Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(Q)(1)(A)
03-20-07

OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

RESOLUTION NO. R-345-07

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO EXECUTE A SETTLEMENT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE HASKELL COMPANY FOR THE SUM OF $2,447,000; AND TO EXERCISE ALL RIGHTS CONFERRED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board authorizes the County Mayor or his designee to execute a settlement agreement between Miami-Dade County and The Haskell Company for the sum of $2,447,000, in substantially the form attached and after review by the County Attorney's Office; and to exercise all right conferred therein.

MEMORANDUM
(Revised)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: March 20, 2007

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Agenda Item No. 8(Q)(1)(A)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

_____ **No committee review**

The foregoing resolution was offered by Commissioner Barbara J. Jordan, who moved its adoption. The motion was seconded by Commissioner Dorrin D. Rolle and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman aye
Barbara J. Jordan, Vice-Chairwoman aye

Jose "Pepe" Diaz	aye	Audrey M. Edmonson	aye
Carlos A. Gimenez	aye	Sally A. Heyman	aye
Joe A. Martinez	aye	Dennis C. Moss	aye
Dorrin D. Rolle	aye	Natacha Seijas	aye
Katy Sorenson	aye	Rebeca Sosa	aye
Sen. Javier D. Souto	aye		

The Chairperson thereupon declared the resolution duly passed and adopted this 20th day of March, 2007. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

KAY SULLIVAN
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

SBB

Steven B. Bass

INSERT DATE WHEN SUBMITTED TO COMMITTEE

Change Order No. __ to Miami-Dade County Construction Management (CM) Contract with The Haskell Company

Miami-Dade County ("Owner") and The Haskell Company hereby enter into this Change Order No. __ to the December 10, 2001 CM Contract between P&O Ports Florida, Inc. ("P & O") (predecessor in interest to Miami-Dade County) and The Haskell Company (hereinafter "Contract") in settlement of certain claims asserted, and which could have been asserted, against the County and/or P & O, in accordance with the terms set forth below.

Pursuant to this Change Order No.__ to the Contract, the parties agree as follows:

1. ~~The~~ parties to this Agreement are The Haskell Company ("Haskell") and Miami-Dade County ("County"). Miami-Dade County is the successor in interest to the interests of P&O Ports Florida, Inc.(P & O) in and to the subject Contract.

2. Pursuant to the Contract, the County or P & O issued various Guaranteed Maximum Price ("GMP") amendments to the Contract to provide for the construction of various specified construction projects and improvements at the Port of Miami to be performed by Haskell pursuant to the Contract for the lump sum prices set forth in the GMPs. Pursuant to these various GMPs, Haskell has been serving in the role of a construction manager or a design/build contractor, as applicable, for these various projects.

3. To date, Haskell has submitted several Requests for Equitable Adjustment ("REAs") under the Contract seeking additional compensation on a variety of theories. Pursuant to these REAs, Haskell maintains, among other things, it was delayed in the performance of its work and was required to perform extra services, all without compensation. Haskell asserts that it has expended, or will expend, approximately $4.8 million in unreimbursed costs and claims it is entitled to recover all or a substantial majority of these costs. In addition, since the filing of these REAs, Haskell has asserted that additional project delays and disruptions have occurred to date that have caused Haskell to incur additional costs.

4. **Haskell Release**. Haskell and the County have met several times to review and negotiate Haskell's various asserted claims. As a result of these meetings, the County and Haskell agree to this Change Order No. __, to, resolve, among other things, any and all claims that Haskell has asserted, or could have asserted, to date, that arise from or relate to this Contract or otherwise arise from or relate to any improvements being undertaken at the Port of Miami excepting only those claims expressly excluded in the following paragraph no.5. By execution of this Change Order, and conditioned upon the receipt of the settlement funds of $2,447,000 to be paid by the County to Haskell hereunder, Haskell hereby irrevocably releases and discharges the County, its agents, employees, consultants, independent contractors, and P & O, its employees, agents, independent contractors, and consultants (hereafter, collectively referred to as the "County and P & O Releasees"), on behalf of Haskell, and its agents, assigns, successors, subcontractors and consultants (of any tier), and suppliers, from any and all claims,

Memorandum

MIAMI-DADE COUNTY

Date: March 20, 2007

Agenda Item No. 8(Q)(1)(A)

To: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Resolution Authorizing Execution of Settlement Agreement between Miami-Dade County and The Haskell Company for the Sum of $2,447,000

RECOMMENDATION

It is recommended that the Board approve the accompanying resolution authorizing the execution of a settlement agreement between Miami-Dade County (County) and The Haskell Company (Haskell) for the sum of $2,447,000, resolving Haskell's construction claims arising from the Seaport Redevelopment Program.

BACKGROUND

On July 24, 2001, the Board approved Resolution R-925-01, which, among other things, authorized the execution of a master development agreement with P&O Ports Florida, Inc. (P&O). This agreement, which designated P&O as the Master Developer of certain Port infrastructure improvement projects, required P&O to competitively procure an architectural/engineering firm (A/E) and general contractor to design and construct multiple phases of the Port's capital development program (project). The overall program contemplated 33 individual project elements (phases) that were to be completed in a certain logical order as described in a program schedule. Among others, the elements included various road improvements, paving and drainage improvements, an 1145' wharf extension, construction of a new Port maintenance building and multi-level parking deck, and demolition of several older structures.

Following a competitive selection process, P&O hired Tetra Tech, Inc. to perform architectural and engineering services and hired The Haskell Company as the project's construction manager. In July 2004, the County, through the Seaport Department, released P&O as master developer and assumed these functions. As part of the Port's replacement of P&O as the master developer, P&O assigned both the A/E Contract with Tetra Tech and the Construction Manager Contract with Haskell to the County. As a result, claims asserted under either the A/E Contract or the Haskell Construction Manager Contract were reviewed and administered by the Port..

During the course of the overall project, several elements were changed for some projects, including delivery method and design and budget, and some were delayed by late or deficient designs or construction errors. When the overall period of construction was extended by over two years, Haskell asserted several claims for additional compensation, delay, and additional general condition costs. In aggregate, Haskell's unresolved extra work and delay claims against the County amounted to approximately $5 million. To assist with the evaluation of Haskell's claims, the Port retained the services of GREYHAWK North America, L.L.C., a construction claims expert consultant.

It was originally anticipated that the work Haskell was contracted to perform would be completed by December 31, 2003. In March of 2004, Haskell submitted a formal Request for Equitable Adjustment seeking $4.6 million in delay damages and a time extension to January 14, 2005. GREYHAWK reviewed this claim in detail and submitted a report on September 21, 2004 finding that, if all of the delays incurred

were solely the responsibility of the Port, that the maximum damages to which Haskell would be entitled would be $1,863,058; but that, based on an analysis of potential concurrent delays by Haskell, the damages due Haskell would be considerably less.

Based on discussions with the Port and GREYHAWK, and due to continuing delays on the program, Haskell submitted a revised request seeking $4.2 million in damages and time extension to September 9, 2005. At this point, Haskell had reduced their damages by $400,000 for a period of time that was nine months longer than the previous request. GREYHAWK reviewed this revised request and issued a supplemental analysis which concluded that, if all the delays being claimed by Haskell were the responsibility of the Port, that the maximum damages to which Haskell would be entitled was $2,952,196; however, based on an analysis of potential concurrent delays, that the recommended damages due Haskell would be $1,129,141.

In late 2004 and early 2005, GREYHAWK and the Port had settlement discussions with Haskell that led to Haskell agreeing to accept $2.2 million in damages and would also absorb any anticipated additional delay costs through December 2005. GREYHAWK supported the settlement based upon the level of effort that would be required to perform a finite analysis to prove all of the potential concurrent delays identified, as well as the risks associated with the outcome of any litigation.

Since the time of that settlement in February 2005, and the conclusion of GREYHAWK's active involvement in the Port program, two years have elapsed. Other than two project elements – Projects 13 (Parking Controls) and 17 (Gate Facility), – all other Haskell project elements achieved substantial completion on or before January 12, 2007. Projects 13 and 17 should achieve substantial completion on or before March 31, 2007, posing an additional delay of fifteen months, for which the prior $2.2 million settlement figure has been increased by $247,000 to $2.447 million (approximately $16,467 per month).

GREYHAWK has indicated that based on its understanding of the General Conditions costs and Bond/Insurance costs incurred by Haskell during the delay periods it reviewed, this incremental cost for the additional 15 months of delay appears reasonable. In return, the County will be released from all actual and potential Haskell claims asserted against either the County or P&O, or which could have been asserted, and the County will release Haskell from potential liquidated damages arising prior to March 31, 2007. However, Haskell may seek additional compensation for extended general conditions costs incurred, in accordance with contract requirements, but only to the extent the project is not completed by March 31, 2007 through no fault of Haskell or any of its subcontractors or suppliers. Similarly, should the project not be completed by such milestones, due to non-concurrent delays caused by Haskell, its subcontractors or suppliers, applicable liquidated damages under the contract could be assessed by the County against Haskell.

Susanne M. Torriente
Chief of Staff/Assistant County Manager

demands, and causes of action that Haskell has asserted, or could have asserted, against any of the County and P & O Releasees that in any way arise from, are connected with, or relate to the Contract as amended or any construction, design, or construction management services performed or provided by Haskell or any of its agents, employees, consultants, contractors or subcontractors (of any tier) relating to any work or improvements performed, or to be performed, at the Port of Miami, including, without limitation, any claims of Haskell or any of its contractors, subcontractors (of any tier), suppliers, agents, or employees (whether asserted or unasserted, known, or unknown, choate, or inchoate) for additional compensation, delay damages, extended general conditions, inefficiencies, extra work, lost profit, or any other loss or damage incurred or arising on or prior to the "Effective Date" of this Change Order (as defined in Section 16 below), with the exception only of the claims expressly excluded in the following paragraph no. 5.

5. Haskell's releases contained herein and required hereby do not include and specifically exclude only the following claims:

   i. Any claims (otherwise allowable under the Contract) that (i) arise from and relate solely to projects 13 or 17 and (ii) are based solely on events occurring after February 13, 2007, provided, however, that any such claims, or portions thereof, for time related or delay damages are not excluded, and are therefore irrevocably released, as to any alleged delays or time related damages, or portions thereof, occurring on or prior to March 31, 2007; and

   ii. Payment required from the County to Haskell for the base-work performed or to be performed by Haskell pursuant to the various executed GMPs other than and excluding any and all claims occurring or arising prior to February 13, 2007 for extra work related compensation, delay, inefficiency, price adjustments for increased cost of labor or materials, and/or time extension, all of which remain irrevocably released.

6. Subject to review and approval by the Board of County Commissioners of Miami-Dade County (the "Board"), and subsequent written approval of the County Manager, the County shall pay Haskell, pursuant to the terms of this Settlement Agreement and upon satisfaction of Haskell's obligations hereunder, including, without limitation, satisfaction of each of the pre-conditions enumerated in section 9 hereof, an additional two million four hundred and forty seven thousand dollars ($2,447,000) in exchange for the above referenced Release in favor of the County. The above-enumerated Haskell release is subject only to the excluded claims expressly set forth in the paragraph 5 above.

7. **Limited County Release of Certain LD Claims.** The County, in exchange for Haskell's above-set forth release, and other consideration provided herein, hereby releases any Contract claims it has against Haskell for liquidated delay damages ("LD") related to any project component completion delays from the inception of the project through and including December 31, 2006, except, as to Project Nos. 13 and 17, for which the County releases LD claims through and including March 31, 2007, provided, however, the

County fully reserves all rights and claims to seek liquidated damages for any completion delays either commencing after or extending beyond December 31, 2006, or, as to Project Nos. 13 and 17, for any completion delays either commencing after or extending beyond March 31, 2007, as provided in the following paragraph 8, and further provided that the County fully reserves all other claims it has against Haskell and third parties arising under the Contract or otherwise.

8. All current work under the scope of the Contract as amended was substantially completed by December 31, 2006, except the work covered by project phase no. 12.3 (interim control building), which was substantially completed on January 12, 2007, and the work covered by project phase nos. 13 (parking control systems) and 17 (cargo gate complex) (project phases 13 and 17 shall be collectively referred to herein as the "Delayed Phases"), which Delayed Phases shall be completed by March 31, 2007. To the extent ~~that the~~ Delayed Phases' work is not completed by these respective dates, Haskell and the County agree as follows:

   i. With respect to the Delayed Phases work, to the extent any critical delays beyond March 31, 2007 are concurrently caused by Haskell (or any of its subcontractors or suppliers of any tier) and the County, Haskell shall not be entitled to any additional general conditions costs or any other time or delay related costs and the County shall not be entitled to assess liquidated delay damages for such periods of concurrent critical delay.

   ii. With respect to the Delayed Phases, to the extent that Haskell or any of its employees, agents, subcontractors or suppliers (of any tier) is/are solely responsible for any critical delay in completing such phases by March 31, 2007, then the County may assess liquidated damages in accordance with those individual project GMPs. Additionally, in such cases (as applicable), Haskell shall use its best efforts to promptly complete all remaining work and fulfill all Contract requirements, without entitlement to any additional extended general condition compensation or any other delay or time based damages, or any other additional compensation, and no such costs or damages shall be charged or assessed against the County.

   iii. With respect to the Delayed Phases work, to the extent that the County is solely responsible for any critical delay in Haskell completing its Delayed Phases work beyond March 31, 2007, and neither Haskell nor any of its suppliers or subcontractors of any tier have any responsibility for such delays, then Haskell will be permitted to seek recovery of its reasonable and verifiable extended general conditions costs resulting solely from such County critical delays beyond March 31, 2007.

9. The County shall pay Haskell, by check, $2,447,000 within ten (10) business days of the last to occur of the following four (4) pre-conditions: (i) approval of this Change Order by the County Commission; (ii) the 10-day veto period expires without any Mayoral veto

being exercised; (iii) proper execution and delivery of this Change Order by both Haskell and the County (in the case of the County, following approval of the County Commission); and (iv) delivery by Haskell to the County of executed general releases and releases of lien in favor of the County and P & O Releasees (as defined above, and in forms acceptable to the County) from Haskell and each Haskell subcontractor and supplier (of any tier), other than the following excepted subcontractors: SAIC (but only with respect to work performed on project 17); Quality Communications (but only with respect to work performed on project 33); Highpower Electric (but only with respect to work performed on project 17); Integrated Security Systems; and Miller Electric (but only with respect to work performed on project 13). Notwithstanding the above, Haskell shall remain obligated to provide the County with executed general releases and releases of lien (in favor of the County and P & O Releasees) from Haskell and each of the above-listed excepted subcontractors prior to Haskell being entitled to receive Final Payment under the Contract or final release of Contract retainages, and prior to Haskell being entitled to seek or receive any shared project savings to which it may be entitled under the Contract.

10. In addition to the above, the parties acknowledge and agree to the following terms and conditions:

i. Haskell excludes from the purview of its release in favor of the County (as set forth in paragraph 5 above) future claims of Haskell (arising after the execution date hereof) for additional general conditions but only for that portion of such delay related general condition costs occurring after March 31, 2007, and only to the limited extent permitted under paragraph 8 above.

ii. The Haskell Company will be at risk for program general condition cost through March 31, 2007 and will provide on-site staffing through March 31, 2007 until all of the work is substantially complete. At a minimum, a full time project manager will be assigned to the project 50% of his/her time.

iii. There shall be no further additive adjustments or compensation for bond and insurance costs, unless the project completion date extends beyond March 31, 2007, and then only as provided in paragraph 8 above. In such situation, if applicable, Haskell may seek additional bond and insurance costs to the extent otherwise compensable in the CM Contract, but only for that increment of extra bond and insurance costs arising after March 31, 2007 (and for work occurring after March 31, 2007), and only to the extent the Project incurs critical delays beyond March 31, 2007 that are solely the responsibility of the County and do not arise, in whole or in part, from any acts or omissions of Haskell or any of its suppliers or subcontractors of any tier. This Haskell waiver of actual and potential bonds and insurance fees will not apply in the event the County materially increases the scope of the Contract, as amended through this change order, in the future, i.e. in the event the Port adds a new building. Haskell shall be entitled to additional bonds and insurance for the SAIC work as provided in the previously agreed to change order for this work.

11. It is expressly agreed that this Global Settlement Agreement, and the payment of $2,447,000 made by the County to Haskell shall represent a full accord and satisfaction of all claims and demands that were raised by Haskell in any of its REAs, or related amendments or updates, or which could have been raised by Haskell therein or otherwise (either on behalf of itself or any of its agents, employees, contractors or subcontractors (of any tier) or suppliers) at anytime prior to the Effective Date hereof, including, without limitation, all claims for delay and/or extended general conditions damages or any other additional compensation under the Contract or otherwise, with the exception only of the claims expressly excluded in paragraph 5 above.

12. It is further agreed that after the execution of this Change Order by all parties hereto Haskell has no obligation to accept any additional work (other than corrective, punch list, or warranty work required under the Contract) if such work would adversely impact the ~~March~~ 31, 2007 completion date. Any request for additional work shall be made in writing by the Owner. Within two working days of receipt of a written request for additional work from the Owner or its designated representative, Haskell shall notify the County if the additional work will impact the March 31, 2007 completion date. If Haskell fails to provide such timely written notice, it shall be obligated to accept and complete the requested additional work.

13. The County will submit this Change Order and Global Settlement Agreement to the Board for its consideration and approval and will request that the consideration of this Global Settlement Agreement be promptly placed on an upcoming Board Agenda. This Change Order and Global Settlement Agreement shall only take effect upon approval by the Board and execution by the County Manager and neither of the parties shall have any rights or obligations under this Global Settlement Agreement unless and until the Board approves this Global Settlement Agreement and if thereafter executed by the County Manager.

14. Except as expressly modified herein, or by any release executed herein or in furtherance hereof, the terms of the parties' underlying construction Contract remain in full force and effect.

15. Exclusive Venue/Choice of Law. Venue for any suit or action to enforce or construe any term of this Global Settlement Agreement shall lie exclusively in Miami-Dade County, Florida. This Global Settlement Agreement shall be governed by and construed in accordance with Florida law.

16. Counterparts. This Global Settlement Agreement may be signed in any number of counterparts, each of which shall be an original and all of which shall represent but one agreement. This Change Order shall become effective on the date (or latest date) that it is executed by all parties hereto, following County Commission approval, and executed originals or counterparts are delivered to the respective parties (the "Effective Date").

17. Severability. In case any one of the provisions contained in this Global Settlement Agreement, or any application thereof, shall be invalid, illegal, or unenforceable in any

respect, the validity, legality, and enforceability of the remaining provisions contained herein, and any other application thereof, shall not in any way be affected or impaired thereby.

18. Successors and Assigns. This Global Settlement Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their successors, and permitted assigns.

Agreed and Accepted:

Miami-Dade County

By:_____[1]

The Haskell Company

By:_____
John H. Patton
President-Civil/Public Facilities

3659303_3.DOC

[1] As stated above, the County's approval of this Global Settlement Agreement is subject to, and dependent upon, obtaining approval hereof by the Board (via resolution) and subsequent execution hereof by the County Manager.

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Miami Seaport
Redevelopment Program

review of

The Haskell Company
Request for Equitable Adjustment
(dated March 1, 2004)

for

The Miami-Dade County Attorney

By

GREYHAWK North America, L.L.C.
Woodbury, New York

February 10, 2005

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I. Executive Summary

The Haskell Company (Haskell) entered into a contract on December 10, 2001 with P&O Ports Florida, Inc. (P&O) to be the Construction Manager on the Miami Seaport Redevelopment Program. The overall program contemplated 33 individual projects (phases) that were to be completed in a certain logical order as described in a program schedule, SCH8, that was part of the Haskell contract. Haskell was to perform each of the project phases as either the CM-at-risk or as the design/builder.

Hasked based its pricing and staffing on the conceptual descriptions of the 33 projects provided to Haskell by P&O. Based on Schedule E of the contract, Haskell based its fee and general conditions costs on the anticipated Program construction cost of $83,554,000 and the required Program duration of two years ending on December 31, 2003 resulting in a total compensation to Haskell of $11,300,000.

During the course of the Program, which is still ongoing, some projects were deleted and others added; some had their delivery method changed; and some had their scope and/or budget changed. As a result of numerous delaying impacts, the Program was not completed by December 31, 2003 Haskell has submitted an initial and supplemental requests for equitable adjustment requesting a time extension to September 9, 2005 and additional compensation of $4,213,124.18

Haskell argues in their request that six major issues impacted their time and cost for performing the work required under the contract. These issues are:

1. Slow and incomplete provision of Programming Data.
2. Delays in obtaining permits.
3. Delays in relocating tenants.
4. Delays in deciding the delivery method for certain project phases and the adequacy of the programming information (30% design drawings) to be used for the design/build projects.
5. Project holds.
6. Scope changes.
7. Preconstruction services on cancelled projects.

As a result of the above the Miami-Dade County Attorney's Office retained the services of GREYHAWK North America, L.L.C. (GREYHAWK) to review the Haskell request and determine the amount of any equitable adjustment to which Haskell may be entitled.

Based upon a review of the Haskell request for equitable adjustment, GREYHAWK has identified the following:

Haskell has only provided anecdotal evidence in support of its assertions of the causes of delay and extra work on the project. In spite of specific requests by GREYHAWK and the County for detailed examples of the alleged failings on the part of the County, Haskell has not provided this information. For example, Haskell has not provided any of the following:

1. Specific examples of lacking design information by providing a reference to the missing data, when it was required and why, when it was received and what the impact resulted to the project.
2. For alleged permitting delays resulting from the resolution of drainage design issues, Haskell was to provide specific information to demonstrate that the revised drainage designs were the result of a relaxation of the contractually required design criteria and not the result of redesigns caused by Haskell over designing a too expensive drainage system.
3. Specific examples of the allegedly deficient 30% design drawings to be used as the basis for their design/build projects by describing by drawing number what information was missing, why it should have been there, when they got the information and how it impacted the project.
4. Specific examples of how a particular project being placed on hold prevented Haskell from performing its work on the remaining active projects.

In addition, the fundamental premise of Haskell's request is that all delays on the Program were the responsibility of the County and that Haskell was not responsible for any delays on the Program. A review of the project record revealed that their fundamental premise was incorrect. GREYHAWK has identified that Haskell has contributed and was responsible for delays to the project in two ways.

Haskell's contract required Haskell to provide cost estimating services during various stages of design development starting at the conceptual design stage and proceeding through schematic design, design development and preparation of construction documents so as to assure that each project would be kept within the budget allocated to it in the Program budget that was the basis of the Haskell contract. There is evidence that Haskell's estimates through this preconstruction process were woefully inadequate and that the bids received on numerous projects exceeded Haskell's previously estimated costs by 50%. This caused some projects to be cancelled and others to be redesigned in order to control the ultimate budget overruns experienced on the Program. These redesigns resulted in delays to the Program and it is clear that Haskell shared in responsibility for these delays.

Haskell was also responsible for numerous other delays on the Program. There is evidence in the record that Haskell was responsible for permitting delays, design delays and construction delays on many of the projects in the Program. Many of these delays were, according to the Haskell schedule updates produced during the course of the Program, on critical projects and

contributed to the overall 579 day delay for which Haskell is seeking compensation. Other delays, while not necessarily critical according to those same schedule updates were certainly concurrent to some degree with the critical delays identified. A major delay to the Program that was never identified as critical on any of the Haskell updates, but was clearly critical to the Program, was the delay completion of the parking garage project. The delayed completion of the parking garage also exposed Haskell to the imposition of Liquidated Damages in accordance with the GMP amendment for that project. The extent of the Haskell delays to the Program, and the imposition of the liquidated damages for the parking garage project, results in a significant reduction in the compensability of the time extension being requested by Haskell and in the ultimate damages to which Haskell would have otherwise been entitled.

In addition, the damages being requested by Haskell were not appropriately calculated. The damages requested also assume that the County is solely responsible for Haskell's cost overruns on the project. This assumption too was not accurate. Haskell's damages as calculated were also not consistent with their own cost records.

As a result of the above, GREYHAWK has determined that of the 579 day time extension being requested, that Haskell has contributed 439 days of concurrent or exclusive delay.

In addition, GREYHAWK has concluded that the $4,213,124 in damages, being requested by Haskell, when appropriately corrected results in a maximum of $2,952,196.53 to which Haskell could be entitled if the County were solely responsible for the delays to the Program and such delays were the result of active interference by the County as alleged by Haskell.

GREYHAWK has also determined that the County is entitled to $258,000 in liquidated damages on the parking garage project and that this amount should be credited against any delay damages to which Haskell would otherwise be entitled.

In preparing their request for time and damages Haskell has characterized the performance of the County that has allegedly resulted in the delays and extra work, for which Haskell seeks compensation, as active interference so as to avoid the limits on additional time and compensation imposed by the contract. Many of the acts alleged by Haskell are specifically defined by the contract as not constituting active interference. Accordingly, there is some question as to whether Haskell will prevail in such an argument.

Should the no damages for delay provisions in the contract be upheld and Haskell not prevail in their assertions of active interference, the maximum compensation to which Haskell would be entitled, per the terms of the contract, is $350,000 and this would then be offset by the County's entitlement to liquidated damages.

However, should Haskell prevail in their arguments, the maximum damages to which Haskell may be entitled, have been calculated as follows:

Maximum potential damages	$2,952,196.53
Deduct for concurrent delays	$2,238,366.63
Deduct for liquidated damages	$ 258,000.00
Maximum potential damages	$ 455,829.90

In addition, there are potential adjustments to the concurrent delays for which Haskell is responsible, as described in the schedule analysis section for the supplemental Haskell request, that could increase Haskell's net entitlement to damages to $1,129.41.

II. Introduction

The Haskell Company (Haskell) entered into a contract, dated as of the 10th of December, 2001 with P&O Ports Florida, Inc. (P&O) for the Miami Seaport Redevelopment Program. For purposes of the contract P&O was the "owner", however, the actual fee owner of the project is Miami-Dade County (including its Seaport Department). Haskell, under the terms of the contract was the Construction Manager who may also fill the role, and be referred to as contractor, builder, or design/builder in the contract or complementary documents.

The scope of the Miami Seaport Redevelopment Program address certain cargo and cruise terminals and certain roadways serving those terminals, along with certain other ancillary facilities. The overall Program contemplated 33 individual Project Phases (individual projects as follows:

Project No.	Description
1	Relocation of Fumigation Yard
2	Demo Shed C
3	Intermodal Center
4	Roadway at Sheds A&B
5	Gangway & Bridge Terminal 10
6	Intermodal Center Teminal 11
7	Parking Garage Terminals 8, 9 and 10
8	INS Facility, Terminal 12
9	PAX Bridge and Gangway Relocation
10	Bulkhead realignment Berth 19
11	Intermodal Roadway Improvements
12	Cruise Entry Gate
13	Parking Control Systems
14	Relocate Seaboard Car Lot – 2 New Surface Lots
15	Sitework and Landscape
16	Eastern Port Blvd.
17	Cargo and Security Gate Facility
18	Port Blvd. Entry Roadway and Flyover
19	Relocate Rail
20	Construct Shed F and Cargo Yard
21	Shed E New Roof
22	Shed D New Roof
23	New Refrigerated Yard, Relocate Chiquita
24	Construct New Terminal Maintenance Facility
25	Construct New Gantry Crane
26	Construct New Port Maintenance Facility

27	Sewer Line Force Main & Utility Improvements
28	Demo Shed B
29	Customs Facilities/Seamen's Center/Comfort Sta.
30	Wharf 6
31	Wharf 7
32	Mooring Improvements
33	Security Improvements

Some of the above projects were to be performed by Haskell as the construction manager and others by Haskell as the Design/Builder.

Although the contract is dated as of December 10th, 2001 Haskell did not complete its final negotiations with P&O until mid-March of 2002. The three months of negotiations were to finalize Haskell's pricing for building the 33 projects. Haskell based its pricing on conceptual descriptions of the 33 projects provided by P&O. The preliminary Program cost estimate provided to Haskell by P&O indicated that the approved total Program cost was $111,230,000 inclusive of all hard and soft costs.

Haskell's fee for performing the work was to be as follows:

4.8% of the Cost of the Work when performed on a CM-at-risk basis
5.4% of the Cost of the Work when performed on a Design/Build basis

In addition, Haskell was to be entitled to a General Conditions Fee of 6% of the Cost of the Work.

Based upon Schedule E of the contract, Haskell based its Fees and General Conditions staffing and other costs upon an anticipated construction cost of $78,851,000 with a required completion date of December 31, 2003 and projected a total fee (based on a 5% composite rate) of $4,283,904 and General Conditions costs at $6,827,079 for a total of $11,110,983 for its services under the contract bringing the total Program cost to $89,961,983. It appears that on January 16, 2002 that P&O revised its budget for the construction costs to $83,554,000 and revised the total Program costs to $94,854,000. Such an adjustment therefore implies a revision of Haskell's total compensation to $11,300,000.

The choice of project delivery method, that determined which projects were to be performed on a CM-at-risk basis and which on a design/build basis, was to be determined by P&O and its client. This determination, however, was also made in reliance upon information and estimates provided by Haskell.

During the course of the Program, which is still ongoing, a number of projects were deleted, others added, some had their delivery method changed, and the scope and/or budgets for still

others were revised. In addition, as a result of the above and other issues, the Program has been impacted by numerous alleged delays, up to the date of the submittal of the Haskell Request for Equitable Adjustment on March 1, 2004, resulting in an anticipated completion date of January 14, 2005. As a result Haskell has submitted the Request for Equitable Adjustment to P&O requesting a 380 day time extension from the original December 31, 2003 date to January 14, 2005 and compensation in the amount of $4,671,109. It should be noted that since Haskell has submitted their request, additional schedule updates have been submitted by them, with the latest, PA 103 with a data date of 5/14/04, indicating that the current anticipated Program completion date is May 3, 2005. This represents an additional delay of 109 days to the completion of the Program.

The Miami-Dade County Attorney's office retained the services of GREYHAWK North America, L.L.C. to independently review the Haskell request and to determine the amount of any equitable adjustment to which Haskell may be entitled.

III. GREYHAWK Scope of Work

In order to evaluate the Haskell Request for Equitable Adjustment, GREYHAWK reviewed the following:

1. The Haskell Request and all supporting documentation.
2. Attended, either in person or telephonically, meetings with Haskell and the County staff to discuss the Haskell Request.
3. Had discussions with Haskell's expert, Chad Hutchison, regarding their preparation of Request and to request further documentation.
4. Met with County staff to review the project files and to select documents for review including:
    i. The Haskell Contract
    ii. Correspondence
    iii. Meeting minutes
    iv. Schedules (also received electronic copies of schedule updates PA00 through PA94 from Haskell)
    v. GMPCO Logs
    vi. Monthly Progress Reports
    vii. Schedule Exception Reports
    viii. All other project records in the possession of P&O Ports
5. Reviewed Haskell's project file structure and requested copies of selected files for each individual project including:
    i. Files for all subcontractors and vendors (contracts and correspondence)
    ii. Correspondence with Ardaman & Associates
    iii. Correspondence with interoffice & jobsite
    iv. Correspondence with utilities
    v. Correspondence with Misc.
    vi. Misc. pre-bid correspondence and subcontractor bids & quotes
    vii. Cost codes and revisions
    viii. Cost reports
    ix. Equipment rental reports
    x. Schedules
    xi. Accident and Safety reports
    xii. Field purchase orders
    xiii. Construction site inspection logs
    xiv. Contract file/major job notice
    xv. PCO logs and RFI logs
    xvi. All superintendent/foreman/inspector diaries, journals, logs, etc.

    Haskell is in the process of copying the requested documents and furnishing them to GREYHAWK. To date GREYHAWK has received most of the requested

documents with the notable exception being item xvi above and the records on some of the cancelled projects.

6. Reviewed the Haskell schedule SCH8 and schedule PA00 and its updates through PA94 to: evaluate the propriety and quality of the Haskell schedules; identify the critical path of the Program according to each schedule and at the time of each update; identify and quantify areas of delay for which Haskell was responsible; and to quantify the extent of concurrent non-compensable delays to the Program.
7. Reviewed the various project records provided by the County and Haskell to identify potential delays that were the responsibility of Haskell.
8. Reviewed selected individual project phase GMP schedules to evaluate Haskell's performance relative to them and to identify Haskell's responsibility for Liquidated Damages.
9. Reviewed the GMPCO logs and transmittal logs to evaluate the development of the Haskell estimates for selected project phases as compared to the actual bids received for the estimated work.
10. Interviewed County staff to obtain information regarding the County's and Haskell's performance on the Program with respects to the delays incurred.
11. Reviewed the Haskell Project Status Summary Reports to evaluate the costs allegedly incurred by Haskell and the nature and compensability of the identified alleged cost overruns.
12. Reviewed the Haskell contract with P&O to determine their contractual entitlement to adjustments for additional time and compensation.

IV. Summary of Haskell Request for Equitable Adjustment

Initial Request Dated March 1, 2004

The Haskell Initial Request for Equitable Adjustment is presented in a binder containing 22 tabbed sections and an appendix. Also included was a CD with three Primavera schedule files: SCH8, PA00 and PA85.

The cover letter transmitting the request was contained in Tab 1 of the Request. In this cover letter Haskell asserts that the late and incomplete supply of Program Development information from P&O and/or the Port of Miami is active interference by those entities and therefore Haskell's damages are not limited to extended general conditions.

Haskell then asserts that P&O has already admitted to Haskell's entitlement to extended general conditions and an extension of time.

In addition, Haskell asserts and requests that, in accordance with the contract documents, they are entitled to the Architect's decision on their request in 10 days and that if they do not receive the decision within 30 days they are free to proceed forward with mediation.

The narrative of the request is essentially contained in Tab 2 of the Request. In this narrative Haskell provides background information on the project and then enters into a dissertation on the various types of issues that they believe have delayed their performance on the project. These issues include:

1. The slow and incomplete provision of Programming Data.
2. Extensive and unanticipated delays in obtaining permits.
3. Delays in tenant relocation.
4. Delays in design/build decisions and the adequacy of the 30% design drawings to be used as the basis for the design/build work.
5. Project holds.
6. Scope changes.
7. Preconstruction services on cancelled projects.

As a result of the above Haskell contends that they have provided additional services and incurred increased costs. Haskell is now seeking a 380 day time extension from the planned Program completion date of December 31, 2003 to January 14, 2005 and an equitable adjustment of $4,671,109 of which $975,848 is currently due and the balance to be earned as the Program progresses to completion on the extended date requested. Tabulations of these damages are contained in Tab 4 of the Request.

To support their entitlement to a time extension Haskell has provided a series of as-planned/as-built comparisons based upon what they consider to be the baseline schedule for the Program (PA00) and the as-built data contained in the 85th update to PA00 identified as PA85. The schedule that was included in Haskell's contract is SCH8. Haskell has not used this schedule for the basis of their as-planned/as-built comparisons. Haskell did not receive a signed contract until several months into the Program and they created PA00 as the baseline for the project at that time. Tab 3 of the Request provides a comparison of the planned Program duration under SCH8 and PA00 showing a 43 day delay due essentially to the delay in obtaining a signed contract and Notice to Proceed. In addition, this exhibit projects the current completion date calculated by PA85 showing an additional 337 days of delay for a total of 380 days of delay for which Haskell wants to be compensated.

Haskell then presents in Tab 5 of its Request a Program "Critical Path Analysis". For this analysis Haskell has chosen to depict the as-planned/as-built comparison for the Wharves 6 & 7, Seaport Maintenance Facility and Roads Cluster projects and then depicts a "critical path" spanning the difference between the plan and as-built.

Tab 6 of the Request then provides an as-planned/as-built comparison of the Wharves 6 & 7 project without any explanation for the differences.

Tab 7 of the Request continues the comparison in Tab 6 and identifies 5 delays totaling 295 days. These delays are:

1. Delay in start of 30% concept design		19 days
2. Delay in completion of 30% review		64 days
3. Delay in Design/Build authorization		48 days
4. Delayed completion of Civil design		150 days
5. Forecast delay in project completion		14 days
	Total	295 days

Tab 8 of the Request provides an as-planned/as-built comparison for the Roads Cluster work and identifies 4 delays totaling 337 days. These delays are:

1. Delay in start of 30% concept design		30 days
2. Delay in completion of 30% concept		89 days
3. Delay in completing design, approval, permitting		169 days
4. Delay in completion of the roads		49 days
	Total	337 days

Tabs 9 thru 19 of the Request provide as-planned/as-built comparisons for the following projects, not all of which are alleged to be on the critical path, and provide anecdotal comments to explain the differences. The projects so illustrated are:

1. Roadway, sheds A&B, cruise loop road - Project 4
2. Interim control room - Project 12.3
3. Relocate Seaboard car lot - Project 14.1
4. Construct surface lots - Project 14.2
5. Eastern Port Boulevard - Project 16
6. Cargo gate facility - Project 17
7. Western port road - Project 18
8. New refrigerated yard, relocate Chiquita - Project 23
9. New seaport maintenance facility - Project 26
10. Wharf 6 & 7 marine work - Project 30
11. Security improvements - Project 33

In addition to the anecdotal comments contained on the Haskell schedule comparison exhibits, Haskell also provided a Program Development Chronology at Tab 20. This is a tabulation of selected comments from the minutes of various types of project meetings.

Tab 21 is a tabulation anecdotal excerpts from Weekly Schedule Exception Reports.

Tab 22 contains the back up for Haskell's damage calculations.

The balance of the binder is an Appendix with selected project documentation that Haskell believes supports their assertions.

The CD received with the Haskell Request for Equitable Adjustment contained backed-up files in Primavera Project Planner format for three schedules as follows:

File Name	Schedule Title	% Comp	Data Date	Project Start	Project Complete	Activity Count
SCH8	MIAMI SEAPORT REDEVELOPMENT PROGRAM	0.0%	11/01/01	11/01/01	12/31/03	233
PA00	MIAMI SEAPORT REDEVELOPMENT PROGRAM	4.7%	04/12/02	12/10/01	02/12/04	824
PA85	MIAMI SEAPORT REDEVELOPMENT PROGRAM	70.9%	01/09/04	12/10/01	01/14/05	3356

SCH8

SCH8 is the preliminary Program schedule contained in the Haskell contract as Exhibit J.

PA00

PA00 is in essence an update of schedule SCH8 and reflects the 43 day initial impact to Program completion as described earlier.

PA85

PA85 is the latest in the series of weekly updates of schedule PAOO prepared by Haskell during the course of the Program. This update projects a Program completion of January 14, 2005.

It is the comparison of the status of the Program as shown in PA00 to that shown in PA85 that provides the framework used by Haskell to illustrate the critical delays alleged to have incurred over the course of the Program. It is the 43 day initial delay indicated in PA00 plus the 337 day delay described in Tab 8 (based on the PA00/PA85 comparison) that accounts for the 380 day time extension being requested by Haskell. Haskell further asserts that none of these 380 days of alleged critical delay is in any way attributable to any act or omission of its forces, or its numerous subcontractors or suppliers. According to General Conditions section 8.3.1 of its contract, Haskell is not entitled to any additional time or compensation for additional general conditions cost for delays for which Haskell, or its subcontractors or suppliers are responsible. A more detailed summary of the parties' subject CM Contract is contained in Section V of this report.

Supplemental Request

In February 2005 Haskell submitted a supplement to their initial request for equitable adjustment that requested an additional time extension of 238days from the January 14, 2005 program completion date projected in their initial request to a revised program completion date of September 9, 2005 resulting in a total time extension request of 575 days. In addition, the Haskell supplemental request revised the amount of the damages in their initial request from $4,671,109 to $3,481,812 and then requested an additional $731,312 in damages, for the supplemental 238 day time extension, bringing their total damage request to $4,213,124.

In support of this supplemental request Haskell submitted a series of spreadsheets showing the calculation of their incurred/projected overhead expenses and total general conditions costs through December of 2005 and an Issue Summary dated November 5, 2004 that contained a series of summaries, by project, containing a bullet point listing of the issues that Haskell asserts contributed to the delays on that project. Haskell also provided a copy of its current Project Status Summary report for its Port of Miami overhead accounts and its associated Cost report with the detail of the charges to each of the overhead accounts in the summary report.

In addition, Haskell provided written comments taking exception to a number of the adjustments made by GREYHAWK to Haskell's claimed damages in their initial request for

equitable adjustment. GREYHAWK has reviewed those comments and rather than updating the damages analysis section of this report regarding the initial request, the revised adjustments will be incorporated into the analysis of the revised damages being requested by Haskell in their supplemental request.

V. Contract Analysis

Haskell entered into a *Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor* AIA Document A121/CMc and AGC Document 565.

The agreement is dated as of December 10, 2001 and is between P&O Ports Florida, Inc. and The Haskell Company.

The contract was for the Miami Seaport Redevelopment Program (MSRP) at the Port of Miami. The scope of the MSRP contemplated 33 individual projects (phases) that were to be performed by Haskell on a traditional CM-at-risk or Design/Build basis pursuant to the terms of the Contract Documents which are deemed applicable to each individual phase.

There are a number of contract clauses that are significant in so far as the nature of the claim that has been submitted by Haskell is concerned. Since the contract contemplated that Haskell could perform projects on either the CM-at-risk or on a Design/Build basis it contains different provisions pertaining to each project delivery method.

The General Conditions of the Contract are AIA form A201 – 1997 which is Exhibit L of the Contract.

Paragraph 3.10 of the General Conditions requires that promptly after being awarded the Contract, the Contractor shall submit its construction schedule for the work. Upon review and acceptance by the Owner and Architect, the construction schedule submitted by the Contractor shall be deemed part of the Contract Documents.

Paragraph 4.3.1 of the General Conditions states that the responsibility to substantiate claims rest with the party making the claim and paragraph 4.3.2 states that claims must be initiated within 21 days after occurrence of the event giving rise to such claim or within 21 days after the claimant first recognizes the conditions giving rise to the claim, whichever is later.

Paragraph 4.3.7.1 of the General Conditions states that if the Contractor wishes to make a claim for an increase in Contract Time, written notice shall be given.

Paragraph 8.3.1 of the General Conditions states that if the Contractor is delayed at any time by an act or neglect of the Owner, or Architect or County or by changes ordered in the Work or by labor disputes, fire, hurricanes, tropical storms, ... provided the delay was not caused by the contractor or others for whom the contractor is responsible, then the Contract Time shall be extended by Change Order to the extent that the delay will prevent the Contractor from achieving Substantial Completion within the Contract Time. Paragraph 8.3.3 states that notwithstanding anything to the contrary in the Contract Documents, an extension in the

Contract Time, together with additional general conditions costs shall be the sole remedy of the Contractor unless a delay is caused by acts of the Owner or County constituting active interference with the Contractor's performance. The paragraph goes on to further state that the Owner's exercise of any of its right or remedies under the Contract Documents including without limitation ordering changes in the Work, directing suspension, rescheduling or correction of the Work, regardless of the extent or frequency of the Owner's exercise of such rights or remedies, shall not be construed as active interference with the Contractor's performance of the Work.

Paragraph 14.3 of the General Conditions states that the Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine and that the Contract Time shall be adjusted for increases in the time caused by the suspension, delay or interruption. It should be noted that provision for adjustment for increased cost for such suspension, etc. was struck from this paragraph.

CM-at-Risk

Haskell is obligated to perform the Work in accordance with a Guaranteed Maximum Price (GMP). Paragraph 2.2.4 of the contract states in part that the basis of the GMP shall include the date of substantial completion for the project phase upon which the GMP is based and a schedule of the Construction Documents issuance dates upon which the substantial completion is based. Paragraph 2.2.8 states that upon acceptance of the GMP proposal and its basis, the terms of the GMP agreement shall be understood to govern, for that project phase, over any conflicting terms contained elsewhere in the Contract Documents.

Compensation for preconstruction services, per paragraph 4.1.1 for each phase are on the basis of hourly rates for the Haskell staff in accordance with items 1 & 2 of Exhibit E of the contract. These hourly rates are understood to be all inclusive for services of the Construction Manager including overhead and profit. According to paragraph 4.1.2 the total compensation for preconstruction services for any project phase shall be subsumed into the General Conditions Cost Allotment for that project phase pursuant to paragraph 5.1.2.7 which states that all compensation paid to the Construction Manager for preconstruction services shall be considered as advances against the General Conditions Cost Allotment. According to paragraph 5.1.1.2 the Construction Manager's General Conditions Cost Allotment for each project phase and for the Program shall be 6% of the Cost of the Work and Direct Purchases by the County. This paragraph goes on to further state that the 6% allotment covers the Construction Manager's staff costs for the Program and each project phase and that the total staffing costs as set forth in Exhibit E were developed in anticipation that the overall construction of the Program would proceed generally in accordance with the schedule set forth in Exhibit J. In the event that the overall construction schedule varies materially from the

Exhibit J schedule for reasons that are not fault of the Construction Manager nor could have been avoided by the Construction Manager's exercise of reasonable diligence, the parties acknowledge that any increased staff costs caused by such variation are not covered by the 6% allotment. The paragraph further states that additional staffing costs resulting from such revisions to the anticipated schedule shall not exceed $350,000.

Paragraph 6.1.6.8 excludes legal, mediation and arbitration costs resulting from disputes between the Owner and Construction Manager from costs that are reimbursable to the contractor under the contract.

Paragraph 6.2 Costs not to be reimbursed, lists under item 6.2.1.9 Costs which would cause the Guaranteed Maximum Price to be exceeded.

Paragraph 10.1 states that if the Contract is terminated prior to establishing the GMP and prior to commencement of the construction phase for any project, the Construction Manager shall be equitably compensated for preconstruction phase services performed prior to receipt of notice of termination. If the Contract is terminated after the start of any construction phase the Construction Manager would be entitled to the cost of the work performed plus its fee and General Conditions Allotment as appropriate less any previous payments on account of the construction phase.

Under Haskell's CM contract, Paragraph 2.1.5 (Preliminary Cost Estimates)requires Haskell to provide a preliminary cost estimate (para 2.1.5.1) followed by a more detailed cost estimate after the Schematic Design Requirements have been approved by the Owner and the County (para 2.1.5.2) and then when the Design Development documents have been completed, Haskell was to provide a more detailed estimate that was to be updated and refined as the Construction Documents were prepared (para 2.1.5.3) and if any estimate exceeded the previously approved estimates Haskell was to make appropriate recommendations to the Owner, County and Architect (para 2.1.5.4).

Paragraph 2.1.8 of their contract states that the Construction Manager does not warrant or guarantee estimates or schedules except as may be included as part of the Guaranteed Maximum Price. Under the contract, paragraph 2.2.1, the Guaranteed Maximum Price is not developed until after the Drawings and Specifications are sufficiently complete.

CM as Design/Builder

Project phases performed on a Design/Build basis are governed by *a Standard Form of Agreement Between Owner and Design/Builder* AIA document A191 which is Exhibit F to the Haskell contract. Under this agreement the performance of the Design/Builder is divided into two parts. Part 1 is the design portion and Part 2 is the construction portion.

Compensation under the Part 1 agreement per paragraph 9.1 was to be in accordance with Paragraph 4.1 of the Haskell Contract (form A121) and was to be on the basis of hourly rates in accordance with Exhibit E.

Paragraph 4.2 of the Design/Build Part 1 agreement states that if the Design/Builder is delayed during Part 1 through no fault of its own, the schedule shall be equitably adjusted and that this extension of performance time shall be the only remedy to which the Design/Builder shall be entitled and in no case shall the Design/Builder be entitled to recover any money damages from the Owner for delay in performance.

Compensation under the Part 2 agreement per paragraph 13.1 was to be based upon the cost of the Work, plus Fee plus General Conditions Cost Allowance, subject to a Guaranteed Maximum Price. It is also to be understood that the GMP included the cost of the work performed under the Part 1 agreement.

Paragraph 4.5 of the Design/Build Part 2 agreement states that if the Design/Builder is delayed at any time in the progress of the Work by an act or neglect of the Owner, Owner's employees, or separate contractors employed by the Owner, or by changes ordered in the Work or by labor disputes, fire, ... the Contract Time shall be reasonably extended by Change Order. The paragraph goes on further to state that an extension of the performance time shall be the only remedy to which the Design/Builder shall be entitled for delay in its performance for any cause whatsoever not the fault of the Design/Builder and in no case shall the Design/Builder be entitled to recover any money damages from the Owner for delay in performance.

The above two paragraphs are far more restrictive than the General Conditions paragraphs that permit GC damages for delays (albeit to a $350,000 cap) and provide relief from the cap if the delays result from active interference. It appears that in the Design/Build mode the intent was that there were to be no damages for delay.

VI. Analysis of Haskell's Request for Equitable Adjustment

Introduction

The Haskell contract contemplated that, in the period from December 10, 2001 to December 31, 2003, Haskell would construct, either as CM-at-risk or design/builder, 33 projects with an aggregate construction cost of $83,554,000 and that Haskell would receive $11,300,000 in fees and general conditions costs for their services in doing so. A number of the 33 projects in the Program ~~were~~ broken into a series of sub-projects resulting in Haskell tracking 48 individual project phases. A number of these sub-projects (phases) were ultimately cancelled. In total, however, Haskell still worked to one degree or another on the 33 basic projects contemplated by the contract. The current status of the projects and the sub-project phases worked on by Haskell during the course of the Program to date can be summarized as follows:

Project No.	Description	Delivery Method	Status
1	**Relocation of Fumigation Yard**	CM	complete
2	**Demo Shed C**	CM	
2.1	Relocate Fire Hydrant		cancelled
2.2	Drainage Improvements		complete
2.3	Move Electrical Vault		cancelled
2.4	Demo Shed C		cancelled
2.5	Surface lot improvements		cancelled
2.6	Signage & Pavement Markings CT 8 & 9		complete
3	**Intermodal Center, Terminal 10**	CM	cancelled
4	**Cruise Loop Road**	D/B	construction
5	**Gangway & Bridge, Terminal 10**	CM	
5.1	New Gangway & Gangway Relocation		active
5.2	Electrical and Utilities		active
5.3	Demo Terminal 1		active
5.4	Partial Demo Shed A		active
5.5	Relocate Fire Department		active
5.6	Mobile Gantry		cancelled
6	**Intermodal Center, Terminal 11**	CM	cancelled
7	**Parking Garage, Terminals 8, 9 & 11**	D/B	complete
8	**INS Facility, Terminal 12**	CM	cancelled
9	**Passenger Bridge & Gangway Relocation**	CM	cancelled
10	**Bulkhead Realignment, Berth 19**	CM	complete
11	**Intermodal & Roadway Improvements**	CM	complete

12	**Cruise Entry Gate**	**CM**	
12.1			cancelled
12.2			cancelled
12.3	Interim Control Room		no signed GMP
13	**Parking Controls System**	**CM**	active
14	**Relocate Seaboard Lot, 2 New Surface Lots**	**D/B**	
14.1	Relocate Seaboard Lot		cancelled
14.2	East West Surface Lots		active
15	**Sitework & Landscape**	**CM**	cancelled
16	**Eastern Port Boulevard**	**D/B**	construction
17	**Cargo Gate Facility**	**CM**	active
18	**Western Port Boulevard**	**D/B**	construction
19	**Relocate Rail**	**CM**	cancelled
20	**Renovate Shed D**	**CM**	cancelled
21	**Shed E, New Roof**	**D/B**	complete
22	**Shed G, New Roof**	**D/B**	complete
23	**New Refrigerated Yard, Relocate Chiquita**	**D/B**	complete
24	**New Terminal Maintenance Facility**	**D/B**	cancelled
25	**New Crane Maintenance Facility**	**CM**	cancelled
26	**New Port Maintenance Facility**	**D/B**	
26.1	Construct New Port Maintenance Facility		active
26.2	Demo Existing Port Maintenance Facility		no signed GMP
27	**Sewer Line Force Main & Utility Improvements**	**CM**	
27.1	New Sewer Line Phase 1		construction
27.2	New Sewer Line Phase 2		construction
28	**Demolish Shed D**	**CM**	completed
29	**Comfort Stations**	**CM**	active
30	**Wharf 6 & 7 Marine Work**	**D/B**	active
31	**Wharf 6 & 7 Civil Work**	**CM**	cancelled
32	**Mooring Improvements**	**CM**	cancelled
33	**Security Improvements**	**CM**	active

In spite of the fact that numerous projects or sub-portions of projects, with an aggregate initial construction cost budget of approximately $29,000,000 were cancelled, the total Program authorization for the remaining projects increased from the $111,230,000 contemplated at the time the Haskell contract negotiations were concluded, to $128,550,000 based upon a September 9, 2003 funding increase granted by the County. It therefore appears that the total cost of the remaining work, which was not cancelled, increased by approximately $46,000,000 -- a more than 50% increase in the anticipated cost of the remaining work.

While the net direct cost increases, we believe, have been funded to Haskell as part of the negotiated GMP's for each of the individual projects, Haskell is arguing that the 6% general conditions component of their compensation when based on the current direct costs of the work built and to be built will not adequately compensate them for the general conditions costs that have actually been expended to date plus the costs to be expended to Program completion. Their argument is that, if for example, the Program direct costs increased in value by $20,000,000 that their general conditions compensation would be increased by 6% of that or $1,200,000. Haskell asserts that such an increase is insufficient because the timeframe for the Program has been extended by more than a year at the same staffing level as contemplated for the original contract duration and because they also provided general conditions services on cancelled projects whose direct cost value is now not included in the total direct costs to which the 6% general conditions allowance is applied. How Haskell has calculated their requested adjustment in general conditions compensation will be discussed later in this report.

a. Haskell Issue Analysis

The basis for their entitlement for the requested adjustment insofar as the extended duration of the Program is concerned is asserted by Haskell to be the result of the following issues:

1. Lack of, or late supply of Program Development Information and continual changes in the master plan in an attempt to keep total Program costs within budget.

In support of this assertion, Haskell has provided anecdotal excerpts from P&O's monthly progress reports that talk about, without specifics, impacts due to lack of design information and changes to the master plan to reduce costs.

2. Permitting

Haskell again provides anecdotal excerpts for the P&O monthly reports, without specifics, that reference permitting impacts and resolution of drainage issues that are affecting permits from various agencies.

Based upon interviews and information received from various County staff, it is clear that the drainage issues had an impact on obtaining permits, but responsibility for the resolution of the drainage issues is in controversy. Haskell maintains that the program information it received from the County required it to design the drainage to certain specifications and they did. Haskell further asserts that because the costs of such drainage designs were so expensive that the County delayed the permitting process by requesting variances from the permitting agencies to be able to submit less costly drainage designs and then forced Haskell to redesign the drainage accordingly.

During a conversation with Haskell's expert consultant, a request was made for Haskell to provide the following to document this argument:

a. For each drainage design that had to be redone, provide the design basis contained in the contract that caused it to be designed the way it was.
b. Show how each design provided was a reasonable basis to satisfy what was required by the contract.
c. Show which of the contract design bases were relaxed and how each submitted design was then changed to accommodate the relaxed requirement and why such a design could not have been provided without the relaxation of the contract requirements.

At a subsequent meeting between Haskell and the County, Haskell confirmed that the information requested was being prepared and would be provided. To date the requested information necessary to evaluate Haskell's assertion has not been received. In short, this portion of Haskell's request remains unsubstantiated.

There is evidence in the record to indicate that the drainage issue, as well as, permit application delays were the responsibility of Haskell. According to information provided by County staff the following are examples of permitting chronologies on the following selected projects that were performed by Haskell on a design/build basis and for which Haskell has permitting responsibility.

- **Project #16 – Eastern Port Boulevard**
  - May 20, 2003 - Haskell sent POM a drainage plan (no calculations). A response was sent back to Haskell on May 21, 2003 asking for calculations to justify 5 new injection wells, and other technical issues.
  - June 3, 2003 - Haskell submitted draft drainage analysis with 4 new injection wells and stormceptors (or similar treatment structure). Additional comments such as the placement of these wells in the middle of the road system, etc, arose and were issued back to Haskell.
  - Revised drainage analysis was received on June 17, 2003 and June 20, 2003, and a meeting was held on June 23, 2003 to discuss the Port's comments. As per Haskell's request, the Port gave Haskell stormwater well calculations to assist with well capacity issues.
  - July 21, 2003 revised drawings and drainage analysis was received proposing 2 new injection wells. Editorial comments were given, and a revised drainage report and ERP application was submitted July 30, 2003 by Haskell.
  - August 2003 the permit application was submitted to FDEP.
  - September 4, 2003, and October 14, 2003 FDEP requested additional information, which was submitted to FDEP September 24, and October 15th, respectively.
  - November 25, 2003 a letter of completeness was issued by FDEP. At this time, Haskell was notified that the permit application for DERM may be submitted with FDEP's letter of completeness. DERM agreed to expedite this review.
  - December 3, 2003 Haskell submitted the DERM permit application.
  - December 10, 2003 DERM issued the permit agreement for the Port's and contractor's signature. This permit is still pending DERM's final signature.
  - December 16, 2003 FDEP permit was issued.

- **Project #18 – Western Port Boulevard**
  - August – November County staff worked with Haskell on drainage design.
  - November 13, 2002 – ERP application submitted to FDEP with utilization of the 4 existing wells.

- December 2002 received RFI from FDEP.
- December - March 2003 - worked with Haskell with treatment design; Drainage reports submitted by Haskell had up to 12 new wells and associated treatment (this time period led to the March 21, 2003 submittal of utilizing the existing 4 wells); exfiltration tests were also performed by Haskell during this time period.
- March 21, 2003 - Response to FDEP RFI with utilization of existing 4 wells, with treatment prior to each well, and a new swale.
- April 4, 2003 - Received a call from FDEP stating still waiting for information from Haskell prior to issuance of permit; notified Haskell and info was submitted.
- April 7, 2003 - FDEP issued permit.
- May 22, 2003 - Received DERM Class II permit application from Haskell and submitted to DERM.
- June 17, 2003 - Received agreement from DERM for Class II permit.
- June 29, 2003 - Received issued DERM Class II permit.
- August 4, 2003 - Haskell sent FDEP a request to modify the treatment system from stormceptors to CDS units (cost savings measure).
- August 7, 2003 - Received FDEP concurrence with the change of the treatment system.

- **Project #26 –New Port Maintenance Facility**
  - February - April 2003 Haskell and the POM worked together on drainage design.
  - April 23, 2003 - ERP application submitted to FDEP.
  - May 20, 2003 - Received RFI from FDEP.
  - July 1, 2003 - Submitted revised application to FDEP with drainage swales.
  - August 11, 2003 - Received FDEP ERP permit EI 13-0059524-011.
  - September 3, 2003 - Haskell was reminded that they still need to get a DERM Class II permit; given the link for the permit application to fill out.
  - September 16, 2003 - POM signed DERM Class II permit application (completed by Haskell) was given to Haskell for submittal to DERM.
  - October 31, 2003 - DERM Class II permit was submitted to DERM - Haskell never submitted the application to DERM in September; DERM agreed to expedite their review.
  - November 24, 2003 - Received agreement from DERM for Class II permit.
  - December 12, 2003 - Received DERM Class II permit.

These chronologies indicate that much of the responsibility for the cited permitting delays rests with Haskell. The impact of these delays to the Program is discussed in the Haskell Caused Delays and the Schedule Analysis sections of this report.

3. Tenant Relocation

To support this issue, Haskell provided paraphrased anecdotal excerpts, without specifics, from P&O's monthly reports referring to lack of agreement with tenants on the location, size and specification of facilities; and other impacts of delayed tenant relocations. The most repeated reference to tenant relocation impacts, in the schedule graphics provided in the Haskell request, relate to the delayed relocation of Chiquita. As will be explained in the section on Project 7, Parking Garage delays, the delay in the relocation of Chiquita is Haskell's responsibility resulting from the late completion of the parking garage.

4. Incomplete 30% Design Drawings for design/build projects

For those projects that Haskell was to perform on a design/build basis the County's architect was to provide 30% design drawings to define the basis for Haskell's bringing that design basis to completion. Haskell asserts that the drawings received were lacking significant information that rendered them much less than 30% drawings and therefore delayed the project as Haskell had to obtain the missing information.

Haskell further states that this problem was exacerbated because the County's architect could not, or would not, bring their drawings to a full 30% before turning them over to Haskell. According to Haskell some of the drawings received were so lacking in information that they actually abandoned them and started the design process anew.

In support of this claim element, Haskell has not provided any specific reference to any alleged deficient drawing received. For this issue to be evaluated Haskell should provide specific reference to a particular drawing number, identified what its deficiencies were and why the alleged deficiencies were indeed such, when the missing information was received, and how that delay impacted their design process. Although this information has been requested, Haskell has failed to provide it. Accordingly, this portion of the Haskell request remains unsubstantiated.

It is also interesting to note that in this section of the Haskell request, they characterize that the County's motivation for the selection of the design/build process was because the County did not want to go through a process of having their architect provide the complete design of a project for Haskell to build on the CM-at-risk basis only to find out, that when Haskell went out for bids on the project, that the architect had designed a project that was over budget. On this account Haskell is ignoring the contractual responsibility it had for providing initial conceptual, and later more detailed, estimates of the architect's designs during the preconstruction phase of the CM-at-risk projects.

5. Project Holds

Haskell argues that as projects progressed through the design or design/build phase that overall Program costs continued to increase and that the County, in order to control costs elected to change the design of certain projects and to place other less important projects on "hold" so as to remove those costs from the overall budget. Haskell has also asserted that the placing of projects on hold impacted their ability to design the remaining projects because the designs were not independent.

To support this argument, Haskell has again provided only anecdotal excerpts from the monthly reports referencing non specific impacts as a result of projects on hold.

Haskell has not provided any specific information to demonstrate how any specific project hold impacted their ability to perform. Nor does Haskell address how they may share some responsibility for the ever increasing Program budgets that necessitated placing projects on hold. This aspect of Haskell's responsibility will be discussed later in this report.

6. Scope Change

Haskell, again without providing any specifics, asserts that scope changes, commonly addressed by change orders, impacted construction progress. They have not provided any explanation as to why the negotiated price and time extension of a change order did not compensate them for this impact. It should be pointed out that the Owner has the contractual right to make changes in the work.

7. Preconstruction Services on Cancelled Projects

Haskell has asserted that the preconstruction services that they provided on projects that were ultimately cancelled constitute additional work under their contract. Their argument is predicated on the concept that the general conditions budget for the Program is based solely as a percentage of the ultimate construction cost of the project and that for the cancelled projects there was ultimately no dollar value against which to apply the percentage. As a result, all moneys paid to Haskell for such general conditions costs were counted against the ultimate general conditions budget and therefore reduced the amount that should have been rightfully available for general conditions costs incurred on the projects that were actually built and upon which the total general conditions budget was based.

Because, as will be described later under the section on Haskell's estimating errors, many projects were cancelled as the result of budget overruns and the need to divert funds from those projects being cancelled to more critical projects that had to remain in the Program. According

to the contract Haskell is only entitled to compensation for additional staff costs that are not incurred for reasons that are not Haskell's fault nor could have been avoided by Haskell's exercise of reasonable diligence. Accordingly, to the extent that Haskell's failure to properly estimate the costs of the various projects led to the cancellation of various projects, Haskell is not entitled to payment for the alleged additional services that could have been avoided had Haskell properly discharged their cost estimating responsibilities.

b. Haskell Caused Impacts to the Program

1. Haskell Cost Estimating Errors

In accordance with Haskell's CM-at-risk contract documents, there was an evolutionary process of estimate development to be performed by Haskell. This process basically required Haskell to do the following:

a. After the owner identified the project requirements and the architect prepared basic design criteria, Haskell was to prepare a preliminary cost estimate, for Owner approval, utilizing conceptual estimating techniques.
b. After the Schematic Design Documents have been prepared by the architect and approved by the County, Haskell was to prepare a more detailed estimate with supporting data for County approval.
c. During the preparation of the Design Development Documents Haskell was required to update and refine its estimate at appropriate intervals.
d. When the Design Development Documents were completed by the architect and approved by the County, Haskell was to prepare another detailed estimate with supporting data for County approval.
e. During the preparation of the Construction Documents Haskell was required to update and refine its estimate at appropriate intervals.

As required by Contract Paragraph 2.1.5.4 if any of the Haskell estimates exceeded a previously approved estimate or the Owner's budget, Haskell was required to make appropriate recommendations to the Owner, County and Architect. By following this process of estimate development and refinement one would expect that when the Construction Documents were given to Haskell to construct as the CM-at-risk, that the Guaranteed Maximum Price (GMP) proposal prepared by Haskell after it received sub-contractor bids would reasonably conform to the prior estimates developed by Haskell.

As already described previously, the value of the GMP proposals submitted by Haskell resulted in an aggregate increase in Program costs of more than 50%. There appears to be a fundamental disconnect between the numerous estimates prepared by Haskell and the resulting bids for the work estimated by Haskell. Some examples of cost growth between the original contract budget, Haskell's initial estimates and the GMP base cost (exclusive of contingencies, insurance and Haskell GC's and Fees) of projects are as follows:

a. Project 1, Relocation of Fumigation Yard
Contract budget $63,000. Haskell estimate $93,529. GMP cost $239,578. This represents a final hard cost 3.8 times the contract budget and more than 2.5 times Haskell's estimate.

b. The roads cluster
Contract budget $12,283,000. Haskell estimate $16,332,515. GMP cost $20,977,255. This represents a final hard cost 1.7 times the contract budget and 28% over the Haskell estimate.

c. Project 26.1, New Port Maintenance Facility
Contract budget $2,000,000. Haskell estimate $3,007,231. GMP cost $3,519,062. This represents a final hard cost 1.75 times the contract budget and 17% over the Haskell estimate.

d. Project 12.3, Interim Control Room
The original scope and budget for this project has been significantly reduced during its development. The final budget given to Haskell for this project was $1,000,000 inclusive of all contingencies and fees. Haskell's initial estimate against this budget was $910,544 in hard costs with a resulting total estimated cost of $1,083,322 which would have been 8% over the established budget. The current GMP cost proposal from Haskell is for $1,140,491 in hard costs. When the contingencies and fees are added the current GMP proposal is for $1,356,902 which is 35% over the budget and, as a result, the project is currently being redesigned to reduce costs. A more detailed analysis of Haskell's estimate development is included in a following section on Haskell's cost estimating delays.

Despite Haskell's contractual responsibilities to provide estimating services for each project phase from the provision of its basic design criteria (conceptual design) all the way through to the completion of Construction Drawings, these significant cost overruns, were often not discovered, as shown in the above examples, until receipt of actual bids when it was often too late to value engineer the completed design to meet budget requirements. Haskell's failure to catch these overruns early in the design process contributed to the need to reduce Program costs. The resulting cost reduction efforts included canceling less important projects and redesigning others in order to keep the ultimate Program budget overrun to a minimum. The failure of Haskell to identify the true costs of the projects they were estimating deprived the County of the opportunity to make more timely decisions regarding the scope of the Program. Had these overruns been identified earlier it would have prevented Haskell from performing work that it now considers to be additional services. The County paid Haskell to perform extensive estimating services throughout the design process precisely to avoid this type of problem.

By the end of June 2002, six months into this anticipated 24 month Program, Haskell's estimated Program costs were suggesting a net $4 million cost overrun. In the period of the next few months the additional identified cost increases of the Program resulted in the cancellation of 10 project phases by the end of December 2002.

Haskell has not provided any information, specific or otherwise, to explain how the County may have increased the scope of any of the projects such that the cost increases identified could be explained by those scope changes instead of by Haskell's inability to properly estimate the cost of the projects as designed.

2. Haskell Caused Delays

One of the underlying assumptions in Haskell's Request for Equitable Adjustment is that they are entitled to all of their extended performance costs, from December 31, 2003 to January 14, 2004, because the County is solely responsible for the delays that pushed Haskell's performance into that time period. Haskell has asserted that they are not responsible for any delays on the Program and that all of the delays encountered are both excusable and compensable. A preliminary review of the County's project files and Haskell's project records has identified more than 250 discrete delays on the various projects that were either the sole responsibility of Haskell or were excusable but not compensable delays (weather related delays that can never be construed as the Owner's active interference in an effort to circumvent the time only remedy for delays in the contract). Not all of the delays were on projects that appeared as critical on Haskell's schedules during the course of the Program, and of those that were on projects that appeared as critical, not all occurred during the time when the project was appearing on the critical path.

Permitting delays

Haskell's responsibility for Permitting delays on projects 16, 18 and 26 have been discussed previously. These delays, as listed in Exhibit 1, contributed a total of 86 days of critical delay to the Program; however, only 46 of those days were not concurrent with other Haskell critical delays. The permitting delays on each of the projects can be summarized as follows:

Project 16		17 days
Project 18		22 days
Project 26		47 days
	Total	86 days

In addition, as will be discussed later, there were elevator permitting delays on Project 7, Parking Garage, that are included in the overall delay to the Program caused by the parking garage and are not included in the permitting delays on Projects 16, 18 and 26 quantified above.

Estimating delays

Haskell's failure to accurately estimate construction costs has, as explained below, resulted in the delayed identification of the need to redesign projects, which has impacted the completion of the Program.

Project 12.3 Interim Control Room

A clear example of this can be seen in Project 12.3 the Interim Control Room. While the budget and scope of this project have been an issue since early on in the Program when it started with a $4,086,871 budget in January of 2002, a final reduced scope and intended budget of $1,000,000 for this project was established in May of 2003.

In May 2003 Haskell's conceptual estimate, against this budget, based on a conceptual floor plan prepared in March 2003 was $1,083,322.

In June 2003 Haskell was given what amounted to the 30% building design. Haskell's June estimate remained unchanged from the previous month.

In July 2003 Haskell was given what amounted to 70% building design and Haskell's estimate was increased by $29,744 to $1,113,066.

In August 2003 Haskell was given the 75% civil design and their estimate remained unchanged from the previous month.

In September 2002 Haskell was given the specifications for the project and their estimate remained unchanged from the previous month.

In October 2003 Haskell was given the 100% building design and their estimate remained unchanged from the previous month.

In November 2003 Haskell was given the Building Permit and Civil Permit sets of drawings and they solicited bids for the work. Based on the bids received Haskell's estimated costs for the work were increased by $325,847 to $1,438,913 for a 43% overrun of the initial budget given to Haskell in May 2003.

From December 2003 to May 2004 various efforts at redesigning components of the project only resulted in Haskell revising its budget estimates to $1,356,902. As a result the County is still in the process of having its Architect redesign the project to cut costs.

It is clear from the above that Haskell had six months of estimating opportunities to identify the budget overrun that was ultimately identified when bids were received for the project. Had

Haskell properly identified this cost overrun six months earlier the necessary re-designs could have been performed in 2003. Haskell clearly must share in responsibility for the six month delay in identifying the budget overrun. It is noted that Project 12.3 only appears critical in Haskell schedule updates PA90 and PA91 in February 2004. The Port staff has advised GREYHAWK that the delays currently being experienced in the re-design of this project are now critical.

Construction activities with extended durations

There were also many construction activities that were observed through a review of the Program schedules that showed numerous construction related activities that had actual durations in excess of their as-planned durations (both as identified in PA94) with no corresponding allegation by Haskell that the County had any responsibility for the extended duration. There were 178 activities with an average extended duration of 34 days however, **these extended durations, in aggregate, comprised 74 days of delay on projects that were critical and because of concurrency only contributed 48 days of critical delay to the Program on projects 14.2, 18.1 and 30.1. These 48 days of critical delay from extended durations were themselves concurrent with other Haskell delays on the Program.** The extended duration delays on Project 14.1, with the exception of 1 day were concurrent with the extended duration delays on Project 18.1. A discussion of the nature of the extended duration delays on projects 18.1 and 30.1 is included in the discussion of those projects in the section on Other Identified Haskell Delays that follows.

Other Identified Haskell delays

The review of the project records revealed that there were other delaying events on the Program that were the responsibility of Haskell. **GREYHAWK has identified 182 days of discrete delays on Projects 18.1, 23, 26.1 and 30.1 that contributed 48 days of critical delay to the Program.** The discrete delays on these projects (except project 23 that had 5 days of concurrent delay with project 18) are described below.

Project 18.1, Western Roadway

According to Haskell's schedules, this Design/Build project was critical during many of the update periods, and contributed to the overall Program delay in November 2002, March 2003, and April 2003 and again from October 2003 through December 2003. The project record reviewed to date shows that a primary difficulty encountered by Haskell was in dealing with one of its major subcontractors, APAC-Southeast, Inc. (APAC). Many of the discrete delay events identified for this project phase are related to the actions and/or inactions of APAC.

PA00 had an original planned duration of 4 months for the completion of design, shown as beginning in April 2002. PA94 records the start of design occurring in April 2002, however, it was not completed until January 2003, or 5 months longer than planned. An initial delay to design was referenced in an e-mail dated 12/16/02. In this e-mail Haskell notifies the Landscape Designer (Eric Lycke) that his progress on the irrigation design is unsatisfactory, and that his failure to perform and respond to phone calls will result in Haskell utilizing a different designer for future projects, however, this Project (18), must be completed. Haskell made their 100% design submittal on 1/17/03. This design delay was tracked in Haskell schedule exception reports from 10/18/02 through 1/17/03. **The delayed completion of design contributed 5 days of critical delay to the Program schedule during the update period of 11/8/02.**

The late completion of design and permitting delays resulted in a late start to construction, causing critical delay through March 2003 and April 2003, during which time project 18 again became critical according to Haskell's schedules. The delayed start of construction was tracked in Haskell schedule exception reports as a delay from 2/13/03 to 6/5/03. However, this project according to PA00 was scheduled to start on 4/21/03 but because its predecessor project (24) was cancelled it could have started as early as 2/13/03. According to Haskell, all permits for construction were in place by 5/16/03. GREYHAWK's review has identified that the FDEP permit was issued on 4/7/03 which is prior to the original planned start of 4/21/03. Haskell did not submit the DERM class II permit application to the County until 5/22/03. The DERM class II permit was approved on 6/17/03. **It is clear that the delay from 4/21/03 resulting in the 6/5/03 delayed start of construction was caused by the permitting delays and resulted in a contribution of critical delay to the overall Program of 22 days during that time period.** These 22 days have been accounted for in the section on permitting delays and are not counted again here.

In August 2003, the project record begins to document significant problems with APAC. In an e-mail from Haskell to APAC dated 8/4/03, Haskell expresses concern with the quality of work performed by APAC, specifically the priming of the loop road on the night of 8/3/03. Haskell notes a complete lack of supervision by APAC, operators not knowing how to operate equipment, and failure to record temperatures and quantities. The project record documents a number of separate instances subsequent to this 8/3/03 incident where backfill (specifically at the MSE wall), pavement, concrete pads and curb work were installed poorly and had to be removed and re-installed.

In a letter dated 10/15/03, Haskell notifies APAC that it will begin to solicit replacement contractors due to APAC's following deficiencies:

- Missed schedule milestones.
- Poor planning and lack of short term scheduling.

- Little or no field management, including subcontractor management.
- Internal communication problems.
- Poor quality of work in both the field and the office.
- Quality of submittals.
- Grossly overestimated change orders.

The following selected events demonstrate deficiencies and/or poor workmanship on the part of Haskell and/or its subcontractors:

- 7/10/03 – Drill shaft operation stopped.
- 7/15/03 – Drill rig broke down.
- 7/16/06 – Replacement parts for drill rig have been ordered.
- 7/21/03 – Drill rig repaired.
    - **NOTE: Drill rig down from 7/15 – 7/20, for a total of 6 days.**

- 8/29/03 – Leveling pad for MSE wall #1 is not level - to be removed and re-poured.
- 9/24/03 – Construction for MSE wall #1 delayed due to re-pour of leveling pad.
- 10/3/03 – Continue replacement of leveling pad.
    - **NOTE: Replace MSE wall delay spanned 8/29 to 10/3, for total of 35 days.**

- 6/10/03 - No work by APAC due to rain.
- 8/14/03 - No work by APAC due to rain.
- 8/28/03 – No work by APAC due to rain.
- 9/02/03 – No work by APAC due to rain (concurrent with MSE wall delay).
- 9/25/03 - No work by APAC due to rain (concurrent with MSE wall delay).
- 11/4/03 - No work by APAC due to rain.
    - **NOTE: Total APAC delay due to weather is 4 days.**

The above identified events total 45 days, and contributed to what GREYHAWK has identified in the Haskell schedule updates as extended durations. For the update period from 10/31/03 through 11/28/03, during which time this project was on the critical path, the identified extended durations contributed 47 calendar days of overall Program delay.

GREYHAWK has also identified other Haskell delays, which did not contribute to the extended durations described above and analyzed as such, that also contributed 25 days of critical delay as follows:

- **The design delay**, as previously discussed in this section, in the period from October 18, 2002 through January 17, 2003 **which contributed 5 days of critical delay during that period.**

- Additional delays in the period from October 15, 2003 to December 19, 2003 which contributed 20 days of critical delay as follows:

  - 10/16/03 - Discovered that MSE wall backfill may be unacceptable, and requires lab testing[1].
  - 10/23/03 - Removed previously placed backfill material that failed sieve and gradation analysis - Stockpile fill is too wet to use.
  - 10/24/03 - Backfill too wet - project delays continue.
  - 10/27/03 - Backfill too wet - project delays continue.
  - 10/29/03 - Backfill too wet - project delays continue.
  - 10/30/03 - Backfill too wet - project delays continue.
  - 10/31/03 - Backfill too wet - project delays continue.
  - 11/3/03 - New backfill material to be delivered.
  - 11/7/03 - Begin placement of new backfill material.
    - **NOTE: MSE wall backfill delay spanned 10/16 to 11/7, for a total of 22 days.**

  - 11/24/03 - Roads inspected from 111+00 to 115+40, and from 230+00 to 239+00. Cross slope incorrect. Base to be re-worked. Project delayed because paving is on hold until cross slope is corrected.
  - 12/1/03 - Cross slope issue at 230+00 to 239+00 due to wrong curb/gutter elevations. Curb to be removed and replaced.
  - 12/2/03 - Base cross slope issues corrected.
  - 12/16/03 - Base for roadway from 230+00 to 239+00 are deficient. This is the second time, and is again due to curb/gutter problems.
  - 12/22/03 - All deficiencies corrected from 230+00 to 239+00.
    - **NOTE: This delay starts on 11/24 and ends on 12/22, for a total of 28 days.**

  These additional delays constitute delay to the project totaling 50 days. During the update periods from 10/31/03 to 12/19/03, Haskell's schedule updates show that these delays **contributed 20 days of critical delay to the overall Program schedule.**

In total these other Haskel delays contributed 25 (5+20) days of critical delay to the Program.

In addition, there are currently ongoing delays to the roads projects resulting from poor quality work and construction equipment damaging the curbs which will both have to be corrected.

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[1] On 10/16/03, Haskell was informed by POM that the material being used as backfill for the MSE wall had not been tested, and that it appeared to contain rocks in excess of 6" diameter. Haskell was instructed to test the material to ensure conformance with project requirements. The testing lab (CTI) failed to conduct these tests in a timely manner, and as of 10/21/03, the results were not known. On 10/22/03, the lab results showed that the stockpiled material's moisture content was too high, and was subsequently rejected requiring removal of previously installed material at the MSE wall. This delay continued through 11/7/03, when Haskell began placing suitable fill at the MSE walls. This material was ultimately tested and found to be satisfactory.

Project 26.1, New Port Maintenance Facility

As previously discussed, the completion of the parking garage (Project #7) was required prior to beginning construction of the new port maintenance facility. The parking garage was completed on 7/24/03, however, according to as-built data in PA94, the Port Maintenance Facility did not begin construction until 12/10/03. The Haskell schedule update for the period of 7/25/03 shows that the new port maintenance facility was to begin construction on 8/4/03, which is one week after completion of the parking garage. All delays associated with the late completion of the parking garage through 7/24/03 are considered elsewhere in this analysis.

According to Haskell, the design for this project was 100% complete on 5/9/03. In Haskell's weekly schedule exception reports beginning on 7/25/03, the delayed start to construction for the new port maintenance facility is tracked as follows:

- 7/25/03 - Plans submitted to B&Z on 5/13/03. Permit approval scheduled for 8/4/03. Start of construction scheduled for 8/5/03.
- 8/01/03 - Permit approval delayed to 8/22/03. Start of construction scheduled for 8/25/03.
- 8/8/03 - Permit approval delayed to 8/22/03. Details have been added to the construction schedule. Start of construction scheduled for 8/25/03.
- 8/15/03 - No change.
- 8/22/03 - Permit approval delayed to 9/2/03. Construction delayed to 9/23/03.
- 8/29/03 - Permit approval delayed to 9/8/03. Construction start on 9/23/03.
- 9/05/03 - No change.
- 9/12/03 - Permit approval delayed to 9/22/03. Construction delayed to 10/2/03.
- 9/19/03 - No change.
- 9/26/03 - Permitting delayed to 10/1/03. Construction start on 10/2/03.
- 10/03/03 - Permit approval delayed to 10/6/03. Construction start on 10/7/03.
- 10/07/03 - Permit approval delayed to 10/14/03. Chiquita relocated today. Construction delayed to 10/15/03.
- 10/17/03 - Permit delayed to 10/21/03. Construction delayed to 10/22/03.
- 10/24/03 - Permit delayed to 10/28/03. Construction delayed to 10/29/03.
- 10/31/03 - Permit delayed to 11/4/03. Construction delayed to 11/5/03.
- 11/07/03 - Permit delayed to 11/14/03. Construction delayed to 11/17/03.
- 11/14/03 - Permit delayed to 11/21/03. Construction delayed to 11/24/03.
- 11/21/03 - Permit delayed to 12/1/03. Construction delayed to 12/2/03.
- 11/28/03 - Permit delayed to 12/12/03. Construction delayed to 12/15/03.
- 12/05/03 - Permit approval expected on 12/8/03. Construction to start on 12/9/03.
- 12/12/03 - Permit approved on 12/8/03. Construction began on 12/9/03.

The schedule exception reports indicate that part of the delay to starting the new maintenance facility was the delayed relocation of Chiquita that did not take place until 10/7/03. As will be discussed later, Chiquita could not be relocated until the completion of the parking garage, which Haskell finished late, that prevented the start of the new Chiquita facility. Chiquita actually left the Port of Miami on 10/7/03 which is before they would have been relocated if they had to wait for the completion of their new facility at the Port, which according to the schedule update on 10/3/03 was not scheduled to be competed until 10/28/03. Haskell in their request indicates that the new Chiquita facility was actually completed on 10/10/03 which is still after Chiquita had already left the Port. The remaining delay to the start of the maintenance facility from 10/7/03 through the actual start of construction (12/9/03) was due to Haskell failing to obtain the necessary permit in a timely fashion. The period from 10/7/03 through 12/9/03 represents a delay of 63 days. However, according to the schedule updates during the period from 10/7/03 through 12/9/03, **the permitting delay, that caused this late start of construction, contributed 47 days of critical delay to the Program**. This delay has been accounted for in the section on permitting delays and is not counted again here.

Since the construction of this project started in December of 2003 which is only the last month of the time period addressed in the Haskell request there little information available during this month. However, the project was critical during December 2003, January and early February 2004. GREYHAWK does not have electronic versions of any schedule updates beyond March of 2004. These were requested from Haskell but not provided.

According to the Haskell schedule updates, this design/build project was not critical during any of the update periods from April 2003 through early October 2003. It was critical from mid-October 2003 through early February 2004 and then was no longer critical in the update through PA94 which is mid-March 2004. This project should have continued on the critical path from February 2004 since completion of this facility is preventing the demolition of the existing maintenance facility whose demolition is delaying the completion of the roads cluster of projects that are critical to Program completion. Had the Haskell schedules been properly constructed and maintained, this project likely would have contributed much more critical delay to the Program schedule than has to date been recorded.

In addition, the project record shows great difficulty on the part of Haskell in controlling and managing its subcontractors as can be seen as follows:

In a letter dated 12/31/03, Haskell states that TLMC Enterprises, Inc. (TLMC) has failed to complete the building pad in a timely manner, and consequently has "caused significant impact in the start of subsequent schedule activities", and that to recover lost time "we may be forced to accelerate future trades by utilizing overtime." The activity for "Slab/Fine Grading" did show an extended duration of 1 month, yet in spite of this, the Program schedule showed only

one day of slippage during the months of December 2003 and January 2004, with, as mentioned before, the project dropping off the critical path in early February 2004.

There is numerous correspondence between Haskell and Randazzo Electrical Services Inc. (Randazzo), such as the letter dated 3/8/04 from Randazzo wherein it complains about receiving critical design information that it had been asking for since the signing of their contract. Randazzo further states in this letter that the result may be a delay to project completion. However the Haskell schedules did not show Project 26 as critical during this time period (March 2004). In a meeting held between Haskell and its subcontractors on 2/10/04, it is noted that "Randazzo feels that the pour schedule is unrealistic and voiced his concerns over his staffing to complete the electrical rough-in for the panels". Randazzo clarified this point in a handwritten note to Haskell, wherein T. Randazzo states that he "expressed concern that the schedule was unrealistic due to the fact that the steel erectors were behind schedule and holding us up. Not because (Randazzo) was having staffing problems...".

In subsequent correspondence, Randazzo states its concern with the late issuance of design information pertaining to the roadway projects. In a letter dated 3/8/04, Randazzo states that "On March 4, 2004 Randazzo Electrical Services received a plan sheet with the site lighting photometrics. This is the first time we have been privy to the information contained on this sheet.....(we) have been requesting this information since the signing of our contract.....receipt of this critical information at this time may cause a delay in the completion of this project...." This matter is apparently the result of Haskell failing to properly coordinate its subcontractors, and resulted in an extended duration to the underground electric schedule activity.

There is also much correspondence between Haskell and its roofing subcontractor, National Roofing/South Florida (National). It is documented in this correspondence that National failed to mobilize in a timely fashion, thereby causing a delay to follow-on trades. Haskell schedule PA94 showed the start of lightweight concrete to begin on March 30, 2004. Schedule data recorded in PA94 extends through its data date of March 12, 2004, and Haskell has not provided any electronic schedule files after PA94, so the impact of any delay associated with the roof remains to be analyzed. However, the project record shows that this work did not begin until 4/15/04.

In May 2004, Haskell notified TLMC that their progress is unacceptable as it relates to the delivery of limerock, the installation of 12" roof drain pipe, and curb work. Haskell informed TLMC that its workforce will be supplemented by Haskell, with costs for this work to be forwarded to TLMC.

Because the Haskell request for equitable adjustment only extends through the period encompassed by their schedule update PA85 which is through January 9, 2004, the potential delaying events described above (other than the permitting delay, which occurred during the timeframe that Haskell used for its request) have not yet been quantified because they are

beyond the timeframe addressed in Haskell's request. They have been included here for reference because Project 26 is not yet complete and is currently critical to the completion of the overall Program.

Project 30.1, Wharfs 6 & 7

According to the Haskell schedules, this project was critical from April 2003 through November 2003, and a portion of overall Program delay is due to the events as outlined below:

The project record indicates poor coordination and communication between Haskell and its design team. The kick-off meeting for design was on 2/14/03. According to Haskell schedule PA39 with a data date of 2/14/03, the activity "design to 100%" was planned to have been complete by May 19, 2003 (there was no differentiation at that time between marine design and civil design in the PA39 schedule). Haskell schedule update PA94 contains as-built data showing that marine design was completed on August 7, 2003, or nearly 3 months later than planned in PA39. The Haskell schedule exception report for the week of 7/11/03 records the start of marine construction as 7/7/03. Since construction was able to start on 7/7/03 the design delay period is from May 19, 2003 to July 7, 2003 or a delay of 49 days. The Haskell schedule exception reports tracked this as a critical project during the timeframe that this design delay was occurring. **This design delay contributed 23 days of critical delay to the overall Program schedule during this timeframe.**

Once construction started the project record shows much in the way of inactivity due to suspension of work, equipment failure and weather delays as follows:

Site Clearing/Demolition

- 7/25/03 - Improperly bled sheet clamp caused damage to new jaws in vibratory hammer - Ordered new set for replacement.
- 8/21/03 - Worked stopped at 2pm due to rain.
- 8/22/03 - Drill broke down at 11:30am.
- 8/25/03 - Drill tested after repair - motor seized up (drill used to demolish existing pile caps).
- 8/26/03 - Remove motor from drill to send out for repairs.
- 8/27/03 - Drill still down.
- 8/28/03 - Drill still down.
- 9/02/03 - Drill still down.
- 9/03/03 - Installed rebuilt motor on drill rig.
    - **NOTE: Drill was down from 8/22 to 9/3, or 13 consecutive days.**
- 9/04/03 - Swapped barge crane (equipment problems).
- 9/08/03 - Drill head broke off -remains in hole.

The delay events listed above are associated with site clearing/demolition, and total 17 days of inactivity and/or disruption, and were recorded as such on Haskell daily reports.

The inactivity and/or disruptions to the work as noted above for site clearing/demolition have contributed to what GREYHAWK has identified in the Haskell schedules as an extended duration for mobilization/site clearing of 83 days.

The extended duration associated with the mobilization/site clearing activity (completed on 11/26/03) **contributed to a critical Program delay of 26 days during the schedule update periods encompassing 10/24/03 to 11/14/03 that are concurrent with the critical delays on Project 18.**

Excavation

Soon after the start of construction, there was an issue with the location of the King Piles, which delayed the completion of the civil design. Haskell tracked this delay starting in the beginning of July 2003 as an impact to the start of excavation along the end wall, and referenced this delay as a delay to the project. Haskell referred to this issue as a coordination issue in their July 2003 progress reports, with excavation re-starting on July 24, 2003. In Haskell schedule PA94, the excavation activity for project #30 shows an actual start date of July 7, 2003, and a seven day suspension of work beginning July 16, 2003 and ending on July 23, 2003. Haskell was granted a change order for this issue.

This suspension of the excavation work represents a 7 day delay to excavation and was identified in the Haskell schedule.

Later in the excavation Haskell had a number of problems with their equipment and the weather as follows:

- 9/25/03 – Vibra-hammer down. Rubber isolation pieces breaking.
- 9/26/03 – Vibra-hammer completed by end of day.
- 9/30/03 – Drill rig down – no drilling.
- 10/15/03 – Cannot dull some existing sheets and tie-rods or install new on far east end because of access to that end of job. Crane repair contractor is using area for parking.
- 11/06/03 – Most work stopped at noon due to rain.
- 11/18/03 – Plates on rods at main wall deadman #2-29 were wrong size and have been repaired.

The delay events listed above are associated with excavation, and total 6 days of inactivity, and were recorded as such on Haskell daily reports.

The King Pile issue and the inactivity events listed above for excavation have contributed to what GREYHAWK has identified in the Haskell schedules as an extended duration for excavation of 11 days which ended on 12/3/03. **However, according to the Haskell schedule updates, this extended duration did not contribute any critical delay to the Program.**

Project 7, Parking Garage, delays

In addition to the permitting, extended construction activity durations and other identified discrete delays as discussed above on projects that were on the critical path of the Program, at one time or another, according to the Haskell schedules PA00 through PA85 (the end of the timeframe used as the basis of the Haskell request), GREYHAWK has also evaluated the performance of Haskell on Project 7, Parking Garage. As explained below this project never appeared as critical, and should have, and contributed significant delay to the Program.

Haskell was given a Notice to Proceed with the parking garage on August 29, 2002 subject to receipt of the appropriate permits. The start of construction for Project 7 was delayed as a result of the Building Permit not being issued until September 16, 2002. Based on the Notice to Proceed date, the parking garage should have been completed by March 10, 2003.

Construction for Project 7 appears to have commenced with site demolition on the day the building permit was issued. Two weeks later, on October 1, 2002 HJ Foundation, Inc. (HJ) notified Haskell that they were being negatively impacted by the lack of survey points available for their pile layout. The pile layout was apparently started by the surveyor on September 21st and completed on September 24, 2002. HJ had begun their pile installation on September 25th but was not able to complete the installation of piles until October 10, 2002. The lack of survey data delayed HJ by one day. However, the GMP schedule showed the pile work was scheduled to finish on October 18th and therefore this delay was not critical to the project.

FL. Lemark began crane erection on October 8, 2002 through October 11, 2002 in preparation for the installation of the precast structure that was planned to start on October 18, 2002. However, the project was not ready for the erection of precast as a result of incomplete pile cap construction. On October 31, 2002 the crane was disassembled and removed from the site. The crane returned back to the site on December 3, 2002 and was re-assembled by December 6. The acual precast erection began on December 9, 2002. On December 16, 2002 the crane broke down and was operational the following day. This delay of fifty-two days to the start of setting the precast structure is attributable to the late completion of pile cap construction. An additional day of delay during the precast erection was attributable to the crane being inoperable for one day. The completion of the precast was required for the elevator construction to be able to start.

ELCI Construction Group, Inc. (ELCI) began working on the construction of the pile caps on November 4, 2002. On November 23, 2002 all of the anchor bolts placed on column line #5 were

out of alignment. ELCI did not finish correcting the anchor bolt problem until December 17th and did not complete the pile cap work until January 24, 2003. This delay represents a delay of twenty-four days for the rework of anchor bolts on column line #5.

On November 18, 2002 MARS Contractors, Inc. (MARS), identified that it was unable to begin its work as scheduled due to the ongoing late completion of excavation originally scheduled to be completed by October 29, 2002. Due to the late completion of excavation, MARS was unable to begin their underground plumbing work and consequently, put Haskell on notice that once they were able to commence work MARS would advise them of the additional costs associated with this delay. The delay in completion of the excavation was apparently the result of prolonged dewatering efforts (with its associated equipment that blocked the pile cap contractor) due to the excessive design and construction depth for the installation of the grade beams. According to Port staff, this is the only building ever designed at the Port that required dewatering. The Haskell design apparently ignored the rather obvious water table. This extensive dewatering delayed the completion of the site work by approximately two weeks.

ELCI also experienced problems in getting started with its work in the elevator pit. In a letter dated November 21, 2002 Haskell requested that ELCI pursue a different concrete supplier due to the inability of the present supplier to deliver concrete within the specified slump tolerances. On November 26, 2002, ELCI produced a completion duration schedule which identified their work activities of pile caps and grade beams indicating delays to their progress due to the previously mentioned dewatering equipment blocking their way and waiting on excavation. On December 12, 2002 Haskell serves ELCI with notice that ELCI is unable to complete its scope of work within the specified duration. This letter putting ELCI on notice requested: supporting documentation if ELCI believed it was being delayed by others and; to submit a request for a time extension if appropriate. GREYHAWK has not found evidence that a time extension request was ever made. According to PA94, ELCI began work in the elevator pit on October 25, 2002.

MARS began working on the underground plumbing on December 2, 2002. On December 17, 2002, MARS submitted a Request for Information (RFI) related to Haskell direction/approval to continue with the underground installation on the storm drain pipe, as the underground drawings have not been approved by the Miami-Dade Building Department. Although Haskell responded the following day with direction to proceed per field order #14 drawings dated December 12, 2002, on December 23, 2002 MARS was forced to remove the previously installed storm water piping, due to design changes by the County Building and Zoning department. On December 31, 2002 the installed piping failed the plumbing inspection. MARS did not complete their underground installation (original activity duration of fifteen days) until March 27, 2003. During the two (2) month period from November 23, 2002 through January 23, 2003 the Haskell daily reports indicate that approval for the changes to the underground plumbing drawings

had not yet been received. This sixty-one day delay in receiving the underground permit and the failed inspection delayed the completion of the underground plumbing installation.

On January 8, 2003 there was a form failure during concrete placement in the east pit. The contractor spent from January 11, 2003 through January 16, 2003 reinstalling the forms and on January 17th the concrete was placed for the east pit. This resulted in a two day delay to the completion of the elevator pits.

On January 18, 2003, ELCI notified Haskell that they will be ready to start the transformer vault the week of January 20, 2003. This letter also indicates that they were aware that the plans have not yet been approved by the Building and Zoning department and they cannot start the structures as of yet. Construction of the Transformer Vault began on February 18, 2003 and finished on April 8, 2003. During this period, on February 25, 2003 through February 28, 2003, ELCI needed to chip out grout filled cells that were incorrectly placed. This resulted in a four day delay for this activity. Additionally, a period of eight days of inactivity was recorded from March 13, 2003 through March 20, 2003 that also delayed this activity. Haskell did not include a specific activity for the vault in the GMP schedule, however, in that schedule ELCI was supposed to finish all of its work by January 13, 2003. Therefore, the vault should have been done by that date and its completion on April 8th represents a delay of 85 days from the planned completion.

After the vault construction was completed on April 8, 2003, Florida Power & Light (FPL) commenced their ductbank and vault installation on April 11, 2003 and completed their work on June 9, 2003. However the electric meter was not installed until June 26, 2003. FPL was delayed in starting their work because Haskell had not completed the vault construction – roof, louver doors, hardware, etc. to FPL standards nor on time. There is no evidence that once FPL started its work that they took any longer to complete it than they should have.

On March 4, 2003, KONE, the elevator subcontractor, identified that it was waiting for the elevator permit approval for the past five (5) months, since October of 2002. It appears that Haskell got the elevator permit sometime between March 6 and March 12, 2003. KONE began the elevator installation on March 12, 2003 on an accelerated basis. According to the GMP schedule KONE was scheduled to start the elevator work ten days prior to the completion of the precast. According to PA94, precast was completed on February 20, 2003 so KONE should have been able to start the elevator work on February 10, 2003 which is 69 days later than originally planned. But, if KONE did not have the elevator permit until March 12, 2003, the late receipt of the elevator permit would represent an additional delay of 30 days beyond the late completion of the precast. KONE completed their work on May 2, 2003 for two of the four elevators but were unable to complete all of their work including adjusting and testing until the FPL work was completed. The FPL work was competed on June 26th with the installation of the meter and, according to the Haskell schedules, the elevator work was then completed on July 2, 2003.

The elevator work according to the GMP schedule was planned to take 73 days but it actually took 112 days or 39 days longer than planned.

As of July 2, 2003, the remaining activities for completion of the parking garage were: the installation of the fire alarm system, that completed on July 23, 2003; and the installation of the phone lines by Bell South that completed on July 15, 2003. Substantial completion was obtained on July 24, 2003. The chronology for these two sequences is as follows:

Haskell's Fire Alarm Subcontractor, Cardel, planned on installing the Fire Alarm System in fifty six days, however, it actually took one hundred twenty-eight days longer than planned. Cardel began their work on January 20, 2003. On March 18, 2003 Haskell submitted COR No. 4 requesting a 42 day time extension and increased compensation for changes made to the fire alarm system. This COR was signed by the Port on October 27, 2003. However, the "action" box indicating whether the COR was approved, rejected or revise & resubmit was not checked. On April 2, 2003 Cardel stopped work due to a conflict with the drawings. Haskell was required to revise and resubmit their drawings, which according to Port staff, only caused a one day delay. On July 3, 2003 the Fire Alarm System failed its final inspection. As a result, Cardel was required to correct the first run of the fire alarm system and fire standpipe due to Building & Zoning requirements. This corrective work was complete on or about July 11, 2003. On July 24, 2003 Haskell passed their final Fire Alarm inspection and achieved substantial completion of the project. On August 7, 2003 Haskell submitted COR No. 9 requesting an 8 day time extension and additional compensation for additional changes to the fire alarm system resulting from the July 3 inspection. This COR was signed by the Port on October 27, 2003. Again the "action" box indicating approved, rejected, revise & resubmit was not checked. As a result of the design drawing conflicts, the failed Building & Zoning inspection and having to perform corrective work, Cardel's fire alarm work was the controlling delay for the project achieving substantial completion on July 24. The delay to the completion of the fire alarm work is one hundred twenty-eight days. The GMP log for this project shows that on March 24, 2003 that Haskell separately requested a time extension for the delay included in COR 4 but there is no indication in the log that this request was granted. Notwithstanding that the Port also rejected a later time extension request by Haskell, it does appear that by signing the two COR's and showing the increased dollar amounts in the GMP log, that the Port also approved the 50 day time extension requested in those COR's.

On May 15, 2003 Haskell's meeting minutes identify that it is the Port of Miami's (POM) responsibility to coordinate the procurement of the elevator telephone line installations to be performed by BellSouth. During the week of June 19, BellSouth completed the telephone lines and it is noted that additional coordination was required between BellSouth and the elevator and fire alarm subcontractors. During the week of June 26, 2003 it is noted that four additional telephone lines needing to be installed are pending procurement from POM. Haskell's weekly report dated July 10, 2003 noted that all elevators will be complete by July 3, 2003, contingent upon the phone line installation for final inspection. Remember it was on July 3rd that the fire

alarm system failed its final inspection. The additional phone line installation was completed on July 15, 2003, which is before Haskell passed the final fire alarm inspection.

Although Haskell submitted an explanation of the delays it experienced at the Parking Garage and requested a time extension, P&O found the information provided in the request to be flawed, based on incorrect assumptions and inconsistent with the facts and on January 16, 2004 rejected Haskell's request for a time extension that was predicated on the basis that its delays on this project were concurrent with County delays.

The Parking Garage actual substantial completion of July 24, 2003, when compared to its planned completion in accordance with PA00, was completed 224 days later than planned. However, the GMP amendment for this project was based on a schedule that was created on 8/23/02 after Haskell had essentially completed sufficient design work to enable the start of construction. The schedule included in the amendment (the amendment was signed by P&O on 8/27/02 and by Haskell on 8/29/03) indicated that Haskell had started construction on August 23, 2002 and was to achieve substantial completion of the garage by February 19, 2003. This completion date is 69 days later than that originally planned in PA00. This delay to the completion was apparently due to delays during the design phase of this project and was incorporated into the August schedule upon which the GMP amendment was based. However, Haskell did not complete the construction of the parking garage by the March 10th date based on the Notice to Proceed. Haskell achieved substantial completion 136 days later on July 24, 2003. Haskell has not addressed the late completion of the parking garage in their request for equitable adjustment.

It is also very important to note that, while there were the significant delays to the Parking Garage as described above (and Haskell, in their time extension request and in discussions with Port staff has acknowledged these delays but considered them as concurrent delays to the Program) that the Parking Garage project, even though it finished months late, never showed up as critical in any of the 94 schedule updates reviewed for this analysis.

When the reality of how the projects in this Program had to be sequenced (in spite of the lack of the necessary logic in the initial Haskell schedule and updates) is considered, the parking garage project was obviously critical to Program completion as explained below.

Project Information Package, Part 2 (PIP2) dated October 3, 2001 was provided to Haskell during contract negotiations and provided a general description of the individual projects in the Program and rudimentary logic describing the sequence of construction and the necessary relationships between the various projects. From this document the predecessor activity for the garage project to be able to start was the relocation of the fumigation yard and the elimination of the eastern row of banana refrigerated container trailer parking. This was required because those two elements were occupying the space where the parking garage was to be constructed.

Haskell understood this constraint and in its PA00 schedule correctly included the relocation of the fumigation yard as a predecessor to the start of the parking garage.

What Haskell failed to incorporate into their schedule was the logic for those projects that could not start until the parking garage was finished. For example, the existing Chiquita facility was to be relocated to an area that was currently being used for parking cars. In order to free up that location, the cars in that area had to be relocated. The intention was to relocate those cars to the parking garage. Therefore the completion of the parking garage (so that the area where Chiquita was to go would not be obstructed by the cars) was indeed a predecessor to the relocation of Chiquita. Haskell did not add this necessary logic tie to its schedule until schedule update PA44 on March 21, 2003 which was after the original planned completion of the garage.

The importance of relocating Chiquita was because the existing Chiquita facility was located in an area that infringed on the ultimate location of the new Port maintenance facility and therefore had to be relocated in order to permit the construction of the new maintenance facility. The new maintenance facility was required to allow the demolition of the existing maintenance facility. The existing maintenance facility is in a location that prevents the completion of Port Boulevard, the completion of which is critical to the completion of the Program.

There were, however, other predecessors to the relocation of Chiquita (in addition to the need to relocate the cars at the new location to the parking garage) and that was the demolition of shed D, Project 28, which was completed in March of 2003, and the construction of the new facility for Chiquita. The construction of the new Chiquita facility in the location of Shed D could not start until after the demolition of shed D and the relocation of the cars. At the time of completion of shed D demolition, however, the parking garage was not yet complete and thus the completion of the garage was the driving or critical predecessor activity to the relocation of Chiquita because it prevented the relocation of the cars that in turn prevented the start of construction of the new Chiquita facility. The parking garage was completed in July of 2003 and the construction of the new Chiquita facility, Project 23, was actually started in August of 2003.

As of this date, the new maintenance facility that was delayed by the relocation of Chiquita (that was delayed by the late completion of the parking garage) is not completed and the existing maintenance facility has not been demolished. The critical delay to the completion of Port Boulevard is continuing. It is interesting to note that in the graphics that Haskell has included in their request (at Tabs 9, 11, 12, 15, 16 and 17 of their request), they make reference to the impacts that the completion of the garage and the relocation of Chiquita and the relocation of the maintenance facility had on the Program, but again consider those impacts to be the responsibility of the County. The Haskell graphics (Tab 5 of their request) also show that the new maintenance facility was on the as-built critical path as of May 1, 2002.

The 136 day delayed completion of the parking garage has clearly delayed the completion of the Program. Based upon what appears to be the previously approved 50 day time extension, Haskell delayed the parking garage by 86 days and according to the GMP amendment for Project 7, as a result of the late completion of the parking garage the County is entitled to $258,000 (86 days at $3,000/day) in liquidated damages. However, even though Haskell appears to have been granted a 50 day time extension for liquidated damages calculation purposes, it still appears that Haskell had 42 days of concurrent delays on this project during the delays related to COR No. 4 and that for Haskell's entitlement to compensable delay costs that the parking garage represented 128 days of concurrent delay. The methodology used to determine the impact of the late completion of the garage on the completion of the Program is explained in the following section of this report on schedule analysis.

c. Schedule Analysis

Haskell has not provided a Critical Path Method (CPM) schedule analysis to support its request for a time extension. According to Haskell's consultant, A.W. Hutchison & Associates (AWH), such scheduling analyses are only as good as the data used to generate them and that their experience is that these scheduling analyses tend to be subjective attempts by individuals using selective information to produce intended results that in the end are theoretical analyses that are subject to open-ended critique and criticism.

The analysis performed by AWH, however, appears to be exactly what they were trying to avoid if they had performed a CPM analysis. AWH has instead provided an as-planned versus as-built comparison of various projects in the Program and using selected anecdotal information to infer that it is the conditions described in the anecdotal references that explain the differences between the as-planned and as-built conditions. It is curious to note that the projects for which AWH has provided this anecdotal analysis are the projects that AWH asserts were either critical or near critical to Program completion. AWH has not provided any type of analysis to demonstrate how they have determined that the alleged critical or near critical projects were so. The terms critical and near critical are terms from the CPM methodology that defines that only critical delays will have an impact on the ultimate completion of a project. AWH obviously recognizes that for any of the alleged delays to have resulted in the time impacts, for which Haskell is seeking a time extension and compensation, the delays had to be critical to Program completion. Although AWH eschews the use of a CPM schedule analysis, they have not provided any evidence that the anecdotal delays they have identified were indeed critical at the time they were occurring. Nor has AWH identified any potential critical or near critical Haskell delays that may have been concurrent with the anecdotal County delays they have identified.

In order not to get into the open-ended critique and criticism debate on CPM analysis that AWH has sought to avoid in the first place, GREYHAWK has performed an analysis, similar to the type of analysis performed by AWH, of the Haskell delays it identified as described previously.

For this preliminary analysis GREYHAWK reviewed Program schedules PA00 through PA94, and the GMP schedules for each project. The GMP schedules were assumed to be the as-planned schedules for each of the individual projects, and that these GMP project schedules corresponded to the individual project schedule components contained in the PA00 schedule and its updates. The PA00 schedule is, according to Haskell, the baseline Program schedule, and for the purpose of this analysis is considered the baseline schedule even though the PA00 schedule starts with a 43 day initial delay when compared to the SCH8 schedule in Haskell's contract. The initial 43 day delay will be discussed and considered separately. The PA94 schedule (and the project records when the data was not available in PA94) was used as the data source for the various projects' as-built information.

For the Haskell project files received to date, the review and digestion of this data is in progress, and the delay events captured thus far from this review, as discussed in other sections of this report, are those that are included in this preliminary schedule delay analysis. Accordingly, this analysis is not yet complete. It is the Haskell delays for project numbers 1, 4.0, 5.1, 5.2, 5.3, 5.4, 5.5, 7, 10, 12.2, 12.3, 14.2, 16, 17.1, 17.2, 18, 19, 21, 22, 23, 26, 27.1, 27.2, 29, 30 and 33 that are included in this analysis. The review of the remaining project files which includes 5 non-cancelled projects is continuing.

From the initial review of the records, some of the delay events were able to be quantified and tracked in time, while others were able to be tracked in time but their duration is, as yet, undefined while still other events were simply recorded in an anecdotal fashion with no reference to time or duration. Where the duration of a given delay was unable to be quantified, but either its start or end date was identified, it was assumed that the delay spanned 5 days, with either the start or finish of the delay being the measuring point going either forward or backward in time, respectively. It is expected that the overall quantification of these as-of-now unspecified delay duration events (assigned 5-days for the purposes of this analysis) will ultimately result in a conservative apportionment of delay when compared to the final analysis and will at this time serve as a reasonable measure of delay for this preliminary report. The events recorded in anecdotal fashion with no reference to time or duration require further investigation to determine how these events relate to the delayed performance of Haskell's contract work. Exhibit 1 is a complete listing, by project, of the Haskell delays identified.

The identified delay events were input into scheduling software to permit a graphical depiction of the delay and how these delay events relate to the as-built project schedules. This graphical depiction of the Haskell delays is Exhibit 2. A similar technique was utilized by AWH for the graphical exhibits in the Haskell request. The delay events that GREYHAWK has incorporated into its analysis include events reported to it by POM staff as Haskell delays, as well as, other delays identified through a review of the project records. Also, there were many instances of POM staff reporting that permitting delays on the part of Haskell caused much delay in the start of construction. The permitting delays are discussed elsewhere in this report as it relates to design/build projects. The quantification of permitting delays chargeable to Haskell on CM-at-risk projects is yet unclear, because Haskell did not have a contractual responsibility to obtain the permits on CM-at-risk projects, and further investigation into how Haskell may have contributed to permitting delays on those projects is required. To be conservative in its schedule analysis, GREYHAWK did not include any permitting delay issues if they related to CM-at-risk projects.

Utilizing scheduling software, the delay events were coded to correspond to their respective project, and graphically depicted along a timeline. Any concurrency of the Haskell delays within a specific project was discounted in the overall quantification of delay for that project. Once all of the Haskell delay for each project was quantified, the projects were then compared

to each other to ensure that a "double-counting" of Haskell delays did not occur. GREYHAWK then analyzed this overall Program delay against the individual Haskell schedule updates (PA00 through PA94) to determine, based on Haskell's own schedule at the time, which of the projects was critical during a given update period. For each update period, if any of the project delays identified in our review was on a critical project, we considered Haskell to have contributed critical delay to the Program for that period. Those identified Haskell delays that were not on a critical project in that update period were not considered as delays to Program completion. Projects (1, 10, 11, 21, 22, and 28), that have been alleged to have been completed on time by Haskell, have not shown up as critical projects on any of the schedule updates and accordingly, potential Haskell delays identified on those projects have not been considered as delays to Program completion. Furthermore, if a delay was on a critical project during a given update period, the delay attributable to Haskell was only calculated as equal to the time lost on the schedule during that update period, but without allowing the delay charged to Haskell to exceed the discrete Haskell delay identified in our review. Put another way, if during an update period, the Program lost 7 calendar days, and there was a Haskell critical delay of only 5 days identified during that period, Haskell was charged with only the 5 day delay and if there was a 5 day Haskell delay during the update period and the Program only lost 1 day during the update period, Haskell was only charged with the 1 day delay.

Based on the above described analysis methodology, Exhibit 3 tabulates the impact of Haskell delays on each critical project and in accordance with this summary GREYHAWK has identified the following:

1. For the Program delay of 337 days as shown in the update period (PA00 thru PA85) utilized by Haskell to justify their time extension request, **GREYHAWK has identified 226 days of Haskell critical delay.**

   The components of this delay can be summarized as follows:

		contribution
a. Delayed completion of the Parking Garage		128
b. Permitting delays		46
c. Other identified Haskell delays		33
d. Extended construction activity durations		0
	Total	207

   If the parking garage delays were not to be considered, then based on the revised concurrencies, there would be 119 days of Haskell critical delay during the update period.

2. Of the Program delay of 376 days identified through update PA94, GREYHAWK has identified 274 days of potential concurrent Haskell delay. In addition, this

analysis has not investigated any Haskell delays through update PA103, which identifies a Program delay of 489 days. Neither of these update periods (PA 94 and PA103) are relevant to Haskell's damages request since their damages are only calculated on the basis of delays encountered through the PA85 update period.

3. For the initial 43 day delay identified by Haskell in PA00 (when compared to SCH8) to reflect the extended negotiations of their contract and receipt of the notice to proceed, this delay is a delay that is at best a mutual responsibility of the parties. However, Haskell signed the contract with SCH8 as the Program schedule basis and it could be argued that Haskell was aware of the 43 day delay at the time they signed the contract containing SCH8 and that therefore **the 43 day initial delay is now solely Haskell's responsibility.**

Accordingly, of the 380 day time extension (43 days initial delay + 337 day delay through PA85) being requested by Haskell **there are 250 days (43 day initial delay + 207 days through PA85) of Haskell critical delays**

The above method of delay analysis, although not a CPM schedule impact analysis per se, leads to a reasonable approximation of the delay for which Haskell could be held accountable but-for the alleged owner caused delays.

d. Damages Analysis

Haskell is requesting a 380 day time extension and $4,671,109 in damages. The damage calculation prepared by Haskell is on a total cost basis. The various cost components of the Haskell damage calculation are as follows:

a. General Conditions costs		$3,625,398
b. Bonds & Insurance		$ 528,886
c. Fee		$ 516,825
	TOTAL	$4,671,109

General Conditions Costs

Haskell has identified that their original contract was based upon $4,004,825 in general conditions costs for labor and $1,103,387 for general conditions cost for non-labor items for a total general conditions budget of $5,108, 712 to be consumed in the original contract performance period ending on December 31, 2003. Haskell then goes on to identify that as of the December 31, 2003 payment requisition, the general conditions budget has increased to $5,660,450.

It is Haskell's contention that although the Program has been delayed, their general conditions staff was, of necessity, maintained at the originally anticipated levels during the original contract performance period and actually spent $5,269,330 during this period as compared to the $5,108,712 planned. As a result of the delays on the Program, less construction value was completed during the original contract performance period. Based on the 6% recovery rate for general conditions costs based on the value of completed construction, Haskell earned $2,890,348 to compensate them for their general conditions expenditures. Since Haskell spent $5,269,330 during this period they have considered the difference between what they spent and what they earned, which is **$2,378,982**, as having been spent on providing additional services during this period. They have defined these additional services as: performing preconstruction services on projects that were ultimately cancelled; performing extensive redesign services as a result of changes, incomplete or incorrect design basis information and; in essence the remaining unabsorbed cost of the general conditions expenses incurred during this initial period.

Haskell then forecasted that since the Program was not completed by the original December 31, 2003 date that they will be incurring continuing general conditions costs in the timeframe beyond December 31, 2003 to the Program completion date projected at the time of their damage calculation to be January 14, 2005. To project the additional one year of general conditions costs, Haskell calculated their alleged actual general conditions costs incurred during

the period from January 1, 2003 to December 31, 2003, assumed that the staffing level for the additional year would be at the same rate and escalated those costs by 5%. This calculation resulted in a forecast for 2004 services of $3,464,780. This forecasted value was then credited with the difference between the original contract budget for general conditions costs and the general conditions costs earned up to December 31, 2003. This credit was $2,218,364 and represented the amount of general conditions contract costs remaining for Haskell to earn while finishing the Program. Accordingly, Haskell has requested **$1,246,416** for the shortfall anticipated in general conditions revenue for 2004.

Haskell then added the $2,378,892 in requested additional services for the period up to December 31, 2003 to the $1,246,416 to calculate the total **$3,635,398** as the necessary adjustment (to compensate for the alleged additional services during the original contract period and the overrun in general conditions costs to be incurred during 2004) to be added to the original contract general conditions budget of $5,108,712 to arrive at their calculated final adjusted GMP of $8,734,110 for additional general conditions costs In their damage calculation spreadsheet Haskell has a column showing the GMP budget as of their 12/31/03 Pay Application. It is unclear why Haskell has made reference this general conditions budget in the amount of $5,660,450. However, if the general conditions budget has already been increased by $551,738 from the $5,108,712 in the original contract to the $5,660,450 at the time of their 12/31/03 pay application this would decrease the amount of adjustment necessary to go from the current (12/31/03) general conditions budget to the final general conditions budget calculated by Haskell. **This difference in budget basis (original contract v. 12/31/03 pay application) would reduce the Haskell requested adjustment by $551,738** because that amount has already been added to the original contract budget and would be available to offset the anticipated overrun in general conditions costs for 2004 services.

In order to support the costs contained in the damage calculations, Haskell has provided copy of their April 30, 2004 Project Status Summary Report for their overhead costs. According to this most recent report, which provides cumulative information from Program inception through the period ending April 30, 2004, the current general conditions budget is $5,541,373 and not the $5,660,450 referenced in the damage calculations. The report also shows the total costs to date, the costs for the current period and projected total costs at the end of the Program. Based on the projected total costs, the report then calculates projected losses compared to the budget referenced in the cost report. If one subtracts the cost to date for each category from the projected final cost for that category this would result in Haskell's projection of the costs remaining to be expended on the Program. If the component of the costs to date is adjusted to correct for the difference between the December 31, 2003 date in the Haskell Request and the April 30, 2004 date in the Status Report, costs incurred and the projected general conditions cost to complete the Program are within the range identified in the Haskell damage calculation. It is important to note again that Haskell has asserted that it used essentially the same staff as contemplated during the initial contract period as evidence by them, in the spreadsheets included at Tab 22 of their request, by the fact that they planned to spend $4,004,825 on general

conditions labor and they actually spent $4,091,029. The similarity in these two numbers appears to be more of a coincidence than an affirmation that Haskell essentially staffed the Program as planned.

For example, the spreadsheets provided by Haskell indicate that Haskell planned to spend $2,325,591 through December 2002 and only spent $1,437,591 during that period. For the period from January 1, 2002 to December 31, 2003 Haskell planned to spend $1,679,234 and actually spent $2,653,438. Haskell spent general conditions costs at a higher rate in 2003 than they ever planned to spend at any time in the Program. This raises the question as to whether Haskell actually underestimated the staffing effort for this Program.

According to Exhibit E in the Haskell contract, Haskell budgeted $4,004,825 for their general conditions labor. According to Haskell's Project Status Summary Report the total current labor budget is $4,018,721 which is only $13,896 higher than the original contract general conditions labor budget of $4,004,825. All of Haskell's projected losses are based upon the budget in the Project Status Summary Report and not the budget contained in the contract. Haskell's damage calculations are based on losses compared to the budget contained in the contract.

Evidence of a potential bid error can be seen in the Project Summary Status Report.

For example, an analysis of the various administrative labor codes within the general conditions labor reveals that the current administrative labor budget and expenses are as follows:

	Code	Description	Budget	Actual (4/30)
a.	01001	Admin Labor	$2,761,633	$4,113,302
b.	01124	Admin Asst	$ 371,416	$ 96,667
c.	01150	Field Clerk	$ 488,264	$ 270,653
		TOTAL	$3,621,313	$4,480,622

The budget for administrative labor was contemplated to be expended over 24 months, which is equivalent to $150,888 per month. According to the Summary Report, Haskell has been incurring actual costs of 160,022 per month. This results in a total cost overrun of $219,216 for the initial contract period. Haskell has not explained why the County is responsible for this component of their increased costs. **Accordingly, Haskell's requested adjustment should be reduced by $219,216.**

Another element of Haskell's general conditions labor costs is code 01226 for Design Review – LMP. For this item Haskell budgeted $48,757 and indicates a cost overrun of $476,461. While some of the impacts alleged by Haskell potentially would have caused some additional design review, this cost overrun suggests that the alleged impacts caused by the County caused a ten-fold increase in Haskell's design review responsibilities. According to the spread sheets Haskell has provided at Tab 22, they anticipated spending $3,458 per month for design review from

January 2002 through February 2003. In the very first month that Haskell performed design review services, May 2002 (two months after the conclusion of contract negotiations) Haskell incurred $54,625 in design review costs followed by expenditures in July and August totaling $46,076. In all, Haskell spent $336,395 up to December 31, 2003 vs. a budget of $48,757 and it is curious to note that for the 2004 extended performance period Haskell is indicating that it is going to spend an additional $188,823 for design reviews. **This overrun needs to be further explained by Haskell but it appears to be a significant bid error and Haskell's requested adjustment should be reduced by $476,461.**

It would also appear that Haskell spent more on its non-labor general conditions costs than it anticipated and this was through no fault of the County. It appears that Haskell may have also underestimated its non-labor general conditions costs as well.

For example, one of the general conditions costs in the Haskell Project Status Summary Report is code 01351 for Legal Expense. While we understand that some legal expenses would be anticipated relative to entering into subcontract agreements etc., it is interesting to note that Haskell budgeted $5,000 and is indicating a cost overrun of $336,345 for this item. Haskell has not explained how any of the alleged County impacts to them may have caused their legal expenses to be increased. In addition, according to Paragraph 6.1.6.8 of the contract legal, mediation and arbitration costs resulting from disputes between the Owner and Construction Manager are not recoverable. **The elimination of this legal expense cost overrun item will reduce Haskell's requested adjustment by $336,345.**

According to the Project Summary Status Report Haskell is also projecting a $122,000 cost overrun for cost code 01342 Construction Travel - Office. Haskell budgeted $28,000 for this item for the Program. Based on the planned construction duration of 21 months as indicated in the SCH8 schedule in Haskell's contract this would equate to $1,333 per month for travel. For the period from May 1, 2004 to Program completion Haskell is estimating $2,871 per month for travel. At best this rate would have resulted in a $28,710 cost overrun for the additional period Haskell is claiming. There is no explanation as to how the County may have caused Haskell to incur the additional $93,290 in increased travel costs during the initial contract period. **Accordingly, Haskell's requested adjustment should be reduced by $93,290.**

Other items appear to have been underestimated by Haskell as well.

One of these underestimated items is for the following temporary services:

	Cost Code	Description	Budget	Actual (4/30)
a.	01510	Temp. Utils	$ 7,500	$ -0-
b.	01511	Temp. Elect	$ 5,625	$ 23,478
c.	01516	Mobile phones	$25,000	$ 76,028

d. 01517	Temp phone	$26,070	$ 64,349
	TOTAL	$64,195	$163,855

For the initial contract period Haskell projected that it would spend $2,674 per month for these facilities. They have actually spent $5,852 per month. This represents a cost overrun of $76,272 for the initial Program period. Haskell has not provided any information to explain why anything that the County is alleged to have done to impact Haskell would have resulted in an increase in these costs. **Haskell's requested adjustment should be reduced by $76,272.**

Haskell also estimated $18,750 for monthly meetings. This represents $781.25 per month to attend meetings. Haskell has actually spent $1,157 per month to attend monthly meetings. There were and are only 24 months in the original contract period. There has been no evidence provided by Haskell to explain why the County is responsible for this increased cost. **Accordingly, Haskell's requested adjustment should be reduced by $9,018.**

Bonds and Insurance

In their request Haskell states that the budget for bonds and insurance was $1,718,367. Their damage calculation also states that as of the December 31, 2003 payment requisition the budget for bonds and insurance was $2,004,901. In the back up for its damage calculations, contained in TAB 22 of their request, the calculation spreadsheet requests $528,886 for additional bonds and insurance. At the back of Tab 22 Haskell provides a tabulation of how their additional bonds and insurance costs are calculated. This tabulation shows an estimated increased cost of $371,785. The $157,101 difference is not explained by Haskell.

A review of the Project Summary Status Report shows that based upon the contract budget of $1,718,367 Haskell is projecting a cost overrun of $282,420. If this overrun is added to the budget it would appear that Haskell expects their total bond and insurance costs to be $2,000,787. They are projecting total costs that are less than the December requisition budget of $2,004,901. **On this basis alone, Haskell's $528,886 request for this item should be reduced by its full amount of $528,886.**

Fee

The last damage item being requested by Haskell is for its Fee. According to their damages calculation spreadsheet, their fee in the original contract was to be $4,238,904 and that according to the December 31, 2003 payment application the fee should be $4,800,729 and they are requesting the $516,825 difference. Haskell's fee according to the contract was defined as a percentage of the Cost of the Work and Direct Purchases by the County. As such, Haskell's fee,

which represents their profit on the Program, would clearly be included in the GMP for each project phase. We do not understand why Haskell is trying to recover any additional fee through their Request for Equitable Adjustment or why they should be entitled to any additional fee on the Program. **Accordingly, Haskell's request should be reduced by $516,825.**

Summary

Based on all of the adjustments described above Haskell's requested damages should be reduced as follows:

Haskell's requested damages	$4,671,109
Reduction for GC's budget Adjustment acknowledged in 12/31/03 pay application	$ 551,738
Adjustment for Admin labor	$ 219,216
Adjustment for Design Review	$ 476,461
Adjustment for Legal	$ 336,345
Adjustment for Const travel	$ 93,290
Adjustment for Temp Services	$ 76,272
Adjustment for Monthly Mtgs.	$ 9,018
Adjustment for Bonds and Ins. budget adjustment acknowledged in 12/31/03 pay application	$ 528,886
Adjustment for Fee budget Adjustment acknowledged in 12/31/03 pay application	$ 561,825
Revised Damages	**$1,863,058**

The above are the damages to which Haskell would be potentially entitled if all of the delays on the Program were solely the responsibility of the County and Haskell did not contribute to the overall delays in any way. In addition, **the portion of the above damages to which Haskell is entitled, after adjustment for concurrent Haskell delays, would then be further reduced by the $315,000 in liquidated damages** to which the County is entitled for the late completion of the parking garage project.

VII. Analysis of Supplemental Request

Schedule analysis

The analysis methodologies utilized on the initial Haskell request were also utilized to identify and analyze any Haskell delays that occurred on the project after the date of the Haskell initial request that would be concurrent with the total Port delay asserted in their supplemental request.

Schedules PA00 through PA94 were reviewed as part of the review of the initial Haskell request and were discussed previously. Schedules PA95 through A125 were reviewed as part of this supplemental analysis. Schedule PA95 has a data date of 3/19/04 and a projected completion date of 2/22/05. Schedule A125 has a data date of 12/31/04 and a projected completion date of 9/9/05. This represents an additional 199 days of program delay.

Haskell continues to claim that it is entitled to all of its extended performance costs, because the County is solely responsible for all of the delay experienced on this program. As in its previous claim, Haskell has again asserted that it is not responsible for any delays on the Program and that all of the delays encountered are both excusable and compensable.

The County researched the project record from March '04 through December '04, and selected documents to be reviewed in order to perform a concurrency analysis by Greyhawk. Using these selected documents provided by the County, this supplemental analysis finds that there were many discrete delays and activities with extended durations on the various projects that were either the sole responsibility of Haskell or were excusable but not compensable delays. Not all of the delays were on projects that appeared as critical on Haskell's schedules during the course of the Program, and of those that were on projects that appeared as critical, not all occurred during the time when the project was appearing on the critical path. Haskell's schedules failed to show certain projects as critical that reasonably should have been shown as critical had the schedules been properly constructed and maintained. In this analysis, these projects (# 4.0, 14.2, 18.1 and 26.0) were included as critical projects even though Haskell's schedules showed them as non-critical to program completion.

The following discrete delays have been identified:

Project #4: Cruise Loop Road

- Activity IDs 4.0-2 and 4.0-3, Severe Weather and a Concrete Shortage: Five days each were assigned for weather and concrete shortages which were reported to have impacted this project.

- Activity IDs 4.0-5 and 4.06, Correction to Concrete Curbs: Immediate correction of concrete curbs was directed on 7/22/04. It was not until 9/16/04 that this corrective work was noted to have been completed, a delay of 56 days. Subsequently, concrete curbs were noted to have been marked for correction on 10/21/04. It was not until 11/11/04 that all valid curb repairs were stated to have been completed, a delay of 21 days.

- Activity ID 4.0-10, Signage: Project documents indicate signage was to have started by 8/2/04-8/3/04. The signage was not noted to have started until 10/14/04, a delay of 72 days.

- Activity ID 4.04, Gate at Wharf Access Road: On 8/19/04 "Mr. Wrves [THC] stated that the gate at the Wharf Access Road required immediate installation." On 8/26/04 Mr. Coughlin [APAC] confirmed the gate would be complete by 8/27/04, a delay of 8 days. The gate is not noted to have been completed until 9/16/04.

- Activity ID 4.0-7, Worker Badges: Overhead signage drilled shaft construction was stopped on 10/8/04 because the subcontractor's employees were working without required security badges. Shaft construction is not noted to have restarted until 11/4/04, a delay of 27 days.

Project #16.0: Eastern Port Boulevard

- Activity IDs 16.0-3 and 16.0-4, Severe Weather and a Concrete Shortage: Five days each were assigned for weather and concrete shortages which were reported to have impacted this project.

- Activity ID 16.0-5, Well Approval: A 111 day delay from 7/15/04 through 11/3/04 was attributed to the lack of approval of the proposed drainage well which was preventing the completion of the storm drainage system.

- Activity ID 16.0-?, Anchor Bolts: Five days, from 1/5/05 through 1/10/05 were attributed to the delay in obtaining anchor bolts to allow the drill shafts to commence.

Project 17.0: Cargo Gate Facility

- Activity ID 17.0-1, Severe Weather: Severe weather was claimed to have impacted, to an unspecified degree, several of the projects. A delay of five calendar days has been assessed for this delay.

Project 18.0: Flyover and Port Signage

- Activity IDs 18.0-2, 18.0-5, and 18.0-6, Concrete Shortages and Severe Weather: Two five day delays were assigned for concrete shortages which were reported to have impacted this project in May and June 2004. Five days were assessed for the reported impact of severe weather.

- Activity ID 18.0-4, Correction of Barrier Walls: Required correction of barrier walls are discussed in documents from 6/21/04 through 7/12/04, a delay of 29 days.

- ~~Activity~~ ID 18.0-11, Signage: Project documents indicate signage was to have started by 8/3/04-8/3/04. The signage was not noted to have started until 10/14/04, a delay of 72 days.

- Activity ID 18.0-7, Mast Arm Foundations: Mast Arms' foundations were reportedly late on 8/26/04. Mast Arms were not noted to have been complete until 11/24/04, a delay of 90 days.

- Activity ID 18.0-10, Worker Badges: Overhead signage drilled shaft construction was stopped on 10/8/04 because the subcontractor's employees were working without required security badges. Shaft construction is not noted to have restarted until 11/4/04, a delay of 27 days.

- Activity ID 18.0-12, WASD Work Order: 59 days of delay are attributed to the delay in placing the WASD work order. APAC stated the work order would be placed by 10/18/04. Although the work order was placed shortly thereafter, additional coordination with WASD was required of APAC. On 12/16/04 APAC believed the issue with WASD was resolved.

Project #26.0: New Seaport Maintenance Facility

- Activity ID 26.0-1, Severe Weather: Severe weather was claimed to have impacted, to an unspecified degree, several of the projects. A delay of five calendar days has been assessed for the severe weather reported to have impacted this project.

- Activity ID 26.0-3, Permits: Since on or before 11/10/04 the owner has inquired about permits for this project. It appears that permits are still outstanding as of 1/19/05. 70 days of delay have been attributed to these outstanding permits.

- Activity ID 26.0-11, Abandoned Punch List: According to the owner, THC abandoned the punch list on Project 26.0 for well over a month. 31 days of delay have been attributed to this "abandonment."

The method of analysis used in this supplemental report was the same as that used and explained in the previous report dated 9/21/04, and the results of this supplemental analysis is as follows:

1. For the additional Program delay of 199 days as shown in the update period (PA95 thru A125) utilized by Haskell to justify their time extension request, **GREYHAWK has identified 189 days of Haskell critical delay.** The apportionment of the components of this delay (ie. permitting delays, discrete delays and extended durations) has not yet been determined, and will require further analysis to complete. The 189 days of identified delay is a gross estimation of Haskell caused delay based on a preliminary review of the documents provided by the County for this supplemental analysis.

2. **If the Port Maintenance Facility is excluded from this analysis, the Haskell critical delay for this period (PA95 through A125) becomes 176 days.**

3. The documents provided by the County were limited and precluded Greyhawk from investigating the cause of the many activities with extended durations, and therefore it was not possible to determine whether these activities experienced extended durations due to Haskell, the County or Force Majure events. Therefore, it may not be appropriate to apportion all of the extended duration delay to Haskell, and the determination of responsibility for these extended durations will require further investigation and a much more thorough review of the project record. **If these extended durations are removed from the analysis, the critical Haskell delay for this period (PA95 through A125) becomes 57 days.**

Damages analysis

Haskell has revised the method it used in its initial request to calculate its requested damages. Their current damages calculation is still based on the difference between its projected total cost and its current contract amount for General Conditions to which Haskell then applied a number of adjustments.

Their current damages request is calculated as follows:

1. General Conditions Labor thru 12/31/03	$4,535,069.92	
2. Non-labor GC's thru 12/31/03	$ 864,141.69	
3. Bonds and insurance thru 12/31/03	$2,000,787.01	
4. Allowances thru 12/31/03	$ 152,419.02	
5. Invoice A items thru 12/31/03	$ 79,418.74	
Total cost thru 12/31/03		$ 7,631,836.78
6. General Condition Labor through 12/31/04	$2,325,524.25	
7. Other GC's thru 12/31/04	$ 500,517.78	
Total 2004 cost		$ 2,826,042.03
8. Additional GC's through 12/31/05	$1,313 067.79	
9. Additional allowance items	$ 157,830.98	
10. Additional bonds & insurance	$ 249,197.00	
Total 2005 costs		$ 1,720,095.77
TOTAL COST		$12,177,974.18
11. CM fee on total cost		$ 608,899.00
	Total Cost + fee	**$12,786,873.18**
12. Credit for current contract including fee		$ 7,992,586.00
13. Credit for Legal and Consulting fees		$ 324,000.00
14. Credit for increased insurance and bond costs		$ 208,248.00
15. Credit for allowance not to be spent		$ 48,915.00
	Total Claim	**$ 4,213,124.18**

The total costs claimed by Haskell as described above contains items for which GREYHAWK does not believe Haskell is entitled.

CM fee on additional general conditions

Paragraph 5.1.1.2(b) of the contract states that if Haskell is given a change order for additional staffing as a result of the construction schedule varying materially from the schedule in exhibit J, that such additional staffing will be paid for in additional and in above the 6% GC allotment, however, no fee or additional general conditions markup will be allowed on top of such charges. Accordingly the amount of fee being charged by Haskell in their total costs, for which a credit has not been included in the credit in item 12 above, would have to be subtracted from their total costs. **This amount is $228,299.65**

Insufficient credit for bonds and insurance costs

Haskell has stated that it is their intent to absorb the risk for all increased bond and insurance costs in excess of the cost of these items as of 12/31/03. The according to Haskell's cost reports the cost of insurance and bonds at the end of 2003 was $2,000,787.01 (the amount in their GMP budget as of that date was $2,004,901). Haskell's total costs project an additional $249,197 for

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these costs for which Haskell has only provided a credit of $208,248 in there claim. Haskell's claimed damages should be reduced by an additional $40,949.00

Administrative labor bid error

It would also appear that Haskell made a bid error in its estimate of its administrative labor staffing costs. Haskell's budgets for these items for the two year contract duration were as follows:

	Budget	Actual
Administrative labor	$2,761,833	$3,480,377
Administrative assist	$ 371,416	$ 142,319
Subsistence	$ 157,000	$ 86,445
Project controls (from PB)	$ 148,000	$ -0-
Total	$3,438,671	$3,709,141

From the above it appears that Haskell planned to spend $143,277 a month and actually spent $154,547 a month for these items. Since Haskell has asserted that the size of the staff on the projects was always the same size staff that was contemplated for this project this represents a bid error of $270,480 ($11,270 x 24) that should be deducted from Haskell's claimed damages.

Consulting cost bid error

In the prior damages analysis section of this report a bid error in Haskell's design review estimate was identified. That analysis was based on only the line item in the cost report for LMP and concluded that a $476,461 bid error had been made. GREYHAWK now understands that LMP provided out of scope services than contemplated by the $48,757 budget in the cost report, and in fact, many of the consultant utilized by Haskell ended performing services originally contemplated to be done by other consultants and also had their scopes of work reduced and performed by others (including Haskell). A review of the various consultants budgets and the actual costs expended during the first two years still reveals a bid error by Haskell for these services as follows:

	Budget	Actual
A^2 (Scheduling)	$334,555	$305,324
LMP	$ 48,757	$336,395
PB	$488,264	$270,653
Less PB work moved to THC admin labor	$148,422	
	$723,154	$912,372

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From the above, Haskell planned to spend $30,134 per month for these services and actually spent $38,015. This represents a bid error of **$189,144** ($7,881 x24) to be deducted from Haskell's claimed damages.

Overstated projected total labor costs

In the spreadsheets provided by Haskell to support their damage calculations they show the projected administrative labor costs to be $6,682,709.77 as part of their $12,177,974.19 in total project costs. The Haskel cost report for December 2004 projects the total labor costs to be $6,150,054 as part of the total final cost of $12,072,062 for the project. This appears to be an overstatement of these costs of **$532,055.00** to be deducted from Haskell's claimed damages. It is curious to note that in the original request for equitable adjustment submitted by Haskell, the total actual GC labor cost incurred thru 12/31/03 was shown to be $4,091,029. The current revised claim by Haskell shows the actual costs incurred thru 12/31/03 to be $4,535,069.92 for a difference of $444,040.92. This might explain why the $535,055 overstatement does not appear to be in the actual and projected costs for 2004 and 2005 provided by Haskell and why the total cost in the Haskell spreadsheets and the current cost report differ by approximately $100,000.

The adjustments to Haskell's claimed damages can be summarized as follows:

Haskell's claimed damages	$4,213,124.18
Deduct for CM fee on GC's	$ 228,299.65
Insufficient credit for bonds and insurance	$ 40,949.00
Administrative labor bid error	$ 270,480.00
Consultant bid error	$ 189,144.00
Overstated final admin labor	$ 532,055.00
Revised damages	**$2,952,196.53**

These would be the maximum damages to which Haskell would be potentially entitled if all of the delays on the Program were solely the responsibility of the County and Haskell did not contribute to the overall delays in any way. In addition, all of the County's legal defenses regarding the $350,000 cap for damages on CM projects and the no damages for delay on design/build projects would have to also be defeated for Haskell to be entitled to this amount. Any amount of damages to which Haskell would be entitled would also have to be reduced by the $258,000 in liquidated damages for their late completion of the parking garage project.

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VIII. Findings and Conclusions

A review of the project records reveals that the delays experienced on the Miami Seaport Redevelopment Program were not caused solely by the County as Haskell suggests in their request for equitable adjustment. In addition, the damages calculated by Haskell include costs for which Haskell is solely responsible.

Accordingly, GREYHAWK finds that of the 579 days of delay (380 in their initial request and 199 in the supplemental request) for which Haskell is seeking a time extension that Has~~kell is~~ responsible for 439days of concurrent or exclusive delay. In addition, for the 86 days of non-excusable delay to the completion of Project 7, the Parking Garage, Haskell is responsible to the County for $258,000 in liquidated damages.

GREYHAWK has also found that of the $4,213,124 in damages being requested by Haskell that the maximum to which Haskell would potentially be entitled is $2,952,196.53.

There are contract provisions that limit Haskell's compensation for delay on CM-at-risk assignments to a maximum of $350,000 for additional staffing costs and further limit Haskell's entitlement for delays on design/build projects to time only with no compensation for additional costs.

The only exception to the above limitations, on the CM-at-risk projects, is if the delays are caused by active interference by the County, however, the contract specifically states that the County's exercise of its rights or remedies under the contract including, ordering changes in the work, directing suspension, rescheduling or correction of the work, regardless of the extent or frequency shall not be construed as active interference. Haskell has not identified specific County actions that fall outside the definition of County actions that cannot be construed as active interference.

Based upon the above, Haskell could be entitled to damages as follows:

1. If the no damage for delay and active interference provisions of the contract were to prevail, Haskell would not be entitled to any more than $350,000 for extended general conditions costs and the County would be entitled to offset this amount with the $258,000 in liquidated damages to which it is entitled.

2. If the no damage for delay provisions do not apply and Haskell could prevail on the active interference issue, the maximum damages to which Haskell could potentially be entitled are calculated by proportionally reducing the amount of corrected Haskell damages by the amount of concurrent or exclusive Haskell delays on the Program.

In this case if there are 439 days of Haskell delay, the damages would therefore be calculated as follows: (579-439)/579 times $2,952,196.53. **This would result in $713,829.90 to which Haskell would be entitled subject to a reduction of $258,000 for liquidated damages for a payment to Haskell in the amount of $455,829.90.**

If the adjustments to the concurrent delays, as discussed in the schedule analysis section above, are made such that the total concurrent Haskell delay is reduced to 307 days, Haskell's net entitlement to damages would be increased to $1,129,141.

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