P6. The progress schedule shall indicate the dates for the commencement and completion of the various stages of construction and shall be updated as required by the Contract Documents. The Progress Schedule shall encompass all of the work of all trades necessary for the construction of the Project and shall be sufficiently complete and comprehensive to enable progress to be monitored through the end of the warranty phase of the Project. The Progress Schedule shall incorporate sufficient time for important COUNTY milestone events and required coordination points as may have been established in the Project's Preconstruction Phase.

3.5 Superintendence and Supervision:

3.5.1 All written orders of the CA are to be given to the CONTRACTOR through the CPM or PMO, which instructions are to be strictly and promptly followed by the Superintendent or Contractor's Project Manager in every case. CONTRACTOR shall keep on the Project site during any progress of the Work, a competent full-time English speaking Superintendent and Project Manager and any necessary assistants, all satisfactory to the CA and CPM. The CONTRACTOR's Project Manager shall not be changed except with the written consent of CA, unless the CONTRACTOR's Project Manager proves to be unsatisfactory to CONTRACTOR and ceases to be in its employ. In which case, CONTRACTOR shall immediately notify CA upon the Project Manager's dismissal in writing with identification of CONTRACTOR's replacement Project Manager. The CONTRACTOR's Project
Manager shall represent CONTRACTOR and all direction given to the CONTRACTOR's Project Manager shall be as binding as if given to CONTRACTOR and will be confirmed in writing by CPM.

3.5.2 CONTRACTOR shall record daily, at a minimum, the following information in a bound document at a minimum, be responsible for a daily log recording: the day, date, weather conditions and how any weather condition affected the progress of the Work, time of commencement of work for the day, all work performed, materials, labor, personnel, equipment and Subcontractors at the Project site, visitors to the Project site including representatives of COUNTY, CPM, Consultant, regulatory authorities, any special or unusual conditions or occurrences encountered, delays incurred, and the time of termination of work for the day. All information shall be recorded in the daily log in ink and certified by the CONTRACTOR'S Project Manager daily. The daily log shall be kept on the Project site and shall be available at all times for inspection and copying by CA, CPM or Consultant. Copies of daily logs must be maintained electronically unless otherwise required by the CPM. Printed copies of such electronic logs shall be prepared and printed daily, kept on file, and shall be available to CA, CPM or Consultant at the Project site for inspection, printing and copying.

3.5.3 The CONTRACTOR, CPM, Consultant and COUNTY shall meet at least weekly or as determined by the CPM or CA during the course of the Work to review and agree upon the work performed to date and to review the Controlling Items of Work for the next two weeks. The CPM shall take, distribute and retain record copies of minutes and any comments thereto of each such meeting.

3.5.4 CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, procedures, safety of construction, and BCAD security compliance.

3.6 CONTRACTOR to Check Drawings, Specifications and Data: CONTRACTOR shall use due diligence to verify all dimensions, quantities and details shown on the drawings, specifications or other data received from CPM, COUNTY or Consultant, and shall notify CPM and CA of all errors, omissions and discrepancies found therein within three (3) calendar days of discovery. CONTRACTOR will not be allowed to take advantage of any error, omission or discrepancy, as full instructions will be furnished by CPM. CONTRACTOR shall not be liable for damages resulting from errors, omissions or discrepancies in the Contract Documents unless CONTRACTOR recognized such error, omission or discrepancy and failed to report it to CPM and CA.

3.7 Differing Site Conditions: In the event that during the course of the Work CONTRACTOR encounters an underground utility that was not shown on the Contract Documents, or subsurface or concealed conditions at the Project site which differ materially from those shown on the Contract Documents and from those ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents; or unknown physical conditions of the Project site, of an unusual nature, which differ materially from that ordinarily encountered and generally recognized as inherent in work of the character called for in the Contract Documents, CONTRACTOR, without further disturbing the conditions and before performing any work affected by such conditions, shall, no later than 9:00 AM the next business day after their discovery, notify the CPM in writing of the
existence of the aforesaid conditions. CPM and COUNTY shall, within two (2) calendar
days after receipt of CONTRACTOR’s written notice, investigate the site conditions identified
by CONTRACTOR. If, in the sole opinion of CA, the conditions do materially so differ and
cause an increase in the time required for, the performance of any part of the Work, CPM
shall recommend an equitable adjustment to the Contract Time, Contract Price or its
component Contract Price Elements, which is subject to approval by the CA or the Board
pursuant to Article 7, herein. If CPM and CONTRACTOR cannot agree on an adjustment in
the Contract Time, Contract Price or its component Contract Price Elements, the adjustment
shall be determined in accordance with Article 30.

No request by CONTRACTOR for an equitable adjustment or change to the Contract Time,
Contract Price, or its component Contract Price Elements under this provision shall be
allowed unless CONTRACTOR has given written notice in strict accordance with the
provisions of this Article.

No request for an equitable adjustment or change to the Contract Time for differing site
conditions shall be allowed if made after the date certified by CPM as the date of Substantial
Completion.

3.8 Submittals:

3.8.1 CONTRACTOR shall submit Submittals (including but not limited to shop drawings,
product samples, product data, warranties, closeout submittals, reports and photographs) as required by the Contract Documents. The Submittals serve as the
CONTRACTOR’s coordination documents and demonstrate the suitability, efficiency,
technique of manufacture, installation requirements, detailing and coordination of
specified products, components, assemblies and systems, and evidence compliance
or noncompliance with the Contract Documents. The CONTRACTOR’s Submittals
are not part of the Contract Documents but are documents prepared and utilized by
the CONTRACTOR to coordinate the Work. Submittals shall not modify the scope,
character or responsibility for the Work to be completed by CONTRACTOR and are
documents utilized for coordinating, clarifying or refining the CONTRACTOR’s
intended methods for achieving the Work.

3.8.2 Within seven (7) calendar days of the date of the NTP that authorizes the
commencement of early work, CONTRACTOR shall submit to CPM or PMO (with a
copy to the CA) the first Submittal Schedule electronically using software that is
convertible or compatible with Primavera P6, for Early Construction Work. The
Submittal Schedule shall be a comprehensive list of items for which Submittals are to
be submitted with identification of the critical items (either long lead or submittals for
which immediate approval is necessary) and the sequence and timing of each
required submittal. The CPM shall review the first Submittal Schedule within seven
(7) calendar days of submittal by CONTRACTOR. Approval of the first Submittal
Schedule by COUNTY shall in no way relieve CONTRACTOR from submitting
complete Submittals as required by the Contract Documents and providing services,
products, materials, equipment, systems and assemblies, fully in accordance with
the Contract Documents.

3.8.3 Within fourteen (14) calendar days of the date of the NTP that authorized work after
the approval of the GMP, CONTRACTOR shall submit to CPM (with a copy to the
CA) the Submittal Schedule electronically using software that is compatible or
convertible with Primavera P6, for all remaining Construction Work. The second
Submittal Schedule shall be a comprehensive list of items for which Submittals are to be submitted with identification of the critical items (either long lead or submittals for which immediate approval is necessary) and the sequence and timing of each required submittal. The CPM shall review the Submittal Schedule within seven (7) calendar days of submittal by CONTRACTOR. Approval of the Submittal Schedule by the COUNTY shall in no way relieve the CONTRACTOR from submitting complete Submittals as required by the Contract Documents and providing services, products, materials, equipment, systems and assemblies, fully in accordance with the Contract Documents.

3.8.4 After the approval of each Submittal Schedule, CONTRACTOR shall promptly request Submittals from the various manufacturers, fabricators, and suppliers as required.

3.8.5 CONTRACTOR shall thoroughly review and check the Submittals and submit them to the CPM and Consultant in accordance with the requirements for such Submittals specified in Division 1 Specifications. Each Submittal and required copy thereof shall indicate the CONTRACTOR’s review and approval of that submittal in the form required by Division 1 Specifications.

3.8.6 The CPM shall maintain the Submittal Log, which shall include, at a minimum, the date of each Submittal, the date of any re-submittal, the date of any approval or rejection, and the reason for any approval or rejection. CONTRACTOR shall review, and may recommend changes to the CPM’s Submittal Log at regularly scheduled construction progress meetings.

3.8.7 If the Submittals indicate deviations or departures from the requirements of the Contract Documents, CONTRACTOR shall make specific mention thereof in its letter of transmittal. Failure to point out such deviations or departures shall not relieve CONTRACTOR from its responsibility to comply with the Contract Documents.

3.8.8 The Consultant shall have no duty to review partial or incomplete Submittals or Submittals that have not been approved by the CONTRACTOR.

3.8.9 Provided such Submittals conform to the approved Submittal Schedule, Consultant shall process Submittals within fourteen (14) calendar days from the date received, unless said Submittals are rejected by Consultant for material reasons or the Submittals are of substantial building systems which require more time for thorough review. Submittals which require a longer review period shall be identified and a review period established for such Submittals by Consultant during the review and approval of the Submittals Schedule. Consultant’s approval of Submittals will be general and shall not relieve CONTRACTOR of responsibility for the accuracy of such drawings, nor for the proper fitting and construction of the work, nor for the furnishing of materials or work required by the Contract Documents. No work for which Submittals are required shall be performed until said Submittals have been approved by Consultant. CONTRACTOR will be working at risk and at its sole liability if no prior approval of the Consultant has been obtained. No money from the CONTRACTOR’s Contingency shall be used to pay for unapproved Submittal deviations. Approval shall not relieve CONTRACTOR from responsibility for errors or omissions on the Submittals or for compliance with the requirements of the Contract Documents.
3.8.10 No review or approval will be given to partial Submittals for items which interconnect, are interdependent, or both where necessary to properly evaluate the Submittal. It is CONTRACTOR’s responsibility to assemble the Submittals for all such interconnecting or interdependent items, check them and then make one submittal to Consultant along with its comments as to compliance, noncompliance, or features requiring special attention.

3.8.11 Additional information provided by the CONTRACTOR on any Submittal shall be typewritten or lettered in ink.

3.8.12 CONTRACTOR shall submit the number of copies required by the Contract Documents plus the number required by jurisdictional authorities (when Submittals are to be made to such authorities). Resubmissions of Submittals due to errors/omissions of CONTRACTOR shall be made in the same quantity until final approval is obtained from Consultant at the CONTRACTOR’s expense, including BCAD costs.

3.8.13 CONTRACTOR shall keep one set of Consultant’s approved Submittals at the Project site at all times.

3.9 Field Layout of the Work and Project Record Documents:

3.9.1 The entire responsibility for establishing and maintaining line and grade in the field lies with CONTRACTOR which shall be based upon site boundary limits, horizontal and vertical control supplied by CA. CONTRACTOR shall maintain an accurate and precise record of the location and elevation of all pipe lines, conduits, structures, manholes, handholes, fittings and other accessories/features and shall prepare a complete site survey sealed by a Florida registered Professional Surveyor which shall be submitted as a project record document prior to the time of requesting Final Payment. Final surveys shall be submitted in hardcopy and as an electronic media submittal prepared in accordance with requirements for electronic media submittals as specified elsewhere in the Contract Documents. The cost of all such field layout and recording work is included in the prices bid for the appropriate items.

3.9.2 CONTRACTOR shall maintain in a safe place at the Project site one record copy of all drawings, plans, specifications, addenda, written amendments, Change Orders, Field Orders, Supplemental Instructions, Contract Price Element Adjustment Memoranda (CPEAM), Submittals and written interpretations and clarifications in good order and annotated to show all changes made during construction. Each of these documents shall be clearly marked by CONTRACTOR as “Project Record Documents”. These Project Record Documents together with all approved samples and a counterpart of all approved Submittals shall be available at all times to COUNTY, PMO, CPM and Consultant for reference. Contractor must maintain a backup for each Project Record Document using electronic means such as external disks, flash drives, or other forms of electronic media. Upon Final Completion of the Project and prior to Final Payment, these Project Record Documents, including Submittals and other Project Record Documents required elsewhere in the Contract Documents and specifications shall be delivered to the CPM for delivery to the CA.

3.9.3 Prior to Substantial Completion, the CONTRACTOR shall deliver to CPM for delivery to the CA all equipment data, along with manufacturers’ recommended spare parts list, spare parts, maintenance manuals, manufacturer’s warranties and operations
manuals as may be required within the Contract Documents for the COUNTY’s employees and agents to maintain and operate any equipment provided as part of the Work. Also prior to Substantial Completion, CONTRACTOR shall provide all necessary training to BCAD staff regarding the maintenance and operation of any equipment provided as part of the Work. Refer to applicable Division 1 Specifications for more information.

3.9.4 Prior to, and as a condition precedent to Final Payment, CONTRACTOR shall submit to CPM for delivery to CA, CONTRACTOR’s as-built drawings in a form acceptable to the CA, updated BIM 3D model, software and hardware, and other project record documents acceptable to CA, and requested by CA.

3.10 Inspection and Testing:

3.10.1 PMO, CPM, Consultant and CA shall at all times have access to the Work, and CONTRACTOR shall provide for use by the PMO, CPM, Consultant and CA the facilities described in the Division 1 Specifications for such access and for inspecting, measuring and testing.

3.10.1.1 Should the Contract Documents, CPM’s or Consultant’s instructions, any laws, ordinances, or any public authority require any of the Work to be specially tested or approved, CONTRACTOR, shall provide and update weekly for the CPM, Consultant and CA a two (2) week look-ahead schedule denoting all activity to be performed and highlighting those that need testing and approval. If the testing or approval is to be made by an authority other than COUNTY, CONTRACTOR shall provide notice no later than seven (7) calendar days prior to the date for such testing. Testing shall be made promptly, and where practicable, at the source of supply. If any of the Work which requires approval is covered up without approval or consent of CPM or Consultant, it must, if required by CPM or Consultant, be uncovered for examination and properly restored to the satisfaction of the CPM or Consultant at no additional cost to COUNTY.

3.10.1.2 Reexamination of any of the Work may be ordered by PMO, CPM or Consultant with prior written approval by the CA, and if so ordered, the Work must be uncovered by CONTRACTOR. If such Work is found to be in accordance with the Contract Documents, COUNTY shall pay the cost of re-examination and replacement by means of an appropriate CPEAM or Change Order. If such Work is not in accordance with the Contract Documents, CONTRACTOR shall correct the nonconforming work at no additional cost to COUNTY.

3.10.3 Payment by COUNTY for Tests:
3.10.3.1 Except when otherwise specified in the Contract Documents, the expense of all tests requested by CPM or required by the Contract Documents, except CONTRACTOR’S quality assurance/quality control tests, shall be borne by COUNTY and performed by a testing firm chosen by CA. The cost of any subsequent retesting, due to failure of the first test, and if the failure is at least partially the responsibility of the CONTRACTOR, shall be paid for by CONTRACTOR.

3.10.3.2 Retesting required because of non-conformance to the requirements of the Contract Documents shall be performed by the same or an alternate testing firm on instructions and as selected by the CA. Payment for retesting will be charged to the CONTRACTOR by deducting inspection or testing charges from the GMP.

3.11 Taxes:

3.11.1 CONTRACTOR shall pay all applicable sales, consumer, use and other taxes required by law. CONTRACTOR is responsible for reviewing the pertinent state statutes involving state taxes and complying with all requirements.

3.11.2 Taxes shall be a cost under Section 8.4.4.6. All such taxes that are required as of the time of the Agreement, as RESTATED, is executed shall be included in the GMP. Taxes for all work performed by Subcontractors shall be considered as Cost of Work and included in the Lump Sum bid of each Subcontractor.

3.12 Construction Manager at Risk Services:

3.12.1 The services of the CONTRACTOR shall include those described or specified herein. The services described herein shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned.

3.12.2 Preconstruction Services: The CONTRACTOR shall perform, or review and make recommendations to the Consultant, on the following as requested by the CA:

- project requirements
- existing on-site and off-site development surveys
- perform cost estimates
- produce schedules
- provide gap analysis
- value engineering
- develop budgets
- constructability
- staging
- phasing
- developing a list of required permits for Early Construction Work as well as all subsequent Construction Work
- maintenance of airport operations
Terminal 4 - Gate Replacement - Western Expansion

- maintenance of airport utilities
- maintenance of traffic
- and other preconstruction services as may be requested by the CA

3.12.3 Early Investigative Work: The CONTRACTOR shall perform, or review and make recommendations to the Consultant, on the following as requested by the CA:

• Utility (Public and County owned) and existing building systems investigations
• Structural Investigations
• Identify existing site conditions
• and other investigative services as may be requested by the CA

The CONTRACTOR shall prepare a schedule for each Phase of the Project as required to supplement a Baseline Schedule when requested by the BCAD PM, CPM, or Consultant. As part of Preconstruction Services, CONTRACTOR shall issue bid documents to cover the scope of work of the Project in accordance with the Contract Documents, including, but not limited to Article 11. In conjunction with submission of any proposed GMP addendum and the final GMP to the COUNTY, CONTRACTOR shall, without assuming the duties of the Consultant, CPM or the PMO, warrant to the COUNTY that the Plans, Specifications and other Contract Documents are consistent, practical, feasible and constructible, and that the Project is constructible within the Contract Time as negotiated. In the event that comments from Broward County Code Services or Fire Marshal are not addressed after the second review, Contractor shall pay for any additional plan review fees when CONTRACTOR had at least partial responsibility for the plan review comments not being addressed or corrected.

3.12.4 Construction Phase Services - CONTRACTOR shall fully comply with the requirements of this Agreement and all Contract Documents and ensure equal compliance by all subcontractors. As set forth in this Agreement, CONTRACTOR shall provide the staffing positions necessary to carry out the work and the commissioning of all specified project equipment, controls, and systems in accordance with Division 1 Specifications and the Contract Documents. CONTRACTOR shall be responsible for all matters of the jobsite, worker safety, and BCAD security compliance. CONTRACTOR shall review all warranties, operation manuals and maintenance manuals for completeness, have them corrected if necessary, and transmit them to CPM.

3.12.5 Post-Construction Phase Services - CONTRACTOR shall coordinate project close-out, including as-built drawings, commencement of operations and transition to occupancy by the COUNTY and its tenants. CONTRACTOR shall cooperate fully with preparation of the Certificates of Substantial and Final Completion, complete remaining commissioning activities, if any, complete all punch-list items including submittal of as-built drawings, and report status of same to the PMO and CPM.
3.12.6 Warranty Phase Services - In addition to CONTRACTOR’s duties under Articles 22, CONTRACTOR’S WARRANTIES and 23, DEFECTIVE WORK, CONTRACTOR shall participate with COUNTY representatives in warranty inspections in the sixth (6th) and eleventh (11th) months after Substantial Completion, and shall be responsible for coordinating and scheduling all warranty and service work. Warranty Inspection reports will be prepared by the CPM and distributed to all parties participating in the Warranty Phase inspections.

ARTICLE 4 - PRIORITY OF PROVISIONS

4.1 In case of conflicts between the provisions of this Agreement, any ancillary documents executed contemporaneously herewith or prior hereto, or any other of the Contract Documents, the provisions of this Agreement (including all Exhibits) shall prevail.

4.2 Anything shown on the drawings and not mentioned in the specifications or mentioned in the specifications and not shown on the drawings shall have the same effect as if shown or mentioned respectively in both. In the event of a conflict among the Contract Documents, the most stringent requirement, including but not limited to issues of quantities or cost of the Work, to the CONTRACTOR shall control.

4.3 The organization of the Specifications into divisions and sections and the arrangement of drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or in establishing the extent of the Work to be performed by any trade. The organization of the Specifications and the arrangement of the drawings are for the convenience of the CONTRACTOR and is not intended to relieve the CONTRACTOR from its obligation to conduct a complete study of the Contract Documents for the purpose of directing and coordinating the various Subcontractors and suppliers as to their respective responsibilities.

4.4 The Contract Documents shall be interpreted so as to eliminate inconsistencies or conflicts, but in the event of any conflict, requirements for greater quantity or more expensive work shall govern.

4.5 The CA must approve all deviations from the Contract Documents whether they are sought by the PMO, CPM, Consultant or the CONTRACTOR. The PMO, CPM or Consultant shall have no authority to order or approve any deviation from the Contract Documents, whether or not such deviation affects the Cost of the Work, or the date of Substantial Completion without written directive from CA.

ARTICLE 5 - CPM’S AUTHORITY

5.1 The CPM shall be the COUNTY’s representative on the Project; unless and until the CA notifies the CONTRACTOR in writing that some other person or entity shall be the COUNTY’s representative. The CPM shall recommend approvals of changes to the CA.

5.2 The CPM will provide, under the direction of the PMO, overall technical and management services to assist the COUNTY in maintaining schedules, establishing budgets, controlling costs, and achieving quality for the Project.

5.3 If at any time the CPM observes or becomes aware of any fault or defect in the Work or of any nonconformance with the Contract Documents, the CPM will promptly notify the PMO.
and CONTRACTOR in writing and will direct that all reasonable steps be taken to correct such fault, defect or nonconformance. The PMO and CPM shall have the authority to reject Work that does not in its opinion, or in the opinion of the CA, conform to the Contract Documents.

5.4 The CPM shall monitor and ensure that overall quality, progress schedule, Cost of the Work, and GMP are adhered to.

5.5 The PMO and the CPM do not have control over construction means, methods, techniques, sequences and procedures employed by CONTRACTOR in the performance of the Work, but shall be responsible for using its best efforts to review and, if unacceptable, notify the CA when the requirements of the Contract Documents or Baseline Schedule are not being met by CONTRACTOR.

5.6 The COUNTY will be assisted by PMO and CPM in the areas of on-site review of work in progress, review of pay requests submitted by the CONTRACTOR, assisting in the interpretation of the intent of the Contract Documents for the proper execution of the Work, and such other assistance as the COUNTY may request.

ARTICLE 6 - TERM OF AGREEMENT/TIME FOR PERFORMANCE/LIQUIDATED DAMAGES

6.1 Contract Time:

6.1.1 CONTRACTOR shall be instructed to commence the Work by written instruction in the form of a Purchase Order issued by COUNTY’s Director of Purchasing and a NTP issued by the CA. Multiple NTP’s will be issued during the project and CONTRACTOR shall only proceed with work that has been authorized by issuance of a NTP by the CA. The first Notice to Proceed and Purchase Order will not be issued until CONTRACTOR’s submission to COUNTY of all required documents (i.e. bonds for early construction work and pre-construction, if applicable and insurance, both OCIP and non-OCIP) and after execution of the Agreement by both parties. No monetary compensation shall be awarded for delay(s) of any kind except as provided for herein. No time extensions for permitting process delays shall be granted for delays caused by actions, inactions or negligence of the CONTRACTOR.

6.1.2 The receipt of all necessary permits by CONTRACTOR, is a condition precedent to the issuance of the NTP for the GMP work to mobilize on the Project site and commence physical construction work. The Work to be performed pursuant to the NTP for the GMP work shall commence as of the Project Initiation Date specified in said NTP.

6.1.3 CONTRACTOR shall provide CPM with a construction schedule, developed in accordance with Division 1 Specifications, indicating specific dates by which completed drawings and permits must be received by CONTRACTOR to ensure the uninterrupted progress of the Work in order to complete the Project as scheduled. The CONTRACTOR shall revise the draft schedule as necessary, based on the CPM’s comments, so as to obtain acceptance by the CA.

6.1.3.1 All schedules shall contain a list of subcontractors known at the time the schedule is submitted. As new subcontracts are awarded, CONTRACTOR shall update the schedule for subsequent submittals according to Section
6.1.3.3. Review and acceptance of the schedules does not constitute an approval of the schedule task relationships or task durations, or otherwise affect the CONTRACTOR’s sole responsibility for the schedule and means and methods of construction.

6.1.3.2 All schedules must be accompanied by a detailed narrative which shall include but shall not limited to, explanations of phasing, access to the site, maintenance of security, temporary construction, protection during construction, commissioning of equipment and maintenance of traffic. The narrative must also include production rates, discussion on the use of weekends and evenings to perform work and shift work, if proposed, required to install the Work. Review and acceptance of the narrative does not constitute an approval of the means and methods or otherwise affect the CONTRACTOR’s sole responsibility for the means and methods of construction.

6.1.3.3 Once accepted by the CA, all schedules shall be updated monthly and be provided with the monthly report. All schedules shall be discussed at the weekly progress meetings to satisfy a two-week look-ahead schedule. The updated schedule shall be known as the progress schedule and shall show the status of all activities or show the content as otherwise required by CA.

6.1.3.4 The CONTRACTOR is responsible for monitoring and maintaining schedule compliance, and as such, shall be responsible for reviewing and assessing the performance and progress of each SUBCONTRACTOR, at least monthly; establish a systemic procedure for gathering and analyzing construction data from SUBCONTRACTORs; incorporate the data into the monthly report in order to provide a summary of the Work to the CPM, PMO and CA. The monthly report must include the current Progress Schedule.

6.1.3.5 Float in the schedule is for the benefit of both parties to the Contract. Suppression or consumption of float by extended activity duration, dummy activities, preferential sequencing or other techniques is not permitted.

6.1.3.6 The CONTRACTOR shall provide rates of progress consistent with all accepted schedules. Whenever Critical Path Activities fall behind the planned schedule of construction, CONTRACTOR must notify the CPM and CA and advise both of the recovery actions being taken by the CONTRACTOR to return the Work to the Baseline Schedule or to revise the sequence of activities to maintain the Substantial Completion date.

6.1.4 Time is of the essence between the Notice to Proceed pertaining to the GMP work and the Substantial Completion date. The CONTRACTOR shall achieve Substantial Completion within six hundred sixty four (664) calendar days from the Project Initiation Date specified in the Notice to Proceed authorizing the physical GMP construction work. The CONTRACTOR shall achieve Final Completion, and submit the final payment application in accordance with Article 8 within ninety (90) calendar days from the date certified by the CPM and the Consultant as the date of Substantial Completion.

6.1.5 Upon failure of CONTRACTOR to achieve Substantial Completion of the Project within the specified period of time, plus approved time extensions, CONTRACTOR
shall pay to COUNTY the sum of Ten Thousand Dollars ($10,000.00) for each calendar day after the time specified in Section 6.1.4 above. After Substantial Completion should CONTRACTOR fail to achieve Final Completion within the time specified in Section 6.1.4 above, plus approved time extensions, CONTRACTOR shall pay to COUNTY the sum of Five Thousand Dollars ($5,000.00) for each calendar day after the time specified in Section 6.1.4 above. After Substantial Completion, should the CONTRACTOR fail to submit "As-Built" drawings within 30 calendar days of the Substantial Completion date, CONTRACTOR shall pay the COUNTY the sum of five hundred dollars ($500.00) for each calendar day. These amounts are not penalties but are liquidated damages paid to COUNTY for its inability to obtain full beneficial occupancy of the Project. Liquidated damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by COUNTY as a consequence of such delay, and both parties desiring to obviate any questions of dispute concerning the amount of said damages and the cost and effect of the failure of CONTRACTOR to complete the Agreement on time.

6.1.6 The CA is authorized to deduct liquidated damages from monies due to CONTRACTOR for the work under this Agreement or as much thereof as the CA may, at its sole option, deem just and reasonable.

6.1.7 Extensions to the Contract Time for delays caused by the effects of extraordinary adverse weather shall be submitted as a request for change in Contract Time pursuant to Section 6.5. These time extensions are justified only when extraordinary adverse weather conditions or related adverse soil conditions prevent CONTRACTOR from productively performing critical path activities, identified on the accepted Baseline Schedule or updates, resulting in the CONTRACTOR being unable to work at least fifty (50%) of the normal workday on Critical Path activities for three or more consecutive days.

6.2 The COUNTY through the CPM may direct the CONTRACTOR to expedite the Work by whatever means the CONTRACTOR may use, including, without limitation, increasing staffing or working overtime to bring the Work back within the Baseline Schedule. If expediting the Work is required due to reasons within the control or responsibility of the CONTRACTOR, then the additional costs incurred shall be absorbed by the CONTRACTOR without issuing a CPEAM from the CONTRACTOR’s Contingency account. If the expediting of Work is required due to reasons outside the control or responsibility of the CONTRACTOR, then the additional costs incurred shall be the subject of an appropriate adjustment issued pursuant to Section 7.3 or Section 7.4, herein as applicable.

6.3 Substantial Completion Date: When CONTRACTOR considers that the Work, or portion thereof designated by the COUNTY pursuant to Section 6.4 herein, has reached Substantial Completion, CONTRACTOR shall so notify CA, CPM and Consultant in writing with a comprehensive list of items to be completed or corrected by CONTRACTOR. CPM and Consultant shall then promptly in accordance with Division 1 Specifications make a preliminary inspection of the Work. When CPM, on the basis of the preliminary inspection, determines that the Work or designated portion thereof is substantially complete, CPM will notify the CA. CA shall then, with the PMO, CPM, Consultant and CONTRACTOR, perform the CA’s Substantial Completion Inspection. At the completion of the CA’s Substantial Completion Inspection, the CPM shall issue a Substantial Completion Inspection Report determining whether Substantial Completion has been achieved; such report shall include a Substantial Completion Punch List.
6.3.1 When the CA's Substantial Completion Inspection has determined that Substantial Completion of the Work, or a portion thereof, has been achieved, the CPM shall prepare a Certificate of Substantial Completion in the form attached hereto in the Division 1 Specifications for execution by the Parties. The Certificate of Substantial Completion shall state: 1) the Date of Substantial Completion; 2) the responsibilities of COUNTY and CONTRACTOR for security, maintenance, utilities, damage to the Work; 3) indicate that Form 5 Notice of Work Completion (form located in the OCIP Insurance Manual attached hereto as Exhibit 6) has been sent to the Owner Controlled Insurance Program (OCIP) Administrator; and 4) list all work yet to be completed (Substantial Completion Punch List) to satisfy the requirements of the Contract Documents for Final Completion. CPM shall prepare and be responsible for obtaining signature of CONTRACTOR on the Certificate of Substantial Completion. CPM shall deliver the executed Certificate of Substantial Completion to the CA for CA's approval or rejection.

6.3.2 The failure to include any items of corrective work on the Substantial Completion Punch List does not alter the responsibility of CONTRACTOR to complete all of the Work in accordance with the Contract Documents.

6.3.3 Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

6.3.4 As-built drawings shall be submitted by CONTRACTOR to CPM within 30 calendar days of Substantial Completion or the CA may withhold payment of all pending and future invoices until the as-built drawings are provided.

6.4 Use of Completed Portions:

6.4.1 COUNTY shall have the right at its sole option to take possession of and use any completed or partially completed portions of the Project. Such possession and use shall not be deemed an acceptance of any of the Work not completed in accordance with the Contract Documents.

6.4.2 In the event COUNTY takes possession of any completed or partially completed portions of the Project, the following shall occur:

6.4.2.1 COUNTY shall give notice to CONTRACTOR in writing at least thirty (30) calendar days prior to COUNTY's intended occupancy of a designated area;

6.4.2.2 CONTRACTOR shall complete to the point of Substantial Completion, the designated area and request inspection and issuance of a Certificate of Substantial Completion;

6.4.2.3 Upon issuance of a Certificate of Substantial Completion, COUNTY will assume full responsibility for maintenance, utility costs, subsequent damages of or by COUNTY and the public, and start of the warranty for the occupied area unless otherwise agreed in writing by the Parties hereto;
6.4.2.4 Upon issuance of a Certificate of Substantial Completion, CONTRACTOR will assume full responsibility for maintaining utility services for the area(s) occupied by COUNTY until all areas of the Work are accepted by COUNTY as substantially complete;

6.4.2.5 CONTRACTOR shall complete all items noted on the Certificate of Substantial Completion Punchlist within the time specified in Section 6.1 and request final inspection and Final Completion of the portion of the Project occupied. Payment for accepted portions of the Work shall be made in accordance with the procedure specified in Article 8; and

6.4.2.6 If COUNTY finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion thereof, such occupancy or use shall not commence prior to a time mutually agreed upon by COUNTY and CONTRACTOR. Insurance secured by CONTRACTOR on the unoccupied or unused portion or portions shall not be canceled or lapsed on account of such partial occupancy or use. CONTRACTOR shall advise the OCIP Administrator should this occur. Consent of CONTRACTOR to such occupancy or use shall not be unreasonably withheld.

6.5 Notification of Change of Contract Time or Contract Price:

6.5.1 Any claim for a change in the Contract Time or Contract Price shall be made by written notice delivered by CONTRACTOR to CPM with a copy to the PMO and the CA within five (5) calendar days of the commencement of the event giving rise to the claim and stating the general nature of the claim. Notice of the detailed nature and specific elements of the claim shall be delivered within ten (10) calendar days after the date of the first written notice. Thereafter, within ten (10) calendar days of the termination of the event giving rise to the claim, notice of the extent of the claim with supporting data shall be delivered unless CPM allows an additional period of time to ascertain more accurate data in support of the claim. This information supporting the claim shall be accompanied by CONTRACTOR’s written notarized certification that the adjustment claimed is the entire adjustment to which the CONTRACTOR has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time or Contract Price shall be determined by PMO and CPM in accordance with Article 30, Resolution of Disputes, herein, if PMO, CPM and CONTRACTOR cannot otherwise agree. NO CLAIM FOR AN ADJUSTMENT IN THE CONTRACT TIME OR CONTRACT PRICE WILL BE VALID IF NOT SUBMITTED IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.

6.5.2 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of and through no fault or negligence of CONTRACTOR if a claim is made therefore as provided in Sections 6.5.1 and 7.6.1. Such delays shall include, but not be limited to, acts or neglect by any separate contractor employed by COUNTY, fires (not caused by CONTRACTOR), floods, labor disputes, epidemics, extraordinary adverse weather conditions or acts of God as authorized by CA.
ARTICLE 7 - CHANGES IN THE WORK OR TERMS OF CONTRACT DOCUMENTS

7.1 Without invalidating the Agreement, COUNTY shall have the right and authority, to make such increases, decreases or other changes in the Work including, but not limited to, the character and quantity of the Work as may be considered necessary or desirable to complete fully and acceptably the proposed construction in a satisfactory manner. Any changes to the Work must be accomplished by means of appropriate 1) CPEAM's or 2) Change Orders. Any sums moved between contract price elements included within the Contract Price must be accomplished by an appropriate CPEAM. In no event shall the Contract Price or Contract Time be modified except by appropriate Change Order or Amendment signed by the CA. Contract Documents and changes shall be binding on COUNTY only if signed by the appropriate COUNTY authority in accordance with COUNTY regulations and policies.

7.2 Field Orders and Supplemental Instructions:

7.2.1 The CPM, in consultation with the BCAD PM, and Consultant, shall have the right to issue Field Orders setting forth written interpretations of the intent of the Contract Documents and Work, provided that the Field Order involved results in no change in the Contract Price or Contract Time.

7.2.2 The Consultant, in consultation with the BCAD PM, PMO and CPM, shall have the right to issue Supplemental Instructions through the CPM, setting forth written orders, instructions, or interpretations concerning the Contract Documents, provided such Supplemental Instructions involve no change in the Direct Construction Cost or Contract Time.

7.3 Contract Price Element Adjustment Memoranda (CPEAM): The CA shall be authorized to issue a CPEAM which is agreed to by the CONTRACTOR and the CA to memorialize the reallocation of sums among the Contract Price elements within the Contract Price. In no event shall the Contract Price be modified except by appropriate Change Order. Agreement on any CPEAM shall constitute a final settlement on all items affected therein, including without limitation any adjustment in the Contract Price elements, subject to performance thereof and payment therefore pursuant to the terms of this Agreement and CPEAM. The cost of any work authorized by a CPEAM shall be determined in accordance with this Agreement, except that CONTRACTOR shall not be entitled to additional General Conditions unless contract time is extended by the CA or as approved by the CA. CONTRACTOR shall advise CPM in writing within seven (7) calendar days of receipt of a CPEAM of any and all objections or claims arising from the CPEAM or same shall be deemed waived. The following specific CPEAM’s are contemplated, but additional or different CPEAM’s may be issued, provided they do not result in a change to the Contract Price:

7.3.1 When 85% of the CONTRACTOR’s Direct Construction Costs of the Project have been awarded, and if the sum of the subcontracts executed is less than the CONTRACTOR’s Direct Construction Cost for such work, then a CPEAM shall be issued transferring 50% of such surplus from the CONTRACTOR’s Contingency Account to COUNTY’s Contingency Account. If the sum of the subcontracts awarded exceeds the CONTRACTOR’s Direct Construction Cost for such work, then the deficiency will be taken by CPEAM from the CONTRACTOR’s Contingency Account.
7.3.2 During the progress of construction, the CONTRACTOR's Contingency Account within the GMP may be decreased and the surplus transferred to the COUNTY's Contingency Account by issuance of a CPEAM detailing the terms of the transfer and documenting the mutual written consent of the CONTRACTOR and the CA, which consent shall not be unreasonably withheld.

7.3.3 An adjustment of Contract Time may be issued by the CA consistent with Section 7.6 and the CA's authority with a Change Order for Excusable Delays and for issues involving the COUNTY's Contingency Account as described below.

7.4 Change Orders: If changes to subcontracted work affect the GMP, such changes shall be accomplished in accordance with this Section 7.4, Change Orders.

7.4.1 Changes in the quantity or character of the Work within the scope of the Project which are not properly the subject of Field Orders or Supplemental Instructions, including changes resulting in changes in the Contract Price or the Contract Time, shall be authorized only by written Change Orders approved and issued in accordance with the provisions of the COUNTY Procurement Code, as amended from time to time or as approved by the Board.

7.4.2 The CONTRACTOR's fee on such changes shall be determined as follows:

7.4.2.1 A mutually acceptable fixed fee not to exceed four percent (4%) of the net change to the Cost of the Work.

7.4.2.2 Subcontractors' percentage markup on Change Orders for overhead and profit shall be reasonable, but in no event shall the aggregate of the Subcontractors' overhead and profit markups exceed ten percent (10%) of the net change to the Subcontractors' Cost of the Work. In the event Subcontractor is affiliated with the CONTRACTOR by common ownership or management, or is effectively controlled by the CONTRACTOR, no fee will be allowed on the Subcontractors' costs. In the event there is more than one level of Subcontractor, such as second and third tier Subcontractors, the sum of all of the Subcontractors' including any tiered Subcontractors' percentage markups for overhead and profit shall not in the aggregate exceed twelve percent (12%) of the net change to the Subcontractors' Cost of the Work.

7.4.2.3 Whenever a change in Subcontractor work is to be based on mutual acceptance of a lump sum, whether the amount is an addition, credit or no change-in-cost, CONTRACTOR shall submit to the CPM an initial cost estimate obtained from the Subcontractor. The breakdown shall list the quantities and unit prices for materials, labor, equipment and other items of cost. Whenever a change involves more than one Subcontractor and the change is an increase in the GMP, overhead and profit percentage of each Subcontractor and CONTRACTOR, if applicable, shall be itemized separately and shall be allowed as in 7.4.2.2.

7.4.2.4 The amount of decrease in the GMP for any change that results in a net decrease in cost will be the amount of the actual net decrease plus four percent (4%) for fixed fees, of the net change. When both additions and
decreases are involved in any one change, the combined effect shall be figured on the basis of the net change in the Cost of the Work, if any.

7.4.3 All changes to construction contracts must be approved in advance, in accordance with the County’s Procurement Code, unless otherwise provided by the Broward County Commission.

7.4.4 CONTRACTOR shall not start work on any changes requiring an increase in the Contract Price or the Contract Time until a Change Order setting forth the adjustments is approved and issued by the COUNTY. Upon receipt of a Change Order, CONTRACTOR shall promptly proceed with the work set forth within the document.

7.4.5 In the event satisfactory adjustment cannot be reached between the CPM, CONTRACTOR, and Consultant for any item requiring a change in the Contract Price or Contract Time, and a Change Order has not been issued, the parties may submit the matter in dispute to the CA as set forth in Article 30 herein. During the pendency of the dispute, and upon receipt of a Change Order, CONTRACTOR shall promptly proceed with the change in the Work involved and advise the CPM and CA in writing within seven (7) calendar days of CONTRACTOR’s agreement or disagreement with the method, if any, provided in the Change Order for determining the proposed adjustment in the Contract Price or Contract Time.

7.4.6 On approval of any change increasing the Contract Price, CONTRACTOR shall ensure that the Performance Bond and Payment Bond are increased so that each reflects the total Contract Price as increased.

7.4.7 To avoid delays to the Project and to mitigate damages to the parties, Change Orders or construction change directives may be issued unilaterally by COUNTY at its sole option.

7.5 No Damages for Delay: No claim for damages or any claim, other than for an extension of time, shall be made or asserted against COUNTY by reason of any delays except as provided in Article 7.6.2. CONTRACTOR shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from COUNTY for direct, indirect, consequential, impact or other costs, expenses or damages, including, but not limited to, costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by CONTRACTOR for hindrances or delays due solely to fraud, bad faith or active interference on the part of COUNTY or its agents. Otherwise, CONTRACTOR shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

7.6 Excusable Delay: Compensable & Non-Compensable:

7.6.1 Excusable Delay: Delay which extends the completion of the Work and which is caused by circumstances beyond the control of CONTRACTOR or its Subcontractors, material persons, suppliers, or vendors are Excusable Delay. CONTRACTOR is entitled to a time extension of the Contract Time for each day the
Work is delayed due to Excusable Delay. CONTRACTOR shall document its claim for any time extensions as provided in Section 6.5 herein.

Failure of CONTRACTOR to comply with Section 6.5 herein as to any particular event of delay shall be deemed conclusively to constitute a waiver, abandonment and relinquishment of any and all claims resulting from that particular event of delay.

7.6.2 Excusable Delay may be compensable or non-compensable.

7.6.2.1 Compensable Excusable Delay: Excusable Delay is only compensable when (i) the delay extends the Contract Time, and (ii) is due solely to fraud, bad faith or active interference on the part of COUNTY or its PMO, CPM or Consultant. In no event shall CONTRACTOR be compensated for interim or non-critical delays which do not extend the Contract Time.

COUNTY and CONTRACTOR recognize and agree that the amount of CONTRACTOR's precise actual costs for delay in the performance and completion of the Work is impossible to determine as of the date of execution of the Contract Documents, and that proof of the precise amount will be difficult. Therefore, costs recoverable by the CONTRACTOR shall be liquidated on a daily basis for each day the Contract Time is delayed due to a Compensable Excusable Delay. These liquidated costs shall be paid to compensate CONTRACTOR for all indirect costs caused by a Compensable Excusable Delay and shall include, but not be limited to, Project overhead, acceleration, loss of earnings, loss of productivity, loss of bonding capacity, loss of opportunity and all other indirect costs recoverable shall be $1,500.00 per day for each calendar day the Agreement is delayed due to a Compensable Excusable Delay.

CONTRACTOR shall be entitled to direct, and indirect costs as provided above, for Compensable Excusable Delays. Direct costs recoverable by CONTRACTOR shall be limited to actual additional costs allowed pursuant to Section 8.4.

7.6.2.2 Non-Compensable Excusable Delay: When Excusable Delay is caused by circumstances beyond the control of CONTRACTOR, its Subcontractors, material persons, suppliers and vendors, and is also caused by circumstances beyond the control of the COUNTY, PMO, CPM or Consultant, then CONTRACTOR shall be entitled to a time extension equal to the actual number of work days delayed on the critical path of the accepted schedule. The CONTRACTOR's General Conditions and CONTRACTOR's Management Services costs associated with such time extension shall be considered Cost of the Work, but in no case shall CONTRACTOR be entitled to any increase in GMP nor any damages for the delay. Such costs may be compensated by a CPEAM transfer of COUNTY's Contingency to the CONTRACTOR's General Conditions or CONTRACTOR's Management Services, fixed fee not included, at the CA's sole discretion.
ARTICLE 8 - PAYMENTS AND COST OF THE WORK

8.1 When the Pricing Documents are complete, CONTRACTOR, PMO, CPM and CA shall convene a Contract Price meeting to negotiate the GMP. CONTRACTOR will thereafter submit to the CA a completed Exhibit 1, CONTRACTOR’s Direct Construction Cost, Schedule of Values, and any other revised elements within the GMP. Based upon such mutually agreed modifications, the CA will issue a CPEAM to reallocate amounts within the GMP; or, if a change to the GMP is required, the CA will initiate a Change Order through the CPM.

8.2 In full consideration of the full and complete performance of the Work and all other obligations of the CONTRACTOR hereunder, the COUNTY shall pay to the CONTRACTOR a sum of money not to exceed the GMP. The GMP shall be as set forth in Article 9 as adjusted by any approved Change Orders. In the event that the CONTRACTOR’s expenditures for the Project exceeds the GMP, the CONTRACTOR shall pay such excess from its own funds, and the COUNTY shall not be required to pay any amount that exceeds the GMP; and the CONTRACTOR shall have no claim against the COUNTY on account thereof.

8.3 After Substantial Completion and acceptance of the Work, and before Final Completion, CONTRACTOR, CPM and the CA shall determine any “savings” achieved during the progress of the Work.

8.3.1 Prior to calculating the “savings,” the remaining amounts in the Document Completion Contingency shall be transferred to the COUNTY’s Contingency and shall not be used to determine “savings.”

8.3.2 The “Savings” shall be determined by performing the following calculation:

Add all unused amounts from the CONTRACTOR’s Direct Construction Cost, CONTRACTOR Fixed Fee, and CONTRACTOR’S Construction Contingency, and divide in half. The CONTRACTOR will share in half and the COUNTY will share in half. The COUNTY’s half shall be placed into the COUNTY’s Contingency using the CPEAM. The CONTRACTOR may submit a complete and proper invoice for its half of the savings.

8.4 The term “Cost of the Work” shall mean the sum of all direct costs necessarily and reasonably incurred and paid by the CONTRACTOR in the performance of the Work. Such costs shall be at rates not higher than those customarily paid in the locality of the Project except with the prior written consent of COUNTY. The Cost of the Work shall include only those items set forth in this Section 8.4 and shall not include any items listed in Section 8.5. Cost of the Work shall be determined as follows:

8.4.1 Subcontractor Costs shall be:

8.4.1.1 The CONTRACTOR’s Direct Construction Cost, as generally described on Exhibit 1, attached hereto, to be 100% performed by Subcontractors selected in accordance with Article 11, herein. Where the work is covered by unit prices contained in the Contract Documents or an applicable subcontract, the cost of the Work shall be determined by application of unit prices to the quantities of items involved.
8.4.1.2 Where Subcontractor is owned by, or an affiliate of the CONTRACTOR or work is to be "self performed" by CONTRACTOR, no overhead and profit shall be allowed.

8.4.1.3 If the subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work shall be determined in the same manner as CONTRACTOR's Cost of the Work.

8.4.2 CONTRACTOR's Labor Costs: Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the work described in the Contract Documents shall be limited to actual salaries paid to employees, plus labor burden as set forth in the schedule of job classifications agreed upon by COUNTY and CONTRACTOR in Exhibits 13A, 14, and 15, and other non skilled labor costs which have the prior approval of the CA, subject to audit by COUNTY. Payroll costs for employees not employed full time on the work covered by the Agreement shall be apportioned on the basis of the time the employees spent on the work. Payroll costs shall be limited to salaries and wages plus the labor burden which includes social security contributions, unemployment, excise and payroll taxes, workers compensation, health insurance, sick leave, vacation, and holiday pay applicable thereto, only. Labor costs for lump sum work are not subject to this section.

8.4.3 Materials and Equipment: Direct Construction Cost of all necessary materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and manufacturers' field services required in connection therewith, adjusted in accordance with Article 10, Discounts, Rebates and Refunds; rentals of all construction equipment and machinery and the parts thereof, including all operating and maintenance costs, costs of transportation, loading, unloading, installation, dismantling and removal thereof, whether rented from CONTRACTOR or others. The rental of any such equipment, machinery or parts shall cease the use thereof is no longer necessary for the Work.

8.4.4 Miscellaneous costs:

8.4.4.1 The cost, as documented by the CONTRACTOR's detailed receipts, of telephone, telegrams, postage, photographs, blueprints, office supplies, first aid supplies and related miscellaneous costs reasonably incurred in direct support of the Work at the Project.

8.4.4.2 Premiums (net) on bonds and insurance coverages that the CONTRACTOR is obligated to secure and maintain under the terms of the Contract Documents and such other bonds as may be required, subject to the written approval of the COUNTY. Premiums paid as part of CONTRACTOR's Cost shall be net of trade discounts, volume discounts, dividends and other adjustments. All insurance coverage's, excluding Owner Controlled Insurance Program (OCIP) costs and coverage's, and bonds shall be provided by companies acceptable to the COUNTY. Insurance through any affiliates of CONTRACTOR shall not be permitted without the COUNTY's prior written approval.
8.4.4.3 The cost of obtaining and using any utility services required for the Work that are not paid directly by COUNTY, including fuel and sanitary services at the Project site.

8.4.4.4 The cost of removal of debris from the site. The Project site, lay-down locations, and staging sites will be kept clear of all debris on a daily basis. All subcontracts shall require Subcontractors to remove all debris daily created by their activities, and the CONTRACTOR shall exercise its best efforts to enforce such requirements or to effect the removal of the debris of the Subcontractors who fail in this regard. Provided, however, the CONTRACTOR shall not be required to remove debris created by the COUNTY's separate contractors except pursuant to Change Order procedures set forth herein. CONTRACTOR shall ensure all laydown storage, staging, materials, and equipment shall be made safe and secure once BCAD Operations declares a Hurricane Warning, as directed by the CPM.

8.4.4.5 The cost and expense actually sustained by the CONTRACTOR in connection with the Work, of protecting and repairing adjoining property, if required, except to the extent that any such cost or expense is:

(a) the responsibility of the CONTRACTOR under Article 13, reimbursable by insurance under the County's OCIP Program or the CONTRACTOR's auto insurance coverage or otherwise;

(b) due to the failure of the CONTRACTOR to comply with the requirements of the Contract Documents/County's OCIP with respect to insurance; or,

(c) due to the failure of any officer of the CONTRACTOR or of any of its representatives having supervision or direction of the Work to exercise good faith or the standard of care normally exercised in the conduct of the business of a general contractor experienced in the performance of work of the magnitude, complexity and type encompassed by the Contract Documents, in any of which events any such expenses shall not be included in CONTRACTOR's costs.

8.4.4.6 Federal, state, municipal, sales, use and other taxes, as applicable to the Project, all with respect to services performed or materials furnished for the Work, it being understood that none of the foregoing includes federal, state or local income or franchise taxes.

8.4.4.7 All reasonable costs and expenditures necessary for the operation of the Project job site office(s), including cost of field computer equipment and software. The CA shall determine the reasonableness of these costs and shall approve in writing prior to these costs being incurred.

8.4.4.8 The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR's employees, excluding travel time, incurred in discharge of duties connected with the Work except for local travel (within Broward, Miami-Dade, or Palm Beach Counties) to and from the site of the Work.

8.4.4.9 Deposits lost for causes other than CONTRACTOR's negligence; royalty payments and fees for permits and licenses.
8.4.4.10 Cost of premiums for additional bonds required because of changes in the Work.

8.4.4.11 Cost of special consultants, including, but not limited to, engineers, architects, testing laboratories, surveyors, employed for services specifically related to the Work.

8.4.4.12 Any other expenses or charges incurred, with the prior written approval of the CA, in the performance of the Work.

8.5 Exclusions to Cost of the Work: Overhead is defined as any and all other costs, not referenced in Section 8.4, of the CONTRACTOR and its operation which are not in direct support of the Project. The CONTRACTOR agrees to furnish and perform, as a part of the CONTRACTOR's Fee and without reimbursement, said overhead items. The term "Cost of the Work" shall not include any of the following:

8.5.1 Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership, parent company, and sole proprietorship), general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in its principal or a branch office for general administration that are not specifically included in the Management Services are to be considered administrative costs covered by CONTRACTOR's labor burden and in accordance with section 8.4.2.

8.5.2 Other than those expenses authorized by this Agreement, expenses of CONTRACTOR's principal and branch offices.

8.5.3 Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

8.5.4 Other overhead, general expense costs or charges of any kind and the cost of any item not specifically and expressly included in Section 8.4.

8.5.5 Costs in excess of the GMP.

8.5.6 Entertainment and meal expenses, car allowances (except for vehicle(s) required to carry out the work stationed on-site with advance approval by the CA) and charges of a personal nature.

8.5.7 Bonuses, profit-sharing or other special labor charges not included in Section 8.4.2, herein.

8.5.8 Any outside legal or accounting fees incurred without prior written approval from the County Attorney, which approval is at the sole discretion of the County Attorney.
8.6 **Progress Payments:**

8.6.1 CONTRACTOR may make Application for Payment for Work completed during the Project at intervals of not more than once a month. CONTRACTOR shall, where the Project involves CBE Subcontractors, make application for payment for work completed by such Subcontractors during the Project at monthly intervals and shall pay its Subcontractors within thirty (30) calendar days following receipt of payment from the COUNTY for such subcontracted work. CONTRACTOR's application shall show a complete breakdown of the Project components, the percentages completed and the amount due in proportion to the percentage of the Work completed or, as to General Conditions, at cost or, at the CA's option, as a Negotiated Lump Sum payable in proportion to the percentage of the Work completed. Where the GMP phase Contractor's General Conditions and Contractor's Management Services are included as lump sum, they shall be paid in proportion to the percentage of the Work completed. (See Exhibits 2 and 3).

8.6.2 Each application shall be accompanied by such supporting evidence as may be reasonably required by CPM or CA. Nevertheless, CONTRACTOR shall submit with each Application for Payment:
- an updated progress schedule acceptable to CPM and CA, as required by the Contract Documents;
- a monthly report as required by the Contract Documents;
- a Certification of Payments to Subcontractors (Form 00924);
- a release of liens from the CONTRACTOR relative to the work which is the subject of the previous pay Application;
- a completed Statement of Compliance, Form 1, attached hereto;
- Form 00924 shall be accompanied by a copy of the notification sent to each Subcontractor listed in item 2 of the form, explaining the good cause why payment has not been made. One original and one copy of each Application for Payment shall be submitted to CPM for certification and distribution to the PMO and CA. COUNTY shall make payment to CONTRACTOR within thirty (30) calendar days after receipt of CONTRACTOR's complete and accurate Application for Payment, as determined by the CA, and submission of an acceptable updated progress schedule. CA may request CONTRACTOR to submit additional information to support its Application for Payment;
- as applicable, a consent of the surety as to release of final payment or release of retainage; and
- Time sheets for management services in a form acceptable to the CA.
- Supporting evidence and pre-approvals are not required for lump sum payment items.

8.6.3 Ten percent (10%) of all monies earned by CONTRACTOR shall be retained by COUNTY until 50% of the Work is completed and accepted by the CA, excluding General Conditions. After fifty percent (50%) of the Work has been completed, the CONTRACTOR may request and the COUNTY shall reduce the retainage to five percent (5%) of all monies previously earned and all monies earned thereafter, except CONTRACTOR’s General Conditions, with consent and release of Surety. After ninety percent (90%) of the Work has been completed, the CONTRACTOR may request and the COUNTY may reduce the retainage to
two and one-half percent (2-1/2%) of all monies previously earned and all monies earned thereafter, except CONTRACTOR’s General Conditions, with consent and release of Surety. Nothing contained herein; however, requires the COUNTY to pay or release any amounts that are the subject of a good faith dispute, the subject of a claim brought pursuant to s. 255.05, Florida Statutes, or otherwise the subject of a claim or demand by the COUNTY or CONTRACTOR.

8.6.4 Subsequent to Final Completion and prior to Final Payment, COUNTY may reduce retainage to a nominal amount at the sole discretion of the COUNTY. Any reduction in retainage shall be in the sole discretion of the COUNTY, shall be recommended by CPM and CONTRACTOR shall have no entitlement to a reduction. In addition, the COUNTY may authorize release of retainage as to a particular Subcontractor or trade when the work of that Subcontractor or trade is satisfactorily completed and a waiver of any claim is provided to CPM for the completed work. Any interest earned on retainage shall accrue solely to the benefit of COUNTY. COUNTY may require consent of Surety prior to any release or reduction of retainage.

8.6.5 COUNTY may withhold, in whole or in part, payment to such extent as may be necessary to protect itself from:

8.6.5.1 Defective CONTRACTOR or Subcontractor Work not remedied.

8.6.5.2 Claims filed or reasonable evidence indicating probable filing of claims by other parties against CONTRACTOR.

8.6.5.3 Failure of CONTRACTOR to make payments properly to Subcontractors or for material or labor.

8.6.5.4 Damage to another contractor not remedied.

8.6.5.5 Liquidated damages and costs incurred by PMO, CPM, COUNTY or Consultant for extended construction administration.

8.6.5.6 Failure of CONTRACTOR to provide any and all documents required to be provided to COUNTY by the terms of the Contract Documents.

8.6.5.7 COUNTY reasonably believes that the remaining contract value is insufficient to finish the Work.

8.6.5.8 Overpayment made by the COUNTY as determined by audit of the CONTRACTOR’s records.

8.6.6 The Schedule of Values, prepared in accordance with the terms of this Agreement, shall expand and detail the items contained in this Agreement’s Exhibits 1 (Estimated CONTRACTOR’s Direct Construction Cost) and Exhibit 2 (General Conditions) and shall include the cost of materials, the cost of labor, the cost of equipment and the cost of Subcontractor work separately for all the portions of the Work delineated. Each monthly Application for Payment shall be for a sum equal to: (i) that portion of the CONTRACTOR’s Direct Construction Cost equal to the percentage of the Work completed; plus (ii) an appropriate amount of the CONTRACTOR’s General Conditions actually expended; plus (iii)
an appropriate amount of the CONTRACTOR’s Fee as related to the percentage of the Work completed. The determination of the percentage of the Work completed shall be made by the CPM; provided, however, prior to the date of the final request, and unless subject to reduction under Section 8.6.5, the aggregate of the CONTRACTOR’s Fee payments shall not exceed 97.5% percent of the CONTRACTOR’s Fee.

The CONTRACTOR’s Direct Construction Cost shall be segregated and detailed in a manner satisfactory to the CPM and the CA, with sufficient supporting documentation and description of charges for the CPM and the CA to evaluate the charges. The Request for Payment shall indicate the percentage of completion of each portion of the Work, and the total Work, as of the end of the period covered by the Application for Payment. The Schedule of Values shall be used as one basis for reviewing the Request for Payment when such amounts are approved.

8.7 If the CA and CPM, in their good faith judgment, determine that the portion of the GMP then remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents, no additional payments will be due to the CONTRACTOR hereunder unless and until the CONTRACTOR, at its sole cost, performs a sufficient portion of the Work so that such portion of the GMP then remaining unpaid is determined by the CA, CPM and PMO to be sufficient to so complete the Work.

8.8 The CPM and CA shall review each such Request for Payment and may make such exceptions as the CPM and the CA reasonably deem necessary or appropriate under the state of circumstances then existing. In no event shall the COUNTY be required to make payment for items of the CONTRACTOR’s Cost to which the CPM or the CA reasonably takes exception.

8.9 CONTRACTOR shall remain solely liable for Subcontractor’s work and for any unpaid laborers, material suppliers or Subcontractors of Subcontractor in the event it is later discovered that said work is deficient or that any of said laborers, material suppliers or Subcontractors did not receive payments due them on the Project. COUNTY will not pay for defective or negligent work even if the cost of correcting such Work falls within the Contract Price, unless otherwise provided for in the Agreement and CPM determines that the CONTRACTOR has diligently pursued the repair or replacement of all defective work of their Subcontractors and vendors at no cost to COUNTY, in accordance with Article 23 – Defective Work.

8.10 Upon receipt of written notice from CONTRACTOR that the Work is ready for final inspection and acceptance, Consultant and CPM shall, within four calendar days, make an inspection thereof. If Consultant, CPM and CA find the Work acceptable, the required documents have been submitted and the requirements of the Contract Documents have been fully satisfied, and all conditions of the permits and regulatory agencies have been met, a Final Certificate of Payment, Form 2, shall be issued by CA upon recommendation from CPM and Consultant, stating the requirements of the Contract Documents have been performed and the Work is ready for acceptance.

8.11 Within thirty (30) calendar days after Final Completion of the Work and acceptance thereof by the COUNTY, the CONTRACTOR shall submit a Final Request For Payment (Final Request) which shall set forth all amounts due and remaining unpaid to the CONTRACTOR (including the unpaid portion of the CONTRACTOR’s Fee). Upon
approval of the Final Request for Payment, the CA will issue a Final Certification of Payment in the form attached hereto as Form 2. The CONTRACTOR shall deliver to the COUNTY the Form of Final Receipt, Form 3, as attached hereto.

8.12 Before final payment, CONTRACTOR shall deliver to CPM a complete release of all liens arising out of this Agreement, or receipts in full in lieu thereof from all suppliers and Subcontractors, consent for Final Payment of Surety, the final corrected as-built drawings, a completed and final CBE Utilization Report, Form 9, and final invoice. COUNTY may withhold final payment under the same circumstances as set forth in this Section 8.6 Progress Payments hereof.

8.13 Except for the CONTRACTOR's Fee, the CONTRACTOR shall use the sums paid to it pursuant to this Article 8 solely for the purpose of performance of the Work and the construction, furnishing and equipping of the Work in accordance with the Contract Documents and payment of bills incurred by the CONTRACTOR in performance of the Work. Notwithstanding, CONTRACTOR recognizes it has separate contractual obligations to its laborers, subcontractors, and vendors, as well as, statutory obligations in accordance with Florida Statutes 255.05.

8.14 The CONTRACTOR shall promptly pay, in accordance with State Statute, all bills for labor and material performed and furnished by its Subcontractors, suppliers and material providers, in connection with the construction, furnishing and equipping of the Work and the performance of the Work.

8.15 If, after the Work has reached Substantial Completion, full completion thereof is materially delayed through no fault of CONTRACTOR, and CPM so certifies, COUNTY shall, upon certificate of CONSULTANT, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

8.16 Final payment shall be made only after the COUNTY's Director of Purchasing has reviewed a written evaluation of the performance of the CONTRACTOR, prepared by CPM and approved by CA, and Director of Purchasing has approved the final payment. The acceptance of final payment shall constitute a waiver of all claims by CONTRACTOR, except those previously made in strict accordance with the provisions of the Agreement and identified by CONTRACTOR as unsettled at the time of the application for final payment.

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ARTICLE 9 – CONTRACT PRICE ELEMENTS

9.1 The Contract Price elements are as follows as of CPEAM No. 018 and CO No. 01:

A. CONTRACTOR’s Direct Construction Cost (Exhibit 1) $ 62,233,202
B. CONTRACTOR’s General Conditions (Exhibit 2) $ 3,534,994
C. CONTRACTOR’s Management Services (Exhibit 3) $ 4,832,818
D. CONTRACTOR’s Fixed Fee, (not to exceed 4% of A+B+C+H+I+K)* $ 3,721,018
E. Document Completion Contingency $ 8,776,157
F. CONTRACTOR’s Construction Contingency (Including Early Work) $ 3,365,111
G. COUNTY’s Construction Contingency $ 3,026,978
H. CONTRACTOR’s Early Construction Work (Exhibits 16 & 17) $ 16,872,801
I. CONTRACTOR’s Early Construction General Conditions (Exhibit 13A) $ 4,628,680
J. COUNTY’S Early Work Contingency $ 2,592,668
K. CONTRACTOR’s Pre-Construction Services, including investigative work (MNTE)$ 1,768,192

= Guaranteed Maximum Price (GMP) $115,352,619

*Excluding Subcontracted Management Services
‡ Plus any fee on dollars paid from contingencies upon CA approval

9.2 CONTRACTOR’s Direct Construction Cost: The costs negotiated between the COUNTY and the CONTRACTOR for equipment, materials, labor, taxes and Subcontractors to complete the Work performed.

9.3 CONTRACTOR’s General Conditions: The costs associated with the CONTRACTOR’s obligation to provide the following, but not limited to: Bonds, Insurance (other than OCIP), on-site offices including equipment and supplies used directly for the Work that is not provided by the COUNTY; sanitary devices; water, vehicles and communications devices not provided by COUNTY and other direct costs as substantiated by the CONTRACTOR, for construction work following completion and permitting of the Contract Documents.

9.4 CONTRACTOR’s Management Services: The cost of professionals, superintendents, safety personnel and administrators employed by the CONTRACTOR to manage the quality, costs, schedule, Subcontractors and scope of the Work in order to successfully complete the Project as specifically set forth in Exhibit 3. If Management Services are subcontracted, no mark-ups shall be applied for these Management Services by the CONTRACTOR.

9.5 CONTRACTOR’s Fixed Fee: The CONTRACTOR’s Fixed Fee is the stated amount to be paid to CONTRACTOR for the services rendered to COUNTY pursuant to Section 9.1.D of this Agreement. The CONTRACTOR’s Fixed Fee shall not be increased by the distribution of the CONTRACTOR’s CONTINGENCY to other price elements within the GMP. The CA may consider increasing the Fixed Fee when the use of either the COUNTY’s Contingency or Document Completion Contingency increases the scope of the Work, through no fault of CONTRACTOR, for work unanticipated within the original GMP. All CA approved increases to the CONTRACTOR’s Fixed Fee shall be documented on the same Contract Price Element Adjustment Memorandum (CPEAM) prepared for the related transfer of COUNTY’s Contingency or Document Completion
Contingency funds to the other price elements. **Increases to the CONTRACTOR’s Fixed Fee shall be limited to 4%, as defined by Section 9.1.D.**

9.6 **Document Completion Contingency:** At the time of execution of this Agreement, the Contract Documents may not be complete. Therefore, it is understood that the sum shown in Section 9.1.E as the Document Completion Contingency is available to cover additional costs arising from differences between the Pricing Documents and the permitted documents or from building code interpretation disputes following the permitting of drawings from any Agency Having Jurisdiction. At Final Completion of the Project, any remaining monies in the Document Completion Contingency shall vest in the COUNTY.

9.7 **CONTRACTOR’s Construction Contingency:** An amount certain, set aside for the CONTRACTOR’s use against risks assumed in providing the GMP with uncertainties which are beyond the control of the CONTRACTOR. The contingency includes: bid results from vendors and suppliers due to changed market conditions, as measured against a relevant market index selected by the CA, and subject to the review and approval of the CA, increased General Condition costs directly attributed to CPEAMs issued under the Document Completion Contingency that do not alter the intent of the Design, or other conditions which result in an increase in Direct Construction Cost through no fault of the CONTRACTOR. The CONTRACTOR will be required to furnish documentation, to the satisfaction of the CA, evidencing the expenditures charged to this Contingency as a precondition to release of any funds by the COUNTY.

9.8 **COUNTY’s Construction Contingency:** These funds may be used to cover costs of additional elements of Work not included in the CONTRACTOR’s Construction Work, including but not limited to: COUNTY selected Subcontractors who are not the lowest responsive and responsible bidders for any portion of the work, COUNTY directed changes after permitting of the Work, differing site conditions, excusable delays as set forth in Section 7.6.2.2, post-hurricane Construction Directives, or errors and omissions in the Contract Documents. The CONTRACTOR shall not perform Work subject to the COUNTY’s Contingency Account without the Contract Administrator’s prior issuance of a CPEAM transferring such approved amounts to the CONTRACTOR’s Early Construction Work or other price element within the GMP.

9.9 **CONTRACTOR’s Early Construction Work:** The costs negotiated between the COUNTY and the CONTRACTOR for equipment, materials, labor, taxes and Subcontractors costs to complete certain portions of the Work which have been fully designed and permitted, prior to issuance of a building permit for GMP work.

9.10 **CONTRACTOR’s Early Construction General Conditions:** The costs associated with the CONTRACTOR’s obligation to provide the following, but not limited to: Bonds, Insurance, on-site offices, vehicles, communication devices, including equipment and supplies used directly for the early construction Work not otherwise provided by COUNTY, sanitary devices, water, and other direct costs as substantiated by the CONTRACTOR, for construction work prior to full completion and permitting of the work to be performed after approval of the GMP.

9.11 **COUNTY’s Early Work Contingency:** These funds may be used to cover costs of additional elements of Work not included in the CONTRACTOR’s Early Work, including but not limited to: Preconstruction Services or Early Investigative Work that was not contemplated, COUNTY directed changes after permitting of early Work,
CONTRACTOR's maintenance of utility services if the COUNTY occupies a portion of the Work earlier than scheduled, differing site conditions or errors and omissions in the Contract Documents. The CONTRACTOR shall not perform Work subject to the COUNTY's Contingency Account without the Contract Administrator's prior issuance of a CPEAM transferring such approved amounts to the CONTRACTOR's Early Construction Work or other price element within the GMP.

9.12 CONTRACTOR's Preconstruction Services: The costs associated with the CONTRACTOR's assistance to refine details of the Consultant's design and completion of the Pricing Documents. Such assistance includes, but is not limited to: constructability review, estimating, scheduling, value engineering, design gap analysis, sequencing or phasing the work, preconstruction investigation services, and General Conditions per Exhibit 14 and Exhibit 15. The CONTRACTOR must provide a report in accordance with the requirements of Division 1 Specifications, of such assistance, identifying specific recommendations and sources thereof or reason therefore, provided to the satisfaction of the CA, as a precondition of receiving payments for the services.

9.13 Contingency Accounts contain no fee, however a fee may be paid to the CONTRACTOR through the Contingency. Such fee will be paid at the CA's discretion. When provided, a fee will be paid to the appropriate CONTRACTOR's line item by a CPEAM.


ARTICLE 10 - DISCOUNTS, REBATES AND REFUNDS

All cash discounts obtained on payments made by the CONTRACTOR shall accrue to the COUNTY unless the CONTRACTOR actually advanced its own funds, prior to receipt of funds from COUNTY, to make the payment giving rise to the discount. When CONTRACTOR becomes aware that a cash discount may be available to COUNTY, CONTRACTOR shall, prior to advancing its own funds, notify CPM of such opportunity so COUNTY can make the required payment to achieve the discount for the COUNTY. CONTRACTOR shall only advance its own funds if CA declines to make the early payment. All trade discounts, rebates and refunds, including those pertaining to all returns from sale of surplus materials and equipment shall accrue to COUNTY, and CONTRACTOR shall make provisions so that they may be obtained.

ARTICLE 11 - SUBCONTRACTS AND PURCHASE ORDERS

Unless waived in writing by the CA, the CONTRACTOR must obtain competitive pricing and subcontract, in compliance with the requirements of this Article 11, for One Hundred Percent (100%) of the CONTRACTOR's Direct Construction Cost required under this Agreement. Subcontracts and purchase orders, involving amounts not in excess of Ten Thousand Dollars ($10,000) may be awarded without the prior approval of the CA, except that all Early Investigation Work requires approval of the CA. All other subcontracts and purchase orders shall be awarded according to the following procedure:

CM @ Risk Agreement R0787918R1
August 21, 2013
11.1 The CONTRACTOR shall prepare for CPM's and CA's review and approval a list of Subcontractors and suppliers for each bid who meet the CONTRACTOR's schedule of minimum requirements. The CONTRACTOR shall obtain bids from a minimum of three (3) such Subcontractors for each subcontract, when available. Otherwise, the CONTRACTOR shall provide documentation to the satisfaction of the OESBD demonstrating the circumstances where a minimum of three (3) Subcontractors are not available.

After receiving such bids, the CONTRACTOR shall analyze them and make recommendations to the CPM, PMO, and CA for awards. CONTRACTOR shall provide to the CPM, PMO, and CA a copy of each Subcontractor's bid sheet or tabulation and schedule of values including composition of payroll burdens and, when requested, any other documentation in its possession pertaining to such bids. When the CPM, PMO and CA have approved the award of any such subcontract or purchase order, the CONTRACTOR shall contract solely in its own name and behalf, and not in the name or behalf of the COUNTY, with the specified Subcontractor or supplier.

The CONTRACTOR's subcontract form shall provide: that the Subcontractor shall perform its portion of the Work in accordance with all provisions of this Agreement and the Contract Documents; that Subcontractor is bound to the CONTRACTOR to the same terms and conditions as the CONTRACTOR is bound to the COUNTY; and shall further provide that, in the event this Agreement is terminated for any reason, that the Subcontractor shall, at the COUNTY's option, perform its subcontract for the COUNTY, or for a contractor designated by the COUNTY, without additional or increased cost, provided the Subcontractor is paid in accordance with its subcontract. The CONTRACTOR shall sign and cause each Subcontractor to sign an Assignment of Rights under Construction Subcontract. Nothing contained herein shall impose on the COUNTY an obligation to assume any subcontract or make any payment to any Subcontractor to perform pursuant to this Section 11.1, and nothing contained herein shall create any contractual relationship between the COUNTY and any Subcontractor.

Costs incurred by COUNTY or CONTRACTOR due to CONTRACTOR's failure to incorporate the provisions of this Agreement into each Subcontractor's Agreement shall be the CONTRACTOR's responsibility, and at no additional costs to the COUNTY.

11.2 If the COUNTY, or CA, as applicable, shall designate as the selected Subcontractor or supplier a bidder whose bid exceeds that of the bidder recommended by the CONTRACTOR, whose bid complies with the Contract Documents (the amount by which the bid of the selected Subcontractor exceeds the bid of the bidder recommended by the CONTRACTOR is referred to herein as the preferred Subcontractor cost differential), then the CA may designate that the preferred Subcontractor cost differential shall be charged against any surplus amounts within the County's Contingency for Direct Cost or the GMP shall be increased by the amount of the preferred Subcontractor cost differential in accordance with the Change Order procedure in Article 7.

11.3 All subcontracts shall contain a schedule of values and labor rates including burden, overhead and profit, any other feasible formula for use in the determination of the cost of changes in the Work.
ARTICLE 12 - INSURANCE

12.1 COUNTY Provided Insurance. COUNTY will provide an Owner Controlled Insurance Program (OCIP) for the Project. The OCIP will be administered by Aon Risk Services of Florida, Inc. The OCIP is more fully described in the insurance manual (Insurance Manual), Exhibit 6 and the OCIP Safety and Loss Prevention Manual (Safety Manual), Exhibit 7, for the Project. Parties performing labor or services at the Project site are eligible to enroll in the OCIP, unless they are Excluded Parties (as defined below). The OCIP will provide to Enrolled Parties (as defined below) Workers' Compensation and Employer's Liability insurance, Commercial General Liability insurance, Excess Liability insurance, Builder's Risk insurance and Pollution Liability insurance as summarily described below, in connection with the performance of the Work (OCIP Coverages).

12.2 Enrolled Parties and Their Insurance Obligations. OCIP Coverages shall cover Enrolled Parties. Enrolled Parties are: the COUNTY, the OCIP Administrator, CONTRACTOR and eligible Subcontractors of all tiers that enroll in the OCIP, and such other persons or entities as CONTRACTOR may designate, in its sole discretion (each party insured under the OCIP is an "Enrolled Party.") Enrolled Parties shall obtain and maintain, and shall require each of its or their Subcontractors to obtain and maintain, the insurance coverage specified in Section 12.8, below, and in the Insurance Manual.

12.3 Excluded Parties and Their Insurance Obligations. The OCIP Coverages do not cover the following "Excluded Parties":
   (a) Hazardous materials remediation, removal or transport companies and their consultants;
   (b) Architects, surveyors, engineers, and soil testing engineers, and their consultants;
   (c) Vendors, suppliers, fabricators, material dealers, truckers, haulers, drivers and others who merely transport, pick up, deliver, or carry materials, personnel, parts or equipment, or any other items or persons delivering or hauling to or from the Project site only;
   (d) CONTRACTOR and each of its or their respective Subcontractors of all tiers that do not perform any actual labor on the Project site; and
   (e) Any parties as may be excluded by COUNTY in its sole discretion, even if they are otherwise eligible.

Excluded Parties and parties no longer enrolled in or covered by the OCIP shall obtain and maintain, and shall require each of its or their Subcontractors of all tiers to obtain and maintain, the insurance coverage specified in Section 12.8, below, and in the Insurance Manual for all on-site and off-site operations.

12.4 OCIP Insurance Policies Establish the OCIP Coverages. The OCIP Coverages and exclusions summarized in this Article 12 or in the Insurance Manual, attached hereto as Exhibit 6, are set forth in full in their respective insurance policies. The summary descriptions of the OCIP Coverages in this Article 12 or the Insurance Manual are not intended to be exhaustive, or to alter or amend any provision of the actual OCIP Coverages. In the event that any provision of this Article 12 or the Insurance Manual conflicts with the OCIP insurance policies, the provisions of the actual OCIP insurance policies shall govern.
12.5 Summary of OCIP Coverages. OCIP Coverages shall apply only to those operations of each Enrolled Party performed at the Project site in connection with the Work, and only to Enrolled Parties that are eligible for the OCIP. OCIP coverages shall not apply to ineligible parties, even if they are erroneously enrolled in the OCIP. An Enrolled Party’s operations away from the Project site, including product manufacturing, assembling, or otherwise, shall only be covered if such off-site operations are identified and are dedicated solely to the Project. OCIP Coverages shall not cover off-site operations until receipt by CONTRACTOR or its Subcontractor of any tier of written acknowledgment of such coverage from the OCIP Administrator. The OCIP shall provide only the following insurance to eligible and Enrolled Parties:

Summary Only – See the OCIP Manual for Detail

12.5.1 Workers’ Compensation insurance at the Statutory Limit in compliance with the Workers Compensation Law of the State of Florida, and in compliance with all federal laws, including U.S. Longshoremen & Harbor Workers Act, and Jones Act coverage, where appropriate.

This insurance is primary for all occurrences at the Project site.

12.5.2 Employer’s Liability Insurance with the following limits:

<table>
<thead>
<tr>
<th>Type of Injury</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bodily Injury by Accident, each accident</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Bodily Injury by Disease, each employee</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Bodily Injury by Disease, policy limit</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

This insurance is primary for all occurrences at the Project site.

12.5.3 Commercial General Liability Insurance provided on ISO Occurrence Form, or its equivalent, with the following limits:

<table>
<thead>
<tr>
<th>Type of Loss</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Each Occurrence Limit</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>General Aggregate Limit for all Enrolled Parties</td>
<td>$4,000,000</td>
</tr>
<tr>
<td>Products &amp; Completed Operations Aggregate For all Enrolled Parties</td>
<td>$4,000,000</td>
</tr>
<tr>
<td>Ten (10) Years Products &amp; Completed Operations Extension</td>
<td></td>
</tr>
</tbody>
</table>

This insurance is primary for all occurrences at the Project site.

12.5.4 Excess Liability Insurance (over Employer’s Liability & General Liability), with the following limits:

<table>
<thead>
<tr>
<th>Type of Loss</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Combined Single Limit</td>
<td>$200,000,000</td>
</tr>
<tr>
<td>General Annual Aggregate for all Enrolled Parties</td>
<td>$200,000,000</td>
</tr>
<tr>
<td>Products &amp; Completed Operations Aggregate For all Enrolled Parties</td>
<td>$200,000,000</td>
</tr>
<tr>
<td>Ten (10) Years Products &amp; Completed Operations Extension</td>
<td></td>
</tr>
</tbody>
</table>

12.5.5 COUNTY shall obtain and maintain Builder’s Risk insurance for the Project, providing coverage for all risks of direct physical loss or damage including flood, earthquake, and named windstorm, as more fully described in the original policy wording. CONTRACTOR, and all Subcontractors of every tier performing a
portion of the Work on the Project shall be additional insureds under the Builder’s Risk insurance, as their respective interests appear. The Builder’s Risk insurance will provide for property in the course of construction, including offsite storage, transit, buildings, structures, fixtures, materials, foundations, machinery and equipment and cold testing, all as more fully described in the original policy wording. The Builder’s Risk insurance will provide a minimum limit of liability in the amount of the contract price for the amount of the Early Work and GMP to cover losses for physical damage and loss per project, subject to additional sub-limits as set forth in the original policy wording. CONTRACTOR shall be responsible for all deductibles under the Builder’s Risk insurance up to $25,000 per occurrence.

12.5.6 COUNTY shall obtain and maintain Contractor’s Pollution Liability (CPL) insurance, providing coverage for claims for bodily injury, property damage, clean-up costs, and related legal defense expense for pollution conditions that result from, or are disrupted by, the services rendered in performance of the contract by or on behalf of CONTRACTOR or any Subcontractor. Coverage will include extensions for transportation and disposal, will include full severability of interests, and will not be restricted by any time element limitations, mold, asbestos, or lead based paint exclusions. Coverage will apply to pollution conditions on, at, under, or migrating from the Project site. CONTRACTOR shall be responsible for all deductibles under the CPL insurance up to $50,000 per occurrence. The CPL insurance shall have the following limits:

| Each Loss | $200,000,000 |
| Aggregate | $200,000,000 |

12.6 COUNTY’S Obligations. COUNTY shall pay the costs of premiums for the OCIP Coverages. COUNTY will receive or pay, as the case may be, all adjustments to such costs, whether by way of dividends, retroactive adjustments, return premiums, other moneys due, audits or otherwise. CONTRACTOR hereby assigns to COUNTY the right to receive all such adjustments, and shall require each of its Subcontractors of every tier to assign to COUNTY the right to receive all such adjustments. COUNTY assumes no obligation to provide insurance other than that specified in Section 12.5, and in the OCIP insurance policies. COUNTY’S furnishing of OCIP Coverage’s shall in no way relieve or limit, or be construed to relieve or limit, CONTRACTOR or any of its Subcontractors of any responsibility, liability, or obligation imposed by the Contract Documents, the OCIP insurance policies, or by law, including, without limitation, any indemnification obligations which CONTRACTOR or any of its Subcontractors have to COUNTY thereunder. COUNTY reserves the right at its option, without obligation to do so, to furnish other insurance coverage of various types and limits provided that such coverage is not less than that specified in the Contract Documents.

12.7 CONTRACTOR’S OCIP Obligations. CONTRACTOR shall:

12.7.1 Incorporate the terms of Article 12 of this Contract, concerning the OCIP, into all subcontract agreements.

12.7.2 Enroll in the OCIP within five (5) calendar days of execution of this Contract and maintain enrollment in the OCIP for the duration of the Contract, and assure that each of CONTRACTOR’S eligible Subcontractors of every tier enroll in the OCIP, and maintain enrollment in the OCIP for the duration of their respective
subcontract within five (5) calendar days of subcontracting and prior to the commencement of Work at the Project site.

12.7.3 Comply with all of the administrative, safety, insurance, and other requirements outlined in this Article 12, the Insurance Manual, the Safety Manual, the OCIP insurance policies, or elsewhere in the Contract Documents.

12.7.4 Provide to each of its Subcontractors of every tier a copy of the Insurance Manual, and ensure Subcontractor compliance with the provisions of the OCIP insurance policies, the Insurance Manual, this Article 12, and the Contract Documents. The failure of (a) COUNTY to include the Insurance Manual in the bid documents or (b) CONTRACTOR to provide to each of its eligible Subcontractors of every tier a copy of the same shall not relieve CONTRACTOR or any of its Subcontractors from any of the obligations contained therein.

12.7.5 Acknowledge, and require all of its Subcontractors of every tier to acknowledge, in writing, that COUNTY and the OCIP Administrator are not agents, partners or guarantors of the insurance companies providing coverage under the OCIP (each such insurer, an “OCIP Insurer”), that neither COUNTY nor the OCIP Administrator are responsible for any claims or disputes between or among CONTRACTOR, its Subcontractors of any tier, and any OCIP Insurer(s), and that neither COUNTY nor OCIP Administrator guarantees the solvency or the availability of limits of any OCIP Insurer(s). Any type of insurance coverage or limits of liability in addition to the OCIP Coverage’s that CONTRACTOR or its Subcontractors require for its or their own protection, or that is required by applicable laws or regulations, shall be CONTRACTOR’S or its Subcontractors’ sole responsibility and expense, and shall not be billed to COUNTY.

12.7.6 Cooperate fully with the OCIP Administrator and the OCIP Insurers, as applicable, in the administration of the OCIP.

12.7.7 Provide, within five (5) calendar days of COUNTY’S or the OCIP Administrator’s request, all documents or information requested of CONTRACTOR or its Subcontractors relating to eligibility for, enrollment in, or administration of the OCIP. Such information may include, but may not be limited to, payroll records, certified copies of insurance coverage’s, declaration pages of coverage’s, certificates of insurance, underwriting data, prior loss history information, safety records or history, OSHA citations, construction cost estimates for this Project, including auditable records of the calculation of the bid or Contract Price or any subcontract amount, pricing for each cost included in the bid or Contract Price or any subcontract amount, or such other data or information as COUNTY, the OCIP Administrator, or OCIP Insurers may request in the administration of the OCIP, to verify that the Costs of OCIP Coverages were not included in the Contract Price or any subcontract amount, or as required by the Insurance Manual. All such records shall be maintained through the term of the Contract and for a period of one (1) year thereafter.

12.7.8 Comply, and require all of its Subcontractors to comply with OCIP Administrator’s instructions for electronically or hand delivering the enrollment forms to the OCIP Administrator enrolling in the OCIP using “Aon Wrap” and for electronically reporting payroll using “AonWrap.”
12.7.9 Pay to COUNTY a sum of up to $5,000 for each occurrence, including court costs, attorneys' fees and costs of defense for bodily injury or property damage to the extent losses payable under the OCIP Commercial General Liability Policy are attributable to CONTRACTOR'S Work, acts, or omissions, the Work, acts, or omissions of any of CONTRACTOR'S Subcontractors, or the Work, acts or omissions of any other entity or party for whom CONTRACTOR or its Subcontractor may be responsible (General Liability Obligation). This General Liability Obligation shall remain uninsured by CONTRACTOR, and will not be covered by the OCIP Coverages.

12.8 Additional Insurance Required From Enrolled Parties and Excluded Parties. CONTRACTOR shall obtain and maintain, and shall require each of its Subcontractors of all tiers to obtain and maintain, the insurance coverages specified in this Section 12.8 in a form and from insurance companies reasonably acceptable to COUNTY unless an exception is approved by the CONTRACTOR and CA. However, in no case will the COUNTY reduce the $5,000,000.00 automobile liability requirement for airside operations. The insurance limits may be provided through a combination of primary and excess policies, including the umbrella form of policy. Each policy required under this Section 12.8, except the Workers' Compensation policy, shall name COUNTY, CONSULTANT, the OCIP Administrator, their respective officers, agents and employees, and any additional entities as COUNTY may request as additional insured's. The additional insured endorsement shall state that the coverage provided to the additional insured's is primary and non-contributory with respect to any other insurance available to the additional insured's. CONTRACTOR shall provide certificates of insurance coverage to COUNTY or the OCIP Administrator as required by the Insurance Manual. Enrolled Parties are to provide evidence of Worker's Compensation, Employer's Liability, General Liability, and Excess Liability insurance, as set out below, for off-site activities, and evidence of Automobile Liability insurance for all activities, both on-site and off-site. Excluded Parties must provide evidence of all insurance set out below for both on-site and off-site activities.

12.8.1 ENROLLED PARTIES AND EXCLUDED PARTIES, per Section 12.3 MUST PROVIDE AUTOMOBILE LIABILITY COVERAGE FOR ONSITE AND OFFSITE WORK

Standard Commercial Automobile Liability Insurance covering all owned, non-owned, and hired automobiles, trucks, and trailers with a combined single limit for NON AIRSIDE of not less than $1,000,000 for bodily injury, $1,000,000 for property damage, and with a $1,000,000 policy limit and for AIRSIDE not less than $5,000,000 for bodily injury, $5,000,000 for property damage and with a policy limit of $5,000,000.

12.8.2 EXCLUDED PARTIES, per Section 12.3, MUST PROVIDE WORKER'S COMPENSATION FOR ONSITE AND OFFSITE WORK

Workers' Compensation insurance at the Statutory Limit in compliance with the Workers Compensation Law of the State of Florida, and in compliance with all federal laws, including U.S. Longshoremen & Harbor Workers Act, and Jones Act coverage, where appropriate, and Employer's Liability insurance with limits of not less than $1,000,000 each accident, $1,000,000 each employee, and with a policy limit of $1,000,000.
12.8.3 EXCLUDED PARTIES, per Section 12.3, MUST PROVIDE GENERAL LIABILITY FOR ONSITE AND OFFSITE WORK

Commercial General Liability Insurance in a form providing coverage not less than the standard ISO Commercial General Liability insurance policy (Occurrence Form). The limits shall be:

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Each Occurrence</td>
<td>$1,000,000/$2,000,000</td>
</tr>
<tr>
<td>General Agggregate</td>
<td>$2,000,000/$4,000,000</td>
</tr>
<tr>
<td>Products/Completed Operations Agggregate</td>
<td>$2,000,000/$4,000,000</td>
</tr>
<tr>
<td>Personal/Advertising Injury Agggregate</td>
<td>$1,000,000/$2,000,000</td>
</tr>
<tr>
<td>Ten (10) Years Products/Completed Operations Extension</td>
<td>$2,000,000/$4,000,000</td>
</tr>
</tbody>
</table>

12.8.4 FOR APPLICABLE EXCLUDED PARTIES, per Section 12.3, MUST PROVIDE POLLUTION LIABILITY FOR ONSITE WORK

Contractor’s Pollution Liability insurance for Excluded Parties, with the following minimum limits:

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Combined Single Limit per Occurrence</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>General Annual Aggregate</td>
<td>$2,000,000</td>
</tr>
</tbody>
</table>

CONTRACTOR and CA will agree to actual amount of coverage which may exceed Two Million Dollars ($2,000,000) but in no case shall it be less than Two Million Dollars ($2,000,000).

If transporting hazardous waste/materials from the Project site, an appropriate MCS-90 Endorsement must be attached and supplied to COUNTY on a primary basis with limits of liability in the amount of $5,000,000.

12.8.5 For all policies provided under this Section 12.8, if the initial insurance expires prior to the completion of the work, renewal certificates of insurance shall be furnished at least thirty (30) days prior to the date of their expiration.

12.8.6 For all policies provided under this Section 12.8, the policy(ies) must be endorsed to provide COUNTY with at least thirty (30) calendar days notice of cancellation, restriction, or both.

12.8.7 CONTRACTOR shall furnish to the COUNTY, or the OCIP Administrator, Certificates of Insurance or endorsements evidencing the insurance coverage specified above within fifteen (15) calendar days after notification of award of the Contract, in the form acceptable to COUNTY. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Contract, and state that such insurance is as required by this Contract. The failure to provide the Certificate of Insurance within fifteen (15) calendar days shall be the basis for the rescission of the awarding contract. The official title of the certificate holder is Broward County Board of County Commissioners. This official title shall be used in all insurance documentation.
12.8.8 Right to revise or reject. Broward County's Risk Management Division reserves the right, but not the obligation, to review and revise any insurance requirements at the time of contract renewal or any amendments, not limited to deductibles, limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work/specifications affecting the applicability of coverage.

12.8.9 COUNTY is to be expressly included as an Additional Insured in the name of Broward County Board of County Commissioners with respect to general liability and excess liability coverages arising out of operations performed for COUNTY by or on behalf of CONTRACTOR or acts or omissions of CONTRACTOR in connection with general supervision of such operation. If CONTRACTOR uses a Subcontractor, then CONTRACTOR shall ensure that Subcontractor names COUNTY and CONSULTANT as an additional insured.

12.8.10 CONTRACTOR'S failure to procure or maintain the insurance required by this Section 12.8 and to ensure that all of its Subcontractors of every tier maintain the required insurance during the entire term of their respective contracts shall constitute a material breach of this Contract pursuant to which COUNTY may immediately suspend or terminate this Contract, or, at its discretion, procure or renew such insurance to protect COUNTY'S interests, pay any and all premiums in connection therewith, and withhold or recover all monies so paid from CONTRACTOR.


12.9.1 Representations and Warranties. CONTRACTOR represents and warrants to COUNTY, and shall require its Subcontractors of every tier represent and warrant to COUNTY that:

(a) All information they submit to COUNTY, or to the OCIP Administrator, shall be accurate and complete.

(b) They have had the opportunity to read and analyze copies of the OCIP insurance policies that are on file in OCIP Administrator's office, and they understand the OCIP Coverages. Any reference or summary in the Contract, this Article 12, the Insurance Manual, or elsewhere in any other Contract Document as to amount, nature, type or extent of OCIP Coverages or potential applicability to any potential claim or loss is for reference only. CONTRACTOR and its Subcontractors of all tiers have not relied upon said reference, but solely upon their own independent review and analysis of the OCIP Coverages in formulating any understanding or belief as to amount, nature, type or extent of any OCIP Coverages or its potential applicability to any potential claim or loss.

(c) The Costs of OCIP Coverages were not included in CONTRACTOR'S bid or proposal for the Work, the Contract Price, and will not be included in any change order or any request for payment for the Work or extra work.

(d) CONTRACTOR acknowledges that COUNTY shall not pay or compensate CONTRACTOR or any Subcontractor of any tier, in any manner, for the Costs of OCIP Coverages.
12.10 Audits. CONTRACTOR agrees that COUNTY, the OCIP Administrator, or any OCIP Insurer may audit CONTRACTOR'S or any of its Subcontractors' payroll records, books and records, insurance coverages, insurance cost information, bid estimates, or pricing for any cost in the Contract Price or any subcontracted Work, or any information that CONTRACTOR provides to COUNTY, the OCIP Administrator, or the OCIP Insurers to confirm their accuracy, and to ensure that the Costs of OCIP Coverage's are not included in any payment for the Work.

12.11 COUNTY'S Election to Modify or Discontinue the OCIP. COUNTY may, for any reason, modify the OCIP Coverage's, discontinue the OCIP, or request that CONTRACTOR or any of its Subcontractors of any tier withdraw from the OCIP upon thirty (30) calendar days written notice. Upon such notice CONTRACTOR, Subcontractor(s), or both, as specified by COUNTY in such notice, shall obtain and thereafter maintain during the performance of the Work, all (or a portion thereof as specified by COUNTY) of the OCIP Coverage's. The form, content, limits of liability, cost, and the insurer issuing such replacement insurance shall be subject to COUNTY'S approval. The cost of the replacement coverage shall be at COUNTY'S expense, but only to the extent of the applicable Costs of OCIP Coverage's.

12.12 Withholding Payments. COUNTY may withhold from any payment owed or owing to CONTRACTOR or its Subcontractors of any tier the Costs of OCIP Coverage's if they are included in a request for payment. In the event a COUNTY audit of CONTRACTOR'S records and information reveals a discrepancy in the insurance, payroll, safety, or any other information required by the Contract Documents to be provided by CONTRACTOR to COUNTY, or to the OCIP Administrator, or reveals the inclusion of the Cost of OCIP Coverage's in any payment for the Work, COUNTY shall have the right to full deduction from the Contract Price of all such Costs of OCIP Coverage's and all audit costs. Audit costs shall include, but shall not be limited to, the fees of the OCIP Administrator, and the fees of attorneys and accountants conducting the audit and review. If the CONTRACTOR or its Subcontractors fail to timely comply with any provisions of this Contract concerning the OCIP, COUNTY may withhold any payments due to CONTRACTOR, its Subcontractor(s) of any tier, or both, until such time as they have complied. Such withholding by COUNTY shall not be deemed to be a default under the Contract Documents.

12.13 Waiver of Subrogation. Where permitted by law, CONTRACTOR hereby waives all rights of recovery by subrogation because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason against COUNTY, the OCIP Administrator, their officers, agents, or employees, and any other contractor or Subcontractor performing Work or rendering services on behalf of COUNTY in connection with the planning, development and construction of the Project. COUNTY also requires that all CONTRACTOR maintained insurance coverage related to the Work include clauses providing that each insurer shall waive all of its rights of recovery by subrogation against CONTRACTOR, COUNTY, the OCIP Administrator, and their officers, agents, or employees. Where permitted by law, CONTRACTOR shall require similar written express waivers and insurance clauses from each of its Subcontractors. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.
12.14 Duty of Care. Nothing contained in this Article 12, or the Insurance Manual shall relieve the CONTRACTOR or any of its Subcontractors of any tier of their respective obligations to exercise due care in the performance of their duties in connection with the Work, and to complete the Work in strict compliance with the Contract Documents.

12.15 Conflicts. In the event of a conflict, the provisions of the OCIP insurance policies shall govern then the provisions of the Contract and its other related Contact Documents, then the provisions of the Insurance Manual.

12.16 Upon selection by the Selection/Negotiating Committee or as otherwise required by this Agreement, the CONTRACTOR shall furnish to the CA, Certificates of Insurance evidencing the insurance coverage specified by this Article 12. Required Certificates of Insurance shall name the types of policies certified.

12.17 Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required of CONTRACTOR is completed. All policies must be endorsed to provide COUNTY with at least thirty (30) calendar days notice of cancellation, restriction or both. If any of the insurance coverage's will expire prior to the completion of the Project, copies of renewal certificates shall be furnished at least thirty (30) calendar days prior to the date of their expiration.

12.18 Insurance Requirements for Vendors, Suppliers, Material Providers, and Haulers. CONTRACTOR shall insure that all vendors, suppliers, material providers and haulers (Vendors), prior to entering the Project site, have the following insurance coverage's:

12.18.1 Business Automobile Liability. Business automobile liability with minimum limits of Five Hundred Thousand Dollars ($500,000) per occurrence combined single limit for bodily injury liability and property damage liability and for airside not less than $5,000,000 for bodily injury, $5,000,000 for property damage and with a $5,000,000 policy limit. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include Owned Vehicles and Hired and Non-Owned Vehicles.

12.18.2 Workers' Compensation. Workers' Compensation and Employer's Liability insurance for operations for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws.

12.18.3 Commercial General Liability Insurance. Commercial General Liability insurance for premises and operations including product liability for any product manufactured, assembled or otherwise worked upon away from the Project site, in a form providing coverage no more restrictive that the Standard Commercial General Liability insurance policy (Occurrence Form). Such policy shall be in the minimum amount of Five Hundred Thousand Dollars ($500,000) per occurrence bodily injury and property damage liability and if airside, One Million Dollars ($1,000,000) per occurrence bodily injury and property damage liability.
ARTICLE 13 - INDEMNIFICATION

CONTRACTOR shall indemnify and hold harmless COUNTY, its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of CONTRACTOR and persons employed or utilized by CONTRACTOR in the performance of this Agreement. To the extent considered necessary by Contract Administrator and County Attorney, any sums due CONTRACTOR under this agreement may be retained by COUNTY until all of COUNTY’s claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by COUNTY. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement.

Mutual Waiver of Consequential Damages: CONTRACTOR and COUNTY expressly waive claims against each other for consequential damages arising out of or relating to this Agreement. Provided, however, nothing in this Agreement shall be deemed to preclude the application of liquidated damages, when applicable, in accordance with the provisions of this Agreement.

ARTICLE 14 - PERFORMANCE AND PAYMENT BOND AND QUALIFICATIONS OF SURETY

14.1 Within five (5) business days of being notified of the award of this Agreement, CONTRACTOR shall furnish a Performance Bond and a Payment Bond containing all the provisions of the Performance Bond and Payment Bond attached hereto as Forms 4 and 5, respectively.

14.1.1 Each Bond shall be in the amount of one hundred percent (100%) of the GMP guaranteeing to COUNTY the completion and performance of the Work covered in such Agreement as well as full payment of all suppliers, material providers, laborers, or Subcontractors employed pursuant to this Project. Each Bond shall be with a surety company which is qualified pursuant to Section 14.2.

14.1.2 Each Bond shall continue in effect for one (1) year after Final Completion and acceptance of the Work with liability equal to one hundred percent (100%) of the amount indicated in Section 14.1.1, or an additional bond shall be conditioned that CONTRACTOR will, upon notification by COUNTY, correct any defective or faulty work or materials which appear within one (1) year after Final Completion of the Agreement. However, nothing herein is intended to shorten the applicable statute of limitations provided for in Florida Statutes.

14.1.3 Pursuant to the requirements of Section 255.05(1)(a), Florida Statutes, as may be amended from time to time, CONTRACTOR shall ensure that the bond(s) referenced above shall be recorded in the public records of Broward County and provide COUNTY with evidence of such recording.

14.1.4 Alternate form of Security: In lieu of a Performance Bond and a Payment Bond, CONTRACTOR may furnish alternate forms of security which may be in the form of cash, money order, certified check, cashier's check. Such alternate forms of security shall be subject to the approval of COUNTY and for same purpose and
shall be subject to the same conditions as those applicable above and shall be held by COUNTY for one (1) year after completion and acceptance of the Work.

14.2 Qualifications of Surety:

14.2.1 Each bond must be executed by a surety company of recognized standing, authorized to do business in the State of Florida as surety, having a resident agent in the State of Florida and having been in business with a record of successful continuous operation for at least five (5) years.

14.2.2 The surety company shall hold a current certificate of authority as acceptable surety on federal bonds in accordance with United States Department of Treasury Circular 570, Current Revisions. If the amount of the Bond exceeds the underwriting limitation set forth in the circular, in order to qualify, the net retention of the surety company shall not exceed the underwriting limitation in the circular, and the excess risks must be protected by coinsurance, reinsurance, or other methods in accordance with Treasury Circular 297, revised September 1, 1978 (31 DFR Section 223.10, Section 223.111). Further, the surety company shall provide COUNTY with evidence satisfactory to COUNTY, that such excess risk has been protected in an acceptable manner.

14.2.3 The COUNTY will accept a surety bond from a company as shown on the chart below provided, however, that if any surety company appears on the watch list that is published quarterly by Intercom of the Office of the Florida Insurance Commissioner, the COUNTY shall review and either accept or reject the surety company based on the financial information available to the COUNTY. A surety company that is rejected by the COUNTY may be substituted with a surety company acceptable to the COUNTY, only if the GMP amount does not increase. The following sets forth, in general, the acceptable parameters for bonds:

<table>
<thead>
<tr>
<th>Amount of Bond</th>
<th>Policy Holder's Ratings</th>
<th>Financial Size Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>500,001 to 1,000,000</td>
<td>A-</td>
<td>Class I</td>
</tr>
<tr>
<td>1,000,001 to 2,000,000</td>
<td>A-</td>
<td>Class II</td>
</tr>
<tr>
<td>2,000,001 to 5,000,000</td>
<td>A</td>
<td>Class III</td>
</tr>
<tr>
<td>5,000,001 to 10,000,000</td>
<td>A</td>
<td>Class IV</td>
</tr>
<tr>
<td>10,000,001 to 25,000,000</td>
<td>A</td>
<td>Class V</td>
</tr>
<tr>
<td>25,000,001 to 50,000,000</td>
<td>A</td>
<td>Class VI</td>
</tr>
<tr>
<td>50,000,001 or more</td>
<td>A</td>
<td>Class VII</td>
</tr>
</tbody>
</table>

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ARTICLE 15 - INDEPENDENT CONTRACTOR

In performing its obligations hereunder, the CONTRACTOR shall be deemed an independent contractor and not an agent or employee of the COUNTY. The CONTRACTOR shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement, unless the Contract Documents give other specific instructions concerning these matters.

ARTICLE 16 - PROJECT RECORDS

16.1 Project Records: COUNTY or its designee shall have the right to inspect and copy the books and records and accounts of CONTRACTOR and all Subcontractors including but not limited to books, records, correspondence, instructions, drawings, receipts, payment records, vouchers, and memoranda which relate in any way to the Project, and to any claim for additional compensation made by CONTRACTOR, and to conduct an audit of the financial and accounting records of CONTRACTOR which relate to the Project and to any claim for additional compensation made by CONTRACTOR. CONTRACTOR shall preserve and make available to COUNTY all financial records, supporting documents, statistical records and any other documents which relate to the Project and to any claim for the required retention period of the Florida Public Records Act (Chapter 119, Fla. Stat.), if applicable, and, if the Public Records Act is not applicable, for a period of three (3) years following Final Completion of the Project. During the Project and for the appropriate records retention period, CONTRACTOR shall provide COUNTY access to its books and records at CONTRACTOR's usual place of business within Broward County upon seventy-two (72) hours written notice. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records and accounts shall be retained until resolution of the audit findings. CONTRACTOR shall be required to produce all records within Broward County for review by COUNTY. If the Florida Public Records Act (Chapter 119, Fla. Stat.) is determined by COUNTY to be applicable to CONTRACTOR's records, CONTRACTOR shall comply with all requirements thereof. Any incomplete or incorrect entry in such books, records and accounts shall be a basis for COUNTY’s disallowance and recovery of any payment upon such entry.

16.1.1 CONTRACTOR's records shall include, but not be limited to accounting records (hard copy, as well as computer readable data), written policies and procedures; Subcontractor files (including proposals of successful and unsuccessful bidders and bid recaps), surety files and bond company files, original estimates, estimating work sheets, correspondence, change order files (including, but not limited to, documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, all required documentation as outlined in the Owner Controlled Insurance Program (OCIP) Safety and loss Prevention Manual and the OCIP Insurance Manual as attached hereto as Exhibit 6 and Exhibit 7 respectively, and any other supporting evidence deemed necessary by the COUNTY to substantiate charges related to this Agreement (all of the foregoing hereinafter referred to as records).

16.1.2 CONTRACTOR shall require all Subcontractors, insurance agents and material suppliers (payees) to keep and maintain comparable records for the same time period and to permit the COUNTY to review, inspect and audit such records.
CONTRACTOR shall include such requirements in all written subcontracts and purchase orders issued.

16.2 If an audit inspection or other examination by the COUNTY or the COUNTY's representatives in accordance with this Article, discloses overcharges, of any nature in the amount of $25,000.00 or more, by the CONTRACTOR to the COUNTY, the cost of the COUNTY's audit (whether performed by the COUNTY or outside auditors) shall be reimbursed or paid to the COUNTY by the CONTRACTOR. Any adjustments, payments, or both which must be made as a result of any such audit, inspection or examination of the CONTRACTOR's invoices and records shall be made within a reasonable amount of time (not to exceed thirty (30) calendar days) from presentation of the COUNTY's findings to the CONTRACTOR.

16.3 By execution of the Agreement, CONTRACTOR represents, and COUNTY hereby materially relies on such representation in entering into this Agreement, that CONTRACTOR has not been placed on the discriminatory vendor list, as provided in Section 287.134, Florida Statues, as it may be amended from time to time. An untrue representation of the foregoing shall entitle COUNTY to terminate this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

ARTICLE 17 - SURVEY

Unless otherwise required by the technical specifications (or, in absence of technical specification requirements concurrent with the Final Request for Payment), the CONTRACTOR shall furnish final surveys in electronic file, AUTOCAD utilizing National CAD Standards as designated by the Contract Administrator, in addition to three (3) sets of hard copy, showing the exact locations of all structures and underground site utilities installed by CONTRACTOR, including all water, sewer, gas, fuel, telephone, security and electric lines and main, and locations of all easements for such utilities then existing. Such surveys shall be prepared by a licensed Florida surveyor who shall certify that the Work is installed and erected entirely upon the Project Site and within the building restriction lines, if any, and does not overhang or encroach upon any easement or right-of-way of others. CONTRACTOR must provide said survey prior to payment of final retainage by COUNTY.
ARTICLE 18 - CONTRACTOR'S RESPONSIBILITY FOR THE WORK

All the following shall be included in the GMP:

18.1 CONTRACTOR shall accept full responsibility for the Work against all loss or damage of whatsoever nature sustained until Final Completion by COUNTY, and shall promptly repair any damage done from any cause whatsoever. Provided that this Section is not intended to preclude, or in any way limit the right of the CONTRACTOR to assert its rights, submit a claim, or seek recovery under any applicable policy of insurance, including but not limited the OCIP coverage's.

18.2 CONTRACTOR shall be responsible for all materials, equipment and supplies pertaining to the Project whether or not stored on site. In the event any such materials, equipment and supplies are lost, stolen, damaged or destroyed prior to Final Completion by COUNTY, CONTRACTOR shall replace same without cost to COUNTY. CONTRACTOR shall be responsible to protect all materials, equipment and supplies, keeping them free from deterioration, weathering, rusting or other action detrimental to the materials. Materials stored off site shall be at no additional cost to the County. Provided that this Section is not intended to preclude, or in any way limit the right of the CONTRACTOR to assert its rights, submit a claim, or seek recovery under any applicable policy of insurance, including but not limited the OCIP coverage's.

18.3 COUNTY reserves the right to award other contracts in connection with this Project. CONTRACTOR shall afford other persons or contractors reasonable opportunity for the introduction and storage of materials and the execution of work under such separate contracts. CONTRACTOR shall properly connect and coordinate this Work with the work of any other persons or contractors that might contract separately with COUNTY.

18.4 If any part of CONTRACTOR's Work depends upon the proper execution or results of the work of any other persons, CONTRACTOR shall inspect and promptly report to CPM any defects in such work that render it unsuitable for such proper execution and results. CONTRACTOR's failure to so inspect and promptly report shall constitute an acceptance of the other person's work as fit and proper for the reception of CONTRACTOR's Work, except as to defects which may develop in other contractor's work after the execution of CONTRACTOR's Work.

18.5 CONTRACTOR shall conduct its operations and take all prudent steps to coordinate the prosecution of the Work so as to create no interference or impact on any other contractor on the site. Should such interference or impact occur, and the CONTRACTOR did not take prudent steps, the CONTRACTOR shall be liable to the affected contractor for the cost of such interference or impact.

18.6 To insure the proper execution of subsequent work, CONTRACTOR shall inspect the work already in place and shall at once report to CPM any discrepancy between the executed work and the requirements of the Contract Documents.

18.7 Contractor shall, at the COUNTY's option, maintain HVAC systems, electrical equipment and water/sewer services for the entire work, even if the COUNTY occupies any part of the Work. If the COUNTY occupies any portion of the Work prior to the anticipated time, based on the Baseline Schedule, the CONTRACTOR shall be compensated for that portion of maintenance applicable to the utility serving the area occupied by the
COUNTY. The compensation shall be made by transferring funds from the COUNTY’s Contingency to the CONTRACTOR’s General Conditions by method of CPEAM.

18.8 Contractor shall follow all of the requirements, and be responsible for all the requirements in Exhibit 8, Division 1 Specifications.

ARTICLE 19 - OCCUPATIONAL HEALTH AND SAFETY

19.1 In compliance with Chapter 442, Florida Statutes, any toxic substance listed in Section 38F-41.03, Florida Administrative Code, delivered as a result of this Project must be accompanied by a Material Safety Data Sheet (MSDS) which may be obtained from the manufacturer. The MSDS must include the following information:

19.1.1 The chemical name and the common name of the toxic substance.

19.1.2 The hazards or other risks in the use of the toxic substance, including:

   (1) The potential for fire, explosion, corrosion, and reaction;

   (2) The known acute and chronic health effects of risks from exposure, including the medical conditions which are generally recognized as being aggravated by exposure to the toxic substance; and

   (3) The primary routes of entry and symptoms of overexposure.

19.1.3 The proper precautions, handling practices, necessary personal protective equipment, and other safety precautions in the use of or exposure to the toxic substances, including appropriate emergency treatment in case of overexposure.

19.1.4 The emergency procedure for spills, fire, disposal, and first aid.

19.1.5 A description in lay terms of the known specific potential health risks posed by the toxic substance intended to alert any person reading this information.

19.1.6 The year and month, if available, that the information was compiled and the name, address, and emergency telephone number of the manufacturer responsible for preparing the information.

19.2 The CONTRACTOR agrees that it shall not transport to, use, generate, dispose of, or install at the Project site any Hazardous Substance, (as defined in Section 19.5), except in accordance with applicable Environmental Laws. Further, in performing the work, the CONTRACTOR shall not cause any release of hazardous substances into, or contamination of, the environment, including the soil, the atmosphere, any water course or ground water, except in accordance with applicable Environmental Laws. At Final Completion of the Work, the CONTRACTOR must provide an Environmental Indemnification Certificate, indemnifying the COUNTY for all claims, actions, or suits resulting from the handling, transport, generation, disposal of any Hazardous Substance as a precondition to the full release of retainage. Such indemnification statement must meet the approval of the CA.
19.2.1 Disposal of Hazardous Substances: Contractor shall prepare all documentation necessary to demonstrate that Federal, State, and local codes, statutes and laws are complied with for the transportation and disposal of hazardous materials. Such documentation must be delivered to the CPM as a pre-condition for payment.

19.3 In the event the CONTRACTOR encounters on the Project site any Hazardous Substance, or what the CONTRACTOR reasonably believes to be a Hazardous Substance, and which is being introduced to the Work, or exists on the Project Location, in violation of any applicable Environmental Laws, the CONTRACTOR shall immediately stop work in the area affected and report the condition to the CPM and CA in writing. The Work in the affected area shall not thereafter be resumed except by written authorization of the CPM and CA if in fact a Hazardous Substance has been encountered and has not been rendered harmless.

19.4 The CA through the CPM may direct the CONTRACTOR by utilization of COUNTY's Contingency Account funds to remediate the Hazardous Substance in accordance with any applicable permits then in existence, but the CONTRACTOR shall not be required to remediate the Hazardous Substance absent such direction. If the CONTRACTOR is not so directed, CONTRACTOR shall not be required to resume work in any area affected by the Hazardous Substance until such time as the Hazardous Substance has been remediated.

19.5 For purposes of this Agreement, the term "Hazardous Substance" shall mean and include, but shall not be limited to, any element, constituent, chemical, substance, compound or mixture, which are defined in or included under or regulated by any local, state or federal law, rule, ordinance, by-law, or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), The Resource Conservation and Recovery Act (RCRA), The Toxic Substances Control Act (TSCA), The Clean Water Act (CWA), The Clean Air Act (CAA), and The Marine Protection Research and Sanctuaries Act (MPRSA), The Occupational Safety and Health Act (OSHA), The Superfund Amendments and Reauthorization Act of 1986 (SARA), or other state superlien or environmental clean-up or disclosure statutes including all state and local counterparts of such laws (all such laws, rules and regulations being referred to collectively as Environmental Laws). It is the CONTRACTOR's responsibility to comply with this Article 19 based on the law in effect at the time its services are rendered and to comply with any amendments to those laws for all services rendered after the effective date of any such amendments.

19.6 Safety and Protection:

19.6.1 CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

19.6.1.1 All employees and Subcontractors on the work site and other persons who may be affected thereby;
19.6.1.2 All the work and all materials or equipment to be incorporated therein, whether in storage on or off the Project site;

19.6.1.3 Other property at the Project site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and

19.6.1.4 Aircraft, people, and vehicles through a Maintenance of Traffic (MOT) plan.

19.6.2 CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and utilities when prosecution of the work may affect them. All damage, injury or loss to any property referred to in Sections 19.6.1.3 and 19.6.1.4 above, caused directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR. CONTRACTOR's duties and responsibilities for the safety and protection of the work shall continue until such time as all the Work is completed and PMO has issued a notice to COUNTY and CONTRACTOR that the Work is acceptable except as otherwise provided in Article 6.5 hereof. Provided that this Section is not intended to preclude, or in any way limit the right of the CONTRACTOR to assert its rights, submit a claim, or seek recovery under any applicable policy of insurance, including but not limited the OCIP coverage's.

19.6.3 CONTRACTOR shall designate a responsible member of its organization at the Work site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR'S project manager unless otherwise designated in writing by CONTRACTOR to COUNTY. This person shall work with the Owner Controlled Insurance Program (OCIP) Safety Director and his/her designated staff.

19.6.4 Contractor shall establish weekly Toolbox talks with employees to review safe work requirements. Such talks shall be documented and all participants shall sign a sign-in sheet to verify attendance. Refer to the OCIP Safety Manual, Exhibit 7, for additional information on Toolbox talks.

19.6.5 The Contractor shall prepare a Hazard Safety Analysis report for construction activities that are inherently dangerous to workers or property. Such activities include, but are not limited to, excavation, crane lifts, hot cutting or welding, working on scaffolding or ladders, and erection of steel or precast concrete structures. Such report shall describe the activities, workers involved, equipment required, work areas and hazards associated with the work. Such report shall identify the precautions the Contractor and its Subcontractors will use to perform the work in a safe manner, and shall list contact names and telephone numbers for Contractor's site superintendent and safety officer.

19.6.6 Notwithstanding the foregoing, CONTRACTOR shall comply with the OCIP Safety and Loss Prevention Manual attached hereto as Exhibit 7. In the event of
ARTICLE 20 - PERMITS, LICENSES AND IMPACT FEES

20.1 Pursuant to the Public Bid Disclosure Act, EACH LICENSE, PERMIT OR FEE A CONTRACTOR WILL HAVE TO PAY THE COUNTY BEFORE OR DURING CONSTRUCTION OR THE PERCENTAGE METHOD OR UNIT METHOD OF ALL LICENSES, PERMITS AND FEES REQUIRED BY THE COUNTY AND PAYABLE TO THE COUNTY BY VIRTUE OF THIS CONSTRUCTION AS PART OF THE AGREEMENT ARE AS FOLLOWS:

Occupational Licenses must be in effect as required by Florida Statutes 205.065, and must be submitted within fifteen (15) calendar days of execution of this Agreement.

Licenses, permits and fees which may be required by the State of Florida, State Agencies or by other local governmental entities are not included in the above.

20.2 Except as otherwise provided by the Contract Documents, all permits required by federal, state or local laws, rules and regulations necessary for the prosecution of the Work undertaken by CONTRACTOR pursuant to this Agreement shall be secured and paid for by COUNTY. It is CONTRACTOR's responsibility to have and maintain appropriate Certificate(s) of Competency, valid for the Work to be performed and valid for the jurisdiction in which the Work is to be performed for all persons working on the Project for whom a Certificate of Competency is required.

20.3 Impact fees levied by any municipality shall be paid by COUNTY.

20.4 The CONTRACTOR shall notify the CPM in writing of all conflicts between the Contract Documents and any laws, ordinances, rules, regulations and restrictions that come to the attention of the CONTRACTOR. If the CONTRACTOR performs any of the Work knowing it to be contrary to any such laws, ordinances, rules, regulations or restrictions and fails to give the CPM written notice thereof prior to performance thereof, the CONTRACTOR shall bear all costs, liabilities and expenses arising therefrom.

20.5 The CONTRACTOR shall be responsible for obtaining all necessary licenses, building and other permits, and similar authorizations from governmental authorities required or necessary to perform its obligations hereunder, and shall give all notices required by, and otherwise comply with, all applicable laws, ordinances, rules, regulations and restrictions.

ARTICLE 21 - PERSONNEL

21.1 All personnel used or employed by the CONTRACTOR in the performance of the Work shall be qualified by training and experience to perform their assigned tasks. At the request of the COUNTY or the CPM, the CONTRACTOR shall not use in the performance of the Work any personnel deemed by the COUNTY or the CPM to be incompetent, careless, unqualified to perform the work assigned to that person, or otherwise unsatisfactory to the COUNTY.
21.2 The CONTRACTOR agrees that in the performance of the Work called for by this Agreement, it will employ only such labor, and engage Subcontractors that employ only such labor, as will not delay or interfere with the speedy and lawful progress of the Project, and as will be acceptable to and work in harmony with all other workers employed on the Project site or on any other building, structure, or other improvement which the CONTRACTOR or any other contractor may then be erecting or altering on behalf of the COUNTY.

The CONTRACTOR agrees that it shall not employ any labor that will interfere with labor harmony at the Project site or with the introduction and storage of materials and the execution of work by other contractors or by Subcontractors.

21.3 CONTRACTOR shall furnish the CPM on request, resumes of CONTRACTOR's key and core personnel involved in the day-to-day Work on the Project. The key personnel shall include, but shall not be limited to, Project Executive, Project Manager, and Superintendent. Core employees shall include, but shall not be limited to, Chief Estimator and Scheduler.

ARTICLE 22 - CONTRACTOR'S WARRANTIES

CONTRACTOR warrants to COUNTY that all materials and equipment under this Agreement will be new unless otherwise specified and that all of the Work will be of good quality and workmanship, free from faults and defects and in complete conformance with the Contract Documents. All work not conforming to these requirements, including substitutions not properly approved and authorized by the Consultant, CA, CPM and PMO, may be considered defective. If required by CPM, CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Article 23 herein.

22.1 The CONTRACTOR further represents and warrants:

That it is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to perform this Agreement; that it is able to furnish the materials, and services; that it is experienced in and competent to perform the Work contemplated by this Agreement; and it is qualified to do the Work herein and is authorized to do business in the State of Florida.

That the CONTRACTOR holds a license, permit or other special license to perform the services included in this Agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license.

The CONTRACTOR agrees that the Work shall be performed in a good workmanlike and professional manner, free from defects in materials and execution, and that all Materials shall be new and approved by or acceptable to the PMO, CPM and Consultant, except as otherwise expressly provided for in the Contract Documents.

ARTICLE 23 - DEFECTIVE WORK

23.1 CPM or Consultant shall have the authority to reject or disapprove work which CPM or Consultant finds to be defective. Upon notice of defective Work, CPM or Consultant, through the CPM shall issue a non-conformance report. The CONTRACTOR shall promptly either correct all defective work or remove such defective work and replace it with non-defective work.
Said work requires the prior approval of the CA. CONTRACTOR shall pay all direct, indirect and consequential costs of such removal or corrections including cost of testing laboratories and personnel. All such costs shall be included in the CONTRACTOR's Direct Construction Cost, CONTRACTOR’s Contingency and CONTRACTOR’s General Conditions.

23.2 Should CONTRACTOR fail or refuse to remove or correct any defective work or to make any necessary repairs in accordance with the requirements of the Contract Documents within the time indicated in writing by CPM, CA shall have the authority to cause the defective work to be removed or corrected, or make such repairs as may be necessary at CONTRACTOR’s expense. Any expense incurred by COUNTY in making such removals, corrections or repairs, shall be paid for out of any monies due or which may become due to CONTRACTOR and deducted from the CONTRACTOR’s Direct Construction Cost, CONTRACTOR’s Contingency, and CONTRACTOR’s General Conditions by a deduction Change Order, or may be charged against the Performance Bond. In the event of failure of CONTRACTOR to make all necessary repairs promptly and fully, CA may declare a default.

23.3 If, within one (1) year after the date of Substantial Completion or such longer period of time as may be prescribed by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, CONTRACTOR, after receipt of written notice from CA, shall promptly correct such defective or nonconforming Work within the time specified by CA without cost to COUNTY, to do so. Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which CONTRACTOR might have under the Contract Documents including but not limited to, Article 22 herein and any claim regarding latent defects.

23.4 Failure to reject any defective work or material shall not in any way prevent later rejection when such defect is discovered, or obligate COUNTY to Final Completion.

23.5 The CONTRACTOR shall, to the CA’s satisfaction, (i) replace any part of the Work that fails to conform with the requirements of this Agreement that appear during progress of the Work on the Project; or (ii) remedy any defects in the Work due to faulty materials or workmanship which appear within a period of one (1) year from the time of Substantial Completion of the Work or portions thereof hereunder or within such longer period of time as may be set forth in the Contract Documents or as may be required by law; and (iii) replace, repair or restore any parts of the Project or furniture, fixtures, equipment or other items placed therein (whether by the COUNTY or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of this Agreement or are due to defects in the Work. The provisions of this Article 23 shall not apply to corrective work attributable solely to the acts of omissions of any separate contractor or Subcontractor of the COUNTY unless the CONTRACTOR is acting in such capacity or capacities. The cost to the CONTRACTOR of performing any of its obligations under this Article 23 shall be within the CONTRACTOR’s Direct Construction Cost, CONTRACTOR’s Contingency and CONTRACTOR’s General Conditions. The CONTRACTOR’s responsibility to make repairs and redo work under this Article 23, is in addition to the CONTRACTOR’s responsibility to the COUNTY for any other damages of any kind for which the CONTRACTOR would be legally responsible.

23.6 If the CA and the CONTRACTOR deem it inexpedient to require the correction of work damaged or not performed in accordance with the Contract Documents, an equitable deduction from the CONTRACTOR’s Direct Construction Cost, CONTRACTOR’s Contingency and CONTRACTOR’s General Conditions shall be made by agreement.
between the CONTRACTOR and the CA, or COUNTY as appropriate. Until such settlement, the CA may withhold such sums as the CA deems just and reasonable from monies, if any, due the CONTRACTOR. If no moneys are held by the COUNTY, reimbursement shall be made to the COUNTY within thirty (30) calendar days by the CONTRACTOR.

23.7 The CONTRACTOR’s express warranty herein shall be in addition to, and not in lieu of, any other warranties or remedies the COUNTY may have under this Agreement, at law, or in equity for defective Work.

ARTICLE 24 – SIGNAGE

24.1 Any requirements for project signs shall be as set forth within the Technical Specifications section. In the absence of such technical specification, CONTRACTOR shall coordinate with and provide Contract Administrator’s typical project sign including applicable Broward County color logo graphics and identification of BOARD, CONTRACTOR, PMO, CPM, Consultant, and other personnel at the direction of the CA.

24.2 All construction signage located at the Project Location, shall be subject to the prior written approval of the CPM and Contract Administrator. The CONTRACTOR recognizes that all signage may be disallowed, in the CPM’s and Contract Administrator’s sole discretion, and that existing signage or advertising on construction field offices, trailers, construction fences, and other construction elements or aids, may be required to be masked or deleted, all at no cost or expense to the COUNTY. Such signage will be considered an overhead expense pursuant to Section 8.4 and shall not be included within the Cost of the Work.

ARTICLE 25 – PUBLIC ENTITY CRIMES ACT

CONTRACTOR represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to COUNTY, may not submit a bid on a contract with COUNTY for the construction or repair of a public building or public work, may not submit bids on leases of real property to COUNTY, may not be awarded or perform work as a contractor, supplier, Subcontractor, or consultant under a contract with COUNTY, and may not transact any business with COUNTY in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from COUNTY’s competitive procurement activities.

In addition to the foregoing, CONTRACTOR further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a public entity crime and that it has not been formally charged with committing an act defined as a public entity crime regardless of the amount of money involved and regardless of whether CONTRACTOR has been placed on the convicted vendor list.
ARTICLE 26 - OWNERSHIP OF CONTRACT DOCUMENTS

Drawings, specifications, designs, models, photographs, reports, surveys, and other data submitted by the CONTRACTOR provided in connection with this Agreement are and shall remain the property of the COUNTY whether the Project for which they are made is completed or not. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by CONTRACTOR shall become the property of COUNTY and shall be delivered by CONTRACTOR to CA within seven (7) calendar days of termination of the Contract by either party. Any compensation due to CONTRACTOR shall be withheld until all documents are received as provided herein.

ARTICLE 27 - CONTRACTOR'S REPRESENTATIVE

The CONTRACTOR's representatives shall include, but is not limited to, the Project Manager and Principal in Charge, as provided in CONTRACTOR's response to RLIR0787918R1. The CONTRACTOR shall advise the CPM, in writing, of any limitations on the authority of CONTRACTOR's representative(s); otherwise, CONTRACTOR's representative(s) shall be considered to have full authority to execute any and all instruments requiring the CONTRACTOR's signature and to act on behalf of the CONTRACTOR with respect to all matters arising out of this Agreement.

ARTICLE 28 - COUNTY'S RIGHT TO TERMINATE AGREEMENT

28.1 If the CONTRACTOR fails to begin the Work within ten (10) calendar days after the Project Initiation Date; fails to perform the Work with sufficient workers and equipment or with sufficient materials to insure the prompt completion of the Work; performs the Work unsuitably, or causes it to be rejected as defective and unsuitable; discontinues the prosecution of the Work pursuant to the accepted schedule; fails to perform any material term set forth in the Contract Documents; becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency; makes an assignment for the benefit of creditors; or from any other cause whatsoever shall not carry on the Work in an acceptable manner, CA may give notice in writing to CONTRACTOR and its Surety of such delay, neglect or default, specifying the same.

If CONTRACTOR, within a period of ten (10) calendar days after such notice, shall not proceed in accordance therewith, then COUNTY may upon written certificate from the CPM of the fact of such delay, neglect or default and CONTRACTOR's failure to comply with such notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Project site and take the prosecution of the Work out of the hands of CONTRACTOR, and appropriate or use any or all materials and equipment that are an integral part of the Work on the Project site as may be suitable and acceptable. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Project is completed.

In addition COUNTY may enter into an agreement for the completion of the Project according to the terms and provisions of the Contract Documents, or use such other methods as in CA's sole opinion shall be required for the completion of the Project according to the terms and provisions of the Contract Documents, or use such other methods as in CA's sole opinion shall be required for the completion of the Project in an acceptable manner. All damages, costs and charges incurred by COUNTY, together with the costs of completing the Project, shall be deducted from any monies due or...
which may become due to CONTRACTOR. In case the damages and expenses so incurred by COUNTY shall exceed the unpaid balance, then CONTRACTOR shall be liable and shall pay to COUNTY the amount of said excess.

28.2 If after notice of termination of CONTRACTOR's right to proceed, it is determined for any reason that CONTRACTOR was not in default, the rights and obligations of COUNTY and CONTRACTOR shall be the same as if the notice of termination had been issued pursuant to the Termination for Convenience clause as set forth in Section 28.3 below.

28.3 This Agreement may be terminated for convenience in writing by the COUNTY upon ten (10) calendar days written notice to CONTRACTOR (delivered by certified mail, return receipt requested) of intent to terminate and the date on which such termination becomes effective. In such case, CONTRACTOR shall be paid for all work executed, including Management Services and General Conditions, prior to termination. Payment shall include reasonable profit for work and services performed up to the date of the notice of termination. No payment shall be made for profit for work and services that have not been performed.

28.4 Upon receipt of Notice of Termination pursuant to Sections 28.2 or 28.3 above, CONTRACTOR shall promptly discontinue all affected work unless the Notice of Termination directs otherwise and deliver or otherwise make available to COUNTY all data, drawings, specifications, reports, estimates, summaries and such other information as may have been required by the Contract Documents whether completed or in process.

28.5 This Agreement may also be terminated by the Board:

28.5.1 Upon the disqualification, by COUNTY's Director of the Broward County Office of Economic and Small Business Development (OESBD), of CONTRACTOR as a County Business Enterprise (CBE) if CONTRACTOR's status as CBE was a factor in the award of this Agreement and such status was misrepresented by CONTRACTOR;

28.5.2 Upon the disqualification by COUNTY's Director of OESBD of CONTRACTOR if CONTRACTOR obtained this Agreement or attempted to meet its CBE contractual obligations through fraud, misrepresentation, or material misstatement;

28.5.3 Upon the disqualification by COUNTY's Director of OESBD of one or more of CONTRACTOR's CBE participants if any such participant's status as a CBE was a factor in the award of this Agreement and such status was misrepresented by CONTRACTOR or such participant;

28.5.4 Upon the disqualification by COUNTY's Director of OESBD of one or more of CONTRACTOR's CBE participants if such CBE participant attempted to meet its CBE contractual obligations through fraud, misrepresentation, or material misstatement;

28.5.5 If CONTRACTOR is determined by COUNTY's Director of OESBD to have been knowingly involved in any fraud, misrepresentation, or material misstatement concerning the CBE status of its disqualified CBE participant. If so determined, CONTRACTOR shall not be awarded CBE participation credit.

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ARTICLE 29 - CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE AGREEMENT

If CPM fails to review and approve or state in writing reasons for rejection of any Application for Payment within twenty (20) calendar days after it is properly presented, or if COUNTY fails either to pay CONTRACTOR within thirty (30) calendar days after presentation by CPM of any sum certified by CPM, or to notify CONTRACTOR and CPM in writing of any objection to the Application for Payment, then CONTRACTOR may give written notice in accordance with Article 31 of such delay, neglect or default, specifying the same. If CA or CPM (where applicable), within a period of ten (10) calendar days after such notice shall not remedy the delay, neglect, or default upon which the notice is based, then CONTRACTOR may stop work or terminate this Agreement and recover from COUNTY payment for all work executed and reasonable expenses sustained therein plus reasonable termination expenses.

ARTICLE 30 - RESOLUTION OF DISPUTES

30.1 Questions, claims, difficulties and disputes of whatever nature which may arise relative to the technical interpretation of the Contract Documents and fulfillment of this Agreement as to the character, quality, amount and value of any work done and materials furnished, or proposed to be done or furnished under or, by reason of, the Contract Documents which cannot be resolved by mutual agreement of CPM and CONTRACTOR shall be submitted to CA in writing for resolution. When either party has determined that a disputed question, claim, difficulty or dispute is at an impasse that party shall notify the other party in writing and submit the question, claim, difficulty or dispute to the CA for resolution. The parties may agree to a proposed resolution at any time without the involvement and determination of the Contract Administrator.

30.2 CA shall notify PMO, CPM and CONTRACTOR in writing of CA's decision within twenty-one (21) calendar days from the date of the submission of the question, claim, difficulty or dispute, unless CA requires additional time to gather information or allow the parties to provide additional information. Contract Administrator's estimates and decisions upon all questions, claims, difficulties and disputes shall be final and binding to the extent provided in Section 30.5.

30.3 All non-technical administrative disputes (such as billing and payment and CBE reporting issues) shall be determined by the Contract Administrator.

30.4 During the pendency of any dispute and after a determination thereof, CONTRACTOR, CPM, Consultant, and CA shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction. During the pendency of any dispute arising under this Agreement, other than termination herein, the CONTRACTOR shall proceed diligently with performance of this Agreement and the COUNTY shall continue to make payments for undisputed amounts in accordance with the Contract Documents.

30.5 In the event the determination of a dispute by the CA under this Article is unacceptable to any of the parties hereto, the party objecting to the determination must notify the other party, the County Administrator or designee, in writing within ten (10) calendar days of receipt of the written determination. The notice must state the basis of the objection and the objecting party's proposed resolution. If notice is given by CONTRACTOR, it must be accompanied by a statement that any Contract Price or Contract Time adjustment

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claimed is the entire adjustment to which the CONTRACTOR has reason to believe it is entitled to as a result of the question, claim, difficulty or dispute. Resolution of such dispute shall be made by the County Administrator or designee. The County Administrator’s decision shall be final and binding on the parties subject to judicial review.

30.6 For any disputes which remain unresolved, within sixty (60) calendar days after Final Completion of the Work, the parties agree to the retention of all their legal rights and remedies provided under State law. If a party objecting to a determination, fails to comply in strict accordance with the requirements of this Article, said party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.

30.7 BY ENTERING INTO THIS AGREEMENT, CONTRACTOR AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF THE PROJECT. CONTRACTOR, PURSUANT TO ARTICLE 11 OF THIS AGREEMENT, SHALL SPECIFICALLY BIND ALL SUBCONTRACTORS TO THE PROVISIONS OF THIS AGREEMENT.

ARTICLE 31 - NOTICES

All notices to be given hereunder shall be in writing, and may be given by depositing the same in the United States Mail addressed to the party to be notified, postpaid, return receipt requested or by delivering the same in person to such party with written receipt of acknowledgment of delivery by a person at the address(s) set forth below. Electronic, facsimile (FAX) or other telephonic transmission shall not be considered as written notice. All notices to be given to the parties hereto shall be sent to or made to the addresses shown below. The place for giving notice shall remain the same as set forth herein unless changed in the manner provided in this Article.

For COUNTY:

County Administrator
Governmental Center,
115 South Andrews Avenue
Room 409
Fort Lauderdale, Florida 33301

With copies to:

Director of Aviation

2200 SW 45th Street, Suite 101
Dania Beach, Florida 33312

Contract Administrator

2200 SW 45th Street, Suite 101
Dania Beach, Florida 33312
and to PMO:

DMJM Aviation
4101 Ravenswood Road, Suite 401
Fort Lauderdale, Florida 33312

and to CPM:

Name: Turner Construction Company
3550 SW 2nd Avenue
Fort Lauderdale, Florida 33315

and to Consultant:

Pierce Goodwin Alexander and Linville, Inc. and Zyscovich Inc. (a Joint Venture)
791 Park Of Commerce Boulevard
Suite 400
Boca Raton, Florida 33487

For CONTRACTOR:

William R. Derrer
Managing General Partner
Cummins-Balfour Beatty, A Joint Venture
3575 NW 53rd Street
Ft. Lauderdale, Florida 33309
954-733-4211

ARTICLE 32 - EEO AND CBE PROVISIONS

32.1 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

CONTRACTOR shall not unlawfully discriminate on the basis of race, religion, age, color, sex, national origin, political affiliation, familial status, disability, pregnancy, sexual orientation, gender identity or expression, marital status or political affiliation in the performance of this Agreement, or in subcontracting work in the performance of this Agreement and shall not otherwise unlawfully discriminate in violation of the Broward County Code, Chapter 16%, as may be amended from time to time. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, color, sex or national origin, sexual orientation, marital status, political affiliation, or physical or mental disability. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection of training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
32.1.1 COUNTY shall also require that any contractor selected to perform work on a COUNTY project include the foregoing or similar language in its contracts with any Subcontractors, except that any project assisted by U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Subcontractors, if any, will be made aware of and will comply with this nondiscrimination clause. Failure to comply with above requirements is a material breach of the Agreement, and may result in the termination of this Agreement or such other remedy as COUNTY deems appropriate.

32.1.2 CONTRACTOR shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, CONTRACTOR shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

32.1.3 By execution of this Agreement, CONTRACTOR represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes). COUNTY hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle COUNTY to terminate this Agreement and recover from CONTRACTOR all monies paid by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY’s competitive procurement activities.

32.2 COUNTY BUSINESS ENTERPRISE (CBE) COMPLIANCE

32.2.1 In completing this Project, CONTRACTOR agrees to and shall comply with the Broward County Business Opportunity Act of 2012 (Broward County Ordinance No. 2012-33, as may be amended from time to time), hereinafter referred to as the “Act,” which provides for the establishment and implementation of CBE participation goals, initiatives, and other opportunities for COUNTY contracts.

Failure by CONTRACTOR to carry out any of the CBE Program requirements shall constitute a material breach of this Agreement, which shall permit COUNTY to terminate this Agreement or to exercise any other remedy available under this Agreement, under the Broward County Administrative Code, under the Broward County Code of Ordinances, or under applicable law, all of which remedies being cumulative.

CONTRACTOR acknowledges that the Broward County Board of County Commissioners, acting by and through the Director of the Broward County Office of Economic and Small Business Development (OESBD), may make minor administrative modifications to the CBE Program which shall become applicable to this Agreement if the administrative modifications are not unreasonable. Written notice of any such modification shall be provided to CONTRACTOR and shall include a deadline for CONTRACTOR to notify COUNTY if CONTRACTOR
concludes that the modification exceeds the authority of this section of this Agreement. Failure of CONTRACTOR to timely notify COUNTY of its conclusion that the modification exceeds such authority shall be deemed acceptance of the modification by CONTRACTOR.

The COUNTY shall review each proposed modification to this Agreement that, by itself or aggregated with previous modifications, increase the contract value of this Agreement by ten percent (10%) of the initial contract value, or Fifty Thousand Dollars ($50,000) whichever is less, for opportunities to include or increase the participation of CBE firms, already involved on this Agreement.

32.2.2 COUNTY and CONTRACTOR agree that prime and subcontract awards to CBE firms are crucial to the achievement of COUNTY’s CBE participation goals. In an effort to assist COUNTY in achieving its established goals for this Project, CONTRACTOR agrees to meet the current CBE participation goals established by COUNTY.

32.2.2.1 This Contract has the following CBE participation goals:

| Total CBE Goal | 28.01% |

32.2.2.2 CONTRACTOR may not terminate for convenience a certified CBE listed as a Subcontractor in the CONTRACTOR’s bid or offer without the County’s prior written consent, which consent shall not be unreasonably withheld. CONTRACTOR shall inform COUNTY immediately when a CBE firm is not able to perform or if CONTRACTOR believes the CBE firm should be replaced for any other reason, so that the OESBD may review and verify the good faith efforts of CONTRACTOR to substitute the CBE firm with another CBE firm.

Whenever a certified CBE Subcontractor is terminated for any reason, including for cause, CONTRACTOR shall make good faith efforts to find another certified CBE firm to perform the work required of the original CBE firm.

32.2.3 CONTRACTOR understands that each CBE firm utilized on the Project to meet the participation goals must be certified by the OESBD. CONTRACTOR agrees to enter into contracts with CBE Subcontractors which are listed on the Schedule of CBE Participation, Form 8, upon execution of the GMP Addendum and to provide copies of its contracts with such persons to the CA and the Broward County OESBD. CONTRACTOR may not deviate from the CBEs approved by the OESBD without the prior approval of the OESBD (or designee).

32.2.4 CONTRACTOR understands that it is the responsibility of the CA and the Broward County OESBD to monitor compliance with the CBE requirements. In that regard, CONTRACTOR agrees to furnish monthly reports in the form attached as Form 6, CBE Monthly Utilization Report, to both the CA and the OESBD on the progress of CBE participation commencing with the first payment application. All reports shall include the name and business address of each CBE firm solicited by CONTRACTOR to work as a Subcontractor in this Agreement and the responses received by CONTRACTOR to such solicitation; the name and business address of each CBE firm actually involved in this Agreement, a description of the work performed or product or service supplied by the CBE firms; the date and amount of each expenditure; the CBE status of any contractor performing any portion of
this Agreement; and any other information requested by COUNTY which may assist COUNTY in determining the CONTRACTOR's compliance with its contractual obligations, or may assist in the implementation and enforcement of the Act. The submission of the report required by this subparagraph shall be a condition of payment to CONTRACTOR.

32.2.5 In the event of CONTRACTOR’s noncompliance with its participation commitment to a CBE firm (including without limitation the unexcused reduction of CBE participation), the affected CBE firm shall have the right to exercise the following remedies if the noncompliance is or was due to no fault of the CBE firm, and due to the willful action or omission of CONTRACTOR:

32.2.5.1 The affected CBE firm shall be entitled to damages pursuant to its agreement with CONTRACTOR.

32.2.5.2 If a Subcontractor or other similarly-situated person institutes an arbitration proceeding claiming non-compliance with the Act by CONTRACTOR, then only in such event shall the remedies include an undertaking by CONTRACTOR to submit any dispute concerning such damages to binding arbitration by an independent arbitrator. However, binding arbitration shall not be available as to any dispute between CONTRACTOR and COUNTY; nor shall COUNTY incur any cost, fee, or liability relative to any arbitration proceedings. An arbitrator may award reasonable attorney’s fees and costs against a non-prevailing party.

32.2.5.3 Nothing under this subsection 32.2.5 shall be construed to limit the rights of and remedies available to COUNTY, including the right to seek its own damages pursuant to this Agreement.

32.2.6 CONTRACTOR agrees that nonpayment of a CBE Subcontractor, as required by Section 32.3.2 below, shall be a material breach of this Agreement and that COUNTY’s CA may, at its option, increase allowable retainage or withhold progress payments unless and until CONTRACTOR demonstrates timely payments of sums due to such Subcontractors. CONTRACTOR agrees that the presence of a “pay when paid” provision in a subcontract shall not preclude COUNTY or its representatives from inquiring into allegations of nonpayment. The foregoing remedies under this subsection 32.2.6 shall not be employed when CONTRACTOR demonstrates that failure to pay results from a bona fide dispute with its Subcontractor.

32.2.7 COUNTY shall have access without limitation to CONTRACTOR’s books and records including payroll records, tax returns and records, and books of account, on five (5) business day’s notice, to allow COUNTY to determine CONTRACTOR’s compliance with its commitment to CBE participation and the status of any CBE firm performing any portion of this Agreement. On-site reviews to monitor the CONTRACTOR’s progress in achieving and maintaining CBE obligations will be carried out by the CA in conjunction with OESBD (or designee).

32.2.8 If CONTRACTOR fails to comply with the requirements of this Agreement or the requirements of the Broward County business Opportunity Act of 2012, COUNTY shall have the right to exercise any administrative remedies provided by the Act, or any other right or remedy provided in this Agreement or under applicable law,
with all such rights and remedies being cumulative.

32.3 CONTRACTOR Payment to Subcontractor

32.3.1 CONTRACTOR shall pay its Subcontractors and suppliers within seven (7) calendar days following receipt of payment from the COUNTY for such subcontracted work or supplies. CONTRACTOR agrees that if it withholds an amount as retainage from its Subcontractors or suppliers, that it will release such retainage and pay same within seven (7) calendar days following receipt of payment of retained amounts from COUNTY, or within seven (7) calendar days after the Subcontractor has satisfactorily completed its work, for which the COUNTY has accepted through approval of CONTRACTOR's application for payment.

32.3.2 CONTRACTOR agrees that nonpayment of a Subcontractor or supplier as required above, shall be a material breach of this Agreement and that COUNTY may, at its option, increase allowable retainage or withhold progress payments unless and until CONTRACTOR demonstrates timely payments of sums due to such Subcontractors or suppliers. CONTRACTOR agrees that the presence of a "pay when paid" provision in a subcontract shall not preclude COUNTY's inquiry into allegations of nonpayment. The foregoing remedies shall not be employed when CONTRACTOR demonstrates that failure to pay results from a bona fide dispute with its Subcontractor or supplier.

32.4 CONTRACT COMPLIANCE MONITORING

32.4.1 CONTRACTOR agrees to submit monthly the CBE Utilization Report to OESBD, with copy to the PMO, containing a record of payments made to its CBE subcontractors during the current reporting period.

32.4.2 CONTRACTOR agrees to submit the Final CBE Participation Report containing the total amount paid to its CBE subcontractors. This report must be submitted with the CONTRACTOR's request for final payment and release of retainage, if applicable.

32.4.3 CONTRACTOR shall certify to the COUNTY the amounts paid to each CBE involved in the project as either a joint venture partner or pursuant to a subcontract with the CBE businesses. All such certifications shall be signed by both the CONTRACTOR and CBEs.

32.4.4 CONTRACTOR agrees that failure to provide appropriate certification as to the payment of CBEs and participants in the Agreement and provide certification in a form acceptable to the COUNTY that CBE business participation requirements of the Agreement have been met, notwithstanding any other provisions of this Agreement, shall be cause for the COUNTY to withhold further payments under the Agreement until such time as such certification is received and accepted by the COUNTY, and shall not entitle the CONTRACTOR to terminate the Agreement, to cease work to be performed, or to be entitled to any damages or extensions of time, whatsoever, due to such withholding of payment or delay in work associated thereto.
32.4.5 CONTRACTOR agrees that it cannot terminate a CBE subcontractor for convenience and then perform the work with its own forces or its affiliate. If a situation arises that a CBE subcontractor needs to be replaced or removed from the team, CONTRACTOR must submit a written request to OESBD with detailed explanation or justification for the submission of such request.

If the request is due to a voluntary cessation of the CBE firm from the team, documentation supporting the voluntary cessation must accompany the request. Requests for substitution or termination of CBE subcontractors will only be approved on a case-by-case basis, provided that reasons cited are properly justified. When a CBE subcontractor is terminated, or fails to complete its work, CONTRACTOR must make good faith efforts to retain another CBE subcontractor to substitute for the original CBE.

32.4.6 Compliance monitoring is conducted to determine if CONTRACTOR and Subcontractors are complying with the requirements of the CBE Program as set forth in the Broward County Business Act of 2012 (Broward County Ordinance No. 2012-33). Failure of the CONTRACTOR to comply with this provision may result in the COUNTY imposing penalties or sanction.

32.4.7 Contract compliance will encompass monitoring for contract dollar achievement and CBE CONTRACTOR utilization. The OESBD staff will have the authority to audit and monitor all contracts and contract-related documents related to Broward County projects. The requirements of the CBE Program are applicable to all CONTRACTOR's, general contractors and Subcontractors.

32.4.8 CONTRACTOR shall be responsible for ensuring proper documentation with regard to its utilization and payment of CBE Subcontractors.

32.5 Broward County Business Opportunity Act of 2012: The provisions of the Broward County Business Opportunity Act of 2012 (Broward County Ordinance No. 212-33). Broward County Code of Ordinances (the “Act”), shall apply to the services performed pursuant to this Agreement. The CONTRACTOR hereby agrees to comply with all of the provisions set forth therein, which are contract provisions required by the Act. The contract provisions contained in Attachment III are hereby incorporated by reference. The provisions set forth in the Act shall be enforceable in accordance with all applicable provisions of this Agreement, and shall further be enforceable in accordance with the provisions set forth in the Act.

(Remainder of the Page left intentionally Blank)
ARTICLE 33 - HURRICANE AND DISASTER PREPAREDNESS

33.1 PRE-HURRICANE AND DISASTER PROVISIONS

33.1.1 During such periods of time as are designated by the BCAD Operations Division as being a hurricane warning or watch, the CONTRACTOR, at no cost to the COUNTY, except as specified in Section 33.1.3 below, shall take all prudent precautions necessary to secure the Project site in response to all threatened hurricane events, regardless of whether the COUNTY or CPM (CPM) has given notice of same. Division 1 Specifications contains additional CONTRACTOR's responsibility under a hurricane watch.

33.1.2 Suspension of the Work caused by a threatened or actual hurricane event, regardless of whether the COUNTY has directed such suspension, will entitle the CONTRACTOR to additional Contract Time as non-compensable, excusable delay, and shall not give rise to a claim for compensable delay.

33.1.3 CONTRACTOR shall be reimbursed actual documented expenses for materials and labor incurred due to hurricane preparations that are outside of the normal daily General Conditions costs. Any such reimbursement shall be at the discretion of the Contract Administrator. Compliance with any specific hurricane warning or watch precautions will not constitute additional work.

33.2 POST-HURRICANE AND DISASTER PROVISIONS

33.2.1 The CA may issue, through CPM, Field Orders or other enabling documents to mobilize CONTRACTOR and its Subcontractors in the aftermath of a hurricane, natural disaster or other emergency for the purposes of damage assessment and providing temporary and permanent repairs to COUNTY facilities (or other facilities as may be assigned by COUNTY). CONTRACTOR shall mobilize upon mutual agreement of specific terms for this work. Division 1 Specifications contains additional CONTRACTOR's responsibility post hurricane.

33.2.1.1 In the immediate aftermath of a hurricane, natural disaster or other emergency, the CONTRACTOR and CA shall establish communications to determine an assessment and recovery plan and to establish a preliminary list of emergency recovery activities that the CONTRACTOR shall undertake.

33.2.1.2 CONTRACTOR and CA shall utilize that preliminary list of emergency recovery activities to develop one or more Construction Change Directives for execution by the CA and CONTRACTOR. Upon mutual agreement, CA shall issue the executed Field Orders upon receipt of which, CONTRACTOR shall immediately undertake the emergency actions described therein.

33.2.1.3 CONTRACTOR shall mobilize personnel, Subcontractors and equipment as necessary to complete the tasks required by a Field Order for hurricane or other disaster recovery.
33.2.1.4 COUNTY shall issue Purchase Orders and other procurement documents as necessary to support of Construction Change Directives as issued by the Contract Administrator.

33.2.1.5 Prior to being eligible for payment of expenses due to Hurricane, pre or post, procedures, CONTRACTOR shall maintain detailed records of the Work and provide full information required for evaluation and to substantiate costs and time adjustments as may be necessitated by these required changes in the Work.

33.2.1.6 CONTRACTOR shall coordinate invoicing and payment procedures for emergency recovery work with the CA to ensure expeditious payment and segregation of such payments from those applicable to the non-emergency Work required by this Agreement.

ARTICLE 34 - OTHER TERMS & CONDITIONS

34.1 Third Party Beneficiaries: Neither CONTRACTOR nor COUNTY intend to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

34.2 Conflicts: Neither CONTRACTOR nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONTRACTOR's loyal and conscientious exercise of judgment related to its performance under this Agreement. CONTRACTOR agrees that none of its employees shall, during the term of this Agreement, serve as an adverse or hostile witness against COUNTY in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her opinion, which is adverse or prejudicial to the interests of COUNTY in any such pending or threatened legal or administrative proceeding. The limitations of this Article shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding regarding this Agreement. CONTRACTOR agrees to prohibit its Subcontractors, by written contract, from having any conflicts as within the meaning of this Article.

34.3 Joint Preparation: Preparation of this Agreement has been a joint effort of COUNTY and CONTRACTOR and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

34.4 False Claims: In accordance with the County's False Claims Ordinance, Section 1-276 et. Seq., Broward County Code of Ordinances, the CONTRACTOR must maintain, as a condition precedent to submitting a claim against the County, a final bid takeoff. The final bid takeoff, where applicable, shall contain a line item for allocation of overhead costs and must be prepared contemporaneously with the bid and in anticipation of the bid for the project. The bid takeoff shall be provided by CONTRACTOR to CA prior to the second or third Notice-to-Proceed being issued. "Claim" means any invoice, statement, request, demand, lawsuit, or action under contract or otherwise, for money, property, or
services made to any employee, officer, or agent of the County, or to any contractor, grantee, or other recipient if any portion of the money, property, or services requested or demanded was issued from, or was provided by, the County. "Bid takeoff" means the final estimate, tabulation, or worksheet prepared by the CONTRACTOR in anticipation of the bid submitted, and which shall reflect the final price. IT IS EXPRESSLY AND SPECIFICALLY AGREED THAT ANY AND ALL CLAIMS SHALL BE WAIVED AND FORFEITED IF NOT SUBMITTED IN STRICT ACCORDANCE WITH THE REQUIREMENTS OF THIS ARTICLE AND THE FALSE CLAIMS ORDINANCE.

34.5 Drug Free Workplace: It is a requirement of COUNTY that it enter into contracts only with firms that certify the establishment of a drug-free workplace in accordance with Chapter 21.31(a) of the COUNTY Procurement Code. Execution of this Agreement by CONTRACTOR shall also serve as CONTRACTOR's required certification that it either has or that it will establish a drug-free workplace in accordance with Chapter 21.31(a) of the COUNTY Procurement Code.

34.6 Assignment: The CONTRACTOR shall not assign or transfer this Agreement or subcontract it as a whole without the written consent of the COUNTY; nor shall the CONTRACTOR assign any monies due or to become due to it hereunder, without the previous written consent of the COUNTY.

34.7 Waiver: No consent or waiver, express or implied, by either party to this Agreement or of any breach or default by the other in the performance of any obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other or future breach or default by such party hereunder, nor deemed to be a modification of this Agreement. Failure on the part of any party hereto to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder, provided however this section shall not alter or amend the notice provisions set forth in the Construction Documents including but not limited to, in Article 8. Inspection by, payment by or tentative approval or acceptance by the COUNTY, or the failure of the COUNTY to perform any inspection hereunder shall not constitute a Final Completion of the Work or any part thereof and shall not release the CONTRACTOR from any of its obligations hereunder.

34.8 Construction of Terms: Unless the context clearly intends to the contrary, words singular or plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall be deemed to include the other. The term "person" shall be deemed to include an individual, corporation, unincorporated organization, partnership, trust, government and governmental agency or subdivision, as the context shall require.

34.9 Captions: The captions used for the Articles in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of the intent of this Agreement or any Article herein.

34.10 Entire Agreement; Severability; Amendments: These Contract Documents incorporate and include all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in the Contract Documents. Accordingly, the parties agree that no deviation from the terms herein shall be predicated upon any prior
representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document in accordance with Article 7 above. In the event any provision of the Contract Documents shall be found by a court of competent jurisdiction to be invalid or otherwise unenforceable, the remainder of this Agreement shall not be affected thereby and each remaining provision, term, covenant or condition of the Contract Documents shall continue to be effective.

34.11 Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

34.12 Governing Law and Venue: This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue situs, and shall be governed by the laws of the State of Florida.

34.13 Truth in Negotiations: Signature of this Agreement by CONTRACTOR shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which COUNTY determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within one (1) year following the end of this Agreement.

ARTICLE 35 – AIRPORT SECURITY

35.1 CONTRACTOR shall be required to comply with all applicable written COUNTY Aviation Department policy statements and all applicable federal and state legal requirements, including without limitation, the following:

35.1.1 CONTRACTOR agrees to observe all security requirements and other requirements of the Federal Aviation and Customs and Border Protection Regulations applicable to CONTRACTOR, including without limitation, 49 C.F.R. Part 1542 and 14 C.F.R. Part 139. The CONTRACTOR agrees to comply with the Airport Security Program and the Air Operations Area (AOA) Vehicle Access Program, and amendments thereto, as approved by the Transportation Security Administration, and with such other rules and regulations as may be reasonably prescribed by the COUNTY or the PMO, and to take such steps as may be necessary or directed by the COUNTY or the PMO to insure that any and all subconsultants, Subcontractors, agents, employees, invitees and guests observe such requirements.

35.1.2 If as a result of the acts or omissions of CONTRACTOR, its Subcontractors, agents, employees, invitees or guests, the COUNTY incurs any fines or penalties imposed by the Transportation Security Administration or the Federal Aviation Administration or any expense in enforcing the regulations of the Transportation
Security Administration or the Federal Aviation Administration, including without limitation, 49 C.F.R. Part 1542 and 14 C.F.R. Part 139 or any expense in enforcing the Airport Security Program or any expense in enforcing the rules and regulations of the COUNTY, then CONTRACTOR agrees to pay and reimburse to COUNTY all such costs and expenses, including all costs of administrative proceedings, court costs, and attorneys fees and all costs incurred by COUNTY in enforcing this provision. Said costs shall not constitute Cost of the Work. CONTRACTOR further agrees to rectify any security deficiency caused by CONTRACTOR, its Subconsultants, Subcontractors, agents, employees, invitees or guests, or other deficiency as may be determined as such by the COUNTY or the Federal Aviation Administration. In the event CONTRACTOR fails to remedy any such deficiency, the COUNTY may do so at the cost and expense of CONTRACTOR. The COUNTY reserves the right to take whatever action is necessary to rectify any such security deficiency or other deficiency. The provisions hereof shall survive the expiration or any other termination of this Agreement. CONTRACTOR shall include this provision in any contracts with any subconsultants, contractors or Subcontractors.

35.1.3 Access to Security Identification Display Areas and Identification Badges (SIDA Badges): The CONTRACTOR shall be responsible for requesting the Aviation Department to issue identification badges to all employees who are authorized and need access to the Security Identification Display Area (SIDA) on the Airport, as designated in the Airport Security Program in order to fulfill contractual obligations under this Agreement. Refer to Exhibit 9, for additional comments. In addition, CONTRACTOR shall be responsible for the immediate reporting of all lost or stolen SIDA badges and the immediate return of the SIDA badges of CONTRACTOR’s personnel transferred from the Airport or terminated from the employ of the CONTRACTOR, or upon termination of this Agreement. Before a SIDA badge is issued to an employee, CONTRACTOR shall comply with the requirements of 49 C.F.R. Part 1542 with regard to employment history, verification and criminal background checks, and shall require that each employee complete the SIDA training program conducted by the Aviation Department. The CONTRACTOR shall pay or cause to be paid to the Aviation Department such charges as may be established from time to time for lost or stolen SIDA badges and those not returned to the Aviation Department in accordance with this Article. The Aviation Department shall have the right to require the CONTRACTOR to conduct background investigations and to furnish certain data on such employees before the issuance of SIDA badges, which data may include the fingerprinting of employee applicants for such badges.

35.1.4 Operation of Vehicles on the AOA: Before the CONTRACTOR shall permit any employee to operate a motor vehicle or motor driven equipment of any kind or type on the AOA (and unless escorted by an Aviation Department-approved escort), the CONTRACTOR shall ensure that all such vehicle or equipment operators possess current, valid and appropriate licenses. In addition, any motor vehicles and equipment of CONTRACTOR operating on the AOA must have an appropriate vehicle identification permit issued by the Aviation Department, which identification must be displayed as required by the Aviation Department.

35.1.5 Consent to Search/Inspection: The CONTRACTOR agrees that its vehicles, cargo, goods and other personal property are subject to being inspected and searched when attempting to enter or leave and while on the AOA.
CONTRACTOR further agrees that it shall not authorize any employee or other person to enter the AOA unless and until such employee or other person has executed a written consent-to-search/inspection form acceptable to the Aviation Department. CONTRACTOR acknowledges and understands that the foregoing requirements are for the protection of users of the airport and are intended to reduce incidents of cargo tampering, aircraft sabotage, thefts and other unlawful activities at the Airport. For this reason, CONTRACTOR agrees that persons not executing such consent-to-search/inspection form shall not be employed by the CONTRACTOR at the Airport in any position requiring access to the AOA or allowed entry to the AOA by the CONTRACTOR.

35.2 The COUNTY shall have the right, but not the duty, to conduct such audits of the CONTRACTOR's employment records as it deems desirable to investigate the CONTRACTOR's compliance with this Article 35. The COUNTY may terminate this Agreement for default if it finds any evidence which indicates that the CONTRACTOR has not complied with the obligations imposed by this Article.

ARTICLE 36 – DISPUTE AVOIDANCE PANEL

36.1 Purpose. The purpose of this dispute avoidance process is primarily to assist in the prevention of disputes between the Terminal 4 Contractors and the County and the mitigation of impacts to the Terminal 4 projects as a result of disputes between the Terminal 4 Contractors and the County, and secondarily to assist in the resolution of disputes and claims between CPM, the Terminal 4 Contractors and County arising out of the Contract Documents. The intent of the establishment of the DISPUTE AVOIDANCE PANEL ("PANEL") is to facilitate contemporaneous agreement as to the resolution of events occurring during the progress of the work, and if agreement cannot be quickly reached, then to fairly and impartially consider disputes placed before it and to provide written recommendations for resolution of these disputes to both the County and the Terminal 4 Contractors. All decisions of the PANEL are non-binding on the parties. Submission of a disputed matter to the PANEL for its written recommendation is an absolute condition precedent to filing any claim, suit or demand for arbitration with regard to the matter. With the consent of both parties, the PANEL may also consider issues that may arise between the CPM and the County.

36.2 Panel Scope

36.2.1 Operations: The PANEL will formulate its own rules of operation, which will be kept flexible to adapt to changing situations. The County and the CPM will keep the PANEL informed of construction activity and progress of the various Terminal 4 Contractors by submitting to the PANEL monthly written progress reports and other relevant data. Selected project records, including but not limited to schedule updates, requests for information, requests for work orders, and requests for change orders, will be furnished to the PANEL at the same time as they are initially furnished to the other parties engaged on the project. The PANEL will visit the project at regular intervals and at times of critical construction events and meet with the representatives of the County, the Terminal 4 Contractors, and the CPM.

36.2.2 Membership of the PANEL: The PANEL shall consist of three neutral members who shall not have been previously employed or engaged as a consultant in any capacity for the County, the CPM or a Terminal 4 Contractor; provided however,
that prior services as a dispute panel member shall not automatically disqualify a potential member. PANEL members shall disclose all prior employment and engagements to the County, the CPM, the Project Team, or to any of the Terminal 4 Contractors. One member shall be nominated by a non-profit entity that represents the interests of construction contractors, and one member shall be nominated by County. Unless reasonably objected to by the County, the CPM or a Terminal 4 Contractor, the nominees shall be appointed to the PANEL. The third member shall be the chair and shall be selected by the two appointed members. Each appointed member shall have significant construction experience and be a non-lawyer. The chairman of the PANEL shall have significant experience with public building construction and be a lawyer. All PANEL members shall be trained and experienced in (i) mediation and arbitration and (ii) the effective operations of Dispute Resolution Boards. The members of the PANEL shall be selected no later than 15 days after the award of Contract and prior to the effective date of the Notice to Proceed. Claims by either party arising out of events occurring prior to the selection of the PANEL are waived and released.

36.2.3 Meetings; confidentiality: The first meeting of the PANEL shall occur within 21 days of the effective date of the Notice to Proceed for this task. Subsequent meetings will be regularly held on site as set forth in Frequency of Meetings below. Statements made in regular meetings of the PANEL will be confidential and inadmissible to the same degree as proceedings in mediation under Florida law. Each meeting will consist of an informal round table discussion and, if possible, a field inspection of the work. The round table discussion will be attended by representatives from the County, some or all of the Terminal 4 Contractors, some or all of the Project Team and the CPM. The round table discussions shall include presentations from the County, the Terminal 4 Contractors and CPM to the PANEL that addresses the following items: construction work accomplished since the last meeting, current status of the work the current and future schedule, payment status, potential future problems that may come before the PANEL, proposed solutions to those problems, and an update regarding previously handled or ongoing problems. It is contemplated that other project participants will be invited to attend regular PANEL meetings, including the Project Team and major subcontractors and subconsultants of the Terminal 4 Contractors. In addition to round table discussions, agendas for regular meetings of the PANEL may include the following:

36.2.3.1 Presentations by representatives of the parties with respect to any issues that have arisen or have been properly presented to the PANEL through the below stated Request for Hearing process. Issues that were not submitted to the PANEL pursuant to the procedures delineated herein shall not be presented to the PANEL for consideration without the agreement of both parties.

36.2.3.2 Rebuttals, if requested, by representatives of the parties with respect to presentations made by the representatives of the other party.

36.2.3.3 Set a tentative date for next meeting.

36.2.4 Frequency of Meetings: In order for the PANEL to become familiar with the project circumstances, it will begin to meet at least once per month. If conditions
warrant, the Chairman in consultation with other PANEL members, the CPM and the County, may reduce/increase the time between meetings to better serve the parties. Factors to be considered when setting the time between meetings include work progress, occurrence of unusual events and the number and complexity of ongoing or potential disputes.

36.2.5 Procedure for scheduling disputed matters before the PANEL: The parties should attempt to resolve potential disputes without resorting to use of the PANEL. However, in the event that a resolution is unlikely, the following procedures must be followed:

36.2.5.1 Before referring a matter to the PANEL a representative of the County, CPM, or a Terminal 4 Contractor must first submit a letter titled Notice of Disagreement to his/her counterpart from the other party describing the issue that has arisen. The party receiving the notice shall have 7 days from receipt of the letter to submit a response. If after 14 days from the initial receipt of the Notice of Disagreement the issue has not been resolved, the party who sent the original Notice may file a written Request for a Hearing to the PANEL and the matter will be scheduled before the PANEL. The written Request shall contain a copy of the initial Notice of Disagreement and the response to this Notice, if any, by the other party. No Request may be filed with the PANEL without first having complied with the Notice of Disagreement requirements of this section.

36.2.5.2 Upon receipt of a Request for a Hearing, the Chairman will schedule the matter for Hearing at a location in Broward County, Florida, within 30 days. The parties may request that the matter be deferred in the event that additional preparation is necessary. The parties may request an informal verbal PANEL recommendation, or the parties may request a formal written recommendation from the PANEL.

36.2.5.3 The parties shall provide to the PANEL position papers with appropriate supporting documentation no later than 14 days before the commencement of the Hearing. The parties shall provide rebuttal papers, if any, no later than 5 days before the Hearing.

36.2.5.4 The party submitting the Request shall be responsible to provide the PANEL with 3 copies of each document submitted with the Request, one for each PANEL member. The party furnishing any written evidence or documentation to the PANEL shall also furnish copies of such information to the other party concurrently when furnishing the documents to the PANEL. The PANEL may request that additional written documentation and explanations from both parties be sent to each member and to the other party for study before the hearing begins.

36.2.5.5 Both parties will be afforded an opportunity to be heard by the PANEL and to offer evidence. The PANEL members may ask questions, request clarification, or ask for additional data. In large or complex disputes, additional hearing days may be necessary in order to consider and fully understand all the evidence presented by both
parties. Attorneys are generally discouraged from attending the PANEL meetings, but are allowed to participate in the Hearings on the following limited basis. Any participation in a hearing by legal counsel or independent claims or technical experts will be for the sole purpose of facilitating a party's presentation. Legal counsel may not examine directly or by cross-examination any witness, object to questions asked or factual statements made during the hearing or make or argue legal motions.

36.2.5.7 All of the PANEL's recommendations for resolution of disputes will be given to the County, the affected Terminal 4 Contractor(s) and the CPM, within 10 days of completing the Hearing(s). In cases of extreme complexity, both parties may agree to allow additional time for the PANEL to formulate its recommendations. The PANEL's initial 10 day written recommendation will address contractual entitlement and the number of days of extension of milestones and/or Contract Time, if at issue. The parties will have 7 days after the 10 day written recommendation to resolve the issue. The parties may agree to mediate the resolution during this 7 day period. If the parties cannot agree on the resolution of the 10 day recommendation during this 7 day period, the PANEL shall issue a written recommendation addressing monetary damages no later than 24 days from completion of the Hearing.

36.2.5.8 No provisions associated with the Dispute Panel shall in any way abrogate the Terminal 4 Contractors' or CPM's responsibility for preserving a claim filed in accordance with the requirements set forth in the Contract Documents.

36.2.5.9 In the event that the County is not in agreement with a decision or recommendation of the PANEL, the County may elect to issue a Work Order or Change Order, with appropriate reservations of rights.

36.2.5.10 Although the PANEL's recommendations are non-binding, all records and written recommendations of the PANEL will be admissible as evidence in any subsequent court proceeding or other dispute resolution procedures.

36.2.5.11 The process described here shall precede the involvement of the Change Review Committee (CRC) as described in the Program Management Plan (PMP). By agreement of the parties and the PANEL, the steps listed under this section may be omitted and the time periods shortened in order to hasten resolution.

36.2.6 Neutrality of PANEL members: All PANEL members shall act impartially and independently when performing their functions as PANEL members including in the consideration of any Contract provisions and the facts and conditions surrounding any written Request to the PANEL by the County or a Terminal 4 Contractor or the CPM. Ex parte communications between a PANEL member and any party are strictly prohibited. PANEL members shall not discuss or communicate with any party without the other party being present. Seeking any PANEL member's advice or consultation is expressly prohibited, unless it is done in the open at a PANEL meeting and in the presence of the other party.
36.2.7 Records of Meetings: While the PANEL may take notes or keep other records during the consideration of a Notice of Disagreement, it is not necessary for the PANEL to keep a formal record. If possible, it is desirable to keep the hearings completely informal. However, formal records of the formal Hearings in regards to Notices of Disagreements may be transcribed by a court reporter if requested by one party. The party requesting the court reporter shall be responsible for any costs. Audio and/or video recording of the meeting is prohibited without prior written agreement by the PANEL and the parties.

36.2.8 Recommendations of the PANEL: All formal written recommendations of the PANEL shall be executed by all PANEL members and supported by at least two members. Recommendations will be based on the pertinent Contract provisions and the facts and circumstances involved in the dispute. This provision shall not prevent the PANEL from issuing informal verbal recommendations.

36.2.9 Reconsiderations: Either party may seek written reconsideration of a written recommendation within 3 working days of receipt of such recommendation from the PANEL.

36.2.10 Construction Site Visits: The PANEL members shall visit the site on a regular basis to keep abreast of construction activities and to develop a familiarity of the work in progress. The frequency, exact time, and duration of these visits shall be as mutually agreed between the County, the CPM, the Terminal 4 Contractors and the PANEL.

36.3 Coordination and Logistics: The CPM will coordinate the operations and meetings of the PANEL. The CPM need not take minutes of PANEL meetings. The PANEL members will execute subconsultant agreements with the CPM, but the CPM may only communicate with PANEL members concerning logistics of meetings and payment for PANEL services.

36.4 Time for Beginning and Completion: The PANEL is to be in operation until all Requests for Hearing submitted prior to Final Acceptance of the Program are heard or Final Acceptance of the Program, whichever is later.

36.5 Payment: The maximum not to exceed daily fee to be paid to each PANEL member shall be One Thousand Five Hundred Dollars ($1,500.00) and travel costs in accordance with the CPM Agreement. Travel costs shall conform to the requirements of County procedures and Florida law.

36.5.1 Payment - Regular meetings: The amounts paid to the chairman of the PANEL and the other PANEL members for their services, including travel costs pursuant to the CPM Agreement, shall be paid from a task account to establish within the CPM Agreement for that purpose. The CPM shall pay the PANEL members, and shall submit a request to the County for payment of all expenses incurred, without markup or bond. County shall process and pay CPM for PANEL expenses as part of regular project periodic pay requests, and the CPM shall be responsible to promptly pay the PANEL members with no withholding or deductions.

36.5.2 Payment - Hearings: In the event a party files a Request for a Hearing, the expenses and fees incurred by the PANEL members in connection with the
Hearing shall be the responsibility of said party.

36.6 Costs and Accounting Records: The PANEL members shall keep available the cost records and accounts pertaining of all of the work by the PANEL for inspection by representatives of the County, the Contractors, or the CPM for a period of three years after final payment. If any litigation, claim, or audit arising out of, in connection with, or related to the Contract is initiated before the expiration of the three year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records in completed.

36.7 Termination of Dispute Avoidance Panel: Upon formal written amendment to this Contract, this dispute resolution process may be terminated.

36.8 Termination Of Panel Membership: PANEL members may withdraw from the PANEL by providing four weeks written notice to all other parties. Should the need arise to appoint a replacement PANEL member, the replacement PANEL member shall be selected as was the departing PANEL member. The selection of a replacement PANEL member shall begin promptly upon notification of the necessity for a replacement. The chairman of the PANEL may be terminated without cause by agreement of the parties. Each party may change its appointed PANEL member on one occasion during the life of the Contract on a without cause basis. PANEL members may be terminated for cause by any of the parties. The party desiring to terminate a PANEL member for cause will notify the other party and the other PANEL members and shall provide an explanation for the requested termination. If the other party does not agree that cause exists, the remaining PANEL members shall convene and decide whether cause exists and such decision shall be effectuated.

36.9 Independent Contractor: Each PANEL member, in the performance of his or her duties on the PANEL shall act in the capacity of an independent agent and not as an employee or consultant of the County, the Terminal 4 Contractors or the CPM. Each PANEL member shall have the same immunity as does a mediator appointed by Court order, as provided by Florida law.

36.10 Public Records: Each PANEL member, Terminal 4 Contractor, CPM and the County shall allow public access to all documents, papers, letters, and other material made or received by the parties that are related to this PANEL and the activities of this PANEL, subject to the provisions of Chapter 119, Florida Statutes. However, upon receipt of any such public records request, the parties hereto shall immediately notify the County and obtain prior written consent from the County before releasing such records. Plans, schematics, security plans and other project elements may not be released unless the recipient executes an appropriate confidentiality agreement.

36.11 Statute Of Limitations: No part of the Dispute Panel Section or any of the procedures delineated herein will in any way toll any statutes of limitations for either of the parties.

36.12 No Bonus: PANEL members shall not be paid nor will they receive or accept any commission, percentage, bonus, or consideration of any nature, other than the payment provided for in this Section, for their performance and services.

36.13 No Conflict: The members of the PANEL shall affirm in writing that at no time, while performing their duties under this section, shall they have any direct or indirect ownership or financial interest in or be employed in any capacity by the County, any
Terminal 4 Contractor, the CPM, the PMO, any Architect/Engineer or Consultant organization working on the Project, any subconsultant or supplier of the project, or any other PANEL member. Notwithstanding the foregoing, the CPM may exercise subconsultant agreements with the PANEL members in accordance with Section 37.3. The members of the PANEL shall affirm and agree in writing, that except for services as a PANEL member on other projects, that they have not been an employee, subcontractor, or Consultant to the County, the CPM, the PMO, Terminal 4 Contractor, any Architect/Engineer or Consultant organization working on the Project, any Subconsultant or supplier of the Project, or of another PANEL member, and that during the term of this Contract they shall not become so involved. The members of the PANEL, the County, and the CPM agree that during the life of the Contract, no discussion or agreement will be made between any PANEL member and any party to this agreement for employment after the Contract is completed.

36.14 Interpretation: The Dispute Avoidance Panel section shall in no way limit the rights of the County to issue Work Authorizations, Change Orders, issue any other type of order or instruction, or take any other type of action that is permitted by the Contract. This section shall also in no way limit the remedies or obligations of the CPM or a Terminal 4 Contractor pursuant to Contract, except that submission of a disputed matter to the PANEL for a written recommendation as to resolution shall be a condition precedent to pursuit of any claim in arbitration or litigation.

36.15 Subsequent proceedings: In the event that a party files suit or initiates arbitration in connection with this project, no member of the PANEL shall be called to testify in such proceedings, and the personal notes of PANEL members shall not be admissible. The County, each Terminal 4 Contractor, and CPM waive all claims against each PANEL member, and the CPM shall require all PANEL members to waive claims against the County, CPM and all Terminal 4 Contractors arising out of the work of the PANEL.

(Remainder of this page intentionally left blank)
Terminal 4 - Gate Replacement - Western Expansion

AGREEMENT between BROWARD COUNTY and Cummings-Balfour Beatty, A Joint Venture for CONSTRUCTION MANAGER AT RISK Services for T 4 Gate Replacement-Western Expansion at Fort Lauderdale-Hollywood International Airport IN BROWARD COUNTY, FLORIDA (RLI #R0787918R1)

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice Mayor, authorized to execute same by Board action on the _____ day of ______________, 2013 and the CONTRACTOR, Cummings-Balfour Beatty, A Joint Venture, signing by and through the presidents of the companies comprising the joint venture duly authorized to execute same.

BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS

Mayor Date
Kristin Jacobs
Print Name

Approved as to form by
Office of County Attorney Broward County, Florida
Joni Armstrong Coffey, County Attorney
Aviation Office
2200 SW 45th Street, Suite 101
Dania Beach, Florida 33312
Telephone (954) 359-6100
Telexphone (954) 359-1292

Assistant County Attorney Date
Alexander J. Williams
Print Name

Chief Trial Counsel Date
Michael J. Kerr
Print Name

CM @ Risk Agreement R0787918R1
August 21, 2013
Terminal 4 - Gate Replacement – Western Expansion

AGREEMENT between BROWARD COUNTY and Cummings-Balfour Beatty, A Joint Venture for CONSTRUCTION MANAGER AT RISK Services For T-4 Gate Replacement-Western Expansion at FLL IN BROWARD COUNTY, FLORIDA (RLI #R0787918R1)

CONTRACTOR

Cummings-Balfour Beatty, A Joint Venture
James A. Cummings, Inc.

William R. Derrer, CEO and President
(Typed name & title, as signed above)
22nd day of August, 2013.

Witness: FREDDY VAEGAS
(Signature of Witness)

CM @ Risk Agreement R0787918R1
August 21, 2013

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Terminal 4 - Gate Replacement – Western Expansion

Form 6       CBE Monthly Utilization Report
Form 7       Final CBE Utilization Report
Form 8       Weekly Time Sheet
Form 9       Certification of Payments to Subcontractors & Vendors

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