CONTRACT NO. RFP-00953

PROJECT AGREEMENT
FOR THE
DESIGN, CONSTRUCTION, FINANCING, OPERATION AND MAINTENANCE
OF THE
MIAMI-DADE COUNTY CIVIL AND PROBATE COURTHOUSE

between

MIAMI-DADE COUNTY, FLORIDA

and

PLENARY JUSTICE MIAMI LLC

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PROJECT AGREEMENT

FOR THE
DESIGN, CONSTRUCTION, FINANCING,
OPERATION AND MAINTENANCE
OF THE
MIAMI-DADE COUNTY CIVIL AND
PROBATE COURTHOUSE

THIS PROJECT AGREEMENT FOR THE DESIGN, CONSTRUCTION, FINANCING, OPERATION AND MAINTENANCE OF THE MIAMI-DADE COUNTY CIVIL AND PROBATE COURTHOUSE is entered into on December 19, 2019, between Miami-Dade County, Florida (the "**County**"), and Plenary Justice Miami LLC, a limited liability company organized and existing under the laws of the State of Delaware (the "**Developer**").

RECITALS

WHEREAS, on June 5, 2018, the Board of County Commissioners (the "Board") adopted County Resolution No. R-553-18, directing the County Mayor or Mayor's designee to develop and publish a solicitation for the selection of, and contracting with, a private entity for the delivery of a new civil and probate courthouse; and

WHEREAS, Resolution No. R-553-18 directed the County Mayor or Mayor's designee to develop and issue a "hybrid" solicitation to consist of a two-phase Request for Proposals ("RFP") whereby the first phase would short list proposers based on qualifications and the second phase would result in the selection of a private entity based on a best value determination based on qualifications, approach to providing the services and price; and

WHEREAS, on August 1, 2018, the County issued RFP-00953 for the new courthouse; and

WHEREAS, on September 27, 2018, the County received five (5) submittals in response to RFP 00953; and

WHEREAS, the County shortlisted three (3) of the five (5) respondents as eligible to proceed to the second phase of the RFP-00953; and

WHEREAS, the Developer was one of the shortlisted respondents; and

WHEREAS, on May 24, 2019, the County issued the second phase documents of the RFP-00953, to the three shortlisted respondents; and

WHEREAS, on July 17, 2019, the County received the technical proposal portion of Proposals from each of the three shortlisted respondents; and

WHEREAS, on July 31, 2019, the County received the financial proposal portion of Proposals from each of the three shortlisted respondents; and

WHEREAS, on December 17, 2019, the Board, determined that the Developer's proposal offered the best value and adopted Resolution No. R-1343-19 to approve this Project Agreement and to authorize the execution and delivery of this Project Agreement; and

WHEREAS, the County desires to receive and the Developer desires to provide the services set forth herein.

NOW THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties hereto, intending to be legally bound, covenant and agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS.

As used in this Project Agreement, the following capitalized terms have the meanings set forth below. Certain words and expressions are defined within the Appendices hereto, and such definitions shall apply, unless the context otherwise requires, in all other parts of this Project Agreement whether or not this Article contains a cross-reference to such definitions.

"Access Roads, Grounds and Landscaped Maintained Elements" has the meaning set forth in Appendix 8 (Facility Management Requirements).

"Accessibility Condition" has the meaning set forth in Appendix 11 (Deductions).

"Actual Response Time" has the meaning set forth in Appendix 11 (Deductions).

"Additional Equity Investment" means an equity investment made solely by the Qualified Investors after the Financial Close Date that is not contractually committed to by the relevant Qualified Investor, as of the Financial Close Date.

"Affected Party" has the meaning set forth in the definition of "Force Majeure Event".

"Affiliate" in respect of a person means any other person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first person, where "control" means, with respect to the relationship between or among two or more persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a person, whether through the ownership of voting securities, as trustee, personal representative or executor, by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such person.

"Annual Service Plan" has the meaning set forth in Appendix 8 (Facility Management Requirements).

"Appendix" means any of the Appendices and, as applicable, any schedules and attachments thereto, that are appended to this Project Agreement and identified as such in the Table of Contents.

"Applicable Law" means:

(1) Any federal, State or local law, statute, code or regulation;

(2) Any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any Governmental Body having appropriate jurisdiction; and

(3) Any Governmental Approval,

in each case having the force of law and applicable from time to time to the Project. Applicable Law excludes any decisions, directives, or undertakings by the County in its capacity as owner of the Project.

"Art in Public Places" has the meaning set forth in subsection 7.1(T) (Art in Public Places).

"**Availability Condition"** has the meaning set forth in Appendix 11 (Deductions).

"Avoidable Costs" when used in relation to an event or circumstance, means all costs and expenditures which:

(1) Are saved or avoided as a result of, or in responding to, the event or circumstance or its effects; or

(2) If the Developer acted reasonably and in accordance with this Project Agreement (including subsection 25.5(A) (Mitigation by the Developer)) would have been saved or avoided as a result of, or in responding to, the event or circumstance or its effects.

"Bankruptcy Law" means the United States Bankruptcy Code, 11 U.S.C. 101 et seq., as amended from time to time and any successor statute thereto. "Bankruptcy Law" also includes any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.

"**Bankruptcy-Related Event**" means in respect of a relevant party (as specified) any of the following events under Bankruptcy Law:

(1) A receiver, receiver manager or other encumbrance holder taking possession of or being appointed over, or any distress, execution or other process being levied or enforced upon, the whole or any material part of the assets of such relevant party, except to the extent such action creates a Permitted Encumbrance; or

(2) Any proceedings with respect to the relevant party being commenced under the Bankruptcy Law and if such proceedings are commenced against the relevant party and are disputed by the relevant party, such proceedings are not discontinued, withdrawn, dismissed or otherwise remedied within 30 days of such proceedings being instituted; or

(3) The relevant party making an assignment for the benefit of its creditors, being declared bankrupt or committing an act of bankruptcy, becoming insolvent, making a proposal or otherwise taking advantage of provisions for relief under the Bankruptcy Law or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the relevant party under the Bankruptcy Law or otherwise and, if proceedings are commenced against the relevant party and are disputed by the relevant party, such proceedings are not stayed, dismissed or otherwise remedied within 30 days of such proceedings being instituted; or

(4) The relevant party ceasing to carry on business.

"Base Case Equity IRR" means [ ]%, the Initial Base Case Equity IRR, as updated at the Financial Close Date pursuant to Appendix 3 (Financial Close Procedures and Conditions). [NOTE: To be inserted from Base Case Financial Model at Financial Close.]

"Base Case Financial Model" means the Initial Base Case Financial Model, as updated at the Financial Close Date and accepted by the County according to the terms of Appendix 3 (Financial Close Procedures and Conditions), which is attached in electronic format as Appendix 17 (Financial Model).

"Benchmark Interest Rate" means the interpolation between the publicly-documented interest rates of each maturity included in the following indices:

(1) 10 year U.S. Treasury; and
(2) 30 year U.S. Treasury.

The Benchmark Interest Rates do not include any additional credit spread, margin or fee components.

"Benchmark Interest Rate Adjustment Date" means the earlier of:

(1) The Financial Close Deadline;

(2) The actual time of Financial Close on the Financial Close Date;

(3) The date of execution of any interest rate hedging instrument by the Developer; or

(4) The Bond Pricing Date.

"Benchmark Interest Rate Protection Period" means the period from the Benchmark Interest Rate Protection Start Date to and including the Benchmark Interest Rate Adjustment Date.

"Benchmark Interest Rate Protection Start Date" means July 19, 2019.

"Billing Period" means each month of a Contract Year except that:

(1) The first Billing Period of the first Contract Year shall begin on the later of the Occupancy Readiness Date and the Scheduled Occupancy Readiness Date and shall continue to the last day of the month, in which the Occupancy Readiness Date occurs, and

(2) The last Billing Period of the last Contract Year shall end on the last day of the Term.

Any computation made on the basis of a Billing Period shall be adjusted on a pro rata basis to take into account any Billing Period of less than the actual number of days in the month to which such Billing Period relates.

"Board" means the Board of County Commissioners of Miami-Dade County, Florida.

"Bond" means any taxable bond.

"Bond Pricing Date" means, with respect to any Bonds included in the Developer's financial plan, the date of the signing of the bond purchase agreement between the Developer and the bond purchasers, or an earlier date on which the Bond interest rates are fixed by the bond purchasers.

"Business Day" means a day other than a Saturday, Sunday, or an official County holiday.

"Buy-Down Insurance Cost" has the meaning set forth in Appendix 10 (Insurance Requirements).

"Capital Charge" has the meaning set forth in Section 16.3 (Capital Charge).

"Capital Expenditure" means an expenditure related to the Project which is treated as a capital expenditure in accordance with GAAP.

"Capital Modification" means any material change to any part of the physical assets constituting the Project occurring after the Occupancy Readiness Date, including the alteration, addition, demolition or extension of the physical assets constituting the Project or the installation of new structures, equipment, systems or technology. If a replacement of any part of the Project is made by the Developer under Article 9 (Operation and Maintenance), or a capital investment, improvement or modification required to be made by the Developer in order to remedy a Developer Event of Default, and can be reasonably expected to result in a material change to the physical assets constituting the Project, then such replacement, capital investment, improvement or modification shall constitute a Capital Modification.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.

"Change in Costs" means, in respect of any Compensation Event, the effect of that Compensation Event (whether of a one-off or recurring nature, and whether positive or negative) upon the actual or anticipated costs, losses or liabilities of the Developer, including, as relevant, the following:

(a) the reasonable costs of complying with the requirements of Articles 15 (Compensation Events and Changes in Law) and 17 (Financial Model), including the reasonable costs of preparation of design and estimates;

(b) the costs of continued employment of, or making redundant, staff who are no longer required;

(c) the costs of employing additional staff;

(d) reasonable professional fees;

(e) (i) Financing Costs (where applicable and without double counting), (ii) the costs to the Developer of financing any Compensation Event (and the consequences thereof) including commitment fees and capital costs, interest and hedging costs, (iii) lost interest on any of the Developer's own capital employed, and (iv) any finance required pending receipt of a lump-sum payment);

(f) the effects of costs on implementation of any insurance reinstatement in accordance with this Project Agreement, including any adverse effect on the insurance proceeds payable to the Developer (whether arising from physical damage insurance or business interruption insurance (or their equivalent)) in respect of that insurance reinstatement and any extension of the period of implementation of the insurance reinstatement;

(g) operating costs, life cycle costs, maintenance costs, or replacement costs;

(h) any Capital Modification or expenditure which is treated as a capital expenditure in accordance with GAAP or equivalent auditing standards utilized and generally accepted in the country of incorporation of the applicable party;

(i) the costs required to ensure continued compliance with the Senior Financing Agreements;

(j) any deductible or increase in the level of deductible, or any increase in premium under or in respect of any insurance policy; and

(k) any material loss, damage, injury, liability, obligation, cost, response cost, expense, fee, charge, judgment, penalty, or fine.

Under no circumstances will Change in Costs include any costs or other losses that arise due to the Developer receiving any payments due by the County to the Developer under Section 7.22 (Payment Obligations of the County During the Design-Build Period) or payments of the Service Fee later than the date that it would have received them in the absence of the Compensation Event.

"Change in Law Event" means the enactment of, and the coming into effect of, after the Technical Proposal Due Date: any Applicable Law; or any modification (including repeal) of any Applicable Law existing on the Technical Proposal Due Date, including but not limited to revised professional and technical standards as set forth in subsection 7.1(G) (Technical Standards and Codes), which is different from Applicable Laws in effect on the Technical Proposal Due Date and compliance with which, in accordance with the Contract Standards: (1) materially expands the scope of or materially interferes with, delays or increases the cost of the Design-Build Work (except that the Developer shall be entitled to relief on account of a Specified Change in Tax Law or a Discriminatory Change in Law as and to the extent provided in Section 15.2 (Discriminatory Changes in Law or Specified Changes in Law); or (2) requires a Capital Modification for compliance therewith.

It is specifically understood, however, that none of the following shall constitute a "Change in Law Event":

(1) Any law, statute, code or regulation that has been enacted or adopted on or before the Technical Proposal Due Date to take effect after the Technical Proposal Due Date;

(2) The denial, delay in issuance of, or imposition of any term or condition in connection with, any Governmental Approval required for the Contract Services;

(3) A change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law which was in effect as of the Technical Proposal Due Date;

(4) Any increase in any fines or penalties provided for under Applicable Law in effect as of the Technical Proposal Due Date; or

(5) Any act, event or circumstance that would otherwise constitute a Change in Law Event but that does not change the requirements imposed on the Developer by the Contract Standards in effect as of the Technical Proposal Due Date.

"Change in Ownership" means:

(1) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares, units or membership interests in the Developer, or in any Affiliate which controls or is controlled by the Developer;

(2) with respect to any of the shares, units or membership interests referred to in section (1) of this definition, any change in the direct or indirect control over:

(a) the voting rights conferred on those shares, units or membership interests;

(b) the right to appoint or remove directors; or

(c) the right to receive dividends or distributions; and

(3) any other arrangements that have or may have or which result in the same effect as section (1) or section (2) of this definition.

"Change Order" means a written order signed by the County and the Developer prior to Occupancy Readiness Date under this Project Agreement, making a Design and Construction Requirement Change. A Change Order shall be deemed to constitute a Project Agreement Amendment.

"Commissioning" means the commissioning of the Project conducted pursuant to Section 7.19 (Commissioning) and Appendix 7 (Commissioning).

"Commissioning Agent" has the meaning set forth in Appendix 7 (Commissioning).

"Commissioning Fine Tuning Period" means the period commencing after the Occupancy Readiness Date, at a time when the Courthouse can be operated under fully loaded occupancy cycles for two (2) years after the Occupancy Readiness Date whereby the Developer verifies through various testing that all key systems in the Courthouse, including heating, air conditioning, and ventilation, are functioning in accordance with the Design and Construction Requirements and the Facility Management Requirements.

"Commissioning Plan" means the commissioning plan for the Project prepared pursuant to Appendix 7 (Commissioning).

"Commissioning Tests" means the commissioning tests set forth in Appendix 7 (Commissioning).

"Compensation Event" means the occurrence of any of the following events or circumstances, the response to which or compliance with which materially expands the scope of or materially interferes with, delays, or increases the cost of performing the Contract Services:

(1) The existence of a Differing Site Condition, to the extent provided in Section 7.4 (Differing Site Conditions);

(2) The existence of a Regulated Site Condition, to the extent provided in Section 7.5 (Regulated Site Conditions);

(3) Compliance by the Developer, pursuant to subsection 9.1(E) (Emergency Orders and Directives) or otherwise, with an order or direction by police, fire officials or any comparable public authority having the legal authority to make such order or give such direction;

(4) Any placement or enforcement of any Encumbrance on the Project Site or the Project not consented to in writing by, or not arising out of any action or agreement entered into by, the party adversely affected thereby;

(5) The preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the Project;

(6) A change in the requirements to obtain LEED Silver Certification of the Courthouse, as such requirements exist on the Technical Proposal Due Date, as provided in Section 7.21 (LEED Silver Certification);

(7) Any:

(a) non-compliance with Applicable Law by any County Indemnitee; or

(b) adverse act of prevention, hindrance, obstruction, or other non-cooperation by any County Indemnitee,

of the Developer's obligations under this Project Agreement during the course of the County carrying out a Capital Modification, as contemplated by Section 10.7 (Alternative Procedures for Implementing Capital Modifications);

(8) The issuance of an injunction (whether temporary, preliminary, interlocutory or permanent) or any other final order by a court of competent jurisdiction, with the result that the County or the Developer becomes unable to perform its obligations under this Project Agreement, provided however, this shall not apply to an injunction or other final order against the Developer arising from the Developer's breach of this Project Agreement or from a violation of Applicable Law;

(9) A County Fault, including under subsection 7.15(D) (Obligations as to County Furnished Equipment), under subsection 7.16(D) (Obligations as to SS Equipment) and under subsection 7.16(E) (Obligations as to Moveable Furniture, Fixtures and Equipment);

(10) A Change in Law Event;

(11) Prior to the Occupancy Readiness Date, (i) the failure (including extreme delays) or the material, prolonged and adverse act of prevention, hindrance, or of any

Governmental Body to provide and maintain direct roadway access to the Project Site upon all roadways immediately abutting the Project Site that are required to perform the Design-Build Work, and (ii) any adverse act of prevention, hindrance, obstruction, or other non-cooperation by the County of the Developer's obligations under this Project Agreement;

(12) County observations or tests revealing that the Design-Build Work complies with the Project Agreement pursuant to subsection 7.14(E)(b) where Developer, at the request of the County, took apart or uncovered for inspection or testing any previously-covered or completed Design-Build Work;

(13) Actions taken by the County under Section 19.3 (County's Temporary Step-In Rights During the Facility Management Period) or Section 19.4 (County's Rectification Rights) which interfered with, delayed or increased the cost of performing the Contract Services by the Developer;

(14) After the Technical Proposal Due Date, any modification of the requirements set forth in Appendix 19 (Department of Transportation and Public Works Adjacent Construction Manual);

(15) The release of any Hazardous Substances other than Developer Hazardous Substances into the Project Site at any time after the Project Site Construction Access Date that must be removed or remediated as a matter of Applicable Law or in accordance with the requirements of this Project Agreement; or

(16) Any other event set forth in this Project Agreement that is specified as a Compensation Event,

except, in each case, to the extent attributable to, arising from, or is caused by, directly or indirectly, by any Developer Fault, any breach of this Project Agreement, Applicable Law, or any Governmental Approval by, or any negligent act or negligent omission of, the Developer or any Project Contractor

"Confidential Information" means personal information, and information of a party that the party has designated as confidential and which is supplied, or to which access is granted, to or on behalf of the other party (whether before or after the Effective Date), either in writing, or in any other form, directly or indirectly pursuant to discussions with the other party and includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a party which contain or otherwise reflect or are derived from such designated information.

"Construction Cost Index" has the meaning set forth in Appendix 3 (Financial Close Procedures and Conditions).

"Contingency and Crisis Management Plan" has the meaning set forth in Appendix 8 (Facility Management Requirements).

"Contract Administration Memorandum" has the meaning set forth in Section 25.7 (Project Agreement Administration).

"Contract Services" means the Design-Build Work, the Facility Management Services, and all other work and services necessary and contemplated by this Project Agreement for the financing, design, construction, delivery, operation and maintenance of the Courthouse.

"Contract Standards" means the standards, terms, conditions, methods, techniques and practices imposed or required by:

(1) Applicable Law and the County Legal Requirements;

(2) The Design and Construction Requirements;

(3) Good Design-Build Practice;

(4) The Facility Management Requirements;

(5) Good Facility Management Practice;

(6) The Design-Build Plans;

(7) The Facility Management Plans;

(8) Applicable written equipment manufacturers' specifications;

(9) Applicable Insurance Requirements; and

(10) Any other standard, term, condition or requirement specifically provided in this Project Agreement to be observed by the Developer.

subsection 1.2(S) (Applicability, Stringency and Consistency of Contract Standards) shall govern issues of interpretation related to the applicability, consistency and stringency of the Contract Standards.

"Contract Year" means each of:

(1) The period from the Financial Close Date to the next September 30th;

(2) Each subsequent period of 12 calendar months commencing on October 1st;

(3) The period from October 1st in the year in which this Project Agreement expires or is terminated (for whatever reason) to and including the Termination Date.

Any computation made on the basis of a Contract Year shall be adjusted on a pro rata basis to take into account any Contract Year of less than 365 or 366 days, whichever is applicable.

"Corrective Maintenance" means Maintenance relating to the repairing of systems and equipment in order to bring it back to original operating condition after breakdown, wear or malfunction.

"Cost Substantiation" has the meaning described in Section 16.13 (Cost Substantiation of Additional Work).

"County" means Miami-Dade County, a body corporate and political subdivision of the State of Florida, acting through motion, formal resolution or ordinance of its Board, unless the Board has delegated such authority to a designee or unless such delegation is specifically set forth in this Project Agreement.

"County Activities" means any activities carried on or to be carried on by the County, or other persons permitted by the County, in the Courthouse related to the administration of justice and any other lawful County purpose.

"County Conditions Precedent" has the meaning set forth in Appendix 3 (Financial Close Procedures and Conditions).

"County Environmental Assessments" means the Project Site information provided by the County as set forth in Appendix 1 (Project Site Information) of this Project Agreement.

"County Event of Default" has the meaning set forth in Section 21.1 (County Events of Default).

"County Facilities" means the Stephen P. Clark Center government building located at 111 NW 1st Street, Miami, Florida and the Cultural Center Plaza and buildings (including the Main Library and HistoryMiami Museum) located at 101 W. Flagler Street, Miami, FL.

"County Fault" means:

(1) A breach by the County of any of its obligations (other than payment obligations) under this Project Agreement; or

(2) A breach of any representation or warranty by the County under this Project Agreement; or

(3) Willful misconduct of a County Indemnitee; or

(4) A negligent act or material omission of a County Indemnitee; or

(5) Any failure by a County Indemnitee to comply with Applicable Law or any Governmental Approvals.

"County Furnished Equipment" means any loose furnishings or equipment that is used in connection with the Project procured, furnished, installed and paid for directly by a Government Entity, and shall include: telecommunications equipment; data network switches, routers and other data network equipment; desktop personal computers; computer networks; copiers; printers; scanners; telephone systems; and audio-visual systems.

"County Indemnitee" means:

(1) Any Government Entity;

(2) Government Person; or

(3) Any representative, agent or advisor (including legal and financial advisors) of any person referred to in items (1) or (2) above or any manager, official, employee, contractor or subcontractor (of any tier) thereof, in any such person's capacity as a provider of services directly or indirectly to the County in connection with the Project, other than the Developer, Project Contractors or Subcontractors.

"County Legal Requirements" means those legal requirements for the design and construction of the Project, any Capital Modifications, and during the operation and maintenance of the Courthouse, all as set forth in Appendix 2.

"County Representative" means one or more individuals specified in writing by the County as the representative(s) of the County from time to time for those specifically designated purposes of this Project Agreement; for example, the County may designate one individual for design plan reviews and processing; another to handle environmental concerns; another individual to address permit reviews and inspections, etc. The Design Criteria Professional shall be a designated County Representative.

"Courthouse" or "Facility" means the new Miami-Dade County Civil and Probate Courthouse and related structures and equipment to be designed, constructed, financed, operated and maintained on the Project Site pursuant to this Project Agreement, including all utility connections, landscaping and other Project Site improvements connected to or related to the Miami-Dade County Civil and Probate Courthouse and related structures, as further described in the Design and Construction Requirements and Facility Management Requirements.

"CPI-Linked" means the percentage change in the value of the index which is listed as "CPI-U (Miami-Ft. Lauderdale-West Palm Beach)" in Section 16.4(C) (Escalation) calculated with reference to the ratio of the most recently published monthly value for that index as of the calculation date to the most recently published values for that index as of the Financial Proposal Due Date; however, in respect of Section 9.4(B)(2) regarding the Vandalism Reserve Account, CPI-Linked means the percentage change in the value of the index which is listed as "Consumer Price Index" in Section 16.4(C) (Escalation) calculated with reference to the ratio of the most recently published monthly value for that index as of the calculation date to the most recently published values for that index as of the Financial Proposal Due Date.

"Credit Agreement" has the meaning set forth in the Lenders' Remedies Agreement.

"Critical Event" has the meaning set forth in Appendix 11 (Deductions).

"Debt" of any person at any date means, without duplication:

(a) all obligations of such person for borrowed money;

(b) all obligations of such person evidenced by bonds, debentures, notes or other similar instruments;

(c) all obligations of such person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business;

(d) all obligations of such person under leases which are or should be, in accordance with GAAP, recorded as capital leases in respect of which such person is liable, except leases arising in the ordinary course of business;

(e) all obligations of such person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property);

(f) all deferred obligations of such person to reimburse any bank or other person in respect of amounts paid or advanced under a letter of credit or other similar instrument;

(g) all Debt (as otherwise defined in this definition) of others secured by a charge, mortgage, lien, pledge, judgment, execution, security interest, restriction, claim

or encumbrance of any nature, including any claims of a Governmental Body, on any asset of such person, provided such Debt (as otherwise defined in this definition) is assumed by such person; and

(h) all Debt (as otherwise defined in this definition) of others guaranteed directly or indirectly by such person or as to which such person has an obligation substantially the economic equivalent of a guarantee.

"Deductions" means those deductions from the otherwise applicable Service Fee that the County is permitted to take as offsets on account of specified instances of non-performance as described in Appendix 11 (Deductions). A "Deduction" can refer to either an Unavailability Deduction or a Performance Failure Deduction.

"Deductions Credit" has the meaning set forth in Section 16.5 (Deductions Credit).

"Delay Period" means, to the extent that the Occupancy Readiness Date has not occurred by the Scheduled Occupancy Readiness Date, the aggregate number of days, as determined by the parties in accordance with the principles set out in Section 8.5 (Scheduled Occupancy Readiness Date and Longstop Date) beyond the Scheduled Occupancy Readiness Date that the Occupancy Readiness Date will be delayed solely as a direct result of the occurrence and subsistence of any Compensation Event(s) or any Force Majeure Event(s). In calculating the Delay Period, the parties shall exclude any days of delay that were caused, solely or concurrently, by Relief Events (exclusive of Force Majeure Events) or by the Developer.

"Deliverable Material" has the meaning set forth in subsection 7.1(H) (Deliverable Material).

"Demolition Work" means the work described in Section 7.3 (Deinstallation of Art and Demolition Work).

"Design and Construction Proposal Extracts" means extracts from the Proposal pertaining to the design and construction of the Project, including clarifications issued by the County and accepted by Developer after the date of submittal, as negotiated by the parties and appended hereto as Appendix 5 (Design and Construction Extracts).

"Design and Construction Requirement Change" means a change in the Design and Construction Requirements made by a Change Order:

(1) As a result of a Developer request agreed to by the County pursuant to Section 7.10 (Design and Construction Requirement Changes Made at Developer Request);

(2) On account of Compensation Events pursuant to Section 7.11 (Design and Construction Requirement Changes Made Due to Compensation Events); or

(3) At the direction of the County pursuant to Section 7.12 (Design and Construction Requirement Changes Made at County Direction).

"Design and Construction Requirements" means the requirements for the design and construction of the Project as set forth in the Design and Construction Standards and the Design and Construction Proposal Extracts, as modified from time to time in accordance with the provisions of Article 7 (Design and Construction) and Appendix 6 (Design-Build Work Review Procedures) and as construed in accordance with the provisions of subsection 1.2(S) (Applicability, Stringency and Consistency of Contract Standards).

"Design and Construction Standards" means the standards for the design, construction and performance of the Project as set forth in Appendix 4 (Design and Construction Standards) and any and all other standards of performance or requirements governing the Design-Build Work in the Project Agreement.

"Design and Construction Contracts" or the "Design-Build Contract" means the agreements between (1) the Developer and the Architect, and (2) the Developer and the Contractor, certified copies of which have been delivered by the Developer to the County, OR, if a design-build form of contracting and development is used, the design-build agreement between the Developer and the Design-Builder, a certified copy of which has been delivered by the Developer to the County.

"Design-Build Contract Price" means $262,767,000, the lump sum price payable by the Developer to the Design-Builder under the Design-Build Contract for the Design-Build Work as of the Effective Date.

"Design-Build Governmental Approvals" means all Governmental Approvals required from time to time during the Design-Build Period for the commencement and continuance of the Design-Build Work.

"Design-Build Period" means the period from and including the Financial Close Date through the Occupancy Readiness Date.

"Design-Build Plans" means the Communication Plan (see Appendix 16, Public Communications regarding certain County responsibilities and Developer responsibilities pertaining to communications), the Emergency/Spill Response Plan, the Hazardous Substances Management Program, each as further described in Appendix 6 (Design-Build Work Review Procedures) as well as the Commissioning Plan, the Design-Build Quality Management Plan, the Health and Safety Plan, and the Re-Commissioning Plan.

"**Design-Build Quality Management Plan**" means the Developer's plan for quality assurance and quality control in implementing the Design-Build Work to be developed in accordance with the requirements set forth in Appendix 6 (Design-Build Work Review Procedures).

"Design-Build Work" means everything required to be furnished and done for and relating to the design, construction and commissioning of the Project by the Developer pursuant to this Project Agreement during the Design-Build Period, including the Demolition Work.

"Design-Builder" means Tutor Perini Corporation, or any assignee or replacement permitted under this Project Agreement.

"Design Criteria Professional" means the entity specified by the County as the licensed design professional responsible for overseeing all aspects of the Design-Build Work on behalf of the County.

"Design Documents" means the Developer's plans, drawings, shop drawings, record drawings, specifications, sketches, graphic representations, calculations, electronic files and other design documents prepared in connection with the Design-Build Work.

"Developer" Developer means Plenary Justice Miami LLC, a limited liability company organized and existing under the laws of Delaware, which is registered to do business

in and is in good standing in the State, and its permitted successors and assigns and is the party responsible for the procurement and delivery of the Project.

"Developer Bankruptcy-Related Event" means a Bankruptcy-Related Event in respect of the Developer.

"Developer Conditions Precedent" has the meaning set forth in Appendix 3 (Financial Close Procedures and Conditions).

"Developer Default Notice" has the meaning set forth in subsection 20.3(A) (Notice and Remedy or Remedial Program).

"Developer Event of Default" has the meaning set forth in subsection 20.1(A) (Developer Events of Default Defined).

"Developer Fault" means:

(1) A breach by the Developer of any of its obligations under this Project Agreement;

(2) A breach of any representation or warranty made by the Developer under this Project Agreement;

(3) Willful misconduct of the Developer or any Developer Person; or

(4) A negligent act or material omission of the Developer or a Developer Person.

"Developer Hazardous Substances" means the presence of Hazardous Substances in, on or under the Project Site (including presence in air, surface water, groundwater, soils, or subsurface strata) which is introduced to the Project Site by, caused by or attributable to any acts or omissions of the Developer or any Developer Person.

"Developer Person" means:

(1) Any director, officer, employee or agent of the Developer in each case acting as such; or

(2) Any Project Contractor, any Subcontractor and any representative, advisor (including any legal and financial advisor) of the Developer, in any such person's capacity as a provider of services directly or indirectly to the Developer in connection with the Project.

"Developer's Project Manager" has the meaning set forth in subsection 4.2(B) (Developer's Project Manager)**.**

"Developer Representative" means the individual or individuals specified in writing by the Developer as the representative of the Developer from time to time for all purposes of this Project Agreement.

"Differing Site Conditions" means (a) actual subsurface or latent physical conditions at the Project Site that differ materially from (i) those constituting the Geotechnical Baseline Conditions or (ii) any other reports or information provided in Appendix 1 (Project Site Information), (b) physical conditions at the Project Site which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character required

herein, or (c) existing, subsurface Utilities which are not noted on the Underground Utility Survey or which would not have otherwise been inferable by the Developer based on a reasonable investigation prior to the Technical Proposal Due Date (understanding that Developer has not been provided an opportunity to drill or excavate the Project Site prior to the Technical Proposal Due Date); provided, however, that the term "Differing Site Conditions" excludes conditions: (1) described in the Project Site Geotechnical Exploration Report; (2) of which the Developer had actual knowledge as of the Financial Proposal Submittal Due Date; (3) buried Utilities that were disclosed in the Underground Utility Survey; or (4) that should have been discovered through a reasonable Project Site investigation performed by Developer or its agents prior to the Financial Proposal Submittal Due Date (understanding that Developer has not been provided an opportunity to drill or excavate the Project Site prior to the Technical Proposal Due Date).

"Disclosed Data" means the information and data contained in the documents included in Appendix 1 (Project Site Information), the Reference Documents and any other information or data provided by the County.

"Discriminatory Change in Law" means after the Technical Proposal Due Date, the enactment of, and the coming into effect of, any Applicable Law, or any modification (including repeal) of any Applicable Law existing on the Technical Proposal Due Date, including but not limited to revised professional and technical standards as set forth in subsection 7.1(G) (Technical Standards and Codes), which is materially different from Applicable Laws in effect on the Technical Proposal Due Date and which is principally directed at, and the effect of which is principally borne by:

(1) the Developer, Design-Builder, or Facility Manager related to work performed on the Project and not other projects or persons, or

(2) persons or entities that have contracted with the County or other Governmental Bodies to deliver capital projects on a design-build, finance, operate, maintain ("DBFOM") basis and which includes a performance-based infrastructure basis similar to the basis on which the Project was procured and delivered and not other persons.

"Dispute" means any disagreement, failure to agree or other dispute between the County and the Developer arising out of or in connection with this Project Agreement, including in respect of the interpretation, breach, performance, validity or termination of this Project Agreement, whether in the law of contract or any other area of law.

"Dispute Resolution Procedure" means the Dispute resolution procedures set forth in Article 18 (Dispute Resolution).

"Distribution" means, without duplication or double counting: Whether in cash or in kind, any:

(a) distribution to Unit Holders or other distribution in respect of Units;

(b) redemption or purchase of Units or reduction of limited liability company capital or the amount of a Unit Holder's contribution stated in the articles of organization or any other reorganization or variation to limited liability company capital;

(c) payment in respect of Junior Debt (whether of fees, principal, interest including capitalized interest and interest on overdue interest, breakage costs, or otherwise and whether or not such items are included or excluded from the definition of Junior Debt);

(d) payment, loan, contractual arrangement, including any management agreement or payment in respect thereof or transfer of assets or rights, in each case to the extent made or entered into after the Effective Date and not in the ordinary course of business and on commercially reasonable terms including to any current or former Unit Holder, or any current or former Affiliate of any current or former Unit Holder;

(e) conferral of any other benefit which is not conferred and received in the ordinary course of business and on commercially reasonable terms, including to any current or former Unit Holder, any current or former Affiliate of any current or former Unit Holder or the Developer;

(f) other payment to any current or former Unit Holder, any current or former Affiliate of any current or former Unit Holder or the Developer howsoever arising and whether made pursuant to the terms of an agreement or otherwise or in respect of any class of Units or other securities of or interests in the Developer if, in any such case, such payment would not have been made were it not for the occurrence of any Refinancing or Change in Control; or

(g) the early release of any reserves or any Contingent Funding Liabilities (as defined in Appendix 13 (Compensation on Termination)), the amount of such release being deemed to be a gain for the purposes of any calculation of Refinancing Gain,

and where any such Distribution is not in cash, the equivalent cash value of such Distribution will be calculated. A Distribution will be calculated in a manner that is consistent with the calculation of the Base Case Equity IRR in the Financial Model.

"Effective Date" has the meaning set forth in Section 3.1 of this Project Agreement and is the date reflected on Page 1 of this Project Agreement.

"Emergency Event" has the meaning set forth in Appendix 11 (Deductions).

"Employee Payments" means any liability that has been reasonably incurred by the Developer arising as a result of termination of this Project Agreement under collective bargaining agreements, employment agreements or under any other agreements with employees of the Developer, including severance (whether accrued or not), vacation pay and sick pay accrued, but excluding any Distribution.

"Encumbrance" means any Lien, lease, mortgage, security interest, judgment, judicial award, attachment or encumbrance of any kind with respect to the Project or Project Site.

"Energy Management Plan" has the meaning set forth in Appendix 8 (Facility Management Requirements).

"Environmental Management Plan" has the meaning set forth in Appendix 8 (Facility Management Requirements).

"Equity IRR" means the Developer's Nominal blended equity internal rate of return on the Units calculated on an after-tax basis at the level of the Developer in accordance with the Financial Model as shown in Appendix 17, having regard to Distributions made and projected to be made.

"Equity Member" means each person that directly holds an equity interest in the Developer.

"Event" has the meaning set forth in Appendix 11 (Deductions).

"Exempt Refinancing" means:

(1) A change in taxation or change in accounting treatment pursuant to changes in Applicable Law or GAAP;

(2) The exercise of rights, waivers, consents and similar actions which relate to day-to-day administrative and supervisory matters that are solely in respect of:

(a) breach of representations, warranties, covenants or undertakings;

(b) movement of monies between the Project Accounts (as defined in the Senior Financing Agreements) in accordance with the terms of the Senior Financing Agreements;

(c) late or non-provision of information or consents;

(d) amendments to Project Contracts;

(e) approval of revised technical and economic assumptions for financial model runs (to the extent required for forecasts under the Senior Financing Agreements);

(f) restrictions imposed by the Senior Lenders on the dates at which the financing provided by the Senior Lenders under the Senior Financing Agreements can be advanced to the Developer under the Senior Financing Agreements, and which are given as a result of any failure by the Developer to ensure that the Design-Build Work is carried out in accordance with the Project Schedule and which are notified in writing by the Developer or the Senior Lenders to the County prior to being given;

(g) changes to milestones for drawdown set forth in the Senior Financing Agreements and which are given as a result of any failure by the Developer to ensure that the Design-Build Work is carried out in accordance with the Project Schedule and which are notified in writing by the Developer or the Senior Lenders to the County prior to being given;

(h) failure by the Developer to obtain any consents from Governmental Bodies required by the Senior Financing Agreements; or

(i) voting by the Senior Lenders and the voting arrangements between the Senior Lenders in respect of the levels of approval required by them under the Senior Financing Agreements;

(3) An amendment, variation or supplement of an agreement approved by the County as part of any Capital Modification, Design and Construction Requirement Change or Facility Management Services Change;

(4) A sale of Junior Debt or Units in the Developer by Unit Holders or, in the case of Junior Debt, Affiliates of Unit Holders or securitization of the existing rights or interests attaching to Junior Debt or Units in the Developer;

(5) A Qualifying Bank Transaction;

(6) A conversion of Units into Junior Debt or of Junior Debt into Units, provided that the total principal amount of all Junior Debt outstanding immediately following the conversion plus amounts paid to the Developer by way of subscription for Units outstanding immediately following the conversion does not exceed the total amounts paid to the Developer by way of subscription for Units outstanding immediately prior to the conversion plus the total principal amount of all Junior Debt outstanding immediately prior to the conversion; or

(7) A secondary transaction in the Bond market.

"Existing Art" has the meaning set forth in Section 7.3(A) (Existing Art).

"Expiration Date" means the date that is 30 years following the Scheduled Occupancy Readiness Date.

"Extraordinary Item" has the meaning set forth in Section 16.6 (Extraordinary Items).

"Facility Component" means the system and equipment referenced in Table-1 of Section 11.1 of Appendix 8 (Facility Management Requirements) which are part of the Design and Construction Requirements.

"Facility Condition Index" has the meaning set forth in Section 3.3 (Facility Condition Index) of Appendix 8 (Facility Management Requirements).

"Facility Management Charge" has the meaning set forth in Section 16.4 (Facility Management Charge).

"Facility Management Notice" means a notice given by one party to the other hereunder relating to routine operational matters arising under this Project Agreement following the Occupancy Readiness Date specifically required hereunder to be given as a "Facility Management Notice".

"Facility Management Period" means the period between the Occupancy Readiness Date and the Termination Date.

"Facility Management Plans" means the plans set forth and described in Section 4 of Appendix 8 (Facility Management Requirements) and shall include the Start-up Plan, the Annual Service Plans, the Five-Year Maintenance Plan, the Life Cycle Schedule, the Life Cycle Plan, the Environmental Management Plan, the Energy Management Plan, the Contingency and Crisis Management Plan, and the Fire, Life Safety and Emergency Management Plan, each as further described and defined in Appendix 8 (Facility Management Requirements).

"Facility Management Proposal Extracts" means extracts from the Proposal pertaining to the operation, maintenance, repair, replacement and management of the Project, including clarifications issued by the County after the date of submittal and agreed to by Developer, as negotiated by the parties and appended hereto as Appendix 9 (Facility Management Extracts).

"Facility Management Representative" shall refer to: (a) the person, designated by the County, who shall act as the single point of contact for the County during the Facility Management Period and with respect to the Facility Management Services; and (b) the person, designated by the Developer, who shall act as the single point of contact for the Developer during the Facility Management Period and with respect to the Facility Management Services. The Facility Management Representative for the County shall be referred to as the "County's Facility Management Representative" and the Facility Management Representative for the Developer

shall be referred to as the "Developer's Facility Management Representative" and, each of the County and the Developer, acting reasonably, may designate in writing a new Facility Management Representative from time to time and may designate additional assistant Facility Management Representatives to assist their respective Facility Management Representative in performing his/her duties.

"Facility Management Requirements" means the standards for operation and maintenance of the Project outlining criteria and specifications for the maintenance and operation of the Courthouse during the Facility Management Period as specifically set forth in Appendix 8 (Facility Management Requirements) which, after the Effective Date, shall also be deemed to include the Facility Management Proposal Extracts; provided, however, that if there is a conflict between the Facility Management Requirements and the Facility Management Proposal Extracts, the more exacting and stringent standard shall apply.

"Facility Management Services" means everything required to be furnished and done for and relating to the operation and maintenance of the Project by the Developer pursuant to this Project Agreement during the Facility Management Period.

"Facility Management Services Agreement" means the agreement between the Developer and the Facility Manager, a certified copy of which has been delivered by the Developer to the County.

"Facility Management Services Change" means a change, including an addition, deletion, alteration, substitution or modification, to the Developer's Facility Management Services obligations under this Project Agreement, made pursuant to Section 10.8 (Facility Management Services Changes).

"Facility Management Services Change Certificate" means a certificate issued by the County describing and authorizing a Facility Management Services Change, the value or method of valuation of the Facility Management Services Change, and the adjustment, if any, to the Service Fee associated with the Facility Management Services Change.

"Facility Management Services Change Report" has the meaning set forth in subsection 10.8(B) (Developer Facility Management Services Change Report).

"Facility Manager" means Johnson Controls, Inc., or any assignee or replacement permitted under this Project Agreement.

"Facility User" means any person employed at, visiting or making use of the Project for any authorized purpose, whether on a regular or sporadic basis.

"Fair Market Value" means the amount at which an asset or a liability would be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale.

"Fees and Costs" means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any Legal Proceeding.

"Final Completion" means completion of the Design-Build Work in compliance with the Design and Construction Requirements and the requirements of Section 7.20 (Final Completion) and the issuance of a final certificate of occupancy.

"Final Warning Notice" has the meaning set forth in subsection 20.1(B)(3) (Persistent Breach).

"Financial Close" means satisfaction or waiver of the Financial Close Conditions in accordance with Appendix 3 (Financial Close Procedures and Conditions).

"Financial Close Conditions" means the Developer Conditions Precedent and the County Conditions Precedent.

"Financial Close Date" means the date on which Financial Close occurs.

"Financial Close Deadline" has the meaning set forth in Section 5.2 (Financial Close Deadline).

"Financial Close Security" means the one or more letters of credit required of the Developer pursuant to Section 5.3 (Financial Close Security) as security for the achievement of Financial Close in the form set forth in Transaction Form A (Financial Close Security).

"Financial Close Termination Sum" means:

(1) $500,000; plus

(2) The lesser of:

(a) The Developer's reasonable and proper costs (without mark-up for overhead or profit) incurred in performing Design-Build Work and seeking to achieve Financial Close from the Effective Date through the date of any notice of termination delivered pursuant to Appendix 3 (Financial Close Procedures and Conditions); and

(b) $500,000 or, in the event the Financial Close Deadline is extended, as provided in subsection 5.2(A) (Financial Close Deadline Defined), $1,000,000.

"Financial Model" means:

(1) For purposes of the Developer's representations as to the financial model as of the Effective Date and prior to the Financial Close Date, the Initial Base Case Financial Model; and

(2) For all other purposes, including the Developer's representations as to the financial model as of the Financial Close Date, the Base Case Financial Model, as updated and replaced from time to time in accordance with the terms of this Project Agreement.

"Financial Proposal Due Date" means July 31, 2019.

"Financing Costs" means, in respect of any Delay Period, the aggregate of:

(1) all amounts of principal that will fall due for payment under the Senior Financing Agreements during that Delay Period; and

(2) all amounts (excluding default interest) of interest that accrue under the Senior Financing Agreements during that Delay Period.

"Financing Period" means the period, if any, from and including the Effective Date through the Financial Close Date.

"Fine Tuning" means the detailed calibration of the systems and equipment designed to control the indoor environment of the Project, through fully loaded occupancy cycles of two years (or such earlier time as the County may reasonably agree) after the Occupancy Readiness Date, whereby the Developer verifies, through various systems and equipment testing, that all key systems in the Project, including heating, air conditioning and ventilation are functioning in accordance with the Contract Standards.

"Fine Tuning Reports" has the meaning set forth in Appendix 7 (Commissioning).

"Fire, Life Safety and Emergency Management Plan" has the meaning set forth in Appendix 8 (Facility Management Requirements).

"Fitch" means Fitch Ratings, Inc., or any of its successors and assigns. If such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, "Fitch" shall be deemed to refer to any other nationally-recognized securities rating agency designated by the County.

"Five-Year Maintenance Plan" has the meaning set forth in Appendix 8 (Facility Management Requirements).

"Food Service Facility" or **"Restaurant"** means the casual cafeteria or deli-style restaurant establishment and Snack Bar, both of which shall be located within the Courthouse and shall serve a complementary menu reflective of then-current trends in the fast/casual food industry and the local consumer market, all for the benefit of Facility Users. The Developer shall design and construct the Restaurant in accordance with Appendix 4 (Design and Construction Standards) and shall operate and maintain the Restaurant in accordance with Appendix 8 (Facility Management Requirements) and Appendix 21 (Minimum Operating Standards for Food Services Facility), and as set forth in Section 9.8 (Food Service Facility).

"Force Majeure Event" means the occurrence of any of the following events after the date of this Project Agreement that directly causes either party (the "**Affected Party**") to be unable to comply with all or a material part of its obligations under this Project Agreement:

(1) any act of terrorism deemed a terrorism act by the County or the State or any certified acts of terrorism as defined by the Terrorism Risk Insurance Act ("TRIA") occurring during any period in which TRIA or a substantially identical federal law is in effect or, where no such equivalent law is in effect, any act of terrorism that otherwise could have been a certified act of terrorism under the TRIA;

(2) pressure waves caused by aircraft or other aerial devices traveling at supersonic speeds;

(3) war, civil war, invasion, violent act of foreign enemy or armed conflict, insurrection or disturbance (including armed violence and hostage taking), or sabotage;

(4) nuclear explosion or nuclear, radioactive, chemical or biological contamination unless the source or cause of the contamination is brought to or near the Project Site by the Developer, or a Project Contractor in breach of the Contract Standards, or is a result of a breach by the Developer of the terms of this Project Agreement;

(5) ionizing radiation unless the source of cause of the ionizing radiation is brought to or near the Project Site by the Developer, or a Project Contractor in breach of the Contract Standards, or is a result of a breach by the Developer of the terms of this Project Agreement;

(6) After the Occupancy Readiness Date, the failure (including extreme delays) of any Governmental Body or utility company having operational jurisdiction in the area in which the Project is located to provide and maintain Utilities and Utilities' services to the Project that are required to perform this Project Agreement; and

(7) Any of the following:

(a) riot or civil commotion;
(b) blockade or embargo;
(c) Epidemics, pandemics, quarantine or severe health alerts issued by a Governmental Body relating thereto; or
(d) official or unofficial strike, lockout, go-slow, or other labor dispute,

which is regional or national in nature and generally affecting the construction industry or a significant sector of it, the judicial system, or the building maintenance or facilities management industries generally.

"Force Majeure Termination Notice" has the meaning set forth in subsection 14.2(E)(1) (Failure to Agree; Right to Terminate).

"Functional Unit" has the meaning set forth in Appendix 11 (Deductions).

"GAAP" means generally accepted accounting principles in effect and consistently applied in the United States (including the accounting recommendations published in the Handbook of the American Institute of Certified Public Accountants).

"Geotechnical Baseline Conditions" means those soil, bedrock, and geological conditions described in the Project Site Information, Geotechnical Exploration Report (Appendix 1C).

"Good Design-Build Practice" means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good practice in the delivery of buildings similar to the Project on a design-build basis and, only in circumstances described in Section 4.7 (Good Design-Build Practice and Good Facility Management Practice), as such practices evolve over the Term.

"Good Facility Management Practice" means the methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good operation, maintenance, repair, replacement and management practices for buildings serving purposes similar to the Project and, only in circumstances described in Section 4.7 (Good Design-Build Practice and Good Facility Management Practice), as such practices evolve over the Term.

"Governmental Approvals" means all permits, licenses, authorizations, consents, certifications, exemptions, rulings, entitlements and approvals issued by a Governmental Body of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Contract Services.

"Governmental Body" means any federal, State, regional or local legislative, executive, judicial or other governmental board, department, agency, authority, commission, administration, court or other body, including the County, acting in its governmental, regulatory or quasi-judicial capacity (and not in its proprietary capacity as a party to this Project Agreement), or any official thereof, having jurisdiction in any way over or in respect of any aspect of the performance of this Project Agreement or the Project.

"Government Entity" means the County, the Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida, Miami-Dade County State Attorney's Office, and/or the Clerk of Courts for Miami-Dade County, Florida.

"Government Person" means any elected or appointed judge, judicial officer, subordinate judicial officer, County Commissioner, County Mayor, director, officer, member or employee of a Government Entity.

"Handback Requirements" refers to the required condition that the Courthouse and each of its elements have to meet on the Expiration Date as set forth in Section 9.12.

"Handback Retainage Account" means a County interest-bearing account at a Qualified Commercial Bank where the Handback Retainage will be deposited.

"Handback Retainage" means the County's good faith estimated amount necessary to complete the Handback Work.

"Handback Survey" means an inspection and survey of the Facility that the Developer and the County shall jointly conduct in the Contract Year commencing four years prior to Expiration Date or promptly following any notice of an event or circumstance which would give either party a right to terminate the Project Agreement.

"Handback Work" means the replacement by the Developer of those Facility Components which are reasonably expected to reach its useful life expectancy at the Expiration Date as determined by the Independent Facility Management Expert.

"Handback Work Plan" means the Developer's plan to perform the Handback Work.

"Hazardous Substances" means any hazardous waste, hazardous product, contaminant, toxic substance, deleterious substance, dangerous goods, pollutant, waste, reportable substance, flammable materials, explosives, radioactive materials, infectious waste, environmental contaminants and any other substance, in respect of which the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation or release into or presence in the environment is prohibited, controlled or regulated under Applicable Law pertaining to the environment, including but not limited to: (a) "hazardous substances" as defined under CERCLA and "hazardous waste" as defined under the Resource Conservation and Recovery Act, 42 U.S.C.A. 6901 et seq., applicable regulations promulgated thereunder; (b) the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.);(c) the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §§ 6901 et seq.); (d) the Water Pollution Control Act (33 U.S.C. § 1317); (e) the Florida Resource Recovery and Management Act, Fla. Stat. § 403.702-403.7893; (f) the Pollutant Spill Prevention and Control Act, Fla. Stat. §§ 376.011-376.21; (g) any material defined as "petroleum" or "petroleum products" under Fla. Stat. § 376.301, (h) contaminant, or hazardous substance as defined in Fla. Stat. § 376.301 or Fla. Stat. § 403.031, wastes as defined in Fla. Stat § 403.031; and (i) ground or water pollution as defined by Section 24-5 of the Miami-Dade County Code, each as amended from time to time.

"Health and Safety Plan" has the meaning set forth in subsection 7.13(B) (Safety and Security).

"Help Desk" shall refer to the facility management incident referral system to be developed, implemented, maintained and operated by the Developer during the Facility Management Period in accordance with Section 13 of Appendix 8 (Facility Management Requirements).

"Income Tax" means any Tax imposed on the income of a person by any federal, State or local Governmental Body.

"Incremental Facility" means the future design and build-out of one or more of the four shell courtroom sets, judicial office sets, or corresponding building support and public areas by the Developer in accordance with Section 10.5 (Capital Modifications at County Direction) and Section 10.6 (Primary Procedure for Implementing Capital Modifications) of the Project Agreement.

"Incremental Facility Management Charge" means the additional costs payable to the Developer as part of the County's Service Fee obligations for the provision of Facility Management Services to the Incremental Facility.

"Independent Building Expert" has the meaning set forth in Section 8.2 (Independent Building Expert) of this Project Agreement.

"Independent Facility Management Expert" means the qualified professional engaged by the parties for the purposes described in Section 9.12 of the Project Agreement.

"Index-Linked" means, a weighted average of the percentage change in each index value listed and weighted in Section 16.4 (Facility Management Charge) calculated with reference to the ratio of the most recently published monthly value for each index as of the calculation date to the most recently published value for each index as of the Financial Proposal Due Date.

"**Initial Base Case Equity IRR"** means 10.26%, being the Nominal post-Income Tax internal rate of return on equity investment over the full Term assuming no early termination or extension of this Project Agreement, projected for the Project under the Initial Base Case Financial Model.

"Initial Base Case Financial Model" means the Developer's financial model for the Project as of the Effective Date, which is attached in electronic format as Appendix 17 (Financial Model).

"Initial Warning Notice" has the meaning set forth in subsection 20.1(B)(1) (Persistent Breach).

"Insurance Proceeds" means the amount of any insurance proceeds received by a person in respect of a claim made under any policy of insurance required to be maintained by the Developer under this Project Agreement.

"Insurance Receivables" means Insurance Proceeds which a person is entitled to receive but which have not been received.

"Insurance Requirement" means any rule, regulation, code, or requirement issued by any insurer that has issued a policy of Required Insurance under this Project

Agreement, as in effect during the Term, compliance with which is a condition to the effectiveness of such policy.

"Insurance Trust Account" has the meaning set forth in subsection 14.3(E) (Insurance Trust Account).

"Insurance Trust Agreement" has the meaning set forth in subsection 14.3(E) (Insurance Trust Account).

"Insurance Unavailability Event" has the meaning set forth in subsection 14.5(A) (Insurance Unavailability Event).

"Intellectual Property" means any or all of the following and all rights, arising out of or associated therewith:

(1) National, international and foreign patents, and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof;

(2) Inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical data and customer lists, product formulations and specifications, and all documentation relating to any of the foregoing throughout the world;

(3) Copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto throughout the world;

(4) Industrial designs and any registrations and applications therefor throughout the world;

(5) Rights in any internet uniform resource locators (URLs), domain names, trade names, logos, slogans, designs, common law trademarks and service marks, trademark and service mark registrations and applications therefor throughout the world;

(6) Databases and data collections and all rights therein;

(7) Moral and economic rights of authors and inventors, however denominated, throughout the world; and

(8) Any similar or equivalent rights to any of the foregoing anywhere in the world.

"Joint Technical Performance Review" has the meaning set forth in subsection 9.6(B) (Joint Technical Performance Review).

"**Judicial Impediment"** has the meaning set forth in Appendix 11 (Deductions).

"Junior Debt" means indebtedness owing by the Developer to any of its Unit Holders or Affiliates of Unit Holders which ranks subordinate in all respects to the Senior Debt, excluding:

(1) All amounts not actually paid to the Developer by cash advance, rights entitling the Developer to a cash advance, or other consideration;

(2) All fees, including commitment fees, standby fees or other fees, paid or to be paid by the Developer, other than to any Unit Holder or any Affiliate of a Unit Holder; and

(3) Capitalized interest, and interest on overdue interest.

"Key Financial Event" has the meaning set forth in Appendix 3 (Financial Close Procedures and Conditions).

"Key Personnel" has the meaning set forth in Appendix 15 (Developer and Project Contractors Information).

"LEED Silver Certification" means formal certification of the Project as meeting the requirements for the Leadership in Energy and Environmental Design Green Building Rating System for New Construction, developed and maintained by the U.S. Green Building Council ("LEED') "silver" rating for new construction under the LEED-NC Rating System.

"LEED Specialist" has the meaning set forth in Appendix 7 (Commissioning).

"Legal Proceeding" means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Project Agreement, and all appeals therefrom.

"Legally Available Non-Ad Valorem Revenues" means all available revenues and taxes of the County derived from any source whatsoever other than ad valorem taxation on real and personal property and including "operating transfers in" and appropriable fund balances within all governmental, proprietary and fiduciary funds and accounts of the County (as defined by generally accepted accounting principles) over which the Board has full and complete discretion to appropriate the resources therein.

"Lenders' Remedies Agreement" means the agreement between the County, the Senior Lenders and the Developer in the form set forth in Transaction Form B (Lenders' Remedies Agreement).

"Lien" means any and every lien against the Project or against any monies due or to become due from the County to the Developer under this Project Agreement, for or on account of the Contract Services, including mechanics', materialmen's, laborers' and lenders' liens.

"Life Cycle Plan" has the meaning set forth in Appendix 8 (Facility Management Requirements).

"Life Cycle Schedule" has the meaning set forth in Appendix 8 (Facility Management Requirements).

"Liquidated Damage Right" has the meaning set forth in subsection 19.2(A) (County Liquidated Damage Rights Defined).

"Longstop Date" has the meaning set forth in subsection 8.5(B) (Longstop Date Defined).

"Loss-and-Expense" means, and is limited to, (in each case subject to Section 19.11 (No Special, Consequential or Punitive Damages)) any and all actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, Tax, cost or

expense for which a party is obligated to indemnify hereunder, including all Fees and Costs, except as explicitly excluded or limited under any provision of this Project Agreement.

"Maintained Element" means all elements of the Project, constructed or installed pursuant to this Project Agreement, County Furnished Equipment and SS Equipment.

"Maintenance" means commissioning, testing, servicing, maintenance, repair, renewal or replacement of the Maintained Elements.

"Market Disruption Event" has the meaning set forth in Appendix 3 (Financial Close Procedures and Conditions).

"Material Contracts" means:

(1) The Project Contracts; and

(2) Any agreement between the Developer and an Affiliate of the Developer with respect to the performance of the Contract Services.

"Mediator" means any person serving as a mediator of disputes hereunder pursuant to Section 18.2 (Non-Binding Mediation Generally).

"Moody's" means Moody's Investors Service, Inc. or any of its successors and assigns. If such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally-recognized securities rating agency designated by the County.

"Moveable Furniture, Fixtures and Equipment" has the meaning set forth in Section 7.16 (Moveable Furniture, Fixtures and Equipment and Security Systems Equipment).

"Net Present Value" has the meaning set forth in Section 1.1 of Appendix 18 (Calculation and Payment of Refinancing Gains).

"New Project Agreement" means an agreement on substantially the same terms and conditions as this Project Agreement (including any agreements entered into pursuant to this Project Agreement as at the Termination Date) but with the following amendments:

if this Project Agreement is terminated prior to the Occupancy Readiness Date, the extension of the Scheduled Occupancy Readiness Date and the Longstop Date by such reasonable period as is agreed by the County and the New Developer to meet such extended Scheduled Occupancy Readiness Date and

(a) Longstop Date;

(b) the term of such agreement will be equal in length to the term from the Termination Date until the date on which the Facility Management Period would otherwise have expired;

(c) the County may not terminate such agreement for reasons which arose prior to the Termination Date so long as the New Developer is using all reasonable efforts to remedy any breach of this Project Agreement that arose prior to the Termination Date and which is capable of being remedied; and

(d) any other amendments as may be specified by the County that do not adversely affect any compensation which would otherwise be payable to the Developer pursuant to Appendix 13 (Compensation on Termination).

"New Developer" means the person who has entered into or who will enter into the New Project Agreement with the County.

"Nominal" means calculated in nominal terms at current prices recognizing adjustment for indexation in respect of forecasted inflation.

"Non-Binding Mediation" means the voluntary system of dispute resolution established by Section 18.2 (Non-Binding Mediation Generally) for addressing disputes arising under this Project Agreement.

"Occupancy Readiness" means satisfaction of the Occupancy Readiness Conditions.

"Occupancy Readiness Certificate" means a certificate delivered by the County Representative in accordance with this Project Agreement.

"Occupancy Readiness Conditions" has the meaning set forth in Section 8.1 (Occupancy Readiness Conditions).

"Occupancy Readiness Date" means the date on which Occupancy Readiness of the Project occurs or is deemed to have occurred under Article 8 (Occupancy Readiness).

"Operating Hours" means 7:00 a.m. to 6:00 p.m., Eastern time on Business Days.

"Operational Condition" has the meaning set forth in Appendix 11 (Deductions).

"Orderly Cleanliness" means, in general, a level of cleanliness representative of the industry standard for similar structures and includes (a) floors and base moldings that shine or are bright and clean with no buildup in corners or along walls, but with up to two days' worth of dirt, dust, stains, or streaks allowed; (b) all vertical and horizontal surfaces that are clean, but with marks, dust, smudges, and fingerprints are noticeable with close observation allowed; (c) washroom, kitchenettes, locker rooms, and shower tile and fixtures that gleam and are odor-free; (d) supplies that are adequate; (e) trash containers and pencil sharpeners that are empty, clean, and odor-free; and (f) exterior fixtures, walls, windows that are in good condition.

"Overdue Rate" means a rate of interest equal to the Prime Rate for the Business Day on which a payment due hereunder becomes overdue, or if such date is not a Business Day, the Business Day next following such date.

"Performance Failure" has the meaning set forth in Appendix 11 (Deductions).

"Performance Failure Deduction" has the meaning set forth in Appendix 11 (Deductions).

"Performance Monitoring Report" means the report that the Developer will prepare and deliver to the County's Representative within five Business Days of the end of each Billing Period during the Facility Management Period and which provides the supporting detail for the Service Fee, as further described in Section 6.2 (Periodic Reporting) of Appendix 8 (Facility Management Requirements).

"Permanent Repair" has the meaning set forth in Appendix 11 (Deductions).

"Permanent Repair Deadline" has the meaning set forth in Appendix 11 (Deductions).

"Permitted Debt" means:

(1) trade or other similar indebtedness incurred in the ordinary course of business;

(2) Taxes and governmental charges, salaries, related Employee Payments and trade payables;

(3) contingent liabilities relating to the endorsement of negotiable instruments received in the normal course of business or incurred with respect to any Governmental Approvals, the Project Contracts or this Project Agreement; and

(4) Debt incurred by way of loans from Unit Holders;

but does not include any Senior Debt (other than the Senior Debt incurred or issued on the Financial Close Date).

"Permitted Encumbrances" means, as of any particular time, any one or more of the following:

(1) Applicable zoning and building bylaws and ordinances, municipal bylaws and regulations, which do not materially interfere with the construction of the Project and operation of the Project by the Developer;

(2) Encumbrances which are created before the Project Site Construction Access Date;

(3) Encumbrances which are created by a Change in Law Event after the Technical Proposal Due Date; and

(4) Any Encumbrance created by an act or omission by any Governmental Body or with respect to which the County has given its consent.

"Persistent Breach" means a breach for which a Final Warning Notice has been issued, that: (a) continues for more than thirty (30) consecutive days after the date of service of the Final Warning Notice; or (b) recurs three (3) or more times within the six (6)-month period after the date of service of the Final Warning Notice.

"Planned Refinancing" means a Refinancing that is identified as a Planned Refinancing in the Initial Base Case Financial Model and that was fully taken into account and set out in the calculation of the Service Fee payments or other payments hereunder and expressly set out in the Base Case Financial Model at Financial Close.

"Post-Refinancing Equity IRR" has the meaning set forth in Section 2.3 of Appendix 18 (Calculation and Payment of Refinancing Gains).

"Post-Refinancing Financial Model" has the meaning set forth in Section 2.2 of Appendix 18 (Calculation and Payment of Refinancing Gains).

"Pre-Refinancing Equity IRR" has the meaning set forth in Section 2.3 of Appendix 18 (Calculation and Payment of Refinancing Gains).

"Pre-Refinancing Financial Model" has the meaning set forth in Section 2.2 of Appendix 18 (Calculation and Payment of Refinancing Gains).

"Preventive Maintenance" means Maintenance relating to the planning and scheduling of maintenance activities and tasks that are aimed to prevent the breakdowns and failures of systems and equipment.

"Prime Rate" means the prime rate as published in The Wall Street Journal (Eastern Edition), or a mutually agreeable alternative source of the prime rate if it is no longer published in The Wall Street Journal (Eastern Edition) or the method of computation thereof is substantially modified.

"Project" means the Courthouse (including the Restaurant), inclusive of the performance of the Contract Services with respect thereto and Moveable Furniture, Fixtures and Equipment, Security Systems Equipment, and County Furnished Equipment only to the extent provided in Section 7.16 (Moveable Furniture, Fixtures and Equipment and Security Systems Equipment), Appendix 4 (Design and Construction Standards), Appendix 8 (Facility Management Requirements), and Section 7.15 (County Furnished Equipment). The Utilities' services to the Restaurant after the Occupancy Readiness Date and the payment thereof shall not constitute part of the Project.

"Project Agreement" means this Project Agreement, and includes the Transaction Forms, Appendices, any Change Orders agreed by the parties, any Contract Administration Memorandums agreed by the parties any amendments to the Project Agreement as provided in Section 25.8 (Project Agreement Amendments), and any Facility Management Services Change Certificates issued pursuant to subsection 10.8(F), and Reference Documents (as applicable).

"Project Agreement Amendment" has the meaning set forth in Section 25.8 (Project Agreement Amendments).

"Project Component" means each of the Project Components identified as such in Section 11 (Remaining Useful Life) to Appendix 8 (Facility Management Requirements).

"Project Contractor" means the Design-Builder, the Facility Manager, or any other entity with which the Developer contracts for the provision and delivery of the services contemplated by this Project Agreement.

"Project Contractor Collateral Agreement" means the agreement to be entered into among the County, a Project Contractor and the Developer in the form set forth in Transaction Form C (Project Contractor Collateral Agreement).

"Project Contracts" means the Design-Build Contract and the Facility Management Services Agreement.

"Project Equipment" means all manufactured equipment, systems, property or assets, whether or not constituting personal property or fixtures, constituting part of the Project, excluding in each case Moveable Furniture, Fixtures and Equipment, Security Systems Equipment, and County Furnished Equipment.

"Project Intellectual Property" means the Intellectual Property which is created, brought into existence, acquired, licensed or used by the Developer, any Project Contractor, any

Subcontractor or any other third party, directly or indirectly, for the purposes of the Contract Services, but does not include the Financial Model.

"Project Requirements" means the Design and Construction Requirements and the Facility Management Requirements.

"Project Schedule" has the meaning set forth in Appendix 6 (Design-Build Work Review Procedures).

"Project Site" or **"Facility Site"** means the real property described in Appendix 1 (Project Site Information) on which the Courthouse is to be constructed by the Developer and includes all Access Roads, Grounds and Landscaped Maintained Elements. The Project Site shall specifically include the area identified in Attachment 4A of Appendix 4 (Design and Construction Standards) required for the re-location of the Cultural Center Plaza Service Road for the duration of the Design-Build Period, the conclusion of which shall result in such area being excluded from the Project Site.

"Project Site Construction Access Date" means the date following the Financial Close Date.

"Project Site Geotechnical Exploration Report" means the Geotechnical Exploration Report, dated March 28, 2019, prepared by Wood Environment & Infrastructure Solutions, Inc. attached in Appendix 1 (Project Site Information).

"Proposal" means the proposal made by, or on behalf of, the Developer in response to the submittal requirements of the RFP and includes the technical proposal and financial proposal.

"Proposal Validity Period End Date" has the meaning set forth in Appendix 3 (Financial Close Procedures and Conditions).

"Public Records" has the meaning set forth in Chapter 119 of the Florida Statutes, as may be amended from time to time.

"Public Records Law" means Florida's Public Records Law, codified as Chapter 119 of Florida Statutes, including the applicable regulations promulgated thereunder, each as amended or superseded from time to time.

"Punch List" has the meaning set forth in subsection 8.4(A) (Punch List).

"Punch List Items" means any defects, deficiencies and items of outstanding work that would not materially impair court activities or the performance of the Facility Management Services and could be rectified with minimal interference to the occupancy, use and lawful operation of the Project.

"Qualified Commercial Bank" means a reputable domestic or foreign commercial bank:

(1) Whose long-term debt has at least two of the following ratings: "A2" or higher by Moody's, "A" or higher by Standard & Poor's, and "A" or higher by Fitch; and

(2) Which maintains a banking office, branch or agency in the United States.

"Qualified Investor" means those investors of the Developer that have been submitted to and approved by, the County, prior to the date of the Project Agreement.

"Qualified Insurer" means an insurer that:

(1) is allowed legally to do business in the State and acceptable to the County, acting reasonably; and

(2) has a Best's Financial Strength Rating of "A-" or better, and a Financial Size Category of "Class VII" or better in the latest evaluation of A.M. Best Company, Inc., or a comparable rating from any other nationally recognized rating agency, unless the County grants specific approval for an exception.

"Qualifying Bank Transaction" means:

(1) The disposition by a Senior Lender to a Qualifying Institution, any other Senior Lender or an Affiliate of such Senior Lender of any of its rights or interests in the Senior Financing Agreements;

(2) The assignment of its interest in or grant by a Senior Lender of any rights of participation in respect of the Senior Financing Agreements in favor of:

(a) any of its Affiliates or another Senior Lender;

(b) any Qualifying Institution or any trustee thereof; or

(c) a local authority or public authority; or

(3) The disposition or grant by a Senior Lender to a Qualifying Institution, any other Senior Lender or an Affiliate of such Senior Lender of any other form of benefit or interest in either the Senior Financing Agreements or the revenues or assets of the Developer, whether by way of security or otherwise.

"Qualifying Institution" means:

(1) A United States trust company, insurance company, investment company, pension fund or institution which has at least $500 million in assets, including entities wholly owned by any of the foregoing;

(2) a bank regulated by the Board of Governors of the Federal Reserve System of the United States or a United States bank, savings and loan institution, insurance company, investment company, employee benefit plan or other institution that has or manages at least $500 million in assets and would be a "qualified institutional buyer" under United States securities law, including entities wholly owned by any of the foregoing;

(3) an institution which is recognized or permitted under the law of any member state of the European Economic Area ("EEA") to carry on the business of a credit institution pursuant to Council Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions or which is otherwise permitted to accept deposits in the United Kingdom or any other EEA member state;

(4) an institution which is recognized or permitted under the law of any member state of the Organization for Economic Cooperation and Development (in this definition, the "OECD") to carry on within the OECD member states the business of a credit institution, insurance company, investment company or pension fund and which

has or manages at least $500 million in assets, including entities wholly owned by any such institution;

(5) Any other institution the County designates in writing as a "Qualifying Institution";

(6) any municipal agency, public benefit corporation or public authority, advancing or insuring mortgage loans or making payments which, in any manner, assist in the financing, development, operation and maintenance of projects;

(7) (i) any pension fund, hedge fund, foundation or university or college endowment fund, (ii) any entity which is formed for the purpose of securitizing mortgages, whose securities are sold by public offering or to qualified investors under the U.S. Securities Act of 1933, as amended, (iii) any person engaged in making loans in connection with the securitization of mortgages, to the extent that the mortgage to be made is to be so securitized in a public offering or offering to qualified investors under the U.S. Securities Act of 1933, as amended, within one year of its making (provided, that an entity described in this clause only qualifies if it is subject to the jurisdiction of state and Federal courts in the State in any actions), each of (i) through (iii) that have at least $500 million in assets, including entities wholly owned by any of the foregoing; or

(8) (i) any "qualified institutional buyer" under Rule 144(a) of the Securities Act of 1933 or any other similar law hereinafter enacted that defines a similar category of investors by substantially similar terms and (ii) the holders of debt issued by any conduit issuer or the trustee for such holders, so long as the indenture trustee for such holders of debt itself is an Qualifying Institution.

"Qualifying Refinancing" means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing or a Planned Refinancing, except to the extent that any Planned Refinancing gives rise to a Refinancing Gain over and above the gain anticipated in the Base Case Financial Model at Financial Close, and in such case only to the extent of such additional Refinancing Gain.

"Re-Commissioning Plan" means the re-commissioning plan for the Project prepared pursuant to Appendix 7 (Commissioning).

"Reconciliation" has the meaning set forth in subsection 15.1(F) (Financing Costs).

"Recording Frequency" has the meaning set forth in Appendix 11 (Deductions).

"Rectification" has the meaning set forth in Appendix 11 (Deductions).

"Reference Documents" means those documents listed as Reference Documents in the Table of Contents and included in Appendix 1 (Project Site Information) to this Project Agreement.

"Refinancing" means:

(1) The Developer incurring, creating, assuming or permitting to exist any Debt other than Permitted Debt;

(2) any transaction in which the County, with the consent or at the request of the Developer, grants rights to any person under an agreement similar to the Lenders' Remedies Agreement or any other agreement that provides for step-in rights or similar

rights to such person, other than the Lenders' Remedies Agreement entered into on the Effective Date, any amendment, variation, novation, supplement or replacement of any Senior Debt or Senior Financing Agreement or any refinancing of Senior Debt;

(3) the exercise of any right, or the grant of any waiver or consent, under any Senior Financing Agreement;

(4) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Senior Financing Agreements or Senior Debt or the creation or granting of any other form of benefit or interest in the Senior Financing Agreements, the Senior Debt or the contracts, revenues or assets of the Developer whether by way of security or otherwise;

(5) the execution and delivery by the Developer of any instrument relating in any way to the financing of the Project or the Contract Services, other than the Senior Financing Agreements, instruments relating to the Junior Debt and the organizational agreement governing the Developer; or

(6) any other arrangement put in place by the Developer or another person which has an effect which is similar to any of (1) through (5) above or which has the effect of limiting the Developer's ability to carry out any of the actions referred to in (1) through (4) above.

"Refinancing Gain" has the meaning set forth in Section 3 (Calculation of the Refinancing Gain) of Appendix 18 (Calculation and Payment of Refinancing Gains).

"Regulated Site Condition" means, and is limited to,

(1) Surface or subsurface structures, materials, properties or conditions having historical, cultural, archaeological, religious or similar significance;

(2) The presence anywhere in, on or under the Project Site on the Technical Proposal Due Date of wells or underground storage tanks for the storage of Hazardous Substances;

(3) The presence of Hazardous Substances (other than Developer Hazardous Substances) in, on or under the Project Site (including presence in air, surface water, groundwater, soils or subsurface strata);

(4) The presence anywhere in, on or under the Project Site on the Technical Proposal Due Date of the habitat of an endangered or protected species as provided in Applicable Law; and

(5) Any fact, circumstance or condition constituting a violation of, or reasonably likely to result in, any loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, Tax, cost or expense under or in connection with any Applicable Law pertaining to the environment,

in each case to the extent not disclosed in or reasonably inferable from the County Environmental Assessments.

"Reinstatement Plan" has the meaning set forth in subsection 14.3(C) (Reinstatement Plan).

"Reinstatement Works" has the meaning set forth in subsection 14.3(A) (Draft Reinstatement Plan).

"Relief Event" means:

(1) a Force Majeure Event;

(2) a flood;

(3) a fire, explosion or earth movement such as an earthquake, shock, tremor, sinkhole, subsidence, landslide or any other similar earth movement (provided that any such movement caused by the normal operation of the County's transit facilities as described in Appendix 19 (Department of Transportation and Public Works Adjacent Construction Manual) shall not constitute a Relief Event);

(4) a tornado, hurricane, storm surge, earthquake, tsunami, or named windstorm and ensuing storm surges;

(5) prior to the Occupancy Readiness Date, the failure (including extreme delays) of any Governmental Body or utility company having operational jurisdiction in the area in which the Project is located to:

(a) timely perform and install Utilities;

(b) timely perform the relocation or removal of existing, underground Utilities noted on the Underground Utility Survey or that should have otherwise been inferable by the Developer based on a reasonable investigation prior to the Financial Proposal Due Date;

(c) enter into an agreement with Developer on terms customary for Utilities' providers affected by projects of similar size and scope as the Project; or

(d) provide and maintain Utilities' services,

to the Project that are required to perform the Developer's obligations under this Project Agreement;

(6) any accidental loss or damage to the Project Site or any roads servicing them if no reasonable, alternative route is available (including obstructed waterways); or

(7) the Developer's failure to obtain a necessary Design-Build Governmental Approval within 120 days of Developer's completed application, provided that the Developer diligently performed all activities reasonably required to obtain such Design-Build Governmental Approval,

except, in each case, to the extent attributable to any Developer Fault, or any breach of this Project Agreement, Applicable Law, or any Governmental Approval by, or any willful act, negligent act or negligent omission of any Project Contractor.

"Reported Event Time" has the meaning set forth in Appendix 11 (Deductions).

"Required Insurance" means the insurance specified in Appendix 10 (Insurance Requirements).

"Required Rectification Period" has the meaning set forth in Appendix 11 (Deductions).

"Required Response Time" has the meaning set forth in Appendix 11 (Deductions).

"Response Action" means any action taken in the investigation, removal, confinement, remediation, transportation, disposal or cleanup of a release of any Hazardous Substance, or to otherwise correct any non-compliance with Applicable Law pertaining to the environment or address any environmental condition as may be required by any relevant Governmental Body. "Response Action" includes any action which constitutes a "removal", "response", or "remedial action" as defined by section 101 of CERCLA.

"Restricted Change in Ownership" has the meaning set forth in subsection 23.2(A) (Restricted Change in Ownership).

"Restricted Person" means any person who (or any member of a group of persons acting together, any one of which):

(1) Is debarred, suspended, or otherwise disqualified from federal, State, or County contracting for any services similar in nature to the Contract Services or any portion thereof;

(2) Was or is subject to any material claim of the United States, State, or County in any proceedings (including regulatory proceedings) which have been concluded or are pending at the time at which the determination of whether the person falls within this definition is being made, and which (in respect of any such pending claim, if it were to be successful) would, in the County's view, in either case, be reasonably likely to materially affect the ability of the Developer to perform its obligations under this Project Agreement;

(3) In the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors, officers, or its senior executives) has been convicted of a felony less than ten (10) years prior to the date at which the determination of whether the person falls within this definition is being made;

(4) Has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by the United States for reasons other than its trade or economic policies;

(5) Has as its primary business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in terrorism; or

(6) Has as its primary business the acquisition of distressed assets or investments in companies or organizations which are or are believed to be insolvent or in a financial standstill situation or potentially insolvent.

"Revenue Rights" means the sole and exclusive right to exercise, control, license, sell, authorize, establish the prices and other terms for, and contract with respect to all rights, revenues and rights to revenues arising from or related to the use, occupancy, operation, exploitation or existence of the Courthouse and the Project Site, whether now existing or developed in the future and whether or not in the current contemplation of the parties; provided, however, that "Revenue Rights" shall not include the Restaurant.

"RFP" means the County's Request for Proposals for the Miami-Dade County Civil and Probate Courthouse RFP 00953, issued on August 1, 2018, as amended.

"Routine Event" has the meaning set forth in Appendix 11 (Deductions).

"Safety Condition" has the meaning set forth in Appendix 11 (Deductions).

"Scheduled Maintenance" means all scheduled Corrective Maintenance, predictive maintenance and Preventive Maintenance, as required by Appendix 8 (Facility Management Requirements).

"Scheduled Occupancy Readiness Date" has the meaning set forth in Section 8.5 (Scheduled Occupancy Readiness Date and Longstop Date), and includes extensions for Supervening Events as provided in subsection 8.5(C) (Extension for Supervening Events).

"Scheduled Refinancing Date" means the date on which the Refinancing is expected to reach financial close.

"Security Systems Equipment" or "SS Equipment" means surveillance cameras, access control equipment, intercom/paging system equipment, access control and monitoring system equipment, video surveillance equipment, security monitoring and control systems, metal detector/x-ray screening stations, intrusion alarm system, mail room screening equipment, and all of other equipment specified or required by Appendix 4 (Design and Construction Standards).

"Senior Debt" means:

(1) All amounts outstanding, including interest and default interest accrued, from the Developer to the Senior Lenders under the Senior Financing Agreements, provided that default interest will not include any increased interest, fees or penalty amounts payable by the Developer for any reason other than a failure by the Developer to pay any amount when due;

(2) Senior Debt Breakage Amounts payable by the Developer (but not Senior Debt Breakage Amounts payable or credited to the Developer); and

(3) All other reasonable transaction fees, costs and expenses for which the Developer is responsible under the Senior Financing Agreements.

"Senior Debt Breakage Amounts" means any prepayment premiums or penalties, make-whole payments or other prepayment amounts, including costs of early termination of any hedging arrangement, that the Developer must pay, or that may be payable or credited to the Developer, under any Senior Financing Agreement or otherwise as a result of the payment, redemption, acceleration or reduction of all or any portion of the principal amount of Senior Debt prior to its scheduled payment date, excluding, however, any such amounts included in the principal amount of any Refinancing.

"Senior Financing Agreements" means the Credit Agreement and the security agreements entered into with respect to or in connection with the Credit Agreement or, in the event of any Refinancing, any agreements replacing the Credit Agreement, such security agreements and such other agreements in connection with such Refinancing.

"Senior Lenders" means the lenders to whom Senior Debt is owed.

"Service Fee" means the fee to be paid by the County to the Developer as compensation for the Developer's performance of the Contract Services, calculated in accordance with Article 16 (Service Fee and Other Payments).

"Small Scale Capital Modification" means a Capital Modification requested by the Developer, and not required as a result of Compensation Events or directed by the County, which has a cost of less than $50,000 (CPI-Linked).

"Snack Bar" means the snack bar located within the jury room within the Courthouse.

"Specified Change in Tax Law" means a Change in L aw Event which results in:

(1) A change in the sales Tax imposed by the State or by the County and paid by the Developer, the Project Contractor or any Subcontractors with respect to sales of goods purchased for the performance of the Contract Services; or

(2) A new Tax imposed by the United States, the State or the County and paid by the Developer, the Project Contractor or any Subcontractors with respect to the performance of the Contract Services, including any value added Taxes or any Taxes measured by gross receipts. New Taxes shall not include any Taxes based on or measured by net income; or any unincorporated business, payroll, franchise or employment Tax.

"Standard & Poor's" means Standard & Poor's Financial Services LLC, a division of The S&P Global Inc., or any of its successors and assigns. If such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Standard & Poor's" shall be deemed to refer to any other nationally-recognized securities rating agency designated by the County.

"Start-up Plan" has the meaning set forth in Appendix 8 (Facility Management Requirements).

"State" means the State of Florida.

"Subcontract" means any contract entered into by a Project Contractor (except Project Contracts), or a subcontractor of a Project Contractor of any tier, with one or more persons in connection with the carrying out of the Developer's obligations under this Project Agreement, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise.

"Subcontractor" means any person that enters into a Subcontract.

"Substantial Completion" has the meaning set forth in Section 7.18 (Substantial Completion).

"Supervening Event" means any Compensation Event or any Relief Event.

"Tax" means, from time to time, all taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges of any nature imposed by any Governmental Body, together with all fines, interest, penalties on or in respect of, or in lieu of or for non-collection of, those taxes, surtaxes, duties, levies, imposts, rates, payments, assessments, withholdings, dues and other charges.

"Technical Proposal Due Date" means July 17, 2019.

"Temporary Availability Condition" has the meaning set forth in Appendix 11 (Deductions).

"**Temporary Repair"** has the meaning set forth in Appendix 11 (Deductions).

"Temporary Repair Proposal" has the meaning set forth in Appendix 11 (Deductions).

"Term" has the meaning set forth in Section 3.1 (Effective Date and Term).

"Termination Amount" means the measure of compensation owing from the County to the Developer upon termination of this Project Agreement prior to the Expiration Date, as set forth in Appendix 13 (Compensation on Termination).

"Termination Amount Due Date" means the date on which the County must pay the Termination Amount to the Developer as provided for in Appendix 13 (Compensation on Termination).

"Termination by Court Ruling" means:

(A) the issuance of a final, non-appealable court order by a court of competent jurisdiction:

(1) permanently enjoining or prohibiting performance or completion of the Design-Build Work for a material portion of the Project or any portion of the Project, including due to a claim by the Federal Transit Administration or the Florida Department of Transportation, or

(2) requiring the County or the Developer to undertake additional or supplemental evaluations, studies or other work under any environmental approval that is impracticable in light of the purpose and intent of this Project Agreement, or

(3) having the effect of causing this Project Agreement to be materially or entirely void, unenforceable or impossible to perform in its entirety, except where the cause of (A)-(C) is where void, unenforceable or impossible to perform by reason of Developer Fault; or

(4) Upholding the binding effect on the Developer or the County of a Change in Law Event that causes impossibility of performance of a fundamental obligation by the Developer or the County under this Project Agreement or impossibility of exercising a fundamental right of the Developer or the County under this Project Agreement.

(B) the inability of the parties to reach agreement regarding modifications to this Project Agreement in accordance with subsection 1.2(O) to return the parties to the benefits of their original bargain following a court ruling holding that any material provision of this Project Agreement is unenforceable or invalid.

"Termination Date" means the earlier of the Expiration Date or the date of termination of this Project Agreement provided in subsection 22.2(D) (Termination Date).

"Termination for Convenience" has the meaning specified in subsection 22.2(A)(1) (County Termination Rights).

"Terrorism Risk Insurance Act" or **"TRIA"** means the Terrorism Risk Insurance Act of 2002.

"Total Courthouse Unavailability" has the meaning set forth in Appendix 11 (Deductions).

"Transaction Form" means any of the Transaction Forms appended to this Project Agreement and identified as such in the Table of Contents.

"Unavailable" or **"Unavailability"** has the meaning set forth in Appendix 11 (Deductions).

"Unavailability Deduction" has the meaning set forth in Appendix 11 (Deductions).

"Unavailability Event" has the meaning set forth in Appendix 11 (Deductions).

"Underground Utility Survey" means Appendix 1B (Underground Utility Survey).

"Unit Holders" means the holder or owner of Units.

"Units" means units or other equity interests of any class in the capital of the Developer.

"Use Condition" has the meaning set forth in Appendix 11 (Deductions).

"Useful Life Requirements" means the minimum remaining beneficial use, as measured in years, that the Developer shall provide for each Facility Component as described in Table-1 of Section 11.1 of Appendix 8 (Facility Management Requirements) and which are part of the Design and Construction Requirements.

"Utilities" means any and all utility installations whatsoever (including gas, water, sewer, electricity, telephone, chilled water and telecommunications), and all piping, wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

"Vandalism" means willful or malicious damage to the Project (including all mechanical equipment, structures, improvements, grounds and all other property constituting the Project) that is caused by a Facility User or any person visiting the Project, except to the extent such damage arises from or is contributed to, directly or indirectly, by any Developer Fault.

"Vandalism Reserve Account" has the meaning set forth in subsection 9.4(B) (Vandalism).

SECTION 1.2. INTERPRETATION.

This Project Agreement shall be interpreted according to the following provisions, except to the extent the context or the express provisions of this Project Agreement otherwise require.

(A) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(B) Persons. Words importing persons include individuals, legal personal representatives, firms, companies, associations, general partnerships, limited partnerships, limited liability partnerships, limited liability companies, trusts, business trusts, corporations, governmental bodies, and other legal entities.

(C) Headings. The Table of Contents and any headings preceding the text of the Articles, Sections and subsections of this Project Agreement shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(D) References Hereto. The terms "hereby," "hereof," "herein," "hereunder" and any similar terms refer to this Project Agreement.

(E) References to Days and Time of Day. All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to eastern standard time.

(F) References to Including. The words "include", "includes" and including" are to be construed as meaning "include without limitation", "includes without limitation" and "including without limitation", respectively.

(G) References to Statutes. Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.

(H) References to Governmental Bodies. Each reference to a Governmental Body is deemed to include a reference to any successor to such Governmental Body or any organization or legal entity or organizations or entities which has or have taken over the functions or responsibilities of such Governmental Body.

(I) References to Business Days. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.

(J) References to Documents and Standards. Each reference to an agreement, document, standard, principle or other instrument includes a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.

(K) References to All Reasonable Efforts. The expression "all reasonable efforts" and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence, all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party's obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances.

(L) Entire Project Agreement. This Project Agreement, contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Project Agreement. Without limiting the generality of the foregoing, this Project Agreement, shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions.

(M) Delivery by Electronic Mail. Triplicates of this Project Agreement shall be executed by the Developer and delivered to the County. The County shall execute and deliver one executed copy of this Project Agreement to Developer.

(N) Governing Law. This Project Agreement shall be governed by and construed in accordance with the applicable laws of the federal government, the State and the County.

(O) Severability. Each provision of this Project Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Project Agreement is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Project Agreement which shall be construed and enforced as if the Project Agreement did not contain such invalid or unenforceable provision or part. If any such provision of this Project Agreement is held to be invalid, unenforceable or illegal, the parties will (i) promptly endeavor in good faith, to the extent legally permissible, to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Project Agreement as nearly as possible to its original intent and effect, including an equitable adjustment to the Service Fee and (ii) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations.

(P) Drafting Responsibility. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Project Agreement to the effect that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

(Q) Interpolation. If any calculation hereunder is to be made by reference to a chart or table of values, and the reference calculation falls between two stated values, the calculation shall be made on the basis of linear interpolation.

(R) Accounting and Financial Terms. All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP.

(S) Applicability, Stringency and Consistency of Contract Standards. Where more than one Contract Standard applies to any particular performance obligation of the Developer hereunder, each such applicable Contract Standard shall be complied with. In the event there are different levels of stringency among such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern. For example, as between the requirements of Article 7 (Design and Construction), Appendix 4 (Design and Construction Standards), and the Design and Construction Proposal Extracts and as between the requirements of Article 9 (Operation and Maintenance), Appendix 8 (Facility Management Requirements), and the Facility Management Proposal Extracts, those provisions which provide better or greater Project size, quantity, quality, integrity, durability and reliability shall take precedence. Any reference in this Project Agreement to materials, equipment, systems or supplies (whether such references are in lists, notes, specifications, schedules, or otherwise) shall be construed to require the Developer to furnish the same, at minimum, in accordance with the grades and standards therefor indicated in this Project Agreement.

(T) Obligations to Provide Assistance. The obligations of a party to cooperate with, to assist or provide assistance to the other party hereunder shall be construed as an obligation to use the party's personnel resources to the extent reasonably available in the context

of performance of their normal duties, and not to incur material additional overtime or third-party expense unless requested and reimbursed by the assisted party. Any failure of a party entitled to assistance hereunder to perform an obligation under this Project Agreement shall not be excused on account of any failure of the party obligated to provide assistance.

(U) Imputation of Knowledge to County. The County will not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the actual knowledge of those of its employees, workers or agents (including the County Representative) who have responsibilities or would be expected to supervise or monitor the performance of the Contract Services or any material aspect of the Project.

(V) Imputation of Knowledge to Developer. The Developer will not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the actual knowledge of those of its agents, employees or workers (including the Project Contractors and the Subcontractors) who have responsibilities or would be expected to supervise or monitor the performance of the Contract Services or any material aspect of the Project.

(W) Third-Party Rights. This Project Agreement is exclusively for the benefit of the County and the Developer and shall not provide, and is not intended to provide, any third parties (with the sole exceptions of the rights of any third-party County Indemnitees as provided in Section 24.1 (Developer's Obligation to Indemnify) and of the Senior Lenders as provided in the Lenders' Remedies Agreement) with any remedy, claim, liability, reimbursement, cause of action or other rights.

(X) Reference Documents. The County has provided the Reference Documents to the Developer. The Reference Documents are for information only and are not mandatory or binding on the Developer and the Developer is not entitled to rely on the Reference Documents as accurately describing existing conditions, presenting design, engineering, operating or maintenance solutions or directions, or defining means and methods for complying with the requirements of this Project Agreement, Governmental Approvals or Applicable Law. The County does not represent or warrant that the information contained in the Reference Documents is complete or accurate or that such information is in conformity with the requirements of this Project Agreement, Governmental Approvals or Applicable Law. Developer shall have no claim to a Supervening Event on account of any incompleteness or inaccuracy in the Reference Documents. The County shall not be responsible or liable in any respect for any causes of action, claims, or losses whatsoever suffered by the Developer, or anyone claiming through the Developer by reason of any use of the information contained in, or any action or forbearance in reliance on, the Reference Documents.

(Y) Order of Precedence. Each of the documents constituting this Project Agreement is an essential part of the agreement between the parties. A requirement appearing in one document is as binding as though occurring in all. The documents are intended to be complementary and to describe and provide for a complete agreement. In the event of any conflict, ambiguity or inconsistency among the documents that cannot be resolved by application of the most stringent standard set forth in subsection 1.2(S) herein, the order of precedence shall be as follows: this Project Agreement; County-provided Appendices; Developer-provided Appendices; then the Proposal itself.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE COUNTY.

The County represents and warrants, as of the Effective Date, that:

(A) Existence and Powers. The County is a body corporate and politic in the State and has full legal right, power and authority to execute, deliver and perform its obligations under this Project Agreement.

(B) Due Authorization. This Project Agreement has been duly authorized, executed and delivered by the County, and constitutes a legal, valid and binding obligation of the County, enforceable against the County in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(C) No Conflict. To the best of its knowledge, neither the execution and delivery by the County of this Project Agreement nor the performance by the County of its obligations in connection with the transactions contemplated hereby or the fulfillment by the County of the terms or conditions hereof:

(1) Conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the County; or

(2) Conflicts with, violates or results in a material breach of any term or condition of any order, judgment or decree, or any contract, agreement or instrument, by which the County's properties or assets are bound, or constitutes a material default under any of the foregoing.

(D) No Approvals Required. No additional approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body or referendum of voters is required for the valid execution and delivery by the County of this Project Agreement except otherwise as such have been duly obtained or made.

(E) No Litigation Affecting the County. Except as disclosed in writing to the Developer, to the best of its knowledge, there is no Legal Proceeding before or by any Governmental Body pending or overtly threatened or publicly announced against the County, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Project Agreement by the County or the validity, legality or enforceability of this Project Agreement against the County, or any other agreement or instrument entered into by the County in connection with the transactions contemplated hereby or on the ability of the County to perform its obligations hereunder or under any such other agreement or instrument.

(F) Information Supplied by the County. The information supplied and representations and warranties made by the County in this Project Agreement are true, correct and complete in all material respects.

(G) Ownership of Project Site. The County owns the Project Site, free and clear of any Encumbrances other than: (1) applicable zoning and building bylaws and ordinances, municipal bylaws and regulations existing as of the Technical Proposal Due Date; and (2) recorded covenants, conditions, restrictions and easements, as shown below, based upon a Title Search Report provided by National Title and Abstract Company on behalf of the County, certified as of February 27, 2018:

COVENANTS, CONDITIONS, RESTRICTIONS & EASEMENTS:

1. **Notification of an Extension to a Previously Approved Development of Regional Impact filed by the Miami Downtown Development Authority on September 8, 2008, in Official Records Book 26557, Page 223.**

2. **Notification of an Extension to a Previously Approved Development of Regional Impact filed by the Miami Downtown Development Authority on September 8, 2008, in Official Records Book 26557, Page 217.**

3. **Resolution No. R-895-97, adopting annual assessments for the Downtown Metrorail Project filed by Miami-Dade County on September 11, 1997, in Official Records Book 17785, Page 4160.**

4. **Resolution No. R-892-96, adopting annual assessments for the Downtown Metrorail Project filed by Miami-Dade County on August 23, 1996, in Official Records Book 17326, Page 3982.**

5. **Resolution No. R-975-95, adopting annual assessments for the Downtown Metrorail Project filed by Miami-Dade County on July 17, 1995, in Official Records Book 16851, Page 627.**

6. **Resolution No. R-1145-94, adopting annual assessments for the Downtown Metrorail Project filed by Miami-Dade County on August 16, 1994, in Official Records Book 16478, Page 889.**

7. **Resolution No. R-852-92, adopting annual assessments for the Downtown Metrorail Project filed by Miami-Dade County on August 7, 1992, in Official Records Book 15615, Page 986.**

8. **Resolution No. R-823-91, adopting annual assessments for the Downtown Metrorail Project filed by Miami-Dade County on August 27, 1991, in Official Records Book 15168, Page 1887.**

9. **Resolution No. R-696-90, adopting annual assessments for the Downtown Metrorail Project filed by Miami-Dade County on August 1, 1990, in Official Records Book 14646, Page 2358.**

10. **Resolution No. R-830-89, adopting annual assessments for the Downtown Metrorail Project filed by Miami-Dade County on August 2, 1989, in Official Records Book 14202, Page 2632.**

11. **Resolution No. R-1395-88, adopting annual assessments for the Downtown Metrorail Project filed by Miami-Dade County on November 3, 1988, in Official Records Book 13881, Page 99.**

12. **Resolution No. R-1091-87, adopting annual assessments for the Downtown Metrorail Project filed by Miami-Dade County on September 17, 1987, in Official Records Book 13410, Page 794.**

13. **Resolution No. R-1045-86, adopting annual assessments for the Downtown Metrorail Project filed by Miami-Dade County on September 16, 1986, in Official Records Book 13021, Page 751.**

14. **Ordinance 86-44, regarding special assessments for the Downtown Metrorail Project filed by Miami-Dade County on June 17, 1986, in Official Records Book 12923, Page 2622.**

15. **Resolution No. R-729-86, regarding special assessments for the Downtown Metrorail Project filed by Miami-Dade County on June 17, 1986, in Official Records Book 12923, Page 2618.**

COVENANTS, CONDITIONS, RESTRICTIONS & EASEMENTS: (continued)

16. **Resolution No. R-1299-85, adopting annual assessments for the Downtown Metrorail Project filed by Miami-Dade County on October 16, 1985, in Official Records Book 12669, Page 3181.**

17. **Resolution No. R-923-84, adopting annual assessments for the Downtown Metrorail Project filed by Miami-Dade County on August 30, 1984, in Official Records Book 12253, Page 1389.**

18. **Easements, restrictions and other notations contained in the Plat of Downtown Government Center – First Addition filed by Miami-Dade County on June 7, 1985, in Plat Book 127, Page 16.**

19. **Shown for Reference: Temporary Easement granted Florida East Coast Railway Company, a Florida corporation, to Miami-Dade County dated December 14, 1979, filed December 20, 1979, and recorded in Official Records Book 10606, Page 1457. (Note: This easement terminated on July 1, 1984)**

20. **Shown for Reference: Right of Way Map for the Flagler Street Bridge filed by the State of Florida State Road Department on January 16, 1969, in Plat Book 83, Page 44.**

21. **Road rights-of-way and other matters shown on the A. L. Knowlton Map of Miami recorded on September 1, 1896, in Plat Book "B", Page 41.**

22. **Agreement for Water and Sanitary Sewer Facilities between Miami-Dade County and City of Miami dated December 5, 2017, filed December 7, 2017 in Official Records Book 30784, Page 3844.**

23. **Perpetual Easement dated March 18, 2016, filed March 23, 2016 in Official Records Book 30010, Page 304.**

SECTION 2.2 REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER

The Developer represents and warrants, as of the Effective Date, that:

(A) Existence and Powers. The Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and has the authority to do business in the State and in any other state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Project Agreement.

(B) Due Authorization and Binding Obligation. This Project Agreement has been duly authorized, executed and delivered by all necessary action of the Developer and constitutes a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(C) No Conflict. To the best of its knowledge, neither the execution nor delivery by the Developer of this Project Agreement nor the performance by the Developer of its obligations in connection with the transactions contemplated hereby or the fulfillment by the Developer of the terms or conditions hereof:

(1) Conflicts with, violates or results in a breach of any constitution, law, governmental regulation, by-laws or certificates of incorporation applicable to the Developer; or

(2) Conflicts with, violates or results in a material breach of any order, judgment or decree, or any contract, agreement or instrument to which the Developer or any of its Affiliates is a party or by which the Developer or any of its Affiliates or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(D) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Project Agreement by the Developer except as such have been duly obtained or made.

(E) No Litigation Affecting the Developer. Except as disclosed in writing to the County, to the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of the Developer's knowledge, overtly threatened or publicly announced against the Developer or any of its Affiliates, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Project Agreement by the Developer or the validity, legality or enforceability of this Project Agreement against the Developer, or any other agreement or instrument entered into by the Developer in connection with the transactions contemplated hereby, or on the ability of the Developer to perform its obligations hereunder or under any such other agreement or instrument.

(F) No Litigation Affecting the Project Contractors. Except as disclosed in writing to the County, to the best of its knowledge, there is no Legal Proceeding, at law or in equity, before or by any court or Governmental Body pending or, to the best of the Developer's knowledge, overtly threatened or publicly announced against the Design-Builder or Facility Manager, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of any Project Contract by the respective Project Contractor or the validity, legality or enforceability of any Project Contract against the Design-Builder or Facility Manager that is party to the Project Contract, or on the ability of any Project Contractor to perform its obligations under its respective Project Contract.

(G) Intellectual Property. The Developer owns, or has express rights to use or can acquire on reasonable terms, all Intellectual Property necessary for the Project without any known material conflict with the rights of others.

(H) Information Supplied by the Developer. The information supplied and representations and warranties made by the Developer in all submittals made in response to the RFP and in all post-proposal submittals with respect to the Developer (and to the Developer's knowledge, all information supplied in such submittals with respect to the Project Contractors and the Subcontractors) are true, correct and complete in all material respects.

(I) Developer Reviews. The Developer has carefully reviewed the whole of this Project Agreement and has taken all steps it considers reasonably necessary to satisfy itself that nothing contained herein inhibits or prevents the Developer from performing and completing the Project in accordance with the Contract Standards.

(J) Compliance with Applicable Law Generally. The Developer is in compliance in all material respects with Applicable Law pertaining to the Developer's business and services.

(K) Representations as to the Initial Base Case Financial Model. The Developer represents to the County that the Initial Base Case Financial Model and formulas:

(1) Were prepared by or on behalf of the Developer in good faith;

(2) As of the Effective Date, are mathematically and formulaically correct and suitable for making reasonable projections and are realistic and reasonable for the Project; subject to the understanding that such projections are based upon a number of estimates and assumptions and are subject to significant business, economic and competitive uncertainties and contingencies;

(3) As of the Effective Date, Developer has reviewed all Applicable Laws relating to Taxes and has taken into account all requirements imposed by such Applicable Laws in preparing the Financial Model;

(4) Was audited and verified by an independent recognized model auditor immediately prior to the Effective Date and such audit will be updated within 48 hours after Financial Close;

(5) Fully discloses all cost, revenue and other financial assumptions and projections that the Developer used or is using in determining to enter into this Project Agreement and by Unit Holders in purchasing Units and Senior Lenders in entering into Senior Financing Agreements;

(6) Are the same financial formulas Developer utilized and is utilizing in the financial model in making its decision to enter into this Project Agreement and presented to and relied upon by the Senior Lenders in entering into the Senior Financing Agreements and by Unit Holders; and

(7) Is the only financial model used by the Developer for the purposes described in items (5) and (6) of this subsection.

SECTION 2.3. CONTINUING ACCURACY OF DEVELOPER REPRESENTATIONS AND WARRANTIES.

During the Term, the Developer shall not take any action, or omit to perform any act, that results in a representation and warranty made in subsections 2.2(A), (B), (C), (D), (G), (H), (I), and (J) (Representations and Warranties of the Developer) becoming untrue. The Developer shall promptly notify the County if any such representation and warranty becomes untrue. From time to time, the Developer shall provide the County, upon the County's request, with information reasonably requested by the County to substantiate the continuing accuracy of these representations and warranties.

ARTICLE 3

TERM

SECTION 3.1. EFFECTIVE DATE AND TERM.

(A) Term. This Project Agreement shall become effective, and the term hereof (the "**Term**") shall commence, on date that is the date the resolution of the Board approving this Project Agreement becomes effective (the "**Effective Date"**). The Term shall continue to the Expiration Date or, if this Project Agreement is earlier terminated by either party in accordance with their respective termination rights under Article 22 (Termination), to the Termination Date.

(B) Accrued Rights. No termination of this Project Agreement shall:

(1) Limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination; or

(2) Preclude either party from impleading the other party in any Legal Proceeding originated by a third-party as to any matter occurring during the Term.

SECTION 3.2. SURVIVAL.

Notwithstanding any other provision of this Project Agreement, the following provisions hereof will survive the expiration or any earlier termination of this Project Agreement:

(1) Section 4.8 (Financial Books and Records);

(2) Section 9.12 (Project Handback); provided that the survival of Section 9.12 (Project Handback) is limited to circumstances where this Project Agreement expires without an earlier termination of this Project Agreement;

(3) Article 18 (Dispute Resolution);

(4) Article 21 (County Events of Default);

(5) Article 22 (Termination) and Appendix 13 (Compensation on Termination), as applicable to the obligations of the parties following the Termination Date;

(6) Section 24.2 (Indemnification Procedures);

(7) Section 25.13 (Confidentiality);

(8) Section 25.14 (Public Records); and

(9) Section 1.2 (Professional Liability Insurance) of Appendix 10 (Insurance Requirements), to the extent 10-year extended reporting or discovery "tail" period provided therein has not expired on the Termination Date;

together with any provisions necessary to give effect to the above provisions.

ARTICLE 4

CONTRACT SERVICES GENERALLY

SECTION 4.1. GENERAL RESPONSIBILITIES OF THE PARTIES.

(A) Developer. The Developer shall, subject to the terms and conditions of this Project Agreement, design, construct, finance, operate and maintain the Project. The Developer shall perform all services, undertakings and obligations under the Project Agreement in compliance with Applicable Law.

(B) County. The County shall, subject to the terms and conditions of this Project Agreement, pay the Service Fee and the other amounts required to be paid by the County hereunder to the Developer for the performance of the Contract Services.

(C) Party Bearing Cost of Performance. All obligations undertaken by each party hereto shall be performed at the cost of the party undertaking the obligation or responsibility, unless the other party has explicitly agreed herein to bear all or a portion of the

cost either directly, by reimbursement to the other party or through an adjustment to the Service Fee.

SECTION 4.2. DESIGN-BUILD WORK PERSONNEL.

(A) Staffing Requirements. The Developer shall enforce discipline and good order during the Design-Build Period among the Developer's employees, all Project Contractors, and all Subcontractors. All persons engaged by the Developer for Design-Build Work shall have requisite skills for the tasks assigned. The Developer shall employ or engage and compensate engineers and other consultants to perform all engineering and other services required for the Design-Build Work. All firms and personnel performing Design-Build Work, including all Project Contractors and Subcontractor firms and personnel, shall meet the licensing and certification requirements imposed by Applicable Law.

(B) Developer's Project Manager. The Developer shall designate from time to time an employee of the Developer who is responsible for the Developer's performance in the execution of the Project Agreement and who, prior to Final Completion, may be an employee of any Affiliate or an employee of the Design-Builder as the Developer's construction manager (the "**Developer's Project Manager**"), who shall be present on the Project Site with any necessary assistants on a full-time basis when the Developer or any Project Contractor or Subcontractor is performing the Design-Build Work. The Developer shall also designate a contact person from the Architect. The Developer's Project Manager shall be appropriately trained, experienced and knowledgeable in all aspects of the Design-Build Work so as to knowledgeably interact and communicate with the County and the Project Contractors and all Subcontractors regarding the Project and appropriately oversee the day-to-day performance of the Design-Build Work. The Developer's Project Manager shall, among other things:

(1) Be familiar with the Design-Build Work and all requirements of this Project Agreement;

(2) Coordinate the Design-Build Work and give the Design-Build Work regular and careful attention and supervision;

(3) Maintain a daily status log of the Design-Build Work;

(4) Attend all monthly construction progress meetings with the County; and

(5) Coordinate, where appropriate, with the Design Criteria Professional.

The Developer shall keep the County continuously informed of all business telephones, mobile telephones, e-mail addresses and other means by which the Developer's Project Manager may be contacted. The Developer's Project Manager (or his/her designee with equal authority to bind and represent the Developer) shall be available to be contacted by the County on a continuous 24-hours per day, 7 days per week, 365 days per year basis for emergency response, information, coordination or any other purpose hereunder. The Developer shall notify the County of any potential change in the Developer's Project Manager and/or designee, and shall not make any such change if the new staffing change would, when viewed objectively and reasonably, adversely affect the ability of the Developer to provide the Design-Build Work in accordance with the Contract Standards.

SECTION 4.3. FACILITY MANAGEMENT SERVICES PERSONNEL.

(A) Staffing Requirements. The Developer shall staff the Project during the Facility Management Period in accordance with the Contract Standards with qualified personnel who meet the licensing and certification requirements of Applicable Law. The Developer shall

discipline or replace, as appropriate, any employee of the Developer, the Project Contractor, or any Subcontractor engaging in unlawful, unruly, offensive or significantly objectionable conduct. The Developer shall notify the County in writing of any material change in staffing levels and positions from time to time, and shall not make any such material change if, when viewed objectively and reasonably, the new staffing level would adversely affect the ability of the Developer to provide the Facility Management Services in accordance with the Contract Standards.

(B) Developer's Facility Management Representative. The Developer's Facility Management Representative shall act as a full-time manager of the Facility Management Services during the Facility Management Period and shall be trained, experienced and proficient in, and hold the appropriate credentials for, including any applicable licenses, the management and operation of institutional public buildings comparable to the Project, shall be appropriately certified under Applicable Law, and whose sole employment responsibility shall be managing the Developer's performance of the Facility Management Services and who shall be responsible for overall maintenance and contract administration matters on behalf of the Developer, including safety and environmental compliance, during the Facility Management Period. The Developer's Facility Management Representative shall be the individual tasked with interfacing with the County with respect to the Facility Management Services and other requirements of the Project Agreement. The Developer acknowledges that the performance of the individual serving from time to time as the Developer's Facility Management Representative will have a material bearing on the quality of service provided hereunder, and that effective cooperation between the County and the Developer's Facility Management Representative will be essential to effectuating the intent and purposes of this Project Agreement. Accordingly, not fewer than 60 days prior to the date on which any candidate for Developer's Facility Management Representative from time to time during the Term is proposed by the Developer to assume managerial responsibility for the Project, the Developer shall:

(1) Provide the County with a comprehensive resume of the candidate's licenses, training, experience, skills and approach to management and customer relations; and

(2) Afford the County an opportunity to interview the candidate with respect to such matters within 20 days of the Developer's notice to the County and provision of the candidate's information as set forth in subsection 4.3(B)(1) herein.

The County, acting reasonably, shall have the right to disapprove the hiring of the proposed candidate, which right of disapproval shall not be exercised unreasonably. The County shall provide notice of its approval or disapproval within 30 days following the interview, or, if no interview is had, within 30 days of the Developers' notice to the County and provision of the candidate's information as set forth in subsection 4.3(B)(1) herein together with a reasonably detailed written explanation of the grounds of any disapproval. Failure of the County to deliver such notice within such 30-day period shall be deemed an approval of the proposed Developer's Facility Management Representative by the County. The initial Developer's Facility Management Representative, a Key Personnel, shall not be replaced, unless otherwise approved by the County in its discretion, for a period of three years from the Occupancy Readiness Date, absent death, disability, retirement, resignation, cessation of employment, or early termination of its contract with the Developer. The Developer shall replace the Developer's Facility Management Representative at the request of the County, after notice and a reasonable opportunity for corrective action, in the event the County determines, in its discretion, that an unworkable relationship has developed between the Developer's Facility Management Representative and the County.

SECTION 4.4. KEY PERSONNEL.

Attached as Appendix 15 (Developer and Project Contractors Information) is a list of the Key Personnel that the Developer shall utilize in undertaking the Contract Services. With respect to each of the Key Personnel:

(1) The Developer, while the Key Personnel remain within its employment, shall use all reasonable efforts to deploy the Key Personnel to perform the duties for the Contract Services described in Appendix 15 (Developer and Project Contractors Information); and

(2) If for any reason a Key Personnel resigns, retires, dies, becomes disabled, receives maternity, parental or sick leave, is promoted or is terminated for cause, then the Developer shall retain a replacement with equivalent expertise and experience to the unavailable Key Personnel satisfactory to the County acting reasonably, and the Developer shall not replace such Key Personnel without the County's consent, acting reasonably.

SECTION 4.5. COMPLIANCE WITH APPLICABLE LAW.

(A) Compliance Obligation. The Developer shall perform the Contract Services in accordance with Applicable Law, and shall cause the Project Contractors and all Subcontractors to comply with Applicable Law.

(B) Governmental Approvals. The Developer shall make all filings, applications and reports necessary to be made in order to obtain and maintain all Governmental Approvals required for the performance of the Contract Services and shall comply with the terms of all Governmental Approvals.

(C) Registration, Licensing and Certification Requirements. The Developer shall ensure that all persons performing the Contract Services, including the Project Contractors and all Subcontractors, comply with all registration, licensing and certification requirements imposed by Applicable Law.

(D) Investigations of Non-Compliance. In connection with any actual or alleged event of non-compliance with Applicable Law in the performance of the Contract Services, the Developer shall, in addition to any other duties which Applicable Law may impose:

(1) Fully and promptly respond to all inquiries, investigations, inspections, and examinations undertaken by any Governmental Body;

(2) Attend all meetings and hearings with respect to the Project required by any Governmental Body;

(3) Provide all corrective action plans, reports, submittals and documentation required by any Governmental Body, and shall provide copies of any such plan, report, submittal or other documentation to the County;

(4) Promptly upon receipt thereof, provide the County with a true, correct and complete copy of any written notice of violation or non-compliance with Applicable Law, and true and accurate transcripts of any oral notice of non-compliance with Applicable Law, issued or given by any Governmental Body; and

(5) The Developer shall furnish the County with a prompt written notice describing the occurrence of any event or the existence of any circumstance which does or may result in any such notice of violation or non-compliance to the extent the Developer has knowledge of any such event or circumstance, and of any Legal Proceeding

alleging such non-compliance. To the greatest extent practicable, the Developer shall provide the County an opportunity to review and comment on any proposed Developer response to any non-compliance with Applicable Law hereunder prior to its implementing such response.

(E) Fines, Penalties and Remediation. Except to the extent excused by Supervening Events, in the event that the Developer, a Project Contractor or any Subcontractor fails at any time to comply with Applicable Law with respect to the Contract Services, the Developer shall:

(1) Immediately correct such failure and resume compliance with Applicable Law;

(2) Pay any resulting fines, assessments, levies, impositions, penalties or other charges;

(3) Indemnify, defend and hold harmless the County and the County Indemnitees in accordance with Section 24.1 (Developer's Obligation to Indemnify) from any Loss-and-Expense resulting therefrom;

(4) Make all changes in performing the Contract Services which are necessary to assure that the failure of compliance with Applicable Law will not recur; and

(5) Comply with any corrective action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Developer, a Project Contractor or any Subcontractor to comply with Applicable Law.

SECTION 4.6. RESTRICTIONS ON DESIGN AND CONSTRUCTION REQUIREMENT CHANGES, CAPITAL MODIFICATIONS AND FACILITY MANAGEMENT SERVICES CHANGES.

The County shall not at any time during the Term require, and the Developer may refuse to implement, a Change Order (relating to a County-directed Design and Construction Requirement Change or a Design and Construction Requirement Change made due to a Compensation Event), a Capital Modification or a Facility Management Services Change which:

(1) Would be contrary to Applicable Law;

(2) Would render any policy of Required Insurance void or voidable unless the County agrees to provide replacement insurance or other security reasonably satisfactory to the Developer;

(3) Would cause the revocation of any Governmental Approval required for the Developer to perform its obligations under this Project Agreement, and such Governmental Approval would not, using reasonable efforts, be capable of amendment or renewal;

(4) Would require a new Governmental Approval for the Developer to perform its obligations under this Project Agreement, which Governmental Approval would not, using reasonable efforts by the Developer or the County, as applicable, be obtainable;

(5) Would materially and adversely affect the risk allocation and payment regime under this Project Agreement with respect to the Design-Build Work or the Facility Management Services, unless the material and adverse effects of such a Change Order on the Design-Build Work or the Facility Management Services Change (as the case may be) are remedied by the County to the Developer's reasonable satisfaction;

(6) The Developer would not, using commercially reasonable efforts, be able to implement within the time specified; or

(7) Would result in a change to the essential nature of the Project

SECTION 4.7. GOOD DESIGN-BUILD PRACTICE AND GOOD FACILITY MANAGEMENT PRACTICE.

Good Design-Build Practice and Good Facility Management Practice shall be utilized hereunder, among other things, to implement and in no event to displace or lessen the stringency of, the Contract Standards. In the event that, over the course of the Term, Good Design-Build Practice or Good Facility Management Practice evolves in a manner which in the aggregate materially and adversely affects the cost of compliance therewith by the Developer, the Developer shall be relieved of its obligation to comply with such evolved Good Design-Build Practice and Good Facility Management Practice (but not Good Design- Build Practice and Good Facility Management Practice as of the Effective Date) unless the County agrees to adjust the Service Fee on a lump sum or reimbursable basis (subject to Cost Substantiation), as appropriate, to account for such additional costs.

SECTION 4.8. FINANCIAL BOOKS AND RECORDS.

(A) Recordkeeping Requirements. The Developer shall prepare and maintain proper, accurate, current and complete financial books and records regarding the Contract Services, including all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, purchase orders, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of the Contract Services, this Project Agreement, the Project Contracts, any Subcontract, any transactions in which the County has or may have a financial or other material interest hereunder, and to the extent required to determine the costs of Design and Construction Requirement Changes, Compensation Event costs, or other changes in or additions to the Service Fee for which the County is or may be responsible under this Project Agreement. The Developer shall produce such financial books and records for examination and copying promptly upon request by the County. All such information upon delivery to the County shall be presented in a format that will enable an independent auditor to perform a review of the information in accordance with GAAP. The Developer shall not be required to provide the County any income statement showing profit or loss, but recognizes that profit and loss information may become discernible to the County through the Cost Substantiation process, through the use of the Financial Model as contemplated hereunder, or otherwise upon the delivery of financial records for the purposes hereof. The Developer shall keep and maintain all such financial books and records with respect to each Contract Year until at least the seventh anniversary of the last day of each such Contract Year, or such longer period during which any Legal Proceeding with respect to the Project may be pending. In the event the Developer fails to prepare or maintain any financial books, records or accounts as required under this Section, the Developer shall not be entitled to any requested payments or adjustments to the extent such failure prevented verification or Cost Substantiation as required by this Project Agreement; provided, however, that Developer shall be entitled to any portion of such requested payments or adjustments that can be reasonably discerned from the financial books, records or accounts as maintained by the Developer.

(B) Inspection, Audit and Adjustment. The County shall have the right to perform or commission an inspection or independent audit of the financial information required to be kept under this Project Agreement. The County shall give the Developer reasonable advance notice (at least three Business Days) prior to any such audit, and such audit shall be performed during business hours. The County shall, or shall cause the party conducting the inspection or

audit, to provide a complete copy of the inspection or audit report to the Developer following receipt of such report. If an inspection or audit reveals that the Developer has overstated any component of the Service Fee, a County payment obligation under subsection 7.22(A), or any other County payment obligation arising out of this Project Agreement, then the Developer shall, at the election of the County, either immediately reimburse to the County or offset against Service Fee payments, as a Service Fee adjustment, the overstated amount plus interest at the Overdue Rate, from the time such amount was initially overpaid until reimbursed or credited to the County. If the overpayment exceeds 1% of the total amount that should have been properly paid by the County during the period audited, then the Developer shall, in addition, reimburse the County for any and all fees and costs incurred in connection with the inspection or audit. The foregoing remedies shall be in addition to any other remedies the County may have, including remedies for a Developer Event of Default.

(C) Commission Auditor. Pursuant to Section 9.10 of the Miami-Dade County Home Rule Amendment and Charter, the Office of the Commission Auditor was created and established, and the Office of the Commission Auditor has the powers and duties set forth in Sections 2-471 through 2-481 of the Code of Miami-Dade County, Florida. The Commission Auditor shall have the right to inspect and audit the books, records, financial statements and operations of Developer, Unit Holders, and its Project Contractors, all in accordance with Section 2-481 of the Code of Miami-Dade County, Florida, and Developer agrees to comply with same. Developer further agrees to include in the Design-Build Contract and in all of the Project Contracts a requirement that all parties comply with the provisions of Section 2-481 of the Code of Miami-Dade County, Florida.

(D) Inspector General Reviews/Audit & Compliance

(1) Independent Private Sector Inspector General Reviews. Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "**IPSIG**"), whenever the County deems it appropriate to do so. Upon written notice from the County, Developer shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Project Agreement and the Courthouse for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall Developer's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein apply to Developer, its successors and assigns, and any Subcontractors and Project Contractors. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of Developer in connection with, and as and when provided under, this Project Agreement. The terms of this paragraph shall not impose any additional liability on the County by Developer or any third party beyond those liabilities or obligations of the County otherwise set forth in this Project Agreement.

(2) Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs, all at no cost or expense to Developer. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and Applicable Law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders, if any, to a contract. The Inspector General

is empowered to retain, at no expense or cost to Developer, the services of IPSIGs to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of Developer, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

(E) Upon written notice to Developer from the Inspector General or IPSIG retained by the Inspector General, Developer shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying, at no cost or expense to the County. The Inspector General and IPSIG shall have the right to inspect and, at no cost or expense to Developer, copy all documents and records in the Developer's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

SECTION 4.9. DELIVERY OF DOCUMENTS.

(A) Developer. In this Project Agreement, the Developer is obligated to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. Where this Project Agreement requires documents to be maintained and delivered in a certain format, the Developer shall comply with such requirements. In addition, the Developer agrees that all such documents shall be submitted to the County both in printed form (in the number of copies indicated) and, at the County's request, in digital form. Digital copies shall consist of computer readable data submitted in any standard interchange format which the County may reasonably request to facilitate the administration and enforcement of this Project Agreement. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.

(B) County. The County shall make available, within a reasonable time, to the Developer upon request copies of all Public Records relating to the Project which is in the possession of the County and material to the Developer's performance hereunder, subject, however, to rights of attorney-client privilege and Applicable Law, including, for example, any confidentiality of records requirements.

ARTICLE 5

FINANCING PERIOD

SECTION 5.1. FINANCIAL CLOSE.

The Developer shall finance the Project in accordance with the requirements of Article 6 (Project Financing and Refinancing) and, in connection therewith, the parties shall comply with their respective obligations for the achievement of Financial Close, as set forth in Appendix 3 (Financial Close Procedures and Conditions). Without limiting anything set forth in Appendix 3, Financial Close shall not occur until each of the: Developer Conditions Precedent has been satisfied by the Developer or waived in writing by the County in its discretion; and each of the County Conditions Precedent has been satisfied by the County or waived in writing by the Developer in its sole discretion.

SECTION 5.2. FINANCIAL CLOSE DEADLINE.

(A) Financial Close Deadline Defined. The "**Financial Close Deadline**" is the date that is the later of (i) 60 days following the Effective Date and (ii) 180 days from the Financial Proposal Due Date. If, however:

(1) There shall be any Legal Proceeding, at law or in equity, before or by any court or Governmental Body, pending, which challenges, or might challenge, directly or indirectly, (a) the authorization, execution, delivery, validity or enforceability of this Project Agreement, (b) the interest of the County in the Project Site; or (c) which can reasonably be expected to materially and adversely affect the ability of the County or the Developer to comply with their respective obligations under this Project Agreement;

(2) Any Change in Law Event shall have occurred after the Effective Date and before the Financial Close Date that would make the authorization, execution, delivery, validity, enforceability or performance of this Project Agreement a violation of Applicable Law;

(3) Any event described in Appendix 3 (Financial Close Procedures and Conditions) occurs permitting an extension of the Financial Close Deadline; or

(4) Any Supervening Event shall have occurred after the Effective Date and before the Financial Close Date;

then the Financial Close Deadline shall, contingent upon a commensurate extension of the Financial Close Security, be extended for such period of time as any of the foregoing events shall be continuing; provided, however, that the Financial Close Deadline shall not be extended beyond 180 days following the Effective Date for any reason, except as such date may be extended by the County and the Developer, each at their respective discretion, and contingent upon a commensurate extension of the Financial Close Security. In the event that the Financial Close Deadline is extended in the manner provided in this Section, such extended date shall be considered the "Financial Close Deadline" for all purposes in this Project Agreement. The parties shall execute a Contract Administration Memorandum to reflect any extension of the Financial Close Deadline. The failure to achieve Financial Close by the Financial Close Deadline may result in termination of this Project Agreement, as and to the extent provided in Appendix 3 (Financial Close Procedures and Conditions).

SECTION 5.3. FINANCIAL CLOSE SECURITY.

(A) Requirements. On the Effective Date, the Developer shall provide security for the performance of its obligations to achieve Financial Close by delivering to the County one or more irrevocable direct pay letters of credit meeting the requirements set forth in this subsection (the **"Financial Close Security"**). The Financial Close Security shall be:

(1) Issued or confirmed by a Qualified Commercial Bank;

(2) In substantially in the form set forth in the Transaction Form A (Financial Close Security) and with an expiration date no earlier than 190 days following the Financial Close Deadline, provided that it can be terminated with notice from the Developer 10 Business Days following the Financial Close Date; and

(3) In an aggregate amount equal to $10,000,000.

(B) County Drawing Rights. The County shall have the right to draw upon the Financial Close Security in the full stated amount thereof solely under the circumstances specified in Section 8.1 (County Termination for Failure to Achieve Financial Close Deadline) of Appendix 3 (Financial Close Procedures and Conditions). The parties acknowledge and agree that the County's rights to retain for its own account the proceeds of a drawing on the Financial Close Security under the circumstances specified in Appendix 3 are in the nature of liquidated damages and subject to the terms and conditions of Section 19.2 (County Liquidated Damage Rights).

(C) Return of Financial Close Security. The County shall return the Financial Close Security to the Developer in accordance with Appendix 3 (Financial Close Procedures and Conditions) unless it has the right (including the contingent right) to draw on the Financial Close Security in accordance with subsection 5.3(B) (County Drawing Rights).

ARTICLE 6

PROJECT FINANCING AND REFINANCING

SECTION 6.1. DEVELOPER RIGHT AND RESPONSIBILITY TO FINANCE PROJECT.

(A) Developer Financing. The Developer is solely responsible for obtaining and repaying all construction and other financing necessary for the Project at its own cost and risk and without recourse to the County and, following the Financial Close Date, exclusively bears the risk of any changes in the interest rate, payment provisions or the other terms and conditions of its financing.

(B) Developer Liability. Notwithstanding any foreclosure or other enforcement of any security interest created by a Senior Financing Agreement, the Developer shall remain liable to the County for the payment of all sums owing to the County under this Project Agreement and the performance and observance of all of the Developer's covenants and obligations under this Project Agreement.

(C) Developer Cooperation with County Financings. The Developer shall provide reasonable assistance to the County in connection with any County financing for any capital costs the County is obligated to pay pursuant to subsection 6.7(A) (County Capital Costs), including cooperating with the County with respect to any continuing disclosure requirements that apply to the County in accordance with any Applicable Law.

SECTION 6.2. SENIOR DEBT NON-RECOURSE TO COUNTY.

All Senior Debt or other obligations, debt or otherwise, issued or incurred by the Developer in connection with this Project Agreement or the Project shall be issued or incurred only in the name of the Developer. The County shall have no obligation to pay debt service on any Senior Debt or such other obligations, or to join in, execute or guarantee any note or other evidence of indebtedness of the Developer or the Senior Financing Agreement.

SECTION 6.3. COMPLIANCE WITH SENIOR FINANCING AGREEMENTS.

The Developer shall keep the Senior Financing Agreements in good standing to the extent necessary to perform its obligations under this Project Agreement and will ensure that none of the terms and conditions of the Senior Financing Agreements will prevent the Developer from performing its obligations under this Project Agreement. If at any time the Developer receives a notice that an "event of default", any event entitling the Senior Lenders to enforce any security or any other similar event has occurred under the Senior Financing Agreements, the Developer shall deliver to the County a copy of such notice within five days receipt thereof.

SECTION 6.4. CHANGES TO SENIOR FINANCING AGREEMENTS.

The Developer shall not, without the prior written consent of the County, not to be unreasonably withheld or delayed, terminate, amend or otherwise modify the Senior Financing Agreements, or waive or exercise any of its rights under the Senior Financing Agreements if such action would materially adversely affect the Developer's ability to perform its obligations under this Project Agreement or have the effect of increasing any liability or potential liability of the County. If at any time any material amendment is made to any Senior Financing Agreement or the Developer enters into any replacement Senior Financing Agreement (or any agreement which affects the interpretation or application of any Senior Financing Agreement), the Developer shall deliver to the County a copy of each such material amendment or agreement no later than 10 Business Days prior to the date of its intended execution for the County's review, comment and, if required, consent and, after any execution, a copy thereof certified as a true copy by an officer of the Developer.

SECTION 6.5. REFINANCING.

(A) Consent Required for Refinancing. Other than an Exempt Refinancing or, with the prior written approval of the County, a Qualifying Refinancing, the Developer shall not enter into any Refinancing. Such consent will not be unreasonably withheld or delayed if such Qualifying Refinancing has no material and adverse effect on the Developer's ability to perform its obligations under this Project Agreement and does not increase any liability or potential liability of the County (unless the County agrees and is specifically compensated for such liability or potential liability).

(B) County's Share of Refinancing Gain. The County shall be entitled to receive a fifty percent (50%) share of any Refinancing Gain arising from a Qualifying Refinancing, to be determined as set forth in Appendix 18 (Calculation and Payment of Refinancing Gains) of this Project Agreement. The County shall not require a share greater than fifty percent (50%) share of the Refinancing Gain as a condition of receiving its consent to a Qualifying Refinancing.

(C) Developer Proposal to Refinance. The Developer shall promptly provide the County with full details of any proposed Qualifying Refinancing, as set forth in Section 2 (Data and Projections Required for the Calculation of Refinancing Gain) of Appendix 18 (Calculation and Payment of Refinancing Gains) of this Project Agreement. The County shall (before, during and within two years after any Qualifying Refinancing) have unrestricted rights of audit over any proposed Financial Model, books, records and other documentation (including any aspect of the calculation of the Refinancing Gain) used in connection with such Qualifying Refinancing.

(D) Payment to the County. Payment to the County of its portion of any Refinancing Gain shall be made as set forth in Section 5 (Payment of the County's Portion of Refinancing Gain) of Appendix 18 (Calculation and Payment of Refinancing Gains) of this Project Agreement.

(E) Calculation of Refinancing Gain. The Refinancing Gain shall be calculated as set forth in Section 3 (Calculation of the Refinancing Gain) of Appendix 18 (Calculation and Payment of Refinancing Gains) of this Project Agreement.

(F) Transaction Expenses. Each party will pay its own transaction costs incurred in connection with a Qualifying Refinancing.

(G) County Cooperation. The County shall cooperate, as reasonably requested by the Developer, in connection with the closing of any Refinancing, including entering into a Lenders' Remedies Agreement in connection therewith (provided the terms are reasonable,

consistent with the existing Lenders' Remedies Agreement and otherwise acceptable to the County) and providing customary legal opinions and instruments and other documents.

SECTION 6.6. [RESERVED. SECTION NOT USED].

SECTION 6.7. CAPITAL COSTS FOR WHICH THE COUNTY IS RESPONSIBLE.

(A) County Capital Costs. This Project Agreement obligates the County to pay costs for Capital Modifications required due to a Design and Construction Requirement Change made at the direction of the County pursuant to Section 7.12 (Design and Construction Requirement Changes Made at County Direction), due to a Compensation Event pursuant to Section 10.4 (Capital Modifications Required Due to Supervening Events) or at the County's direction pursuant to Section 10.5 (Capital Modifications at County Direction), along with any related operation, maintenance, repair and replacement costs directly attributable to any such Design and Construction Requirement Change made at the direction of the County or to a Capital Modification, but only to the extent such costs are not already covered by insurance. All such costs associated with a Design and Construction Requirement Change made at the direction of the County or a Capital Modification shall be subject to Cost Substantiation in accordance with Section 16.13 (Cost Substantiation of Additional Work) and shall be paid to the Developer. Alternatively, and at the option of the County, the costs can be paid on a negotiated lump sum basis in accordance with Section 16.12 (Negotiated Lump Sum Pricing of Additional Work). The County shall pay any such costs from currently available funds or from the proceeds of a County financing. The Developer shall have no obligation to finance any such costs and adjust the Service Fee on account of any Developer financing except following any agreement of the parties with respect thereto entered into based on a County request made pursuant to subsection (B) of this Section and memorialized in a Project Agreement Amendment. Any agreed adjustment to the Service Fee resulting from a Design and Construction Requirement Change made at the direction of the County or a Capital Modification shall be accounted for as an Extraordinary Item.

(B) Developer Financing. At the County's request, and subject to subsection 7.22(B) (Conditions to Certain Developer Performance Obligations During the Design-Build Period), the Developer shall use all reasonable efforts to obtain the financing required to pay the capital costs that the County is obligated to pay for as referred to in subsection (A) of this Section 6.7, on commercially reasonable terms and subject to the consent of the Senior Lenders, acting reasonably. To the extent the Developer is able to obtain such financing, the cost of the financing will be included in the adjustment of the Service Fee resulting from the implementation of the Design and Construction Requirement Change made at the direction of the County or the Capital Modification. The County shall pay the Developer, as an Extraordinary Item, an amount equal to the reasonable out-of-pocket expenses incurred by the Developer in seeking such financing, provided that the County approved such expenses prior to the Developer incurring them.

(C) No Senior Lender Obligation. The County acknowledges that the Senior Lenders have no obligation to provide the financing referred to in this Section or to subordinate or share their security.

ARTICLE 7

DESIGN AND CONSTRUCTION

SECTION 7.1. DESIGN-BUILD WORK GENERALLY.

(A) Commencement and Prosecution of Design-Build Work. On the Financial Close Date, the Developer shall promptly proceed to undertake, perform and complete the Design-Build Work in accordance with the Contract Standards. The Developer's failure to satisfy the Occupancy Readiness Conditions by or before the Scheduled Occupancy Readiness Date

shall result in the loss of Service Fee payments scheduled to be made by the County under Section 16.1 (Service Fee Generally) during the period of delay. Failure to satisfy the Occupancy Readiness Conditions by the Longstop Date shall constitute a Developer Event of Default upon which the County may terminate this Project Agreement for cause in accordance with subsection 22.2(A) (County Termination Rights).

(B) Developer Control of the Design-Build Work; No County Responsibility. The Developer shall have total control of the Design-Build Work and shall effectively direct and supervise the Design-Build Work so that it is undertaken in compliance with the terms of this Project Agreement. The Developer shall have the sole and exclusive responsibility and liability for the design, construction and performance of the Project hereunder, notwithstanding the fact that the RFP included certain minimum conceptual design criteria for the Design-Build Work and the Design and Construction Standards that the Project would be required to meet or the fact that in negotiating this Project Agreement, between the date the Developer was selected as the preferred proposer pursuant to the RFP and the Effective Date, the County participated in certain design development activities that resulted in the finalization of the Design and Construction Requirements. The Developer acknowledges that such minimum conceptual design criteria do not in any manner or to any degree impair the Developer's ability to perform the Design-Build Work and the Facility Management Services in compliance herewith. Nothing in this Project Agreement shall be interpreted as giving any responsibility for the Design-Build Work to the County, any County Indemnitee, the Design Criteria Professional, any other County Representative, or to the Independent Building Expert. The County's rights of review and comment with respect to any aspect of the Design- Build Work shall be for the County's benefit only, and no review or comment by the County Representative or any Government Person shall in any way relieve the Developer of its obligation for all aspects of the Design-Build Work of the Project. If, however, the County and the Developer agree to specific changes to the Contract Standards that agreement shall be reflected in a formal document, duly executed by both parties and shall be binding on the parties.

(C) Materials, Labor and Services. The Developer shall furnish all necessary architectural, design and engineering services, labor, materials, equipment, supplies, tools, scaffolding, transportation, Utilities and Utilities' services, insurance, , completed structures, assemblies, fabrications, acquisitions, installations, testing, accounting, recordkeeping and other things and services of every kind whatsoever necessary for the full performance and completion of the Developer's design, engineering, construction, start- up, Commissioning, obtaining and maintaining Governmental Approvals and related obligations with respect to the design, construction and Commissioning of the Project during the Design-Build Period under this Project Agreement. The materials, machinery, structures, improvements, and equipment to be furnished as part of the Design-Build Work shall be new, of recent manufacture, and meet or exceed the Design and Construction Standards.

(D) Project Sequencing, Schedule and Reports. The Developer shall not be limited in the sequencing or staging of the Design-Build Work, except to the extent that the Contract Standards impose limitations. The Developer shall prepare and provide the County with the "critical path method" Project Schedule for Design-Build Work in accordance with Appendix 6 (Design-Build Work Review Procedures). Throughout the Design- Build Period, the Developer shall submit to the County Representative a monthly progress schedule and report in accordance with the requirements of Appendix 6 (Design-Build Work Review Procedures). The Developer's submittal of the monthly progress schedule and report (or any revised progress schedule and report) is for the County's information only and shall not limit or otherwise affect the Developer's obligations to achieve Occupancy Readiness by the Scheduled Occupancy Readiness Date. The County's acceptance of the monthly progress schedule and report (or any revised progress schedule and report) shall not bind the County in any manner and shall not imply County approval or consent to any of the matters set forth therein.

(E) Design and Construction Requirements. The Developer shall design the Courthouse in accordance with Applicable Law, including, but not limited to, the Florida Building Code, and shall be responsible for obtaining any and all required Governmental Approvals, including building permits in the manner set forth in this Project Agreement and all appendices hereto. Developer shall perform the Design-Build Work in compliance with the Design and Construction Requirements. The Design and Construction Requirements are intended to include the basic design principles, concepts and requirements for the Design-Build Work but do not include the final, detailed design, plans or specifications or indicate or describe each and every item required for full performance of the physical Design-Build Work or for achieving Occupancy Readiness. The Developer acknowledges that the Courthouse is to be constructed, operated and maintained immediately adjacent to the County's transit facilities, as such facilities are described in Appendix 19 (Department of Transportation and Public Works Adjacent Construction Manual) and that, as a consequence, the Project Site may be subject to tremors and vibrations resulting from the transit facilities. The Developer shall design and construct the Courthouse in consideration of the adjacency of the transit facilities such that the foundations and superstructure of the Courthouse are protected and able to withstand any and resulting tremors and vibrations without damage to the Courthouse. The Developer agrees to prepare and furnish all necessary detailed designs, plans, drawings and specifications in conformity with the Design and Construction Requirements. The Developer further agrees that it shall not have the right to bring any claim whatsoever against the County, its employees, agents, or any of its consultants or subcontractors, arising out of any designs, plans, drawings or specifications included in the RFP or made available during the procurement process.

(F) Standards of Workmanship and Materials. Where this Project Agreement does not specify any explicit quality or standard for construction materials or workmanship, the Developer shall use only workmanship and new materials of a quality consistent with that of construction workmanship and materials specified elsewhere in the Design and Construction Requirements, and the Design and Construction Requirements are to be interpreted accordingly.

(G) Technical Standards and Codes. References in this Project Agreement to all professional and technical standards, codes and specifications, except as otherwise provided in Appendix 4 (Design and Construction Standards), are to the most recently published professional and technical standards, codes and specifications of the institute, organization, association, authority or society specified, all as in effect as of the Effective Date. Unless otherwise specified to the contrary, (1) all such professional and technical standards, codes and specifications shall apply as if incorporated in the Design and Construction Requirements and (2) if any material revision occurs, to the Developer's knowledge, after the Effective Date, and prior to completion of the applicable Design-Build Work, the Developer shall notify the County. If so directed by the County, the Developer shall perform the applicable Design-Build Work in accordance with the revised professional and technical standard, code, or specification.

(H) Deliverable Material. The Developer shall deliver to the County all design documents, reports, submittals and other materials ("**Deliverable Material**") required to be delivered under Appendix 6 (Design-Build Work Review Procedures), Appendix 7 (Commissioning), Appendix 10 (Insurance Requirements) and Appendix 14 (Reports and Records). With respect to those Deliverable Materials required to be delivered within a certain number of days after the Effective Date under Appendix 4 (Design and Construction Standards), Appendix 6 (Design-Build Work Review Procedures), Appendix 7 (Commissioning), Appendix 10 (Insurance Requirements) and Appendix 14 (Reports and Records), such obligation to provide such Deliverable Materials shall be counted from the Effective Date. The County shall have the right from and after the Effective Date to use (or permit use of) all such Deliverable Material, all oral information received by the County in connection with the Design-Build Work, and all ideas or methods represented by such Deliverable Material, without additional compensation. The County's use of any such Deliverable Material for any purpose other than the Project shall be at its own risk and the Developer shall have no liability therefor.

(I) Payment of Costs. Except as otherwise expressly provided or referred to in Section 7.22 (Payment Obligations of the County During the Design-Build Period), the Developer shall pay directly all costs and expenses of the Design-Build Work of any kind or nature whatsoever, including all costs of permitting (regardless of permittee); regulatory compliance and Legal Proceedings brought against the Developer; obtaining and maintaining the Financial Close Security; obtaining and maintaining the Required Insurance pursuant to Developer's obligations under Appendix 10 (Insurance Requirements); financing costs; payments due under the Project Contracts and Subcontracts or otherwise for all labor and materials; legal, financial, engineering, architectural and other professional services of the Developer; sales, use and similar Taxes on building supplies, materials and equipment; general supervision by the Developer of all Design-Build Work; the preparation of schedules, budgets and reports; keeping all construction accounts and cost records; and all other costs required to achieve Substantial Completion, Occupancy Readiness and Final Completion.

(J) Quality Assurance and Quality Control. The Developer shall have full responsibility for quality assurance and quality control for the Design-Build Work, including compliance with the Design-Build Quality Management Plan, which shall be developed by the Developer in accordance with Appendix 6 (Design-Build Work Review Procedures).

(K) Naming and Signs. The County shall have the exclusive right to name the Project and any parts thereof. The Developer shall provide and maintain temporary Project identification and information signs during the Design-Build Period. No signs shall be erected (other than those required pursuant to subsection 7.13(B)(b) (Safety and Security) until their appearance, content, and location have been fully reviewed and approved by the County, which approval shall not unreasonably be withheld, conditioned or delayed. The Developer shall remove temporary signs from the Project Site when they are no longer necessary.

(L) Laydown Areas. Laydown and staging areas for construction materials shall be located on the Project Site or at other locations arranged and paid for by the Developer.

(M) Maintenance of the Project Site. During performance of the Design-Build Work following the Project Site Construction Access Date, the Developer shall be responsible for the overall maintenance and security of the Project Site. The Developer shall keep the Project Site neat, secure and orderly at all times, and shall clean up and remove all rubbish and construction debris from the Project Site as they accumulate in accordance with the Contract Standards.

(N) Title and Risk of Loss. Title to the structures, improvements, fixtures, machinery, equipment and materials constituting the Project shall pass to the County upon incorporation in the Project, free and clear of all Liens as provided in subsection (O) of this Section. The Developer shall, however, subject to the Supervening Event provisions hereof, bear all risk of loss concerning such structures, improvements, fixtures, machinery, equipment and materials until Substantial Completion, regardless of the extent to which the loss was insured or the availability of Insurance Proceeds.

(O) Encumbrances. The Developer shall not directly or indirectly, without the County's consent, create or permit to be created or to remain, and shall promptly discharge or bond, any Encumbrance arising on the Project, the Project Site or the Design-Build Work, other than Permitted Encumbrances, arising out of the Developer's construction of the Project.

(P) Compliance with Easements and Limits; Surveying. The Developer shall construct the Project in compliance with the requirements of the easements, exceptions to title, limits and setback requirements identified in Appendix 1 (Project Site Information); shall perform

all construction surveying necessary in connection therewith; and shall preserve or replace as necessary all existing property line and corner survey monuments encountered.

(Q) Utilities. The Developer shall make all arrangements necessary to secure the availability of all Utilities required to construct and operate the Project and the Restaurant in the capacities required hereunder. In furtherance and as part of this obligation, Developer shall be required to coordinate with, seek all necessary permissions from, make all necessary applications to, and undertake all work required by all Utility companies, Utility owners and owners of right-of-ways adjacent to the Project Site and owners of properties adjacent to the Project Site to ensure the construction and connection of Utilities necessary to build and service the Courthouse. Developer shall be required to coordinate with the County and undertake all work necessary to connect the Courthouse to the existing chilled water loop, including but not limited to, the construction of a connection outside of the Project Site.

(R) Relocation of Existing Utilities. The Developer shall be responsible for all construction activities required with regard to existing Utilities (e.g., conduits, pipelines, transmission mains and other Utility equipment and appurtenances), including any relocation of Utilities, whether such construction activities are performed by the Developer or by the owner of the existing Utility. To the extent requested by Developer and subject to Applicable Law, the County will provide to Developer the benefit of any provisions in recorded Utility or other easements on or under the Project Site which require the easement holders to relocate at their expense and the County will reasonably assist Developer in obtaining the benefit of all rights the County has under any Utility easement, permit or other right (including contractual rights) pertaining to Utilities on the Project Site, it being understood that such assistance will not entail the initiation of or participation in legal actions or proceedings or the expenditure of County funds.

(S) Software Programming. The Developer's obligation to perform the Design-Build Work includes the obligation to provide all software programming for the monitoring instrumentation and controls relating to the Project, as specifically set forth in Appendix 4 (Design and Construction Standards).

(T) Art in Public Places. This Project is subject to the Art in Public Places ("AIPP") provisions in Section 2.11.15 of the Code of Miami-Dade County, Florida and Administrative Order 3-11, as managed by the County's Department of Cultural Affairs pursuant to Procedure 358 in the Miami-Dade County Procedures Manual. The Developer shall transmit an amount equal to 1.5% of the Design-Build Contract Price to the Department of Cultural Affairs for the implementation of the AIPP program and public art into the Project. The Developer shall work collaboratively with the Department of Cultural Affairs on the implementation of the AIPP program into the Project.

(U) Notice of Default. The Developer shall provide to the County, promptly following the receipt thereof, copies of any notice of default, breach or non- compliance received under or in connection with any Governmental Approval, or Project Contract pertaining to the Design-Build Period that may have a material and adverse effect on performance by the Developer of its obligations under this Project Agreement.

(V) Indemnification in Project Contracts and Subcontracts. Any and all Project Contracts and all Subcontracts of any tier entered into by the Developer to design or build the Project shall require subcontractors to release the County and hold it harmless to the same extent required in Section 24.1 (Developer's Obligations to Indemnify). The release obligations set forth in the Project Contracts and Subcontracts shall name the County as an express third-party beneficiary with rights of enforcement of such obligation and shall entitle the County to succeed to Developer's rights under such Project Contract or Subcontract. The Developer shall include, or cause to be included, in the Project Contracts the requirements that all design and

construction shall be performed in accordance with Applicable Law and this Project Agreement. Developer shall provide the County with any and all Project Contracts upon request by the County. The County shall not, however, be construed as a party to any Project Contract related to the Project nor shall the County in any way be responsible for any or all claims of any nature whatsoever arising or which may arise from any such Project Contracts or Subcontracts.

(W) Cultural Center Plaza Service Road. The Developer shall re-locate the existing service road providing access to the Cultural Center Plaza that is part of the County Facilities, all as required by the Design and Construction Standards and Applicable Law. At the conclusion of the Design-Build Period, the County shall be responsible for operating and maintaining any portion of the relocated service road not contained within the Project Site. The Developer's performance of these obligations shall not, at any time, interfere with the County's ability to access the guideway and corresponding Metrorail and Metromover infrastructure, the Cultural Center Plaza and buildings (including the Main Library and HistoryMiami Museum).

SECTION 7.2. ACCESS TO AND SUITABILITY OF THE PROJECT SITE.

(A) Familiarity with the Project Site. The Developer acknowledges that the Developer's agents and representatives have visited, inspected and are familiar with the Project Site, its surface physical conditions relevant to the obligations of the Developer pursuant to this Project Agreement, including surface conditions, normal and usual soil conditions, roads, Utilities, topographical conditions and air and water quality conditions; that the Developer is familiar with all local and other conditions which may be material to the Developer's performance of its obligations under this Project Agreement (including transportation; seasons and climate; access, availability, disposal, handling and storage of materials and equipment; and availability and quality of labor and Utilities), and has received and reviewed all information regarding the Project Site provided to it hereunder or obtained in the course of performing its obligations under this Project Agreement, has made any other investigations that it deems necessary to make a determination as to the suitability of the Project Site; and that based on the foregoing, the Project Site constitutes an acceptable and suitable site for the construction of the Project in accordance herewith, and the Project can be constructed on the Project Site by the Scheduled Occupancy Readiness Date and within the construction cost upon which the Service Fee is based.

(B) Access to Project Site Prior to Commencement of Construction. The execution of this Project Agreement shall be deemed to constitute the granting of a license to the Developer for full access to the Project Site for the purposes of this Project Agreement, including mobilization and performing engineering, analysis and such additional subsurface and geotechnical studies or tests as deemed necessary by the Developer prior to commencement of construction, provided that, prior to February 20, 2020, Developer shall take no action and perform no test that causes damage to the Existing Art on the Project Site. The Developer shall assume all risks associated with such activities (except to the extent provided otherwise in Section 7.5 (Regulated Site Conditions) and shall, to the extent and in proportion to the degree of fault or negligence by the Developer in causing any harm, indemnify, defend and hold harmless the County and the County Indemnitees in accordance with Section 24.1 (Developer's Obligation to Indemnify) from and against all Loss-and-Expense arising therefrom. The County shall not in any way materially or unduly interfere with the Developer in the performance of its obligations (and exercising of its rights hereunder) under the Project Agreement in accordance with the terms of the Project Agreement (having regard always to the interactive nature of the activities of the County and of Developer). The Developer shall allow the County to access the Facility Site for the purposes of performing its obligations pursuant to Section 7.3 (Deinstallation of Art and Demolition Work).

(C) Vacating the Project Site and Commencement of Construction. The County shall vacate, and shall require all third parties using or occupying the Project Site to vacate, the Project Site on or before the Project Site Construction Access Date and shall remove all

improvements located thereon that the County desires to salvage, other than the bathroom facility existing on the Facility Site as of the Effective Date and the Existing Art which the County shall remove pursuant to Section 7.3. The Developer shall not commence the Demolition Work or construction of the Project, including physical Project Site preparation work, until the Project Site Construction Access Date.

SECTION 7.3. DEINSTALLATION OF ART AND DEMOLITION WORK.

(A) Existing Art. The Developer acknowledges and understands that a large art sculpture and associated plaque are currently on the Project Site (the "**Existing Art**"). Prior to February 20, 2020, the County shall, through its Department of Cultural Affairs, de-install and remove the components of the existing sculpture. If the County is unable to remove, or desires to have the Developer remove, the art sculpture and associated plaque, such work shall be undertaken by Developer, following a Change Order, as a Design and Construction Requirement Change made at the County direction and Developer shall transport same to a location within Miami-Dade County identified by the Department of Cultural Affairs. The Developer agrees that no adjustment to the Service Fee shall result from Developer undertaking the de-installation and removal of the existing sculpture and plaque. In the event that Developer undertakes such work, the Developer shall use the utmost care in the de-installation and removal of such sculpture so as to preserve all components and not cause permanent damage to same and shall have no responsibility for erecting or installing the sculpture at a new location. The County shall make arrangements for and be responsible for re-installation or storage of the existing sculpture and plaque.

(B) Demolition Work. The Developer shall demolish any improvements on the Project Site that remain located thereon as of the Project Site Construction Access Date, including all existing buildings, existing parking lot, existing paving and other existing site improvements, and associated Utilities not otherwise needed for the Project, but excluding the bathroom facility existing on the Project Site as of the Effective Date and the Existing Art; properly remove and dispose all demolition debris; and prepare the Project Site for construction of the Project, all in accordance with this Section, Section 3.6 (On-site and Offsite Improvements) of Appendix 4 (Design and Construction Standards) and Appendix 5 (Design and Construction Extracts) (the "**Demolition Work**"). The Developer shall pay the cost of all such Demolition Work, and have the right to any economic benefit associated with the sale or reuse of the demolition debris. The Demolition Work shall not include the bathroom facilities existing on the Facility Site as of the Effective Date, which shall be removed at the direction of the County prior to February 20, 2020. The Demolition Work shall include the abatement of Hazardous Substances described in the County Environmental Assessments, if any, and the restoration of all undeveloped areas of the Project Site to a stabilized condition, which at a minimum shall include an established stand of grass with minimal landscape plantings. The Developer shall determine the sequence and timing of the Demolition Work in accordance with the Project Schedule.

SECTION 7.4. DIFFERING SITE CONDITIONS.

(A) Further Investigations and Protection of Utilities. Prior to commencing any trenching or excavations, the Developer shall, taking into account the information in the Project Site Geotechnical Exploration Report, the Underground Utility Survey and in compliance with Good Design-Build Practice, conduct further site investigations, including exploratory excavations and further borings, to confirm the location and type of underground structures that could be damaged as a result of the excavations. Such underground structures include all Utilities and other piping, and manholes, chambers, electrical conduits, wires, tunnels and other existing subsurface work located within or adjacent to the Project Site. The Developer shall carefully sustain in their places and support or, if necessary, relocate all underground and surface structures and Utilities located within or adjacent to the Project Site. To the extent any

of Developer's work will or may impact the Utilities of the County Facilities and businesses or residents in the area surrounding the Project Site, Developer shall notify, at least five Business Days in advance of such work: (1) the County of any work that might impact Utilities of the County Facilities and businesses or residents in the area surrounding the Project Site; and (2) such businesses or residents of such work. To the extent that five Business Days' advance notice is not feasible, the Developer shall provide as much advance notice as is reasonably possible under the circumstances to the County and to impacted businesses and residents of the Developer's work.

(B) Discovery of Differing Site Conditions. The Developer and the County recognize the existence of certain surface and subsurface geotechnical conditions at the Project Site, as reflected in the Project Site Geotechnical Exploration Report. Upon discovering an alleged Differing Site Condition and before the condition is further disturbed, the Developer shall promptly, after taking appropriate measures to secure the affected Design- Build Work, notify the County of the alleged Differing Site Condition. The Developer's notice to the County shall be issued by telephone or in person and followed within 24 hours thereafter by written notice, providing a brief description of why the condition encountered is considered a Differing Site Condition. To the extent possible based on the Developer's knowledge at the time of such notice, the Developer's written notice shall describe the specific subsurface geotechnical condition encountered that is alleged to constitute a Differing Site Condition and the measures taken to deal with such Differing Site Condition. Promptly upon, but in no event later than 3 Business Days following receipt of the Developer's notice, the County will investigate or cause to be investigated the alleged Differing Site Condition set out in the Developer's notice. Notwithstanding anything set forth in subsection (C) (Relief for Differing Site Conditions) of this Section or in Article 13 (Supervening Event Procedures), no relief based on the occurrence of a Compensation Event shall be allowed for any alleged Differing Site Condition unless the Developer provides the County with notice in accordance with this subsection.

(C) Relief for Differing Site Conditions. If the actual conditions encountered during construction: (1) meet the criteria for a Differing Site Condition, and (2) meet the criteria for a Compensation Event, then the Developer shall be entitled to relief based on the occurrence of a Compensation Event as and to the extent provided in Article 15 (Compensation Events and Changes in Law).

SECTION 7.5. REGULATED SITE CONDITIONS.

(A) County Environmental Assessments. The County has made the County Environmental Assessments available to the Developer. Without limiting the Developer's rights hereunder, the authors of the County Environmental Assessments do not permit the Developer or any entity other than the County to rely on the information contained therein. The County has taken no steps to verify the accuracy of such information but is not aware of any errors in the County Environmental Assessments.

(B) Regulated Site Conditions - Avoidance of Exacerbation. In performing the Design-Build Work, the Developer shall exercise due care, in light of all relevant facts and circumstances, to avoid exacerbating any Regulated Site Condition after the location and existence of such Regulated Site Condition has been disclosed to the Developer in County Environmental Assessments, or becomes actually known by the Developer through physical observation (including any such observation made during excavations).

(C) Certain Regulated Site Conditions - County Obligations. If at any time the County receives written notice from a Governmental Body or the Developer, or the Developer receives a written notice from a Governmental Body, that a Regulated Site Condition that differs from those described in the County Environmental Assessments has been determined to exist which:

(1) Reasonably requires a Response Action or other action in order to comply with Applicable Law; or

(2) interferes or delays with the performance of the Design-Build Work; or

(3) Increases the cost to the Developer of performing the Design-Build Work; or

(4) If not remediated or otherwise corrected, would reasonably be expected to result in the Developer incurring costs, liabilities or obligations,

then the County shall promptly commence and diligently prosecute Response Actions or other actions as may be necessary under Good Design-Build Practice to dispose of, remediate, rectify or otherwise correct such Regulated Site Condition in compliance with Applicable Law. The County shall have the right to contest any determination of such a Regulated Site Condition and shall not be required to take any action under this subsection so long as: (1) the County is contesting any determination of a Regulated Site Condition in good faith by appropriate proceedings conducted with due diligence; (2) Applicable Law permits continued design or construction of the Project pending resolution of the contest, so that the Developer shall have no liability as a result of the failure of the County to remediate or otherwise correct such a Regulated Site Condition during the period of contest; and (3) unless the County affords the Developer appropriate relief, the pendency of the County's contest is not otherwise having an adverse effect on the Developer; provided that the Developer shall be entitled to perform any Response Action to correct any such Regulated Site Conditions (at the County's expense, subject to the resolution of any such contest) after affording the County a reasonable opportunity to take such Response Action.

(D) Relief for Certain Regulated Site Conditions. A Regulated Site Condition that differs from those described in the County Environmental Assessments constitutes a Compensation Event, and the Developer shall be entitled to relief in accordance with Section 15.1 (Compensation Events), except to the extent the Developer fails to exercise due care with respect to a disclosed or known Regulated Site Condition as provided in subsection (B) of this Section and to the extent covered by the Required Insurance.

(E) Hazardous Substances. The parties acknowledge and agree that the Developer is not the generator, operator, arranger or transporter of any Hazardous Substances present in, on or under the Project Site prior to the Project Site Construction Access Date (irrespective of when such Hazardous Substances are discovered), shall not be identified as such on any waste manifests and documentation required under Applicable Law, and shall have no liability for any such Hazardous Substances except as set forth herein. Developer shall have no liability for Hazardous Substances except for Developer Hazardous Substances. If at any time after the Effective Date, there exists Developer Hazardous Substances, the Developer shall be responsible to undertake, pay for, and complete any remediation or mitigation work that is required on the Project Site by Applicable Law, inclusive of any monitoring required thereafter and satisfying any closure conditions.

SECTION 7.6. DESIGN-BUILD GOVERNMENTAL APPROVALS.

(A) Generally. The Developer shall make all applications and take all other action necessary to obtain and maintain all Design-Build Governmental Approvals and shall pay all fees, costs and charges due in connection therewith. Where required under Applicable Law, such applications shall be made in the name of the County, subject to the County's rights hereunder. The Developer shall manage the process of obtaining the Design-Build Governmental Approvals in a manner which affords the County a reasonable opportunity to review and

comment upon such submittals and all material documentation submitted to and issued by any Governmental Body in connection therewith as provided in Appendix 6 (Design-Build Work Review Procedures). The Developer shall not knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding the Design-Build Governmental Approvals or the terms and conditions thereof that would impose any unreasonable cost or burden on the County or that would contravene any County policies with respect to the matters contained therein. The County reserves the right to reject, modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Developer which would have the effect described in the preceding sentence.

(B) Permitting Assistance by the County. The County shall provide reasonable assistance to the Developer in connection with the Developer's obligation to obtain and maintain the Design-Build Governmental Approvals required under this Section, including signing permit applications, attending public hearings and meetings of the Governmental Bodies charged with issuing the Design-Build Governmental Approvals, and providing the Developer with existing relevant data and documents that are within the County's custody or control or are reasonably obtainable by the County and which are reasonably required for such purpose; provided, however, that the County's obligation to provide such reasonable assistance shall be limited, in light of the Developer's primary role in the permitting and development of the Project, only to those actions which are legally required to be taken by the County as permittee or which involve providing information which is in the possession of or reasonably obtainable by the County. The County shall dedicate at least one member of its building permit staff and make available other appropriate staff to serve as a liaison for the Developer to assist with seeking to expedite the permitting process and other Governmental Approvals for the Design-Build Work. Among other things, such liaison shall use reasonable, diligent efforts to: seek the expeditious processing of permits; meet with the Developer's Representative and the Design-Builder; act as a liaison to coordinate any necessary inspections from County agencies or regulatory bodies; and coordinate meetings between the Developer's Representative and County staff necessary to address questions associated with processing applications to County agencies and regulatory bodies. The covenants contained in this subsection 7.6(B) shall not obligate the County to staff the Developer's permitting or development efforts, to undertake any new studies or investigations with respect to the Project, or to affirmatively seek to obtain the issuance of the Design-Build Governmental Approvals, nor shall they impair, waive or supersede the County's Sovereign rights in accordance with Section 25.11 (Actions of the County in its Governmental Capacity).

(C) Developer Assumption of Permitting Risk for Design-Build Work. The Developer explicitly assumes the risk of obtaining and maintaining the Design-Build Governmental Approvals, including the risk of delay, non-issuance or imposition of any term or condition in connection therewith by a Governmental Body. In assuming this risk, the Developer acknowledges in particular that the Governmental Body issuing any Design-Build Governmental Approval may impose terms and conditions which require the Developer to make changes or additions to the Project or Project operations which may increase the cost or risk to the Developer of performing the Contract Services, all of which costs or risks shall be for the account of and borne by the Developer.

SECTION 7.7. DEVELOPER DESIGN – GENERAL.

(A) Design Considerations. The design for the Project undertaken and performed by the Developer shall:

(1) Be undertaken by a design team exercising such degree of care, skill and diligence as would reasonably be expected from consultants qualified to perform services similar in scope, nature and complexity to the design, as of the date of this Project Agreement, and the Developer shall appoint a design team that:

(a) is so qualified;

(b) includes (as required by Applicable Law) licensed or registered professional engineers and architects; and

(c) has sufficient expertise and experience to expeditiously and efficiently perform all of the design in a proper and professional manner to the standard set out in this Project Agreement;

(2) include specific consideration of "constructability," the adjacency of the Project to the transit facilities described in Appendix 19 (Department of Transportation and Public Works Adjacent Construction Manual) and "life cycle" cost issues at all stages of design, as appropriate; and

(3) include consideration of efficient and cost-effective operation and maintenance.

(B) County Review and Comment on Design Documents. The Developer shall provide the County with the design submittal protocol in accordance with the specific requirements set forth in Appendix 6 (Design-Build Work Review Procedures). The County shall have the right to review and comment on all Design Documents as provided in Appendix 6 (Design-Build Work Review Procedures) in order to confirm the compliance and consistency of the Design Documents with the Design and Construction Requirements. In no event shall the Developer proceed with the physical construction of any particular segment of the Design-Build Work without first complying with the requirements of the design submittal protocol and Appendix 6 (Design-Build Work Review Procedures). The Developer shall give due consideration and provide written responses, in the time and manner provided in Appendix 6 (Design-Build Work Review Procedures), to any comments delivered by the County as to the Developer's design submittals. Save to the extent the Developer is entitled to a Compensation Event pursuant to subsection 7.14(E) (Notice of Covering Design-Build Work), neither compliance by the Developer with the Design and Construction Requirements, nor review and comment by the County of the Developer's Design Documents, nor any failure or delay by the County in commenting on any design submittals shall in any way relieve the Developer of full responsibility for the design, construction, performance, operation and maintenance of the Project in accordance with the Contract Standards, subject to the last sentence of subsection 7.1(B) (Developer Control of the Design-Build Work; No County Responsibility).

(C) Documents at the Project Site. The Developer shall maintain at the Project Site all design and construction documents, including a complete set of record drawings. These documents shall be available to the County for reference, copying and use, and a complete set thereof shall be delivered to the County upon completion of the Design- Build Work.

(D) Ownership of Design. The County shall own the Design Documents upon the earlier of: the Occupancy Readiness Date or, making payment of the Termination Amount. Except for reference purposes, the Design Documents shall not be used by the County, the Developer, the Architect, the Design-Builder, the Project Contactors, or any Affiliates on any other project. The County is the owner of the Proposal and the Design and Construction Requirements.

SECTION 7.8. DEVELOPER DESIGN - REQUIREMENTS.

The Developer shall prepare all Design Documents necessary or appropriate to carry out and complete the Design-Build Work. As of the Effective Date, the Developer's design for the Project is not complete. The Design and Construction Requirements shall form the basis of design for the Project and all design work shall be completed in accordance therewith. All the

Developer working and final Design Documents shall comply with the Design and Construction Requirements and shall ensure that the Project is constructed to a standard of quality, integrity, durability and reliability which is equal to or better than the standard established by the Design and Construction Requirements, subject to the last sentence of subsection 7.1(B) (Developer Control of the Design-Build Work; No County Responsibility).

SECTION 7.9. CHANGES TO DESIGN AND CONSTRUCTION REQUIREMENTS GENERALLY.

The Developer acknowledges the County's material interest in each provision of the Design and Construction Requirements, and agrees that, subject to Section 7.11 (Design and Construction Requirement Changes Made Due to Compensation Events), no change to the Design and Construction Requirements shall be made except with the consent of the County, which consent may be withheld or conditioned in its reasonable discretion taking into account the standards of quality, integrity, durability and reliability established for the Project by the Contract Standards. Any such changes shall be evidenced by a Contract Administration Memorandum, Project Agreement Amendment, or Change Order, as applicable. The County shall review and comment upon the final design of the Project, which shall also be subject to the approval of the County. The Developer shall design the Project such that the appearance of the Project is in compliance with the Design and Construction Requirements applicable to such matters. The parties acknowledge that reasonable, minor variations from the Design and Construction Requirements shall be permitted in the final design of the Project with County and Developer approval or consent, to be granted, denied or condition by each party acting reasonably, and to be followed by the execution of a Contract Administration Memorandum. Examples of elements of the Design and Construction Requirements from which there may be reasonable, minor variations in the final design with approval by the County and Developer evidenced by a Contract Administration Memorandum include thickness, level and composition of individual structural members; exact dimensions of rooms (to the extent overall functionality is not impaired or total square footage decreased); exact size, weight and height of mechanical components; and dimensions, ratings and positions of electrical cables, and control panels.

SECTION 7.10. DESIGN AND CONSTRUCTION REQUIREMENT CHANGES MADE AT DEVELOPER REQUEST.

The Developer shall give the County written notice of, and reasonable opportunity to review and comment upon, any Design and Construction Requirement Changes proposed to be made at the Developer's request. The notice shall contain sufficient information for the County to determine that the Design and Construction Requirement Change:

(1) Does not diminish the capacity of the Project to be operated so as to meet the Contract Standards;

(2) Does not impair the quality, integrity, durability and reliability of the Project;

(3) Is reasonably necessary or is advantageous for the Developer to fulfill its obligations under this Project Agreement; and

(4) Is feasible.

The County shall have the right, acting reasonably, to accept, reject or modify any Design and Construction Requirement Change proposed by the Developer. Any such Design and Construction Requirement Change accepted or modified by the County, and any related change in the terms and conditions of this Project Agreement, shall be reflected in a Change Order.

SECTION 7.11. DESIGN AND CONSTRUCTION REQUIREMENT CHANGES MADE DUE TO COMPENSATION EVENTS.

Upon the occurrence of a Compensation Event prior to the Occupancy Readiness Date, the County shall promptly proceed, subject to Article 13 (Supervening Event Procedures), to make or cause to be made all Design and Construction Requirement Changes reasonably necessary, if any, to address the Compensation Events. The Developer and the County shall consult concerning possible means of addressing and mitigating the effect of any Compensation Event, and the Developer and the County shall cooperate in order to minimize any delay, lessen any additional cost and modify the Project so as to permit the Developer to continue providing the Contract Services in light of such Compensation Events. The design and construction costs resulting from any such Design and Construction Requirement Change, to the extent payable by the County pursuant to Article 15 (Compensation Events and Changes in Law), shall be paid directly by the County to the Developer during the Design-Build Period in accordance with Section 7.22 (Payment Obligations of the County During the Design-Build Period). Any increase in the operation, maintenance, repair and replacement costs directly related to Design and Construction Requirement Changes reasonably necessary to address the Compensation Events shall be borne by the County (through an adjustment of the Service Fee payable solely following the Occupancy Readiness Date, subject to Article 15 (Compensation Events and Changes in Law) and determined pursuant to Section 16.13 (Cost Substantiation of Additional Work) in this Project Agreement requiring cost substantiation. Any Design and Construction Requirement Change made on account of Compensation Events, and any related change in the terms and conditions of this Project Agreement, shall be reflected in a Change Order. The Developer's obligation to perform the design and construction work resulting from the Design and Construction Requirement Change is subject to the conditions set forth in subsection 7.22(B) (Conditions to Certain Developer Performance Obligations During the Design-Build Period).

SECTION 7.12. DESIGN AND CONSTRUCTION REQUIREMENT CHANGES MADE AT COUNTY DIRECTION.

The County shall have the right, but not the obligation, to make Design and Construction Requirement Changes at any time prior to the Occupancy Readiness Date at its discretion for any reason whatsoever, whether and however the exercise of such rights affects this Project Agreement so long as such Design and Construction Requirement Change does not contravene the limitations referred to in Section 4.6 (Restrictions on Design and Construction Requirement Changes, Capital Modifications and Facility Management Services Changes). The design and construction costs resulting from any such Design and Construction Requirement Change made at the County's direction under this Section shall be paid directly by the County to the Developer during the Design-Build Period in accordance with Section 7.22 (Payment Obligations of the County during the Design-Build Period). Any related operation, maintenance, repair and replacement costs or expenses to the provisions of the Facility Management Services, as reasonably determined to exist and quantified by the Developer and the County, directly attributable to Design and Construction Requirement Changes made at the County's direction shall be borne by the County through an adjustment to the Service Fee. Any such Design and Construction Requirement Change and any related change in the terms and conditions of this Project Agreement shall be reflected in a Change Order. The Developer's obligation to perform the work related to a Design and Construction Requirement Change is subject to the conditions set forth in subsection 7.22(B) (Conditions to Certain Developer Performance Obligations During the Design-Build Period).

SECTION 7.13. CONSTRUCTION PRACTICE, SAFETY AND SECURITY.

(A) Means and Methods. The Developer shall perform the Design- Build Work in accordance with the Contract Standards and shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for

the correct, prompt, and orderly prosecution and completion of the Design-Build Work as required by this Project Agreement. The responsibility to provide the construction means, methods, techniques, sequences and procedures referred to above shall include, but shall not be limited to, the obligation of the Developer to provide the following construction requirements: temporary offices and construction trailers; required design certifications; required approvals; weather protection; clean-up and housekeeping of the Project Site; construction trade management; temporary parking; vehicle traffic; safety and first aid Facility and equipment; correction of or compensation for defective work or equipment; Project Contractor and Subcontractors' insurance; storage areas; workshops and warehouses; temporary fire protection; security of the Project Site; temporary Utilities; potable water; sanitary services; Project Contractor, Subcontractor and vendor qualification; receipt and unloading of delivered materials and equipment; erection rigging; temporary supports; and construction coordination.

(B) Safety and Security. The Developer shall maintain safety and security at the Project Site at all times prior to the Occupancy Readiness Date at a level consistent with the Contract Standards. Without limiting the foregoing, the Developer shall:

(a) Take all necessary precautions for the safety and security of the Design-Build Work and provide all necessary protection to prevent damage, injury or loss caused by trespass, negligence, vandalism, malicious mischief or any other course related to the Design-Build Work, for:

(i) Workers at the Project Site and all other persons who may be involved with deliveries or inspections;

(ii) Visitors to the Project Site;

(iii) Passersby, neighbors and adjacent properties;

(iv) Materials and equipment under the care, custody or control of the Developer or Subcontractors on the Project Site;

(v) Other property constituting part of the premises or the Project under construction; and

(vi) County property;

(b) Establish and enforce all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards;

(c) Implement a comprehensive safety program in accordance with Applicable Law;

(d) Give all notices and comply with all Applicable Law relating to the safety of persons or property or their protection from damage, injury or loss;

(e) Operate and maintain all equipment in a manner consistent with the manufacturer's safety requirements;

(f) Provide for safe and orderly vehicular movements;

(g) Comply with Appendix 19 (Department of Transportation and Public Works Adjacent Construction Manual); and

(h) Develop and implement a written site-specific health and safety plan (the "**Health and Safety Plan**") that includes management commitment to maintaining a safe workplace, employee participation, hazard evaluation and controls, employee training and periodic inspections which shall:

(i) Designate an appropriately certified safety professional with a minimum of five years of construction safety experience who is to develop and sign the Health and Safety Plan including all safety rules at the Project Site;

(ii) Designate a qualified safety professional stationed full- time at the Project Site during on-site construction activities whose primary/only duty shall be the implementation of safety rules at the Project Site, the prevention of fires and accidents, monitoring compliance with the Health and Safety Plan, and the coordination of such activities as shall be necessary with the County and all Governmental Bodies having jurisdiction;

(iii) Require the Project Contractors and all Subcontractors to work and implement the Health and Safety Plan;

(iv) Comply with the Developer's on-site safety requirements and to designate a qualified safety professional whose duty shall be the implementation of safety rules at the Project Site and monitoring compliance of Project Contractor and Subcontractor employees with the Health and Safety Plan; and

(C) Department of Transportation and Public Works Adjacent Construction Manual. The Developer shall perform all activities provided for by this Project Agreement only as approved by the County and in accordance with Appendix 19 (Department of Transportation and Public Works Adjacent Construction Manual). The Developer acknowledges that Appendix 19 (Department of Transportation and Public Works Adjacent Construction Manual) contains minimum requirements and that the Developer shall be responsible for all costs associated with complying with those minimum requirements. The Developer further acknowledges the County may impose more stringent requirements as to construction of the Courthouse if the County reasonably determines that more stringent requirements are warranted to adequately protect the Metrorail and Metromover systems and its operation, provided that the County shall (a) impose such requirements at the earliest stage of the approval process for the Design Documents when the matter of concern is or should be apparent, and (b) cooperate and work in good faith with the Developer to mitigate any safety standards and requirements that would materially increase construction costs or materially delay construction through alternative practices and procedures that are mutually acceptable to the County and to the Developer to facilitate the construction of the Courthouse without such increase in costs or delays in construction wherever reasonably possible, provided that such alternative practices and procedures shall not jeopardize the safety of the Metrorail and Metromover systems or the users of the systems or of any employees, agents, licensees and permittees of the County.

SECTION 7.14. CONSTRUCTION MONITORING, OBSERVATIONS, TESTING, UNCOVERING, AND CORRECTION OF WORK.

(A) Observation and Design Review Program. During the progress of the Design-Build Work through Final Completion, the Developer shall at all times afford the County every reasonable opportunity for observing all Design-Build Work, and shall comply with the Design-Build Work review procedures set forth in Appendix 6 (Design-Build Work Review Procedures). The Developer shall use all reasonable efforts to provide County employees with safe access to the Design-Build Work. During any such observation, all representatives of the County shall comply with the Health and Safety Plan for the Design- Build Work applicable to areas visited and all reasonable instructions or directions made by the Design-Builder in this

respect, and shall not interfere with the Developer's performance of any Design-Build Work. The Developer shall, upon reasonable notice, cooperate with the County to arrange for tours of the Project Site at reasonable times during normal working hours during construction for interested judges and other Government Persons, provided that all such tours do not interfere with the progress of the Design-Build Work. The Developer shall provide the County reasonable advance notice of all scheduled inspections by governmental authorities to determine compliance of the construction with Applicable Laws.

(B) Developer Tests and Inspections. The Developer shall conduct all tests of the Design-Build Work (including shop tests) or inspections required by the Contract Standards. The Developer shall give the County reasonable advance notice (at least one Business Day) of tests or inspections prior to the conduct thereof; provided, however, that in no event shall the County's inability, failure or refusal to attend or be present at or during any such test or inspection delay the conduct of such test or inspection or the performance of the Design-Build Work. All analyses of test samples shall be conducted by persons appearing on lists of laboratories authorized to perform such tests by the County or federal agency having jurisdiction and shall be subject to the approval of the County, which approval shall not be unreasonably withheld. In addition to the foregoing, Commissioning Tests of the completed Project shall be conducted in accordance with Section 7.19 (Commissioning) and Appendix 7 (Commissioning).

(C) County Tests, Observations and Inspections. The County, its employees, agents, representatives and contractors (which may be selected in the County's discretion), specifically including the Design Criteria Professional, shall have the right, at all times but following at least one Business Day's prior notice, to review the Design Documents to confirm compliance of the Project with the Design and Construction Requirements and Applicable Law, and, at any reasonable time and with reasonable notice, to inspect the Project during construction, conduct such on-site observations and inspections, and such civil, structural, mechanical, electrical, chemical, or other tests as the County deems necessary or desirable to ascertain whether the Design-Build Work complies with this Project Agreement, including but not limited to, testing construction materials. The County's costs of any such test, observation or inspection shall be borne by the County, unless such test, observation or inspection reveals a material failure of the Design-Build Work to comply with this Project Agreement or Applicable Law, in which event the Developer shall pay all reasonable costs and expenses of such observation, inspection or test within 30 Business Days of receipt of an invoice from the County. In the event that any requested test, observation or inspection causes a delay in the construction schedule, the Scheduled Occupancy Readiness Date shall be adjusted to reflect the actual period of time needed for completion as directly caused by the requested testing, but only if such testing, observation or inspection does not reveal any material failure or non-compliance as set forth herein.

(D) Certificates and Reports. The Developer shall secure and deliver to the County promptly, at the Developer's sole cost and expense, all required certificates of inspection, test reports, work logs, certified payroll and approvals with respect to the Design-Build Work as and when required by the Contract Standards. The Developer shall provide to the County, immediately after the receipt thereof, copies of any notice of default, breach or non-compliance received by the Developer under or in connection with any Governmental Approval, Project Contract, or Subcontract pertaining to the Design-Build Period.

(E) Notice of Covering Design-Build Work. The Developer shall give the County reasonable advance notice of its upcoming schedule with respect to the covering and completion of any Design-Build Work, and shall update such notice, if necessary, within a reasonable time period before such covering and completion. The County shall give the Developer reasonable notice (a minimum of 48 hours) of any intended inspection or testing of such Design-Build Work in progress prior to its covering or completion, which notice shall be sufficient to afford the County a reasonable opportunity to conduct a full inspection of such Design-Build Work. At the

County's written request, the Developer shall take apart or uncover for inspection or testing any previously-covered or completed Design-Build Work; provided, however, that: (1) the County's right to make such requests shall be limited to circumstances where there is a reasonable basis for concern by the County as to whether the disputed Design-Build Work complies with the requirements of this Project Agreement; and (2) the cost of uncovering, taking apart, or replacing such Design-Build Work, along with the costs related to any delay in performing Design-Build Work caused by such actions, shall be borne as follows:

(a) By the Developer, if:

(i) such Design-Build Work was covered prior to any observation or test required by the Contract Standards or prior to any observation or test for which the County was not provided reasonable advance notice hereunder and did not have the appropriate observers observe the test; or

(ii) such observation or test reveals that the Design-Build Work does not comply with this Project Agreement; and

(b) By the County, promptly following receipt of an invoice therefor from the Developer, if such observation or test reveals that the Design- Build Work complies with this Project Agreement.

(F) Meetings and Design-Build Work Review. During the Design-Build Period, the Developer and the County shall conduct periodic meetings in accordance with Appendix 6 (Design-Build Work Review Procedures).

(G) Correction of Design-Build Work. Throughout the Design-Build Period, the Developer shall complete, repair, replace, restore, re-perform, rebuild and correct promptly any Design-Build Work which does not conform with the Contract Standards. The County may elect by Change Order, at the Developer's request, to accept non-conforming Design- Build Work and charge the Developer (through an adjustment to the Service Fee) an amount agreed upon by the parties by which the value of the Developer's services or Design-Build Work has been reduced. The obligations specified in this subsection establish only the Developer's specific obligation to correct the Design-Build Work and shall not be construed to establish any limitation with respect to any other obligations or liabilities of the Developer under this Project Agreement. This subsection is intended to supplement (and not to limit) the Developer's obligations under the Commissioning Tests, Occupancy Readiness Conditions and any other provisions of this Project Agreement or Applicable Law.

SECTION 7.15. COUNTY FURNISHED EQUIPMENT.

(A) Developer Responsibilities. Excluding County Furnished Equipment, the Developer shall procure, furnish, pay for and install all general facility/building system requirements for the Project set forth in Appendix 4 (Design and Construction Standards) and the appendices thereto as a responsibility of the Developer and otherwise required by the Contract Standards which shall include, but not be limited to, all of the building systems infrastructure (wiring, conduits, etc.) required for the proper installation and functioning of the County Furnished Equipment.

(B) Selection, Payment, and Installation of County Furnished Equipment. The County shall identify, select, purchase and install in its discretion all County Furnished Equipment the County requires for the Project as more specifically set forth in Appendix 4 (Design and Construction Standards) and the appendices thereto as a responsibility of the County or any other Government Entity. The County shall determine the locations at which the County Furnished Equipment is to be installed. The County shall advise the Developer, in

connection with the establishment and periodic revision of the Project Schedule, as to the nature and quantity of the County Furnished Equipment the County plans to supply, and the expected dates of delivery and installation. The parties shall agree on a schedule for the delivery and installation of the County Furnished Equipment that is consistent with and will not cause a material delay in the Project Schedule; provided, however, that the Developer shall provide the County and its contractors, consultants, and installers with access to the Courthouse in accordance with the schedule specified in subsection 7.15(C) herein to allow the County, its contractors, consultants, and installers to configure, deploy, and install County Furnished Equipment. The County shall be responsible for the delivery and installation of any County Furnished Equipment, and shall not unreasonably interfere with the Design-Build Work in connection therewith. The Developer shall provide reasonable assistance to the County in all coordination, scheduling, delivery and installation activities related to the County Furnished Equipment. At a minimum, during the required access periods specified in subsection 7.15(C) herein, the Developer shall provide: stable, steady, and continuous air-conditioning, power, and lighting; the presence of the Developer's low voltage installation contractor while the County is working; complete and accurate set of Design Documents and as-built diagrams; a staging area with secure locks for delivery; finished information technology-related rooms and spaces that are free from dust and conducive for the successful configuration, deployment, and commissioning of County Furnished Equipment in the Courthouse; and coordinated daily trash pick-up by the Developer.

(C) Courthouse Access Schedule. The Developer shall provide access to the Courthouse, including the loading dock, for the County, its contractors, consultants, and installers for the installation of County Furnished Equipment as described herein:

(1) On or before six months prior to the Scheduled Occupancy Readiness Date, 20% of the floor area of the Courthouse, to include Functional Space Nos. 29.57 (Network Operations Center), 29.61 (Server Room), and a proportionate number of 29.62 (Telecom/Low Voltage Rooms), shall be available for County access;

(2) On or before five months prior to the Scheduled Occupancy Readiness Date, 40% of the floor area of the Courthouse, to include the areas identified in subsection 7.15(C)(1) above, shall be available for County access;

(3) On or before four months prior to the Scheduled Occupancy Readiness Date, 60% of the floor area of the Courthouse, to include the areas identified in subsection 7.15(C)(2) above, shall be available for County access;

(4) On or before three months prior to the Scheduled Occupancy Readiness Date, 80% of the floor area of the Courthouse, to include those areas identified in subsection 7.15(C)(3) above, shall be available for County access;

(5) On or before two months prior to the Scheduled Occupancy Readiness Date, 100% of the floor area of the Courthouse, to include those areas identified in subsection 7.15(C)(4) above, shall be available for County access.

(D) Obligations As To County Furnished Equipment. County Furnished Equipment shall be deemed to be part of the Project only to the extent of the Developer's obligations with respect thereto as provided in this subsection. The County Furnished Equipment shall not be deemed to be part of the Project, and the County shall be responsible for the maintenance, repair and replacement thereof. The Developer shall be entitled to claim the occurrence of a Compensation Event during the Facility Management Period to the extent that the County does not maintain, repair, remove or replace the County Furnished Equipment in accordance with Good Facility Management Practice and such failure has an adverse effect on the Developer's performance of, or the Developer's cost of providing, the Contract Services.

SECTION 7.16. MOVEABLE FURNITURE, FIXTURES AND EQUIPMENT AND SECURITY SYSTEMS EQUIPMENT.

(A) Base Furniture, Fixtures and Equipment. Other than Moveable Furniture, Fixtures and Equipment and other than Security Systems Equipment that are identified as a County responsibility in Appendix 4 (Design and Construction Standards), the Developer shall furnish, pay for and install all furniture, fixtures and equipment required for the Project under the Contract Standards, to include the provision of all necessary infrastructure; furniture, fixtures, and equipment; décor; and supplies required for the proper furnishing and operation of the Restaurant.

(B) Selection and Installation of Moveable Furniture, Fixtures and Equipment and Security Systems Equipment. At least one (1) year prior to the Scheduled Occupancy Readiness Date, the County shall identify and select, in its discretion and in consultation with the Developer, all furniture, fixtures and equipment the County requires for the Project (the "**Moveable Furniture, Fixtures and Equipment**") that are not described in the Design and Construction Requirements as furniture, fixtures and equipment that the Developer is required to furnish, pay for and install as part of the Project. A preliminary list of expected Moveable Furniture, Fixtures and Equipment is set forth in Appendix 4 (Design and Construction Standards). The County shall identify and select, in its discretion and in consultation with the Developer, the SS Equipment. The Developer shall be responsible for the procurement of the Moveable Furniture, Fixtures and Equipment and the SS Equipment identified and selected by the County and the Developer shall undertake such procurement processes in accordance with any requirements imposed by Applicable Law, including but not limited to, the inclusion of Small Business Enterprise Program measures. Developer shall be responsible for accepting delivery of all Moveable Furniture Fixtures and Equipment and the SS Equipment and for the placement and installation thereof within the Courthouse. The County shall determine the locations at which the Moveable Furniture, Fixtures and Equipment and the SS Equipment is to be installed. The parties shall agree on a schedule for the delivery and installation of the Moveable Furniture, Fixtures and Equipment and of the SS Equipment that is consistent with and will not cause a material delay in the Project Schedule.

(C) Payment and Reimbursement for Moveable Furniture, Fixtures and Equipment and SS Equipment. The Developer shall seek competitive bids or price quotations for the Moveable Furniture, Fixtures and Equipment and the SS Equipment (to include delivery, installation, and assembly) identified and selected by the County but shall not directly place any orders or make payment for the purchase of the Moveable Furniture, Fixtures and Equipment or the SS Equipment. The County shall be responsible for issuance of all purchase orders and for making direct payment to third party vendors and suppliers for the purchase, delivery, installation, and assembly of Moveable Furniture Fixtures and Equipment and SS Equipment. The Developer, in conjunction with the County, shall arrange for delivery and installation of the Moveable Furniture, Fixtures and Equipment and of the SS Equipment in a timely and proper manner. Moveable Furniture, Fixtures and Equipment and SS Equipment shall be deemed to be part of the Project only to the extent of the Developer's obligations with respect thereto as provided expressly in this Project Agreement. The Developer and the County shall cooperate and shall make any and all necessary amendments to this Project Agreement in order to ensure that the County's purchase of the Moveable Furniture, Fixtures and Equipment and the SS Equipment is completed on a tax-exempt basis.

(D) Obligations As To SS Equipment. SS Equipment shall be deemed to be part of the Project only to the extent of the Developer's obligations with respect thereto as provided in this subsection. The SS Equipment shall not be deemed to be part of the Project, and the County shall be responsible for the maintenance, repair and replacement thereof. The Developer shall be entitled to claim the occurrence of a Compensation Event during the Facility

Management Period to the extent that the County does not maintain, remove, repair or replace the SS Equipment in accordance with Good Facility Management Practice and such failure has a material and adverse effect on the Developer's performance of, or the Developer's cost of providing, the Contract Services.

(E) Obligations As to Moveable Furniture, Fixtures and Equipment. Moveable Furniture, Fixtures and Equipment shall be deemed to be part of the Project only to the extent required for the Developer to fulfill its obligations with respect thereto as provided in this subsection. Moveable, Furniture, Fixtures and Equipment shall be deemed to be part of the Project for the purposes of Developer's obligations during the Facility Management Period for the upkeep and cleaning of the Moveable Furniture, Fixtures and Equipment as required in the Facility Management Requirements. However, the County shall be responsible for the repair and maintenance of the Moveable Furniture, Fixtures and Equipment during the Facility Management Period. The Developer shall be entitled to claim the occurrence of a Compensation Event during the Facility Management Period to the extent that the County does not remove, repair or replace the Moveable Furniture, Fixture and Equipment in accordance with Good Facility Management Practice and such failure has a material and adverse effect on the Developer's performance of, or the Developer's cost of providing, the Contract Services.

SECTION 7.17. WARRANTIES OF DESIGN-BUILD WORK.

The Developer shall, for the protection of the County, obtain from the Project Contractors, all Subcontractors, vendors, suppliers and other persons from which the Developer procures structures, improvements, fixtures, machinery, equipment and materials to be incorporated in the Project such warranties and guarantees as are normally provided with respect thereto or, to the extent superior in scope or length, as are specifically required in Appendix 4 (Design and Construction Standards) and the Contract Standards, each of which shall be assigned to the Facility Manager to the full extent of the terms thereof and subject to the security interest of the Senior Lenders under the Senior Financing Agreements. No such warranty shall relieve the Developer of any obligation hereunder, and no failure of any warranted or guaranteed structures, improvements, fixtures, machinery, equipment or material shall be the cause for any increase in the Service Fee or excuse any non-performance of the Design-Build Work. The Developer shall enforce such warranties and guarantees as provided in Section 9.11 (Enforcement of Project Warranties).

SECTION 7.18. SUBSTANTIAL COMPLETION.

(A) Conditions to Substantial Completion. "**Substantial Completion**" shall occur only when all of the following conditions have been satisfied, as determined by the County Representative and, in the case of a dispute, by the Independent Building Expert, except to the extent that any or all of such conditions have been waived by the County:

(1) Physical Completion. Construction of the Project is physically complete and all Design-Build Work pertaining to the Project, except the Commissioning Tests and the items on the Punch List, is complete and in all respects is in compliance with this Project Agreement;

(2) Project Equipment, SS Equipment, and Movable Furniture, Fixtures and Equipment. The Project Equipment, the SS Equipment, and the Moveable Furniture, Fixtures and Equipment are installed such that the Project Equipment, the SS Equipment and the Moveable Furniture, Fixtures and Equipment is ready for its intended use, in good and working order, and free from any defects, except for Punch List Items;

(3) Certificate of Occupancy. Final certificate of occupancy is issued by the Governmental Body having jurisdiction or, in the event of a temporary certificate of

occupancy, it will be in the County's sole and absolute discretion as to whether the temporary certificate of occupancy contains acceptable conditions so as to render its issuance sufficient to satisfy this condition towards substantial completion.

(4) Safety and Security Systems. The Project's security and safety systems are functional in accordance with the requirements set forth in this Project Agreement; and

(5) Utilities. All Utilities specified or required under this Project Agreement to be arranged for or by the Developer are connected and functioning properly.

(B) Notice of Substantial Completion. The Developer shall give the County Representative and the Independent Building Expert at least 30 days prior written notice of the expected date of Substantial Completion. The County shall promptly (but within 10 Business Days) coordinate with the Developer to arrange for inspection and certification for the Project's Substantial Completion. The County will issue a certificate of either rejection or acceptance of the Developer's Substantial Completion certification within 10 days of completing the County's inspection of the Project, but no later than 10 days following the Developer's expected date for Substantial Completion.

SECTION 7.19. COMMISSIONING.

(A) Commissioning Generally. The Developer shall comply with the Commissioning requirements of Appendix 7 (Commissioning) and shall, as provided therein:

(1) Prepare a detailed Commissioning Plan for the conduct of the Commissioning Tests, meeting the minimum requirements set forth therein;

(2) Include criteria for achieving LEED Silver Certification for the Project;

(3) Conduct Commissioning activities during design and construction;

(4) Perform Commissioning Tests necessary to demonstrate occupancy

(5) Conduct Commissioning Tests during the Commissioning Fine Tuning Period.

(B) Commissioning Tests Report. Promptly upon its completion of the Commissioning Tests, the Developer shall deliver to the County Representative a copy of the Commissioning Tests report prepared by or on behalf of the Developer pursuant to Appendix 7 (Commissioning).

SECTION 7.20. FINAL COMPLETION.

(A) Requirements. "**Final Completion**" shall occur when all of the following conditions have been satisfied:

(1) Occupancy Readiness. The Developer has achieved Occupancy Readiness in accordance with Article 8 (Occupancy Readiness);

(2) Design-Build Work Completed. All Design-Build Work (including all items on the Punch List and all clean up and removal of construction materials and demolition debris) is complete and in all respects is in compliance with this Project Agreement and a Certificate of Occupancy has been issued by the appropriate Governmental Body;

(3) Deliverable Material. The Developer shall have delivered to the County all Deliverable Material required by subsection 7.1(H) (Deliverable Material) needed to achieve Final Completion;

(4) Equipment Warranties and Manuals. The Developer shall be in possession of, and shall have delivered to the County, copies of the warranties of equipment and fixtures constituting a part of the Project required to be obtained under Section 7.17 (Warranties of Design-Build Work), together with copies of all related operating manuals supplied by the equipment supplier;

(5) Spare Parts In Storage. All spare parts required by the applicable Design and Construction Requirements have been delivered and are in storage at the Project;

(6) Record Drawings. The Developer has delivered to the County a final and complete red-lined set of construction record drawings;

(7) Equipment Manufacturers' Certificate. The Developer has delivered to the County written certification from the equipment manufacturers (including manufacturers of information technology systems and instrumentation and controls) that all major items of machinery and equipment included in the Project have been properly installed and tested in accordance with the manufacturers' recommendations and requirements; and

(8) Claims Statement. The Developer has delivered to the County a consent of surety identifying all outstanding claims known to it of every kind whatsoever of the Developer connected with, or arising out of, the Design-Build Work, and arising out of or based on events prior to the date when the Developer gives such statement to the County.

(B) Obligation to Achieve Final Completion; Punch List Items. The Developer shall achieve Final Completion within 120 days after the Occupancy Readiness Date, and shall complete and rectify all Punch List Items as provided in Section 8.4 (Punch List Items). The Developer shall give the County Representative and the Independent Building Expert at least 30 days prior written notice of the expected date of Final Completion. The County shall promptly (but within 10 Business Days) coordinate with the Developer to arrange for inspection and certification for the Project's Final Completion. The County will issue a certificate of either rejection or acceptance of the Developer's Final Completion certification within 10 days of completing the County's inspection of the Project, but no later than 10 days following the Developer's expected date for Final Completion.

SECTION 7.21. LEED SILVER CERTIFICATION.

The Developer shall obtain LEED Silver Certification of the Project in accordance with Appendix 4 (Design and Construction Standards) and shall further, as follows:

(1) Registration. Within 10 Business Days of the Effective Date, the Developer shall register the Project with the United States Green Building Council.

(2) Required Rating. The Developer shall achieve all necessary prerequisites, record keeping, standards, credits and points necessary to achieve at least a LEED Silver Certification for the Project. The Developer shall formally apply for LEED Silver Certification of the Project within 540 days following the Occupancy Readiness Date. Thereafter, the Developer shall pursue the application process with due diligence to completion, and obtain LEED Silver Certification for the Project.

(3) County LEED Requirements. The Developer shall comply with all requirements of the County's Sustainable Buildings Program, as set forth in Sections 9-71 through 9-75 of the County Code and Implementing Order 8-8.

SECTION 7.22. PAYMENT OBLIGATIONS OF THE COUNTY DURING THE DESIGN-BUILD PERIOD.

(A) County Payment Obligations. The County shall pay the Developer pursuant to Section 16.12 (Negotiated Lump Sum Pricing of Additional Work) or Section 16.13 (Cost Substantiation of Additional Work), during the Design-Build Period, at the times provided for herein and from funds provided by the County in accordance with subsection (B) of this Section, the following:

(1) the amounts specified in Section 7.11 (Design and Construction Requirement Changes Made Due to Compensation Events);

(2) the amounts specified in Section 7.12 (Design and Construction Requirement Changes Made at County Direction);

(3) the amounts specified in subsection 7.14(C) (County Tests, Observations and Inspections) and subsection 7.14(E) (Notice of Covering Design-Build Work);

(4) the amounts specified in subsection 15.1(D) (Compensation Relief for Compensation Events Occurring Prior to the Occupancy Readiness Date); and

(5) the amounts specified in subsection 15.2(A) (Changes Prior to the Occupancy Readiness Date), relating to a Discriminatory Change in Law or Specified Change in Tax Law.

(B) Conditions to Certain Developer Performance Obligations During the Design-Build Period. The Developer shall have no obligation to perform any of the obligations referred to in subsection (A) of this Section, that pertain to Design-Build Work, unless and until (1) the parties have agreed upon a scope, price and schedule for the performance of such obligations in accordance with all applicable provisions of this Project Agreement, and (2) the County has provided written assurances acceptable to the Developer, acting reasonably, that funds necessary to pay the cost of performing such obligations will be available for such purposes in the amounts and on the schedule agreed upon by the parties. The schedule changes may include changes to the Scheduled Occupancy Readiness Date and the Longstop Date, and the price changes may reflect delay costs. Any such changes shall be reflected in a Change Order.

(C) Limitations. Except as provided or referred to in this Section, the County shall have no payment obligations to the Developer during the Design-Build Period.

ARTICLE 8

OCCUPANCY READINESS

SECTION 8.1. OCCUPANCY READINESS CONDITIONS.

(A) Conditions. The following conditions shall constitute the "**Occupancy Readiness Conditions**", each of which shall be and remain satisfied in all material respects by the Developer in order to achieve Occupancy Readiness and establish the Occupancy Readiness Date:

(1) Substantial Completion. Substantial Completion has occurred;

(2) Ready for Use. The Project in its entirety is "ready for use" (defined below) for the purposes of normal courtroom, court office and other related County operations, except for Punch List Items;

(3) Architect Letter. The Architect has issued a letter of confirmation to the County Representative, with a copy to the Independent Building Expert, indicating that all buildings and systems at the Project are ready for use, except for Punch List Items, and to the best of its knowledge, have been designed and built in accordance with this Project Agreement;

(4) No Encumbrances. There are no Encumbrances registered or recorded on the Project Site or any part of the Project other than Permitted Encumbrances;

(5) Successful Commissioning. The Developer has completed Commissioning the Project in accordance with the Commissioning Plan, and the Commissioning Tests have been successfully performed and satisfied (subject to such Commissioning which is identified in the Commissioning Plan to be conducted after the Occupancy Readiness Date);

(6) Required Insurance. The Developer has obtained and submitted to the County certificates of insurance that meet all Required Insurance that are the Developer's responsibility as specified in Appendix 10 (Insurance Requirements);

(7) Life Cycle Schedule. The Developer has delivered to the County a Life Cycle Schedule as required by Appendix 8 (Facility Management Requirements); and

(8) Start-up Plan. The Developer has delivered to the County a Start-up Plan as required by Appendix 8 (Facility Management Requirements).

(B) "Ready for Use". For purposes of subsection (A) of this Section, in determining whether the Project, Moveable Furniture, Fixtures and Equipment or Project Equipment are "ready for use," the following factors shall be taken into account:

(1) compliance with the requirements of this Project Agreement;

(2) the ability of public and Facility Users to access the Project, and the risk of injury to members of the public and all Facility Users;

(3) the security requirements set forth in Appendix 4 (Design and Construction Standards) and Appendix 8 (Facility Management Requirements) of this Project Agreement are operational;

(4) the absence of any apparent hazard or nuisance;

(5) the ability to conduct court operations in a reasonably quiet and stable environment free from dust, chemical, smoke and other health and safety concerns;

(6) the proper installation of all Project Equipment, County Furnished Equipment and Moveable Furniture, Fixtures and Equipment, and the functionality of all Project Equipment; and

(7) such other considerations as a reasonable person of ordinary prudence would take into account if asked to decide whether the Project is suitable for the commencement of court proceedings and ancillary government functions performed at

the Courthouse, all so that, subject to the Punch List Items, the Project in its entirety is ready to use for the purposes of normal courtroom, court office, the Clerk of Courts, and other related tenants. This factor shall not be construed to impose additional obligations on the Developer beyond the Contract Standards.

SECTION 8.2. INDEPENDENT BUILDING EXPERT.

(A) Engagement of Independent Building Expert. At the option of either the County or the Developer, but in no event earlier than 90 days prior to the date on which the Developer anticipates the Project will be in a condition necessary to satisfy the Occupancy Readiness Conditions, the County and the Developer shall engage a person or an entity that possesses skills in design review (including architectural review, structural peer review, and mechanical, electrical and plumbing) for compliance with design requirements and technical specifications similar to the Design and Construction Requirements; institutional building construction involving complex structural systems similar to the Courthouse; construction cost consulting; construction claims adjusting and structural retrofit construction (**"Independent Building Expert"**) in order to resolve any disagreements between the County and Developer as to whether the Developer has satisfied the Occupancy Readiness Conditions. Such skills of the Independent Building Expert may be acquired through a joint venture, association or, with the approval of the County and the Developer, a subcontractor. The Independent Building Expert is not, and will not purport to be, a partner, joint venture or agent of either the County or the Developer. Upon notice by either the County or the Developer, as applicable, that the other party desires the selection and retention of an Independent Building Expert, both the County and the Developer shall have the right to present in writing, within 10 days of the notice of a party's election to retain an Independent Building Expert, up to 3 candidates for consideration by the parties. In proposing, and ultimately selecting, the Independent Building Expert, the Developer and the County shall consider the duties and obligations of the Independent Building Expert as set forth in subsection 8.2(B) below and its ability to fulfill them. The written notice of the candidates for consideration shall include each candidate's qualifications to act as Independent Building Expert and their proposed rates or fees to provide the requested services. The County and the Developer shall cooperate with one another in order to appoint the Independent Building Expert as soon as reasonably practicable but in no event later than 10 days' after the presentation of candidates. In the event that the County and the Developer are unable to agree within such time period to the selection of an Independent Building Expert, the matter may be handled by the Dispute Resolution Procedures under Article 18 (Dispute Resolution).

(B) Duties and Obligations of Independent Building Expert.

(1) The Independent Building Expert shall act impartially and independently of the County and the Developer in the performance of its duties as contemplated in this Project Agreement and shall use its best skill and judgment in providing the services and making any certifications related to the Occupancy Readiness Conditions. Nothing in this Project Agreement shall be interpreted as giving the Independent Building Expert any responsibility or authority for any aspect of the Design-Build Work or for satisfying the Occupancy Readiness Conditions, or as relieving the Developer of its responsibility for the Design- Build Work or for meeting the Occupancy Readiness Conditions as set out in this Project Agreement.

(2) All determinations of fact and the drawing of conclusion based upon any facts so determined shall be made in the exercise of the Independent Building Expert's independent professional judgment. Although the Independent Building Expert should take account of any opinions or representations made by the County and the Developer, and their respective professional advisors and consultants, the Independent Building Expert shall not be bound to comply with any opinions, representations , requests or directions made by either the County, the Developer, or their respective professional

advisors and consultants in connection with any matter on which the Independent Building Expert is required to exercise its professional judgment. Notwithstanding the foregoing, the Independent Building Expert shall accept all agreed statements of fact made jointly by the County and the Developer.

(3) The Independent Building Expert shall have no direct or indirect material interest in or connection with any person, trust, partnership,joint venture or other entity that is not at arm's length to the County or the Developer. The Independent Building Expert shall have no direct or indirect material interest in, and will not at any time have a direct or indirect interest in, the certification of Occupancy Readiness with respect to the Project except with respect to the performance of its services and the payment of its fee. The Independent Building Expert shall be required to agree that, during the term of its agreement with the County and Developer relating to the Project, if any conflict or risk of conflict of interest arises, or there is reasonable apprehension that a conflict of interest has arisen or may arise, the Independent Building Expert shall immediately notify the County and the Developer in writing of that conflict or risk of conflict and shall take such steps as may be required by the County and the Developer to avoid, or (where it is not possible to avoid that conflict) mitigate that conflict or risk to the greatest extent possible, or (where it is not possible to avoid that conflict, and the County and the Developer jointly request) resign.

(4) The Independent Building Expert shall have no authority to give any directions to the County or the Developer, or either of their officers, employees, contractors, consultants or agents, and shall have no authority to waive or alter any terms of the Project Agreement, nor to discharge or release either the County or the Developer from any of its obligations under the Project Agreement.

(5) The Independent Building Expert shall be required to act in accordance with the joint direction of the County and the Developer, provided that the directions are not inconsistent with the other terms of this Project Agreement and do not vary or prejudice the Independent Building Expert's exercise of its professional judgment under this Project Agreement. The Independent Building Expert shall be required to provide copies to the County and the Developer of all reports, communications, certificates and other documentation that it provides to either the County or the Developer.

(C) Actions by the County and Developer Regarding the Independent Building Expert.

(1) No Interference. Neither the County nor the Developer shall in any way obstruct or otherwise impede or interfere with the performance of the duties and obligations of the Independent Building Expert. All instructions given to the Independent Building Expert by the County and the Developer shall be in writing.

(2) Joint Approval Required. The County and the Developer shall not, without the other's prior written approval, which approval shall not be unreasonably withheld or delayed, terminate, repudiate or discharge the Independent Building Expert for any reason, or enter into a separate agreement with the Independent Building Expert in connection with the Project.

(3) Cooperation and Costs. The County and the Developer shall cooperate with one another generally in relation to all matters within the scope of the Independent Building Expert. All instructions and representations issued or made by either the County or the Developer shall be simultaneously copied to the other and both the County and the Developer shall be entitled to attend all inspections undertaken by, or meetings involving, the Independent Building Expert. All costs of the Independent Building Expert shall be borne equally by the Developer and the County.

(D) Additional Services. The County and the Developer may at any time agree in writing to engage the services of the Independent Building Expert to resolve other disagreements of a technical nature between the County and the Developer that are not directly related to the satisfaction of the Occupancy Readiness Conditions. If the Developer and the County agree to use the Independent Building Expert to resolve technical disputes under this Project Agreement, the agreement with the Independent Building Expert shall be amended to include such additional scope of work.

SECTION 8.3. OCCUPANCY READINESS CERTIFICATE.

(A) Generally. The Developer shall give the County and, if retained, the Independent Building Expert, not less than 60 days' written notice of the date on which it anticipates the Project will be in a condition necessary to satisfy the Occupancy Readiness Conditions and the dates on which it is intended that the County Representative carries out the inspection of the Project. After the Developer provides the 60 days' advance notice, but in no event earlier than 30 days following the 60 days' notice, the Developer shall give the County an application for an Occupancy Readiness Certificate (the "Occupancy Readiness Notice") setting forth all material information required by Section 8.1 above. Upon the delivery of the Occupancy Readiness Notice by the Developer, the County Representative shall inspect the Project as soon as possible but no later than ten Business Days following such a request, and determine whether to issue the Occupancy Readiness Certificate in accordance with this Project Agreement.

(B) Certificate Issuance. In determining whether there is an entitlement for the issuance of an Occupancy Readiness Certificate, the County Representative shall witness such tests and investigations and make such inquiries as are reasonably necessary or advisable to the question as to whether the Occupancy Readiness Conditions have been satisfied. Provided, however, that the obligation to witness tests and investigations and make inquiries shall not apply where it is clear that the Occupancy Readiness Conditions have not been met. If the County Representative determines that the Occupancy Readiness Conditions have been satisfied, the County Representative shall deliver, within five Business Days from the inspection referred to in subsection (A), a duplicate signed original Occupancy Readiness Certificate to the Developer.

(C) Deficiencies. If, upon inspection and review, the County Representative determines that any of the Occupancy Readiness Conditions have not been satisfied, the County shall identify any deficiencies in a written report delivered as soon as possible but no later than five (5) Business Days following the date of the inspection performed under subsection (A) and may also engage the services of the Independent Building Expert to resolve any disagreements at this time, or any time, that exist between the County and Developer regarding the satisfaction of the Occupancy Readiness Conditions. The Developer shall thereupon act with the highest level of diligence and expediency to rectify all such matters or, if the Developer disagrees with the County, may request that the Independent Building Expert review the County's written deficiencies' report, inspect the Project, and take any other actions within the scope of the Independent Building Expert's authority to resolve the disagreement between the County and the Developer regarding to the Occupancy Readiness Conditions. As soon as the Developer has completed all required rectification actions, the Developer may give a new Occupancy Readiness Notice. Upon the Developer's notification of such rectification to the County and issuance of a new Occupancy Readiness Notice, the County Representative shall confirm such rectification and issue a duplicate signed original Occupancy Readiness Certificate to the Developer as soon as possible but no later than three (3) Business Days following the date the County Representative determines that such rectification has been completed or shall issue a revised report identifying all deficiencies that need to be corrected. This process shall continue until the Occupancy Readiness Certificate has been issued.

(D) Effect of Issuance. The Occupancy Readiness Certificate shall establish the Occupancy Readiness Date and be final and binding on the County and the Developer with respect to the occurrence of the Occupancy Readiness Date.

(E) Matters Not Affected By Certificate Issuance. Neither the issuance of the Occupancy Readiness Certificate, nor any use by the County of any part of the Project or the commencement of any court activities under the terms of this Project Agreement, shall:

(1) Limit the obligations of the Developer under this Project Agreement, including its obligation to complete the Design-Build Work in accordance with this Project Agreement and to remedy any defects, deficiencies or items of outstanding Design-Build Work existing or discovered prior to or after the date of the Occupancy Readiness Certificate or the date of the Punch List;

(2) Be construed as an approval by the County of the Project or the manner in which the Design-Build Work has been carried out by the Developer; or

(3) Have any effect other than as specified in subsection (D) of this Section.

The County shall retain all of its rights with respect to any matter not affected by the issuance of the Occupancy Readiness Certificate.

SECTION 8.4. PUNCH LIST ITEMS.

(A) Punch List. The County Representative, in conjunction with the Developer, shall, prior to inspection of the Project to determine whether the Project has met the Occupancy Readiness Conditions, prepare a list of all Punch List Items (the "**Punch List**") identified at that time and an estimate of the cost and the time for rectifying such Punch List Items. The County shall not withhold the Occupancy Readiness Certificate by reason solely that there are Punch List Items, understanding, however that the existence and scope of Punch List items may impede the satisfaction of the Occupancy Readiness Conditions. The Punch List shall be a statement of repairs, corrections and adjustments to the Design-Build Work, and incomplete aspects of the Design-Build Work, which, in the County Representative's and Developer's reasonable estimations:

(1) The Developer can complete before the Final Completion deadline provided in Section 7.20 (Final Completion), and with minimal interference to the occupancy and use of the Project; and

(2) Would represent, to perform or complete, a total cost of not more than 1% of the portion of the price payable under the Design-Build Contract.

Either the County or the Developer may engage the services of the Independent Building Expert to resolve any disagreements regarding the items that are to be included in the Punch List.

(B) Minimal Impact on Project Operations. The Punch List shall contain the schedule for the completion and rectification of the Punch List Items. In determining the relevant time for rectifying Punch List Items, the Developer shall schedule the completion and rectification of Punch List Items so as to minimize, to the greatest extent reasonably possible, any impairment of Facility Users' use and enjoyment of the Project, disruption of the Facility Management Services and the court activities.

(C) Waiver of Occupancy Readiness Requirements. The County may, in its discretion, waive (in writing) any Occupancy Readiness Condition, and the failure to meet any such requirement shall constitute a Punch List Item.

(D) Rectification of Punch List Items. The Developer shall complete and rectify all Punch List Items within 120 days of the Occupancy Readiness Date. The Developer acknowledges and agrees that the completion and rectification of Punch List Items may require work outside of normal working hours in order to accommodate the efficient operation of the Project and conduct of County Activities.

(E) Failure to Rectify Punch List Items. In the event that the Developer fails to complete and rectify the Punch List Items specified in the Punch List within the time period specified pursuant to subsection (D) of this Section:

(1) the County may withhold from the Service Fee a holdback amount that is 200% of the amount estimated by the County Representative for the County to complete and rectify Punch List Items (to the extent then outstanding); and

(2) the County may engage others to perform the work necessary to complete and rectify the Punch List Items, at the risk and cost of the Developer, and the County may deduct such cost from the holdback amount set forth in subsection (E)(1) of this Section.

Upon completion and rectification of all of the Punch List Items pursuant to this subsection, the County shall release to the Developer the then remaining amount of the holdback. If the cost of such completion and rectification exceeds the amount of such holdback, then the Developer shall reimburse the County for all such excess cost.

SECTION 8.5. SCHEDULED OCCUPANCY READINESS DATE AND LONGSTOP DATE.

(A) Scheduled Occupancy Readiness Date Defined. The Scheduled Occupancy Readiness Date is the date that is 1,460 days following the Financial Close Date, as such date may be extended as provided in subsection (C) of this Section.

(B) Longstop Date Defined. The Longstop Date is the date that is 365 days following the Scheduled Occupancy Readiness Date, as such date may be extended as provided in subsection (C) of this Section.

(C) Extension for Supervening Events. If a Supervening Event occurs between the Financial Close Date and the Scheduled Occupancy Readiness Date, the Scheduled Occupancy Readiness Date and the Longstop Date shall be extended for such time as is reasonable in the circumstances to take account of the effect of the delay on any critical path matter in the Project Schedule caused by the Supervening Event.

SECTION 8.6. FAILURE TO ACHIEVE OCCUPANCY READINESS BY THE SCHEDULED OCCUPANCY READINESS DATE.

(A) Loss of Service Fee Payments. The obligation of the County to pay the Service Fee shall commence on the later of (i) the Occupancy Readiness Date or (ii) the Scheduled Occupancy Readiness Date, as provided in Section 16.1 (Service Fee Generally). The Developer acknowledges, accordingly, that any delay in achieving Occupancy Readiness beyond the Scheduled Occupancy Readiness Date will result in the loss of Service Fee payments to which the Developer otherwise would have been entitled during the period of delay.

(B) Incremental Move-In Costs. The Developer shall keep the County regularly apprised as to the date on which the Developer reasonably expects the Occupancy Readiness Date to occur. Not later than 60 days prior to the Scheduled Occupancy Readiness Date, the Developer shall notify the County in writing as to the date on which the Occupancy Readiness

Date is definitively expected to occur. The County may rely on such notice in planning its move-in activities. If the proposed Occupancy Readiness Date is earlier than the Scheduled Occupancy Readiness Date, the County shall notify the Developer within 30 days as to whether it intends to take occupancy on such proposed Occupancy Readiness Date. If the Developer fails to achieve Occupancy Readiness by the proposed Occupancy Readiness Date (as such proposed Occupancy Readiness Date may be extended on account of Supervening Events) and the County incurs additional incremental direct, arm's length out of pocket costs as a result of reliance on the proposed Occupancy Readiness Date (such costs to be reasonably incurred and evidenced to the Developer through reasonable substantiation of costs related to the move of court personnel and equipment into the Courthouse), the Developer shall pay such costs to the County. If the proposed Occupancy Readiness Date is earlier than the Scheduled Occupancy Readiness Date and the County does not notify the Developer that it intends to take occupancy on such proposed Occupancy Readiness Date, then the Developer shall not incur any liability under this Section unless and until the actual Occupancy Readiness Date occurs after the Scheduled Occupancy Readiness Date. Notwithstanding anything contained in this Project Agreement, the liability of the Developer under this subsection shall not exceed $3,400per day.

SECTION 8.7. FAILURE TO ACHIEVE OCCUPANCY READINESS BY THE LONGSTOP DATE.

In the event the Developer fails to satisfy the Occupancy Readiness Conditions by the Longstop Date, a Developer Event of Default hereunder shall be deemed to have occurred and the County may pursue all remedies available under Article 19 (Remedies of the Parties and County Step-In Rights) and Article 22 (Termination) in accordance with the terms thereof.

SECTION 8.8. COUNTY RIGHT OF OCCUPANCY.

(A) Commencement of Use and Occupancy. The right of the County to occupy and use the Project under this Project Agreement shall commence on the Occupancy Readiness Date, except as provided in subsection (B) of this Section.

(B) Early Occupancy. In the event the Developer determines during the Design-Build Period that the Occupancy Readiness Date may occur prior to the Scheduled Occupancy Readiness Date and that it wishes to offer early occupancy of the Project, it shall so advise the County. The County shall be under no obligation to take early occupancy of the Project or commence payment of the Service Fee prior to the Scheduled Occupancy Readiness Date, but may do so in its discretion under terms and conditions negotiated by the parties.

ARTICLE 9

OPERATION AND MAINTENANCE

SECTION 9.1. DEVELOPER OBLIGATIONS GENERALLY.

(A) Responsibility. Commencing on the Occupancy Readiness Date, the Developer shall operate, maintain, repair, and replace the Project on a 24-hour per day, 7-day per week basis during the Term in accordance with the Facility Management Requirements and the other Contract Standards.

(B) Scope. The Developer shall furnish all labor, materials, equipment, supplies, tools, storage, transportation, insurance, sales, delivery, accounting, record-keeping and other things and kinds of services whatsoever necessary for the full performance of the Developer's operation, maintenance, repair, replacement, management, obtaining and maintaining Governmental Approvals and related obligations under this Project Agreement.

(C) Maintenance of County Furnished Equipment, SS Equipment and Moveable Furniture, Fixtures and Equipment. The Facility Management Services do not include the obligation to provide any maintenance, repair or replacement of County Furnished Equipment or of SS Equipment, the costs and responsibility for which shall be borne by the County.

(D) Special Events. The County shall have the right to utilize the Courthouse for planned, special events or activities outside of Operating Hours upon reasonable notice to the Developer. In the event that the County's use of the Courthouse for planned, special events or activities outside of Operating Hours materially interferes with or materially increases the cost of performing the Contract Services, Developer shall notify the County of the additional costs associated with the County's special events and the County shall have the right to continue to use the Courthouse for special events provided the County pays Developer for such additional costs. All such additional costs associated with the County's special events shall be provided to the County by the Developer in an itemized and detailed format to allow the County to assess and evaluate the accuracy of such costs and all such the County and all said costs shall be reasonable and necessary for the special events.

(E) Emergency Orders and Directives. The Developer shall comply with all orders and directives given or issued by the County or any Governmental Body having police power or regulatory jurisdiction based on an emergency condition.

(F) Facility Management Services' Safety Requirements. In addition to all other requirements imposed by Applicable Law, the Developer shall perform all Facility Management Services in accordance with Appendix 19 (Department of Transportation and Public Works Adjacent Construction Manual), as may be amended from time to time, and as otherwise provided in subsection 7.13(C) (Department of Transportation and Public Works Adjacent Construction Manual).

(G) Indemnification in Project Contracts and Subcontracts. Any and all Project Contracts and Subcontracts of any tier entered into by the Developer to operate, maintain, repair, and replace the Project shall require Subcontractors to release the County and hold it harmless to the same extent required in Section 24.1 (Developer's Obligations to Indemnify). The release obligations set forth in the Project Contracts and Subcontracts shall name the County as an express third-party beneficiary with rights of enforcement of such obligation and shall entitle the County to succeed to Developer's rights under such Project Contract or Subcontract. The Developer shall include, or cause to be included, in the Project Contracts the requirements that all operations, maintenance, repair, and replacement shall be performed in accordance with Applicable Law and this Project Agreement. Developer shall provide the County with any and all Project Contracts upon request by the County. The County shall not, however, be construed as a party to any Project Contract related to the Project nor shall the County in any way be responsible for any or all claims of any nature whatsoever arising or which may arise from any such Project Contracts or Subcontracts.

SECTION 9.2. UTILITIES.

(A) Supply. The Developer shall arrange for and establish the physical connection for the supply of electric, gas, water, sewer and other utility service required for the Project, inclusive of the Restaurant, in accordance with Appendix 4 (Design and Construction Standards).

(B) Service. Following the issuance of the Occupancy Readiness Certificate, the County shall negotiate, establish and contract for all electric, gas, water, sewer and other utility service required for the Project with the utility providers selected by the County and will

be responsible for all metering arrangements and paying utilities directly without recourse to the Developer. To the extent requested by Developer and subject to Applicable Law, the County will provide to the Developer the benefit of any provisions in recorded Utility or other easements on or under the Project Site which require the easement holders to relocate at their expense and the County will reasonably assist the Developer in obtaining the benefit of all rights the County has under such Utility easements, permits or other rights pertaining to Utilities on the Project Site, it being understood that such assistance will not entail the initiation of or participation in legal actions or proceedings or the expenditure of any County funds. The Developer shall negotiate, establish and contract for all electric, gas, water, sewer and other utility service required for the Restaurant with the utility providers selected by the County and will be responsible for all metering arrangements and paying utilities for the Restaurant directly without recourse to the County.

(C) Payment for Utilities. The County, following the Occupancy Readiness Date, shall timely pay all utility bills for the Project excluding the Restaurant.

(D) Energy Efficiency. The Developer shall maintain the energy efficiency of the Project in accordance with the requirements of Appendix 4 (Design and Construction Standards) and Appendix 8 (Facility Management Requirements) and as set forth in the Energy Management Plan and Appendix 9 (Facility Management Extracts). Any failure of the Developer to perform its maintenance and other obligations relating to the energy efficiency of the Courthouse shall result in a Deduction as provided in Appendix 11 (Deductions).

SECTION 9.3. DOCUMENTS AND REPORTS.

(A) Plans, Programs, Reports and Documents. The Developer shall provide the County with the plans, programs, reports and documentation required with respect to the Facility Management Services under Appendix 8 (Facility Management Requirements).

(B) Default Reports. The Developer shall provide to the County, immediately after the receipt thereof, copies of any written notice of a material default, breach or non-compliance received or sent under or in connection with any Material Contract with respect to the Facility Management Services.

SECTION 9.4. ORDINARY MAINTENANCE.

(A) Ordinary Maintenance and Repair. The Developer, except as provided in subsection 9.1(C) (Maintenance of County Furnished Equipment, SS Equipment, and Moveable Furniture, Fixtures and Equipment) and subsection (B) of this section, shall perform all normal and ordinary maintenance of the mechanical equipment, structures, improvements, grounds and all other property constituting the Project, and shall keep the Project in good working order, condition and repair and in a neat and orderly condition all in accordance with the Facility Management Requirements. The Developer shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, consumables and services which are necessary for the normal and ordinary maintenance of the Project and shall conduct all Scheduled Maintenance. The Developer's obligation to provide consumables described in this section shall include, but not be limited to, all bathroom consumables required for the operation and maintenance of the Facility.

(B) Vandalism.

(1) If any maintenance, repair or replacement of the Project is required due to Vandalism from any cause or to any extent, the Developer shall perform such maintenance, repair or replacement. The County shall continue to have the right to

impose Deductions for Unavailability Events and Performance Failures relating to Vandalism, in accordance with Appendix 11 (Deductions).

(2) No later than the Occupancy Readiness Date, the Developer shall establish and fund a reserve account ("**Vandalism Reserve Account**") to remediate acts of Vandalism. The Developer shall allocate such funds to the Vandalism Reserve Account at the rate of $10,000 (CPI-Linked) per Contract Year (such amount to be prorated to accommodate any partial Contract Year of operation of the Project by the Developer). Amounts in the Vandalism Reserve Account that remain unused in any Contract Year will roll into the next Contract Year. Unused funds upon the Termination Date will be deducted from the final Service Fee payment or otherwise credited to the County in the final Annual Settlement Statement or calculation of the Termination Amount, as applicable. Subject to paragraph (3) of this subsection, the Developer may withdraw funds from the Vandalism Reserve Account in such amounts and at such times as needed to pay amounts attributable to the reasonable, actual costs that have been incurred by the Developer in respect of maintenance, repair or replacement activities that are required to remediate acts of Vandalism. If such costs exceed the total funds available in the Vandalism Reserve Account at any time, the cost of additional remediation shall be paid by the County as an Extraordinary Item.

(3) The Developer shall provide the County on a monthly basis (or at other times as reasonably requested by the County) with a written report indicating any amounts that have been withdrawn from the Vandalism Reserve Account during the month, together with evidence of the costs that are the subject of such drawings; the purpose for which funds have been used; evidence that all Project Contractors and Subcontractors have waived any rights to Liens; the balance remaining in the Vandalism Reserve Account; and such other supporting information as the County may reasonably require. Any amounts that are found to have been improperly withdrawn shall, at the election of the County, either be immediately returned to the Vandalism Reserve Account or offset against Service Fee payments, as a Service Fee adjustment. For purposes of this paragraph, the term "improperly withdrawn" refers to the Developer's withdrawal of funds in circumstances where the Developer cannot provide evidence establishing that the funds were used to remediate acts of Vandalism in accordance with paragraph (2) of this Section.

SECTION 9.5. MAJOR MAINTENANCE, REPAIR AND REPLACEMENTS.

(A) Major Maintenance, Repair and Replacements Generally. The Developer, in addition to its ordinary maintenance obligations described in Section 9.4 (Ordinary Maintenance) and except as provided in subsection 9.1(C) (Maintenance of County Furnished Equipment, SS Equipment and Moveable Furniture, Fixtures and Equipment), shall prepare, maintain and comply with its obligations under the Facility Management Plans required pursuant to Appendix 8 (Facility Management Requirements) and shall perform all major maintenance, repair and replacement of the equipment, systems, structures, improvements and all other property constituting the Project during the Term required under the Contract Standards, including all maintenance, repair and replacement which may be characterized as "major" or "capital" in nature. The County's approval for any such maintenance, repair or replacement shall not be required unless it constitutes a Capital Modification under Article 10 (Capital Modifications and Facility Management Services Changes). The obligations of the Developer under this Article are intended to assure that the Project is fully, properly and regularly maintained, repaired and replaced in order to preserve its long-term reliability, durability and efficiency, and that in any event the Project is returned to the County at the end of the Term in a condition which fully complies with the Handback Requirements.

(B) Major Equipment Repair and Replacement Schedule and Schedule Changes. The parties acknowledge that, in light of the long-term nature of this Project Agreement and the practical limitations on predicting with specificity the life cycle of any particular asset of the Project, it may be appropriate from time to time to alter the Life Cycle Plan or the Five-Year Maintenance Plan. Accordingly, the Developer shall have the right to request County approval of alterations to the Life Cycle Schedule, Life Cycle Plan or the Five- Year Maintenance Plan at any time during the Term, provided that no such alterations shall be made unless the Developer demonstrates to the satisfaction of the County that the sum of all major maintenance, repairs and replacements performed to date by the Developer, and all major maintenance, repairs and replacements to be performed under any such alterations, shall result in a standard of overall Project maintenance, repair and replacement which is equal to or better than the standard represented by the activities to be performed under the current Life Cycle Schedule, Life Cycle Plan and Five-Year Maintenance Plan. Any alterations to the Life Cycle Schedule, Life Cycle Plan or the Five-Year Maintenance Plan shall be identified and justified in a Contract Administration Memorandum and shall be subject to the County's approval, acting reasonably. The Developer shall cooperate with the County in identifying any such alterations which may be desirable in order to anticipate or address the technical obsolescence or inefficient operation of any component, system or process of the Project, and in proposing such alterations for the County's approval. In no event shall any such alteration of the Life Cycle Schedule, Life Cycle Plan or the Five-Year Maintenance Plan result in a change to the Service Fee. The Facility Management Charge shall constitute the only compensation available to the Developer for the performance of its major maintenance, repair and replacement obligations under this Article.

SECTION 9.6. MAINTENANCE INSPECTIONS AND JOINT TECHNICAL PERFORMANCE REVIEW.

(A) Maintenance Inspections. The County may at any time perform a limited or full-scale inspection and review of the state of repair, working condition and performance capability of the Project, including testing of equipment and systems to determine their physical and operational condition. Any such inspection and review shall be performed at the County's expense, and shall take place at such time as the County shall determine upon reasonable notice to the Developer. The inspection may include a concurrent review of all relevant data, records and reports. The Developer shall cooperate fully with the inspections, which shall not interfere unreasonably with the Developer's performance of the Contract Services.

(B) Joint Technical Performance Review. In accordance with Section 3.4 (Joint Technical Performance Review) of Appendix 8 (Facility Management Requirements), at the end of each five-year period through the first 15 years and at the end of each three year period throughout the remaining Facility Management Period, the Developer and the County, supported by a duly qualified independent inspector and such technical resources as are mutually deemed necessary, will conduct a Joint Technical Performance Review (the "**Joint Technical Performance Review**") of the Project. The independent inspector shall be experienced in conducting facility condition assessments for courthouses and other similar public Facility that are critical to a local, state or federal government. The Joint Technical Performance Review will assess the performance and effectiveness of both the Scheduled Maintenance and life cycle works completed over the previous period and the work planned and scheduled for the upcoming five-year period in accordance with the then-current Five-Year Maintenance Plan and Life Cycle Plan as further described in Appendix 8 (Facility Management Requirements). The cost of the independent inspector engaged to conduct a Joint Technical Performance Review will be split equally between the County and the Developer.

SECTION 9.7. UNAVAILABILITY EVENTS AND PERFORMANCE FAILURES.

(A) Deductions. The County shall have the right to impose Deductions for Unavailability Events and Performance Failures as and to the extent provided in Article 16 (Service Fee and Other Payments) and Appendix 11 (Deductions).

(B) Additional Developer Obligations. In the event the same Unavailability Event or Performance Failure occurs repeatedly or persistently, and the Developer is not excused from performance as a result of a Supervening Event, the Developer shall, in addition to incurring Deductions, take any action (including making all capital investments, improvements or modifications or repairs, replacements and operating and management practices changes) necessary in order to continue or resume performance hereunder and eliminate the cause of, and avoid or prevent recurrences of such Unavailability Event or Performance Failure. Further, if any such Unavailability Event or Performance Failure involves a violation of Applicable Law, the Developer shall (1) promptly provide the County, within 24 hours, with copies of any notices sent to or received from any Governmental Body having regulatory jurisdiction with respect to any violations of Applicable Law and (2) pay any other resulting fines, levies, assessments, impositions, penalties or other charges resulting therefrom.

(C) Minimizing Interruption to County Activities. The Developer shall perform its maintenance, repair, replacement and related obligations, including such maintenance, repair, replacement and related obligations required in response to an Unavailability Event or Performance Failure, in a manner that minimizes disruption or interference with County Activities. Notwithstanding anything to the contrary in subsection 25.5(B) (Mitigation by the County) the County has no obligation to conduct County Activities at a time or location or otherwise to accommodate any maintenance, repair, replacement or related activities, including such maintenance, repair, replacement and related obligations required in response to an Unavailability Event or Performance Failure (subject to Section 3.2 (Functional Units Unavailable But Nonetheless Used) of Appendix 11 (Deductions)).

SECTION 9.8. FOOD SERVICE FACILITY.

(A) General Operations and Staff. The Developer shall provide all services required for the successful operation of the Restaurant, including but not limited to purchasing, food preparation, janitorial, inventory control/security, and customer service. The Developer shall provide sufficient staffing at the Restaurant to meet customer demands, to include a full-time on-site manager having experience in the management of food services operations. Developer shall provide uniforms which shall be worn by all Restaurant staff. The Developer shall operate the Restaurant in an orderly manner and as not to disturb the operation of the Courthouse. The Developer shall be responsible for the conduct, demeanor, and appearance of all staff providing food services.

(B) Operating Hours. The Developer shall operate the Restaurant continuously and uninterruptedly to serve customers, at a minimum, from 7:00 AM until 4:00 PM during all Business Days; provided, however, that the Developer shall operate the Snack Bar continuously and uninterruptedly to serve customers, at a minimum, from 7:30 a.m. to 11:00 a.m. during all Business Days.

(C) Pricing, Payments. The Developer shall maintain a pricing schedule at the Restaurant that is comparable to off-site operations in the surrounding area. The Developer shall provide for multiple payment options to its Restaurant customers, including cash and credit card payments. The Developer shall have the right to retain all revenues and profits derived from performance of Contract Services in the Restaurant.

(D) Permits, Regulations, and Certifications. The Developer shall obtain any and all necessary licenses, permits, and/or approvals that are required for the operation of the Restaurant in accordance with Applicable Laws. Upon receipt, the Developer shall make available

all health department inspections to the County. All Restaurant staff shall possess a current food handlers' certification from the governing local or state jurisdiction. All managers shall possess a valid National Restaurant Association ServSafe® certification. The Developer shall, every three (3) years, update its Hazard Analysis Critical Control Point Plan (to be required as part of the plans that are to be submitted in the Facility Management Requirements).

(E) Food Safety Investigations. The Developer shall promptly notify the County of any potential incidents related to food-borne illness at the Restaurant. Upon notification of a potential food-borne illness or food safety violation, the Developer shall immediately investigate all claims or concerns. The Developer shall take immediate corrective action to ensure the health and safety of all Restaurant customers. The Developer shall document and maintain records of all potential incidents, including at a minimum: 1) a description of the issue, 2) the date the County was notified, 3) the steps taken to investigate the claims or concerns, 4) a description of the resolution, including any corrective actions taken to address the incident.

(F) Minimum Operating Standards. The Developer shall at all times comply with the minimum operating standards for the Restaurant contained in Appendix 21 (Minimum Operating Standards for Food Service Facility).

(G) Modification of Food Service Facility Requirements. If, notwithstanding Developer's diligent, good faith efforts to make the Restaurant profitable, the Restaurant is consistently operating at a loss, then the Developer may request a modification of the Food Service Facility requirements set forth in this Section 9.8 (Food Service Facility). Any such request from the Developer shall be accompanied by an accounting evidencing the Restaurant's claimed losses, a description of the Developer's diligent, good faith efforts to make the Restaurant profitable over the relevant time period, and a description of the Developer's requested modifications to these requirements. The County will consider any such requested modifications and act reasonably in approving or disapproving any mutually agreed-upon changes to these requirements through a Contract Administration Memorandum.

SECTION 9.9. COVENANT OF NON-INTERFERENCE.

The operations of the Department of Transportation and Public Works and use of its transit facilities, as such facilities are described in Appendix 19 (Department of Transportation and Public Works) is paramount. Developer's operations, repairs, and maintenance of the Facility shall not materially and adversely interfere with, obstruct or restrict the Department of Transportation and Public Works' customary and reasonable operations or the public's use of transit facilities, unless prior arrangements have been made in writing between the Department of Transportation and Public Works and the Developer. Developer shall be required to notify the Department of Transportation and Public Works a minimum of thirty (30) days in advance of any planned activities to be performed or commissioned by the Developer that may impact the Department of Transportation and Public Works' transit facilities and/or operations. At its sole discretion, the Department of Transportation and Public Works may require that its employees or representatives are present on site to coordinate, oversee, and/or monitor such activities. If Developer fails to allow such employees or representatives to be on site or pay for same, such activities shall not commence. In the event of an inconsistency between this Section 9.9 and Appendix 19 (Department of Transportation and Public Works Adjacent Construction Manual), Appendix 19 shall prevail.

SECTION 9.10. DISPOSAL OF SURPLUS EQUIPMENT.

The Developer may, at the direction of the County, remove, dispose of and sell, in accordance with Applicable Law, equipment constituting part of the Project that is unused or obsolete and no longer needed. All proceeds from any sale made at the County's request, net of the Developer's actual and reasonable expense in removing the equipment and arranging the

sale, shall be the property of the County (except any equipment, fixtures, or materials from the Restaurant owned by the Developer or Developer Person). The County may also, at its election, remove, dispose and sell, in accordance with Applicable Law, equipment constituting part of the Project (except any equipment, fixtures, or materials from the Restaurant owned by the Developer or Developer Person) that is unused and obsolete and no longer needed and keep all proceeds from the sale.

SECTION 9.11. ENFORCEMENT OF PROJECT WARRANTIES.

At Final Completion, Developer shall assign all warranties for components and systems of the Courthouse to the County. During the Term, the Developer shall be responsible for meeting the maintenance obligations under all manufacturers' warranties on new equipment purchased and installed in the Project by the Developer, and shall be the agent of the County in enforcing all equipment warranties and guarantees, including warranties and guarantees of the Design-Build Work obtained by the Developer pursuant to Section 7.17 (Warranties of Design-Build Work). The Developer shall not be required to commence or maintain any litigation with respect to such warranties or guarantees, but may do so in its discretion. The Developer shall cooperate with and assist the County if the County seeks to enforce warranties and guarantees through litigation. The Developer shall not take or omit any act which voids or impairs any of the manufacturer's warranties on new equipment purchases and installed in the Project by Developer.

SECTION 9.12. PROJECT HANDBACK.

(A) Required Project Condition. On the Expiration Date (and not on any earlier Termination Date), the Project and each Facility Component comprising the Project shall be in a condition which is:

(1) Consistent with the Project and each of the elements of the Project having been designed and constructed in accordance with the applicable design life requirements set forth in the Appendix 4 and Appendix 5 and related appendices; and

(2) Consistent with the Developer having performed the Facility Management Services in accordance with the Facility Management Requirements.

In any event:

(3) The Facility Condition Index for the Facility shall be no worse than .10; and

(4) the Remaining Useful Life of each Facility Component shall be no less than the required Useful Life Requirements set forth in Section 11.1 of Appendix 8 (Facility Management Requirements).

The requirements of this subsection (A) constitute the **"Handback Requirements"**.

(B) Handback Survey. In conjunction with the preparation of the Annual Service Plan for the Contract Year commencing four years prior to the Expiration Date, the Developer and the County shall conduct the Handback Survey. The procedure for conducting this Handback Survey will be performed by the Independent Facility Management Expert in a manner consistent with the Technical Performance Review described in Section 3.4 of the Facility Management Requirements. The Handback Survey shall, at a minimum, identify:

(1) the Project's compliance with subsection 9.12(A) of this Project Agreement;

(2) the Handback Work, if any, to be completed by the Developer;

(3) the Remaining Useful Life of all Facility Components;

(4) an estimated value for the Remaining Useful Life of all Facility Components at the Expiration Date; and

(5) any other facility condition information as requested and agreed to by the County and the Developer

(C) Handback Work Due to Handback Survey. If the Handback Survey requires the Developer to perform any Handback Work, within 60 days of completion of the Handback Survey the Developer shall deliver to the County:

(1) The Handback Work Plan including the method and schedule for performing the Handback Work without interruption to the day-to-day operation of the Facility. Where applicable, the Handback Work Plan will be consistent with, and integrated into, the Annual Service Plan, Life Cycle Plan and Five-Year Maintenance Plan then in effect; and

(2) A cost estimate for the Handback Work.

(D) Determination of Handback Retainage. Upon submittal of the items required by subsection (B) of this Section, the County:

(1) Shall review and comment on the Developer's Handback Work Plan in accordance with the Project Agreement and the Facility Management Requirements; and

(2) Shall establish the Handback Retainage amount in an amount equal to:

(a) The reasonable costs for the Handback Work;

(b) Without duplication, an additional retainage amount equal to the estimated value of additional work required for the Facility to meet the Required Project Condition described in subsection 9.12(A) of the Project Agreement. For the purpose of meeting the Useful Life Requirements, the retainage amount shall equal the estimated value of all Facility Components with a Useful Life as described in Section 11.1 of Appendix 8 (Facility Management Requirements) minus the estimated value of the Remaining Useful Life of all existing Facility Components at the Expiration Date, as determined by the Independent Facility Management Expert.

(E) Establishment and Use of Handback Retainage Account. The County shall hold back and retain a proportional amount from the Service Fee payments until a total amount of deposits equal to the pro-rated amount of the Handback Retainage over the subsequent number of months prior to the Expiration Date has been deposited in the Handback Retainage Account. The account shall be the property of the County, subject to the Developer's withdrawal rights under this Section. The Developer shall have the right, upon the submittal of certified requisitions to the County with full supporting receipts or other substantiated evidence of payment, to withdraw from such account amounts necessary to reimburse itself for amounts actually expended in the performance of the Handback Work. In lieu of the Handback Retainage being held back from the Service Fee, the Developer shall be entitled to post an irrevocable letter of credit with the County in an amount equal to the Handback Retainage or may request that the County accept a performance bond, or other cash collateral or security. The County may

decline any such request for a performance bond or other cash collateral or security in its discretion.

(F) Performance of the Handback Work and Further Inspection. The Developer shall implement the Handback Work Plan and take all other steps necessary to assure compliance with the Handback Requirements, notwithstanding the County's participation in the Handback Survey or review of the Handback Work Plan or the fact that the actual cost of compliance may be higher than the Handback Retainage or other agreed upon cash collateral or security. At least 240 days prior to the Expiration Date, the Developer and the County shall conduct a further joint inspection and survey of the condition of the Facility and the progress of the Handback Work. Notwithstanding the County's participation in the Handback Survey or review of the Handback Work Plan, the Handback Retainage or other agreed upon cash collateral or security, or the complete or partial performance of the Handback Work, the Developer shall not be released from any obligation to conduct any other inspection or to provide any other Facility Management Services in accordance with the Project Agreement.

(G) Substantial Deviation. In case of significant inflation, spike in material costs or any unforeseen condition that may result in a depletion of the Handback Retainage Account before the completion on the Handback Work, the County will hold back and retain additional amounts, as reasonably agreed by the Developer, from the Service Fee payments in order to address the differential cost between the original Handback Retainage and the new expected cost of the Handback Work.

(H) Final County Condition Assessment. On, or within five Business Days after, the Expiration Date, the County shall either:

(1) Issue to the Developer a handback certificate confirming compliance with the Handback Requirements and return any remaining amount in the Handback Retainage Account related to the Handback Work to the Developer; or

(2) Notify the Developer of its decision not to issue the handback certificate, setting out each respect in which the Handback Work was not properly performed or the Facility does not comply with the Handback Requirements and stating the County's reasonable estimate of the cost it reasonably believes is necessary to complete all work required for the Facility to comply with the Handback Requirements. The County will reserve the right to retain any remaining amounts in the Handback Retainage Account to ensure full compliance with the Handback Requirements.

(I) Final Developer Condition Assessment. The Developer may, within 30 days after receipt of the notice given in accordance with subsection (H) of this Section, object to any matter set forth in the notice giving details of the grounds of each such objection and setting out the Developer's proposals in respect of such matters.

(J) Final Compliance. If the Facility did not, at the Expiration Date, comply in all respects with the Handback Requirements, the Developer shall complete any work necessary to cause such compliance within 60 days following the Expiration Date or pay to the County no later than 60 days after the Expiration Date an amount equal to the cost of completing any outstanding Handback Work based on the County's cost estimate pursuant to subsection 9.12(D)(2), net any amount remaining in the Handback Retainage Account related to the Handback Work, so that the Facility is in a condition which complies with the Handback Requirements. Upon payment being received in full by the Developer, the County will issue the handback certificate and if such payment is not received from the Developer when due, the County may draw any unpaid amounts against the Handback Retainage Account and release any balance to the Developer.

(K) Termination Prior to Expiration Date. If the Termination Date occurs prior to the Expiration Date, the amount standing to the credit of the Handback Retainage Account shall be withdrawn and paid to the County. Any amount payable to the Developer in respect of the Handback Retainage Account balance pursuant to Appendix 13 (Compensation on Termination) shall be withdrawn and paid to the Developer and credited against the County's payment obligation in respect thereof.

ARTICLE 10

CAPITAL MODIFICATIONS AND FACILITY MANAGEMENT SERVICES CHANGES

SECTION 10.1. CAPITAL MODIFICATIONS GENERALLY.

(A) County Approval. The County shall have the right, in its discretion, to accept, reject, approve or modify all Capital Modifications. All Capital Modifications and related changes to the terms and conditions of this Project Agreement shall be reflected in a Project Agreement Amendment.

(B) Small Scale Capital Modifications. The County's rights under subsection (A) of this Section with respect to Small Scale Capital Modifications shall extend only to those affecting the functional or aesthetic quality of the Project as originally constructed.

(C) Conditioned Approvals. The County shall have the express right to condition its approval of Capital Modifications upon a sharing of any net cost savings expected to result therefrom or upon any further term or condition that the County may seek to establish with respect thereto.

(D) Responsibility for Costs. All Capital Modifications shall be made and implemented in accordance with this Article. The Developer shall bear the cost and expense of all Small Scale Capital Modifications and all Capital Modifications required in accordance with Section 10.3 (Capital Modifications Arising From Repairs and Replacements or Required to Remedy a Developer Fault). The responsibility for the cost and expense of any Capital Modifications requested by the Developer in accordance with Section 10.2 (Capital Modifications at Developer Request) shall be determined by the County in its discretion in accordance with its approval rights under this Article. The County shall bear the cost and expense of all Capital Modifications made pursuant to Section 10.4 (Capital Modifications Required Due to Supervening Events) and pursuant to Section 10.5 (Capital Modifications at County Direction).

(E) No Developer Ownership. In no event shall the Developer have any ownership interest in the Project as a result of any Capital Modification.

(F) Safety Requirements. In addition to all other requirements imposed by Applicable Law, the Developer shall perform all Capital Modifications in accordance with Appendix 19 (Department of Transportation and Public Works Adjacent Construction Manual), as may be amended from time to time, and as otherwise provided in subsection 7.13(C) (Department of Transportation and Public Works Adjacent Construction Manual).

SECTION 10.2. CAPITAL MODIFICATIONS AT DEVELOPER REQUEST.

The Developer shall give the County written notice of, and reasonable opportunity to review and comment upon, any Capital Modification proposed to be made at the Developer's request. To assist the County in the exercise of its approval rights under Section 10.1 (Capital Modifications Generally), the notice shall contain sufficient information for the County to determine that the Capital Modification:

(1) Does not materially diminish the capacity of the Project to be operated so as to meet the Contract Standards;

(2) Does not materially impair the quality, integrity, durability and reliability of the Project;

(3) Is reasonably necessary or is advantageous for the Developer to fulfill its obligations under this Project Agreement; and

(4) Is feasible; and

(5) Will or will not result in an adjustment to the Service Fee and the estimated amount thereof.

Except as otherwise agreed to by the County, the design and construction costs of any such Capital Modification proposed to be made at the Developer's request, and any related operation, maintenance, repair and replacement costs directly attributable to the Capital Modification, shall be borne by the Developer.

SECTION 10.3. CAPITAL MODIFICATIONS ARISING FROM REPAIRS AND REPLACEMENTS OR REQUIRED TO REMEDY A DEVELOPER FAULT.

In the event that (1) any repair or replacement proposed to be performed by the Developer in satisfaction of its obligations under Article 9 (Operation and Maintenance), or (2) any capital investment, improvement or modification required to be made by the Developer in order to remedy a breach of this Project Agreement, can be reasonably expected to result in a material change to the Project, such repair, replacement, capital investment, improvement or modification shall constitute a Capital Modification. In no event shall the rejection or modification of any such Capital Modification by the County relieve the Developer of its obligation to perform maintenance, repair and replacement required under Article 9 (Operation and Maintenance) or perform any other obligation hereunder. Except as otherwise agreed to by the County, the design and construction costs of any such Capital Modification, and any related operation, maintenance, repair and replacement costs, shall be borne by the Developer.

SECTION 10.4. CAPITAL MODIFICATIONS REQUIRED DUE TO SUPERVENING EVENTS.

Upon the occurrence of a Supervening Event, the Developer shall promptly proceed to make or cause to be made all repairs, replacements and restoration to the Project reasonably necessary to address the Supervening Event, as provided in Article 13 (Supervening Event Procedures), Article 14 (Relief Events), and Article 15 (Compensation Events and Changes in Law), as applicable. The County shall have the right, but not the obligation, to direct the Developer to make Capital Modifications in connection with any such repair, replacement or restoration work. The design and construction costs attributable to any such Capital Modification and any increased operation, maintenance, repair and replacement costs directly related to such Capital Modification shall be borne by the County but only to the extent that such costs are not already covered by insurance. The Developer shall not be required to undertake any Capital Modification under this Section unless and until (1) the parties have agreed upon a scope, price and schedule for the implementation of the Capital Modification in accordance with all applicable provisions of this Project Agreement including Section 10.6 (Primary Procedure for Implementing Capital Modifications), (2) the County has provided written assurances acceptable to the Developer, acting reasonably, that funds necessary to pay the cost of the Capital Modification (or agreed-upon portion thereof) will be available for such purposes in the amounts and on the schedule agreed upon by the parties, and (3) the parties have agreed upon any

resulting increase or decrease in the operation, maintenance, repair and replacement costs directly related to the Capital Modification and the corresponding adjustments to the Service Fee.

SECTION 10.5. CAPITAL MODIFICATIONS AT COUNTY DIRECTION.

The County shall have the right to make Capital Modifications at any time and for any reason whatsoever after the Occupancy Readiness Date, whether and however the exercise of such rights affects this Project Agreement so long as the implementation of such Capital Modification does not contravene the limitations referred to in Section 4.6 (Restrictions on Design and Construction Requirement Changes, Capital Modifications and Facility Management Services Changes). The design and construction costs of any such Capital Modification made at the County's direction under this Section, and any related operation, maintenance, repair and replacement costs directly attributable to such Capital Modification, shall be borne by the County pursuant to this Article and, for the Incremental Facility, pursuant to Section 16.4. The Developer shall not be required to undertake any Capital Modification under this Section unless and until (1) the parties have agreed upon a scope, price and schedule for the implementation of the Capital Modification in accordance with all applicable provisions of this Project Agreement including Section 10.6 (Primary Procedure for Implementing Capital Modifications), (2) the County has provided written assurances acceptable to the Developer, acting reasonably, that funds necessary to pay the cost of the Capital Modification (or agreed-upon portion thereof) will be available for such purposes in the amounts and on the schedule agreed upon by the parties, and (3) the parties have agreed upon any resulting increase or decrease in the operation, maintenance, repair and replacement costs directly related to the Capital Modification and the corresponding adjustments to the Service Fee.

SECTION 10.6. PRIMARY PROCEDURE FOR IMPLEMENTING CAPITAL MODIFICATIONS.

(A) Primary Implementation Procedure. Subject to Section 10.7 (Alternative Procedures for Implementing Capital Modifications), the implementation procedure set forth in this Section shall apply with respect to all Capital Modifications except Small Scale Capital Modifications, which the Developer may implement by means of its own choosing in accordance with Applicable Law.

(B) Initial Assessment. When a Capital Modification is required or is proposed by either party, the Developer, at its cost and expense, shall prepare and deliver to the County an initial assessment of the matter. The initial assessment shall describe the need for or objective of the Capital Modification, set forth an overview of potential approaches to addressing the need or objective, and contain a preliminary assessment of potential cost and schedule considerations. The purpose of the initial assessment shall be to furnish the County with a reasonable basis for authorizing funds to pay for a conceptual plan and implementation proposal provided for in subsections (C) and (D) of this Section.

(C) Developer Conceptual Plan and County Review. Following the initial assessment made pursuant to subsection (B) of this Section, at the request of the County and, except with respect to Capital Modifications made pursuant to Section 10.3 (Capital Modifications Arising from Repairs or Replacements, or Required to Remedy a Developer Default) at the cost and expense of the County, the Developer shall prepare and deliver to the County a conceptual plan for the implementation of the Capital Modification. The conceptual plan shall include the Developer's recommendations as to technology, design, construction, equipment, materials, and operating and performance impacts. The foregoing recommendations shall seek to allow for maximum competition in price and shall not favor the Developer or any of its Affiliates. Preliminary schedule and capital and operating cost estimates shall be included, together with an assessment of possible alternatives. The conceptual plan shall specifically evaluate reasonable alternatives to the mix of Capital Modifications and changed operating and

management practices which the Developer is recommending. The County shall review the Developer's conceptual plan and recommendations, and undertake discussions with the Developer in order to reach agreement on a basic approach to the Capital Modification. At the County's option, Developer may be asked by the County to skip the conceptual plans for Capital Modifications and to instead simply provide the County with options on the approach to the Capital Modifications.

(D) Developer Implementation Proposal. Following agreement on a basic approach to the Capital Modification, at the request of the County and, except with respect to Capital Modifications made pursuant to Section 10.3 (Capital Modifications Arising From Repairs and Replacements or Required to Remedy a Developer Fault), at the County's expense, the Developer shall submit a formal implementation proposal to the County for its consideration. With respect to any Capital Modification to be undertaken at the County's expense and as otherwise required by Applicable Law, the implementation proposal shall contain: (1) a Developer services element, to be implemented through a Project Agreement Amendment, and (2) a third-party services element, to be implemented through third-party contracting.

(1) Developer Services Element. The Developer services element shall contain: (a) the Developer's offer to perform design, construction management and commissioning test services and obtain and maintain Governmental Approvals with respect to the Capital Modification for a fixed price, and shall include a guarantee of the performance of the Capital Modification through a commissioning test and a guaranteed maximum construction price if so requested by the County and agreed to by the Developer; and (b) as applicable, the Developer's offer to operate, maintain, repair, replace, permit and manage the Capital Modification following construction and commissioning for compensation paid as an adjustment to the Facility Management Charge with a revision of the composition or weighting of the indices used to adjust the Facility Management Charge in Section 16.4 (Facility Management Charge), as appropriate, and shall include long-term performance guarantees appropriate to the Capital Modification.

(2) Third-Party Services Element. The third-party services element shall be a proposal by the Developer to conduct, as allowed by Applicable Law, either a qualifications-based selection process for design engineers and a bidding process for the construction work or a competitive proposal process for the design-build work involved in completing the Capital Modification. The resulting design services and construction contracts or design-build contract shall be held by and executed in the name of the Developer, unless required to be held by the County under Applicable Law. A "competitive proposal process" referred to herein may include a qualifications-based request for proposals and a design-build contract award to the most advantageous proposer. All such third-party services work for design and construction services shall be undertaken in accordance with the County Legal Requirements set forth in Appendix 2.

(E) Negotiation and Finalization of Developer Implementation Proposal. The parties shall proceed, promptly following the County's review of the Developer's submittal and quotation, to negotiate to reach an agreement on price and any adjustment to the terms and conditions of this Project Agreement resulting from the Capital Modification. Any final negotiated agreement for the implementation of a Capital Modification under this Section shall address, as applicable:

(1) Design requirements;

(2) Construction management services;

(3) Commissioning tests, standards and procedures;

(4) A guarantee of completion;

(5) Performance guarantees;

(6) Any changes to the Contract Standards to take effect as a consequence of the Capital Modification;

(7) A payment schedule for the design and construction management-related services;

(8) Any adjustments to the Service Fee resulting from the Capital Modification, including any related operation, maintenance, repair and replacement costs directly attributable to such Capital Modification;

(9) A financing plan; and

(10) Any other appropriate amendments to this Project Agreement.

The Developer shall not be obligated to undertake any Capital Modification under Section 10.4 (Capital Modifications Required Due to Supervening Events) or Section 10.5 (Capital Modifications at County Direction) except following agreement as scope, price and schedule and the delivery by the County of assurances as to the availability of funds, as provided in such Sections. Except as otherwise specifically provided in this Section, the County shall have no obligation to reimburse the Developer for any costs incurred pursuant to this Section except as part of a negotiated amendment to this Project Agreement.

(F) Implementation Procedures. With respect to each Capital Modification to be made by the Developer, other than Small Scale Capital Modifications, the County shall have the same substantive and procedural rights that it has with respect to the design, construction, commissioning, final completion and handback of the Project, as set forth in this Project Agreement.

SECTION 10.7. ALTERNATIVE PROCEDURES FOR IMPLEMENTING CAPITAL MODIFICATIONS.

With respect to any Capital Modification to be undertaken at the County's expense and as otherwise required by Applicable Law, the County shall be under no obligation to utilize the primary implementation procedure for Capital Modifications set forth in Section 10.6 (Primary Procedure for Implementing Capital Modifications), and may instead, in its discretion, utilize any other implementation procedure available to it or required under Applicable Law. Alternative implementation procedures may include contracting with the Developer or any third party to implement the Capital Modification on a sole source or any competitive basis using any project delivery method available under Applicable Law. The County may determine to proceed with an alternative implementation procedure for Capital Modification at any time, whether before or after entering into negotiations with the Developer under the primary implementation procedure specified under Section 10.6 (Primary Procedure for Implementing Capital Modifications). No alternative implementation procedure for Capital Modifications shall contravene the limitations referred to in Section 4.6 (Restrictions on Design and Construction Requirement Changes, Capital Modifications and Facility Management Services Changes) or unreasonably interfere with the Developer's performance of its obligations under this Project Agreement. Unless otherwise agreed by both parties, the Developer shall have no liability for the work performed by a third party chosen by the County under this Section.

SECTION 10.8. FACILITY MANAGEMENT SERVICES CHANGES.

(A) Generally. The County may, on a quarterly basis each Contract Year during the Term (except more frequently as may be appropriate to address urgent County governmental circumstances), subject to Section 4.6 (Restrictions on Design and Construction Requirement Changes, Capital Modifications and Facility Management Services Changes), require the Developer to implement a Facility Management Services Change in accordance with this Section. The implementation procedure set forth in this Section shall apply with respect to all Facility Management Services Changes which the County may require during the Term. In the event the County requests a Facility Management Services Change, the County shall issue to the Developer a written notice including a sufficient description of the contemplated Facility Management Services Change.

(B) Developer Facility Management Services Change Report. Within 15 Business Days, or such longer period as the parties agree acting reasonably, after receipt of the County's notice delivered pursuant to subsection (A) of this Section, the Developer shall prepare and deliver to the County a report for the contemplated Facility Management Services Change ("**Facility Management Services Change Report**"). A Facility Management Services Change Report shall include, to the extent that it is relevant to the proposed Facility Management Services Change:

(1) A description of the scope of the contemplated Facility Management Services Change with respect to the Facility Management Services;

(2) A comparison of the scope of Facility Management Services as a result of the contemplated Facility Management Services Change as compared to the scope prior to the Facility Management Services Change;

(3) An estimate of all costs, if any, reasonably necessary for and directly associated with the contemplated Facility Management Services Change, as further described in subsection (C) of this Section, including the following, as applicable:

(a) all Facility Management Services labor, material and equipment costs, supported as the case may be by quotations from the applicable Facility Manager and Subcontractors;

(b) any costs related to the Developer's management and oversight of the Project that should reasonably be included in the contemplated Facility Management Services Change;

(c) all costs of an amendment or renewal of a Governmental Approval required by the contemplated Facility Management Services Change; and

(d) all financing costs;

(4) An estimate of the cost savings, if any, resulting from the contemplated Facility Management Services Change;

(5) A description of any changes to the Senior Financing Agreements that would be required to reflect a change in the risk profile of the Project arising from the contemplated Facility Management Services Change;

(6) A description of any changes to the Service Fee that are required to reflect any costs or cost savings described in items (3) and (4) above;

(7) Identification of any amounts payable by the County to the Developer, if any, other than the Service Fee;

(8) The Developer's proposal as to how any increased costs to the Developer resulting from the contemplated Facility Management Services Change may be funded;

(9) The value of the loss or reduction of benefits resulting from the contemplated Facility Management Services Change;

(10) A description of any additional consents or approvals required, including amendments, if any, of any Governmental Approvals required to implement the contemplated Facility Management Services Change;

(11) A description of any impact on the obligations of the Developer under any Material Contracts;

(12) A description of the extent to which the contemplated Facility Management Services Change or the implementation thereof would interfere with the Developer's ability to comply with any of its obligations under this Project Agreement, the Material Contracts and any Governmental Approvals;

(13) The name of the Subcontractor, if any, which the Developer intends to engage for the purposes of implementing the contemplated Facility Management Services Change;

(14) A description of any further effects (including, without limitation, benefits and impairments to the Facility Users) which the Developer foresees as being likely to result from the contemplated Facility Management Services Change or the implementation thereof;

(15) A description of any actions that would be reasonably required by the County to implement the contemplated Facility Management Services Change;

(16) A description of the steps the Developer will take to implement the contemplated Facility Management Services Change, in such detail as is reasonable and appropriate; and

(17) A description of any impact on expected usage of Utilities for the current Contract Year and subsequent Contract Years.

If the Developer prepares a Facility Management Services Change Report pursuant to this subsection and the County elects not to proceed with the contemplated Facility Management Services Change, then the County shall pay the Developer's Facility Management Services Change Report preparation costs subject to Cost Substantiation. Notwithstanding the foregoing, the County shall not be responsible for any Developer costs associated with a Facility Management Services Change Report prepared pursuant to subsection (J) of this Section. Notwithstanding anything contained in this Project Agreement to the contrary, all costs payable by the County shall first be estimated in advance of the work and the estimate shall be provided to the County in advance of the work, and the final cost of any such work shall be within the previous estimate provided and shall be reasonable.

(C) Valuation of Facility Management Services Changes. The County and the Developer shall negotiate in good faith the costs or savings associated with any Facility Management Services Change in accordance with subsection (E) of this Section. If the parties fail to agree on the costs or savings of such Facility Management Services Change, the costs or savings shall be determined as set forth in this subsection. The costs or savings of a Facility Management Services Change shall be the net incremental additional costs or savings of

implementing the Facility Management Services Change, calculated as the aggregate cost, if any, of any additions to the Developer's Facility Management Services obligations required to implement the Facility Management Services Change minus the aggregate cost savings, if any, from all reductions in the Developer's Facility Management Services obligations resulting from the implementation of such Facility Management Services Change. A Facility Management Services Change may have a net cost, a net saving, or may result in no net cost or saving. The costs of a Facility Management Services Change are the aggregate of the costs reasonably incurred by the Developer or the Facility Manager to implement the Facility Management Services Change, supported by invoices, purchase orders, time sheets and other customary industry documentation, as follows:

(1) The amounts of all Subcontractor or supplier agreements;

(2) The direct costs incurred for the Facility Management Services personnel, based on the number of personnel hours required to undertake the Facility Management Services Change;

(3) The direct costs incurred for the procurement of materials, consumables and equipment, for the supply and delivery of such materials, consumables and equipment, including the costs of any associated testing, commissioning, spare parts, manuals and software, and including any related design and engineering costs;

(4) The costs incurred for the evaluation of proposals and award of a contract for work associated with the Facility Management Services Change, and the supervision and management of such contracts;

(5) All direct costs incurred by the Developer in procuring and managing the Facility Management Services Change (including costs of advisers and extra costs under any management services agreements entered into by the Developer); and

(6) All other additional direct costs pertaining to the Facility Management Services Change, including disposal, insurance, bonding, financing, Governmental Approvals and directly attributable overheads, calculated at the direct cost to the entity that directly incurs such costs, and the costs incurred or borne by the Developer in preparing a Facility Management Services Change Report.

The costs applied pursuant to this subsection shall be no greater than the market rates prevailing at the time of the implementation of the Facility Management Services Change paid between parties contracting at arm's length. In addition to the costs incurred by the Developer or Facility Manager described above in this subsection, a mark-up shall be applied without duplication to such aggregate costs as full payment for all other costs, including indirect overhead costs and profit in accordance with subsection 16.13(E) (Mark-Ups).

(D) Justification and Supporting Documentation. The Developer shall use, or will cause the Facility Manager to use, reasonable efforts to obtain competitive quotations and proposals for all work, equipment and materials required to implement a Facility Management Services Change. The cost estimates included in a Facility Management Services Change Report shall be in sufficient detail to allow evaluation by the County and will include such supporting information and justification as is necessary to demonstrate that:

(1) The Developer has used all reasonable efforts, including utilizing competitive quotes or proposals, to minimize the cost of a contemplated Facility Management Services Change and maximize potential related cost savings;

(2) The Developer and Facility Manager have valued the Facility Management Services Change as described in subsection (C) of this Section, and have not included other margins or mark-ups;

(3) The full amount of any and all expenditures that have been reduced or avoided (including any Capital Expenditure) have been fully taken into account; and

(4) The Developer has mitigated or will mitigate the impact of the contemplated Facility Management Services Change, including on the performance of the Facility Management Services, the expected usage of Utilities, and the direct costs to be incurred.

(E) Agreement on a Facility Management Services Change. Within 30 Days, or such longer period as the parties agree acting reasonably, following receipt by the County of a Facility Management Services Change Report prepared in accordance with subsection (B) of this Section, the County may deliver to the Developer any requests for clarifications or amendments, and the parties' representatives shall meet and use all reasonable efforts to agree to the Facility Management Services Change Report. Such agreement shall include the costs, payments (including payment of direct costs and adjustments to the Service Fee, if any) and other information contained in the Facility Management Services Change Report. If the County would be required by Applicable Law to require the Developer to competitively solicit any contract in relation to a contemplated Facility Management Services Change, the County may require the Developer to seek and evaluate competitive proposals for the proposed Facility Management Services Change. The County may modify any Facility Management Services Change request notice delivered pursuant to subsection (A) of this Section, in writing, at any time prior to the parties reaching an agreement on the Facility Management Services Change Report pursuant to this subsection. In the event the County delivers notice of any such modification to the Developer, the Developer shall notify the County of any changes to the Facility Management Services Change Report within 20 Business Days after receipt of such modification notice.

(F) Facility Management Services Change Certificate. Upon agreement of the parties with respect to the Facility Management Services Change in accordance with subsection (E) of this Section, the County shall issue a signed Facility Management Services Change Certificate to the Developer. In the event the County and the Developer do not agree on the Facility Management Services Change, the County may issue a Facility Management Services Change Certificate in accordance with subsection (G) of this Section. The Developer shall not proceed with a Facility Management Services Change prior to receiving a signed Facility Management Services Change Certificate from the County. A Facility Management Services Change Certificate issued in accordance with this subsection shall be binding upon the County and the Developer. Upon receipt of a Facility Management Services Change Certificate the Developer shall implement the Facility Management Services Change, without prejudice to the Developer's right to refer any dispute concerning the Facility Management Services Change to Non-Binding Mediation or the Dispute Resolution Procedure, including valuation of the Facility Management Services Change in accordance with subsection (C) of this Section.

(G) Disagreement on Facility Management Services Change Report. In the event the County and the Developer cannot agree on a Facility Management Services Change Report, the County may elect not to proceed with the Facility Management Services Change described in the notice delivered to the Developer in accordance with subsection (A) of this Section. Alternatively, the County may issue the Facility Management Services Change Certificate to the Developer stating the County's determination of the matters referred to in the Facility Management Services Change Report, and if the Developer disagrees with all or any of the determinations set forth in the Facility Management Services Change Certificate, then the Developer may deliver the County a notice identifying any such disagreements within 10 Business Days of receipt of the Facility Management Services Change Certificate. Following

delivery of the notice to the County identifying any points of disagreement to the Facility Management Services Change Certificate, the Developer may, (1) pursuant to its rights under Section 4.6 (Restrictions on Design and Construction Requirement Changes, Capital Modifications and Facility Management Services Changes) refuse to implement the Facility Management Services Change or (2) without prejudice to its rights with respect to such disagreements which may be addressed pursuant to the provisions of Article 18 (Dispute Resolution), use all reasonable efforts to implement the Facility Management Services Change as directed in the Facility Management Services Change Certificate. If the Developer fails to timely deliver the notice to the County identifying any points of disagreement with the Facility Management Services Change Certificate as set forth in this subsection, the Developer shall be deemed to have waived any such objections to the Facility Management Services Change Certificate.

(H) Responsibility and Payment for Facility Management Services Changes. Except as specifically provided in this Project Agreement, the County shall bear no risk or liability whatsoever arising from any Facility Management Services Change other than the liability to make payment in connection therewith. The County shall bear the cost and expense of all Facility Management Services Changes made pursuant to this Section. Payments by the County and any adjustments to the Service Fee with respect to Facility Management Services Changes shall be made in accordance with Sections 16.6 (Extraordinary Items) and 16.13 (Cost Substantiation of Additional Work).

(I) Cost Savings. In the event any Facility Management Services Change is reasonably expected to result in a net cost savings to the Developer, the parties shall negotiate in good faith the extent to which any such net cost savings shall be shared with the County, and the Service Fee shall be reduced accordingly.

(J) Facility Management Services Changes at Developer Request. The Developer may give the County written notice of, and reasonable opportunity to review and comment upon, any Facility Management Services Change proposed to be made at the Developer's request. The County shall have the right, in its discretion, to accept, reject, approve or modify all such Facility Management Services Change requests made by the Developer. The responsibility for the cost and expense of any Facility Management Services Change requested by the Developer in accordance with this subsection shall be determined by the County in its discretion. The written notice provided by the Developer shall contain sufficient information for the County to determine that the Facility Management Services Change:

(1) Does not diminish the capacity of the Project to be operated so as to meet the Contract Standards;

(2) Does not impair the quality, integrity and reliability of the Facility Management Services;

(3) Is reasonably necessary or is advantageous for the Developer to fulfill its obligations under this Project Agreement;

(4) Is feasible; and

(5) Will or will not result in an adjustment to the Service Fee and the estimated amount thereof.

The County shall not unreasonably deny any Facility Management Services Change request made by the Developer that complies with the requirements of this subsection and will result in cost savings to both the County and the Developer. Any Facility Management Services Change proposed to be made at the Developer's request,

and accepted by the County, shall be implemented as set forth in this Section, except that the notice provided by the Developer pursuant to this subsection shall take the place of the notice provided by the County pursuant to subsection (A) of this Section.

SECTION 10.9. COUNTY REVENUE RIGHTS.

Except as set forth in Section 9.8 (Food Service Facility), the Developer shall have no Revenue Rights to the Courthouse or the Project Site. The County, or other Government Entity or third party identified by the County, shall have all of the Revenue Rights in each case on such terms and conditions as the County shall determine in its sole discretion and in accordance with Applicable Law. The County or other Government Entity, as applicable, shall have the sole and exclusive right to collect, receive and retain all revenues and other consideration of every kind and description arising from or relating to the Revenue Rights. The Revenue Rights shall include, but not be limited to, the following rights, and the revenues and rights to revenues arising from the exercise, control, license, sale, authorization, issuance or operation of such rights for any of the following:

(A) Any and all costs, fees, fines, forfeitures, impositions, or otherwise charged, assessed, billed, levied or claimed by any Government Entity;

(B) Advertising anywhere on, about, above, under, upon, within, or on the exterior of the Courthouse or the Project Site;

(C) Leases, licenses, or other agreements with third parties for the use, occupancy, staging or other event in or on the Courthouse or Project Site whether on a temporary or long-term basis;

(D) Concession agreements for the sale, display and distribution of food, beverages, publications, merchandise, formal or casual restaurants or food shops, or any other goods or services (including shoe polishing services, copy services, etc.) throughout the Courthouse and the Project Site;

(E) Naming rights for the Courthouse, the Project Site or any part thereof; and

(F) Placement and contracts for vending machines throughout the Courthouse and Project Site.

ARTICLE 11

CONTRACTING AND LABOR PRACTICES

SECTION 11.1. USE OF PROJECT CONTRACTORS AND SUBCONTRACTORS.

(A) Project Contractors and Subcontractors. The County acknowledges that the Developer may carry out the Design-Build Work and the Facility Management Services by contracting such obligations to Project Contractors, who in turn may contract all or part of their obligations under any Project Contract to one or more Subcontractors.

(B) Use of Project Contractors and Key Personnel. The Developer shall use the Project Contractors and Key Personnel listed in Appendix 15 (Developer and Project Contractors Information) or such others as the County may approve, acting reasonably and without unreasonable delay, for the performance of the Contract Services in the roles indicated in Appendix 15 (Developer and Project Contractors Information).

(C) Restricted Persons. In providing the Contract Services, the Developer shall not contract with, or allow any of its Project Contractors or any Subcontractors to contract with, any person that at the time of such contracting, in the reasonable opinion of the County, is a Restricted Person.

SECTION 11.2. PROJECT CONTRACTS AND SUBCONTRACTS.

(A) Terms and Actions. The Developer shall retain full responsibility to the County under this Project Agreement for all matters related to the Contract Services. No failure of any Project Contractor or Subcontractor used by the Developer in connection with the provision of the Contract Services shall relieve the Developer from its obligations hereunder to perform the Contract Services. The Developer shall be responsible for settling and resolving with all Project Contractors and Subcontractors all claims arising from the actions or inactions of the Developer or a Project Contractor or Subcontractor.

(B) Indemnity for Claims. The Developer shall pay or cause to be paid to the Project Contractors and all Subcontractors all amounts due in accordance with their respective Project Contracts and Subcontracts. No Project Contractor or Subcontractor shall have any right against the County for labor, services, materials or equipment furnished for the Contract Services. The Developer acknowledges that its indemnity obligations under Section 24.1 (Developer's Obligation to Indemnify) shall include all claims for payment or damages by any Project Contractor or Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Contract Services to the extent that those claims fall within the scope of the indemnity in Section 24.1 (Developer's Obligation to Indemnify).

(C) Assignability. All Project Contracts or Subcontracts entered into by the Developer with respect to the Project shall be assignable to the County, solely at the County's election and without cost or penalty, upon the expiration or termination of this Project Agreement, subject to the terms of the Project Contractor Collateral Agreement and provided that no Termination Amount is outstanding.

(D) Payment and Performance Bond. The Developer shall execute, furnish the County with, and record in the public records of Miami-Dade County, a payment bond and a performance bond in accordance with the provisions of Section 255.05, Florida Statutes and in accordance with Appendix 2 (County Legal Requirements) within 15 days following the Financial Close Date in an amount equal to the portions of the Design-Build Contract Price that cover all construction activities, materials and supplies. Alternatively, the Developer shall: (i) cause its Design-Builder to furnish the County with a payment and performance bond in accordance with the provision of Section 255.05, Florida Statutes and in accordance with the County Legal Requirements within 15 days following the Financial Close Date in an amount equal to the portions of the Design-Build Contract Price that cover all construction activities, materials and supplies; and (ii) furnish an alternate form of security in the amount and in accordance with the County Legal Requirements. The Developer shall cause the County to be named, upon issuance of such payment bond and performance bond, as an additional obligee and beneficiary thereunder, and shall deliver a certified copy thereof, with the multiple obligee rider or other comparable documentation, to the County within 10 days after issuance. The County's rights in respect of all such securities shall be subject to the rights of the Senior Lenders under the Lenders' Remedies Agreement.

(E) County Legal Requirements. In selecting, contracting with, and managing the contracts of, the Design-Builder and all Subcontractors for the design and construction of the Project, the Developer shall comply with, and shall cause its Design-Builder and Subcontractors to comply with, all County Legal Requirements as set forth in Appendix 2.

SECTION 11.3. MATERIAL CONTRACTS.

(A) County Consents. Unless the Developer has, at its earliest practicable opportunity, submitted to the County notice of the proposed course of action (and any relevant documentation) and the County has consented to such course of action, such consent not to be unreasonably withheld or delayed, the Developer shall not:

(1) Terminate, or agree to or permit the termination of, all or any material part of any Material Contract;

(2) Make, or agree to or permit the making of:

(a) any material amendment of any Material Contract; or

(b) any departure by any party from any material provision of any Material Contract;

(3) Permit any Project Contractor to assign or transfer to any person any of such Project Contractor's rights or obligations under a Material Contract other than by way of a Subcontract that is not a subcontract of all or substantially all of the obligations under the Material Contract; or

(4) Enter into, or permit the entering into, of any Material Contract other than those entered into with the Project Contractors listed in Appendix 15 (Developer and Project Contractors Information).

(B) Timeframe for Consents. The County shall give or deny such consent within:

(1) 10 Business Days of receipt of such notice and all relevant documentation, if the Developer is seeking to terminate a Material Contract immediately; and

(2) 20 Business Days of receipt of such notice and all relevant documentation in all other cases.

If the County fails to give or deny its consent within such time periods it shall be deemed to have given its consent. The giving or denial of consent by the County shall not create any liability of the County to the Developer or to any third party.

(C) Costs of Request for Consent. The Developer shall pay, without duplication, the County's reasonable internal administrative and personnel costs and all out- of-pocket costs in connection with considering any request for consent by the Developer pursuant to this Section. At the time of the request, the Developer shall make a payment to the County against its obligation under this Section of $15,000 (Index-Linked). After the County's decision is rendered, the County will either refund any overpayment or invoice the Developer for any additional amounts due under this Section with reasonable substantiation of such costs.

SECTION 11.4. REPLACEMENT MATERIAL CONTRACTS.

If any Material Contract at any time lapses, terminates, or otherwise ceases to be in full force and effect (whether by reason of expiration or otherwise), unless the goods, services or rights which were the subject matter of such Material Contract are no longer reasonably required for the Project, the Developer:

(1) Will forthwith enter into, or cause to be entered into, a replacement contract or contracts upon the same or substantially similar terms as the contract so replaced (to the extent reasonably practicable) and in accordance with the County Legal Requirements; and

(2) Will forthwith enter into, or cause the replacement Project Contractor to enter into, a Project Contractor Collateral Agreement.

SECTION 11.5 DELIVERY OF AMENDED OR REPLACEMENT MATERIAL CONTRACTS

If at any time any amendment is made to any Material Contract, or a replacement Material Contract (or any agreement which materially affects the interpretation or application of any Material Contract) is entered into, the Developer shall deliver to the County a copy of each such amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of the Developer.

SECTION 11.6. PAYMENT OF LIVING WAGES DURING THE FACILITY MANAGEMENT PERIOD.

As of the Effective Date, the County's living wage is set forth and codified in Section 2-8.9 of the Code of Miami-Dade County, Florida. The Developer, the Facility Manager and any Subcontractors shall pay not less than the then-current County living wage rates to applicable Developer Persons in accordance with Applicable Law with respect to the Facility Management Services, as such wages rates may be amended from time to time.

SECTION 11.7. LABOR RELATIONS AND DISPUTES.

(A) Labor Relations. The Developer shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the Contract Services. The Developer shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing or seeking to represent employees of the Developer, the Project Contractor and Subcontractors. The County shall have no responsibility whatsoever for any such disputes or issues and the Developer shall indemnify, defend and hold harmless the County and the County Indemnitees in accordance with Section 24.1 (Developer's Obligation to Indemnify) from any and all Loss-and-Expense resulting from any such labor dispute, except to the extent that such labor dispute is a Compensation Event.

(B) Labor Disputes. If the Developer has knowledge of an actual or potential labor dispute that may affect any of the Contract Services, the Developer shall promptly:

(1) Give notice thereof to the County, including all relevant information related to the dispute of which the Developer has knowledge; and

(2) Take all reasonable steps to ensure that such labor dispute does not affect the performance of any of the Contract Services including by applying for relief to appropriate tribunals or courts. The Developer acknowledges that if the labor dispute involves workers of a Project Contractor or Subcontractor, or of anyone employed by or through them, the County will not be required to provide any Facility, space or assistance in the Project or on the Project Site for the purposes of such workers or any applicable union.

ARTICLE 12

INSURANCE, DAMAGE AND DESTRUCTION

SECTION 12.1. INSURANCE.

(A) Required Insurance. At all times during the Design-Build Period and the Facility Management Period, as applicable, the Developer and County, in accordance with each party's responsibility under Appendix 10 (Insurance Requirements), shall obtain or cause to be obtained, maintain and comply with the terms and conditions of the Required Insurance, and shall pay all premiums with respect thereto as the same become due and payable.

(B) Project Contractors and Subcontractors. The Developer shall ensure that all Project Contractors and Subcontractors secure and maintain all insurance coverage and other financial sureties required by Applicable Law in connection with their presence and the performance of their duties at or concerning the Project.

(C) Compliance with Insurer Requirements. The Developer and the County shall comply promptly with the requirements of all insurers pertaining to the Project Site and the Project under any policy of Required Insurance to which such is a named insured, a co-insured, or an additional insured person. Neither party to this Project Agreement shall knowingly do or permit anything to be done or fail to take any reasonable action that results in the cancellation or the reduction of coverage under any policy of Required Insurance to which such party is a named insured, a co-insured, or an additional insured person.

(D) Failure to Provide Insurance Coverage. For the Required Insurance that is the Developer's responsibility pursuant to Appendix 10 (Insurance Requirements), if the Developer fails to pay any premium for such Required Insurance, or if any insurer cancels any such Required Insurance policy and the Developer fails to obtain replacement coverage so that such Required Insurance is maintained on a continuous basis, or if the Developer fails to provide evidence of such Required Insurance to the County in accordance with Appendix 10 (Insurance Requirements), the County may, but is not obligated to, pay such premium or procure similar insurance coverage from another insurer and upon such payment by the County the amount thereof shall be immediately reimbursable to the County by the Developer. Subject to Section 14.5 (Unavailability of Insurance), the failure of the Developer to obtain and maintain any such Required Insurance shall not relieve the Developer of its liability for any losses intended to be insured thereby, be a satisfaction of any Developer liability under this Project Agreement or in any way limit, modify or satisfy the Developer's indemnity obligations hereunder.

(E) Reductions for Insurance Proceeds and Insurance Receivables. Whenever this Project Agreement obligates the County to pay any amount to the Developer in respect of an event or circumstance for which, or with respect to the consequences of which, an insurance claim may be made by the Developer under the Required Insurance, the amount which the County is obligated to pay will be reduced by the amount of Insurance Proceeds and Insurance Receivables which the Developer recovers or would have been entitled to recover if it had complied with the requirements of this Project Agreement or any policy of Required Insurance.

(F) Property Insurance Proceeds. Property Insurance Proceeds shall be deposited, held and applied as provided in subsection 14.3(E) (Insurance Trust Account).

SECTION 12.2. PROTECTION OF PROJECT AND PRIVATE PROPERTY FROM LOSS, DAMAGE AND DESTRUCTION.

(A) Protection. The Developer shall use care and diligence, and shall take all reasonable and appropriate precautions, to protect the Project from loss, damage or destruction. The Developer shall report to the County and the insurers, immediately upon obtaining knowledge thereof, any damage or destruction to the Project and as soon as practicable thereafter shall submit a full report to the County. The Developer shall also submit to the County within

24 hours of receipt copies of all accident and other reports filed with, or given to the Developer by, any insurer, adjuster or Governmental Body.

(B) Repair of Property. The Developer shall promptly repair or replace all property owned by the County or any other public or private owner that is damaged by the Developer or any Developer Person in connection with the performance of, or the failure to perform, the Contract Services. The repair and replacements shall restore the damaged property, to the maximum extent reasonably practicable, to its character and condition existing immediately prior to the damage.

SECTION 12.3. PROJECT AGREEMENT NOT AFFECTED BY DAMAGE OR DESTRUCTION

Except as otherwise expressly provided herein, the partial destruction or damage or complete destruction of the Project by fire or other casualty will not permit either party to terminate this Project Agreement or entitle the Developer to surrender possession of the Project or to demand any increase in any amounts payable to the Developer under this Project Agreement.

ARTICLE 13

SUPERVENING EVENT PROCEDURES

SECTION 13.1. SUPERVENING EVENTS GENERALLY.

(A) Extent of Relief Available to the Developer. If a Supervening Event occurs, the Developer may seek relief from its obligations, may seek extensions of time, may claim compensation, and may exercise a termination right under this Project Agreement, in each case as and to the extent permitted pursuant to this Article, Article 14 (Relief Events), and Article 15 (Compensation Events and Changes in Law) and in accordance with Section 14.3 (Developer's Obligations Upon Material Damage or Destruction).

(B) Mitigation Given Effect. Any relief to which the Developer is entitled under this Article on account of Supervening Events shall be adjusted to account for the effect of the mitigation measures which were or should have been taken by the Developer in compliance with its duty to mitigate under Section 25.5 (General Duty to Mitigate).

(C) Applicable Law Compliance. Nothing in this Article shall be interpreted as relieving the Developer of its obligation, following any and all Supervening Events, to perform its obligations under this Project Agreement in compliance with Applicable Law.

SECTION 13.2. PROCEDURES UPON THE OCCURRENCE OF A SUPERVENING EVENT.

(A) Notice and Written Report. In order to assert an entitlement based on the occurrence of a Supervening Event, the Developer shall give notice of the occurrence of the Supervening Event to the County as soon as practicable, and in any event within 15 Business Days of the date the Developer has knowledge that the Supervening Event has caused or is likely to cause an entitlement under this Project Agreement. As soon as practicable thereafter and in any event within 30 Business Days of the date the Developer has knowledge of the Supervening Event, the Developer shall submit a written report to the County (based on information available to the Developer at the time of submission):

(1) Describing the Supervening Event and the cause thereof, to the extent known;

(2) Stating the date on which the Supervening Event began and its estimated duration, if such estimated duration can be reasonably estimated;

(3) Summarizing the consequences of the Supervening Event and the expected impact on the performance of the Developer's obligations under this Project Agreement, to the extent such impact can be reasonably ascertained; and

(4) Indicating the nature and scope of the Developer's potential entitlement to relief, including specifically but not limited to, the specific reference to the applicable sections of the Project Agreement that result in such claim of entitlement.

(B) Updates. The Developer shall provide the County with periodic updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the Supervening Event and the matters described in subsection (A) of this Section. In particular, the Developer shall notify the County as soon as the Supervening Event has ceased and of the time when performance of its affected obligations can be resumed.

(C) Submittal of Relief Request. The Developer shall submit to the County a further notice making its request for specific relief, the basis therefor and the event giving rise to the requested relief within 30 days after the notice referred to in subsection (A) of this Section. If the specific relief cannot reasonably be ascertained within such 30-day period, the Developer at the conclusion of such 30-day period shall furnish a further notice to the County establishing the expected date by which the appropriate requested relief shall be definitively requested and the basis for such extension. The Developer shall then specify the specific relief by the date established in such further notice or submit a further extension notice with a further expected date and the basis for such extension, which further extension shall be subject to the County's approval, acting reasonably.

(D) Delay in Notification. If any Supervening Event notice or any required information is submitted by the Developer to the County after the dates required under this Section, then the Developer shall still be entitled to relief provided due to the occurrence of the Supervening Event except such relief shall be equitably adjusted to the extent that the ability to mitigate was adversely affected as a result of the delay in providing such notice or information.

(E) Multiple and Overlapping Claims. The Developer may make multiple but not duplicative claims with respect to a Supervening Event.

(F) Burden of Proof and Mitigation. The Developer shall bear the burden of proof in establishing the occurrence of a Supervening Event and the entitlement to relief based thereon, and shall demonstrate that the Developer complied with its mitigation obligations under Section 25.5 (General Duty to Mitigate).

(G) Resumption of Performance. Promptly following the occurrence of a Supervening Event, the Developer shall use all reasonable efforts to eliminate the cause thereof and resume performance of this Project Agreement.

(H) Developer Information. The County shall provide the Developer information reasonably requested in order for the Developer to reasonably assert a Supervening Event claim.

(I) County Response. Within 30 days after receipt of a relief request by the Developer pursuant to subsection (C) of this Section, the County shall issue a written determination as to the extent, if any, to which it concurs with the Developer's request, and the reasons therefor.

(J) Agreement or Dispute. The agreement of the parties as to the specific relief to be given the Developer on account of a Supervening Event shall be evidenced by a Contract Administration Memorandum, a Project Agreement Amendment or a Change Order, as applicable. Either party may refer any dispute regarding a Supervening Event to Non-Binding Mediation or to the Dispute Resolution Procedure.

ARTICLE 14

RELIEF EVENTS

SECTION 14.1. RELIEF EVENTS.

(A) Developer Reinstatement. If all or any part of the Project is damaged or destroyed on account of a Relief Event, the Developer shall promptly repair, replace or restore the part of the Project so damaged or destroyed to at least the character or condition with materials of like kind and quality and without deduction for depreciation at the time and place of loss, and in compliance with Applicable Law, and in accordance with the requirements of Section 14.3 (Developer's Obligations Upon Material Damage or Destruction).

(B) Schedule Relief. If a Relief Event occurs:

(1) The Scheduled Occupancy Readiness Date and the Longstop Date shall be extended as and to the extent provided in Section 8.5 (Scheduled Occupancy Readiness Date and Longstop Date); and

(2) The occurrence of the Relief Event shall not extend the period of time during which the Developer is obligated to provide the Contract Services and entitled to receive the Service Fee beyond 30 years from the Scheduled Occupancy Readiness Date.

(C) Termination Relief. If any Developer Event of Default or breach of this Project Agreement would not have occurred but for the occurrence of the Relief Event, such Developer Event of Default or breach will be deemed to have not occurred for the purposes of this Project Agreement. Notwithstanding the foregoing, nothing in this Article will have the effect of 1) relieving either party from performing any payment obligations contemplated in this Project Agreement, including, but not limited to, payment of the Service Fee or 2) preventing the County from assessing any Deductions (whether or not such Deductions were caused by the relevant Relief Event).

SECTION 14.2. FORCE MAJEURE EVENTS.

(A) General. In addition to the provisions of Article 14.1 (Relief Events), the provisions of this Article apply with respect to Force Majeure Events.

(B) No Breach Obligations. Neither party may bring a claim for a breach of obligations under this Project Agreement by the other party or incur any liability to the other party for any losses or damages incurred by that other party if a Force Majeure Event occurs and the Affected Party is prevented from carrying out its obligations by that Force Majeure Event; provided, however, that the occurrence of a Force Majeure Event shall not excuse either party from performing any payment obligations contemplated in this Project Agreement including, but not limited to, payment of the Service Fee. No Deductions will be taken for instances of Unavailability Event or Performance Failures occurring as a direct result of a Force Majeure Event.

(C) Consultation and Notification. Promptly (and in any event within ten (10) Business Days) after any notification of a Force Majeure Event under subsection 13.2(A) (Notice and Written Report): (1) if the Developer is an Affected Party, it shall provide written notice to the County stating that it is an Affected Party and setting forth the obligations in the Project Agreement it is unable to perform, and (2) the parties shall consult with each other in good faith and use all reasonable efforts to agree on appropriate terms to mitigate the effects of the Force Majeure Event in accordance with the terms of Section 25.5 (General Duty to Mitigate) and facilitate the continued performance of this Project Agreement. Promptly, and in any event within thirty (30) days after any notification of a Force Majeure Event under subsection 13.2(A) (Notice and Written Report), if the County is an Affected Party, the County shall provide written notice to the Developer stating that it is an Affected Party and setting forth the obligations in the Project Agreement it is unable to perform.

(D) Compensation Prior to Occupancy Readiness Date. To the extent that any Financing Costs become due for payment or repayment by the Developer during the Delay Period, the County shall pay to the Developer an amount equal to such Financing Costs in accordance with the procedures set forth in subsection 15.1(F) (Financing Costs) below.

(E) Failure to Agree; Right to Terminate.

(1) If:

(i) as a result of a Force Majeure Event, the Affected Party is unable to comply with any of its material obligations under this Project Agreement for a continuous period of more than one hundred eighty (180) days after the date such Force Majeure Event occurred; and

(ii) within such one hundred eighty (180) day period, the parties are unable to agree on appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Project Agreement,

either party may deliver notice to the other party that it wishes to terminate this Project Agreement (a "**Force Majeure Termination Notice**"). A Force Majeure Termination Notice must (A) provide a proposed date of termination and (B) be delivered to the other party at least thirty (30) days before such proposed date of termination.

(2) If:

(i) the County delivers a Force Majeure Termination Notice to the Developer in accordance with subsection 14.2(E)(1); or

(ii) the Developer delivers a Force Majeure Termination Notice to the County in accordance with subsection 14.2(E)(1) during the Design-Build Period,

this Project Agreement will terminate on the date of termination stated in such Force Majeure Termination Notice.

(3) If the Developer delivers a Force Majeure Termination Notice to the County in accordance with subsection 14.2(E)(1) during the Facility Management Period, subsection 14.2(F) (County Options) will apply.

(F) County Options.

(1) If the Developer delivers a Force Majeure Termination Notice in accordance with 14.2(E) (Failure to Agree; Right to Terminate) during the Facility Management Period,

the County shall, within fifteen (15) Business Days of receiving such notice, deliver a notice to the Developer stating that the County either:

(i) accepts that this Project Agreement will terminate on the date stated in the Force Majeure Termination Notice; or

(ii) requires this Project Agreement to continue.

(2) If the County issues a notice under subsection 14.2(F)(1)(i) or fails to deliver any notice under subsection 14.2(F)(1), this Project Agreement will terminate on the date set out in the Force Majeure Termination Notice delivered by the Developer in accordance with subsection 14.2(E)(1) (Failure to Agree; Right to Terminate).

(3) If the County delivers a notice under subsection 14.2(F)(1)(ii):

(i) this Project Agreement will not terminate and will continue until the County provides written notice (of at least thirty (30) days) to the Developer that it wishes this Project Agreement to terminate; and

(ii) until such time as the County terminates this Project Agreement in accordance with subsection 14.2(F)(3)(i):

(A) the Developer shall, to the extent practicable, continue to perform the Facility Management Services; and

(B) subject to the Developer complying with subsection 14.2(F)(3)(ii)(A), the County shall pay to the Developer each Service Fee from the day after the date on which this Project Agreement would have terminated under subsection 14.2(F)(2) as if the Facility Management Services were being fully provided in accordance with the requirements of this Project Agreement and all other amounts, including losses and expenses caused by any damage or delay (to the extent not covered by insurance proceeds) resulting from the Force Majeure Event.

(G) If this Project Agreement is terminated pursuant to subsection 14.2(E)(2) (Failure to Agree; Right to Terminate) or subsection 14.2(F)(2) (County Options), the County shall pay compensation to the Developer in accordance with Appendix 13 (Compensation on Termination).

SECTION 14.3. DEVELOPER'S OBLIGATIONS UPON MATERIAL DAMAGE OR DESTRUCTION.

(A) Draft Reinstatement Plan. If the Project suffers damage or destruction, that is likely to cost more than $1,000,000 (CPI-Linked), to repair, replace and restore, the Developer shall, as soon as practicable and in any event within 30 days of such damage or destruction, and before undertaking any material remedial work (other than any emergency work required to stabilize other parts of the Project or to facilitate the continued provision of the Facility Management Services to other parts of the Project, provide the County with a draft plan (the "**Draft Reinstatement Plan**") for the carrying out of the works necessary (the "**Reinstatement Works**") to repair, replace and restore the damaged or destroyed portions of the Project and related assets, and containing to the extent possible the details required to be included in the Reinstatement Plan under subsection (C) of this Section.

(B) No Reinstatement in Same Form. As soon as reasonably practicable and in any event within 30 days after the delivery of the Draft Reinstatement Plan, the County:

(1) Shall provide the Developer with any comments it may have on the Draft Reinstatement Plan; and

(2) If it has decided that the Project is not required to be reinstated in the same form as prior to the damage or destruction, will issue a preliminary Capital Modification instruction to that effect.

(C) Reinstatement Plan. As soon as reasonably practicable and in any event within 15 Business Days after receipt of the County's comments, the Developer shall deliver to the County a revised plan (the "**Reinstatement Plan**") to reasonably take into account the comments received from the County and making changes to the Draft Reinstatement Plan necessary to reflect the contractual terms agreed (as negotiated and finalized) with the person effecting the Reinstatement Works.

(D) Reinstatement Plan Details. The Reinstatement Plan shall set forth in as much detail as is reasonable in the circumstances:

(1) The identity of the person, or (if the Developer is conducting a competitive process) persons, intended to effect the Reinstatement Works;

(2) The terms and timetable or (if not then established) the reasonably anticipated terms and timetable upon which the Reinstatement Works are to be effected (including the date upon which the Project is reasonably expected to become fully operational again and the Facility Management Services to be fully provided);

(3) The impact that implementation of the Reinstatement Plan will have on the revenues of the Developer under this Project Agreement and on the payment obligations of the Developer under the Project Contracts, including in respect of life cycle requirements;

(4) The total cost or (if not then established) the reasonably anticipated total cost of the Reinstatement Works; and

(5) The impact of any Capital Modification requested by the County as part of the reinstatement.

(E) Insurance Trust Account. The parties shall cause an insurance trust account ("**Insurance Trust Account**") to be created and held pursuant to the terms of an insurance trust agreement ("**Insurance Trust Agreement**") to which the County, the Developer and the Senior Lenders are parties and which has been approved by the County. The Insurance Trust Agreement shall be consistent with this Project Agreement in all material respects.

(F) Application of Property Insurance Proceeds Available for Repair, Replacement or Restoration. All property Insurance Proceeds available for the repair, replacement or restoration of the Project shall be deposited in the Insurance Trust Account and at all times applied to such repair, replacement or restoration purposes in accordance with the terms of this Project Agreement.

(G) Insurance Deductibles and Exceedances. The Developer shall be responsible for and bear all costs associated with insurance deductibles and any claims exceeding policy limits in accordance with Appendix 10 (Insurance Requirements). The County shall be responsible for and bear all costs associated with insurance deductibles and any claims exceeding policy limits in accordance with Appendix 10 (Insurance Requirements). Developer shall be responsible to fund Reinstatement Works necessary as a direct result of a Force Majeure

Event only to the extent of all Insurance Proceeds available for repair, replacement or restoration of the Project.

SECTION 14.4 STANDARDS OF REPLACEMENT, REPAIR OR RECONSTRUCTION.

Any replacement, repair, or reconstruction of the Project or any part thereof pursuant to the provisions of Section 14.3 (Developer's Obligations Upon Material Damage or Destruction) shall be made or done in compliance with the Design and Construction Standards, the County Legal Requirements, and the requirements set forth in Appendix 6 (Design-Build Work Review Procedures), subject to any agreement made between the County and the Developer to revise the Design and Construction Standards or the requirements set forth in Appendix 6 (Design-Build Work Review Procedures) as they pertain to the replacement, repair or reconstruction work.

SECTION 14.5. UNAVAILABILITY OF INSURANCE.

(A) Insurance Unavailability Event. If during the Term:

(1) Any Required Insurance that is the Developer's responsibility in accordance with Appendix 10 (Insurance Requirements) is not available to the Developer with Qualified Insurers; or

(2) The insurance premium payable or the terms and conditions for any Required Insurance that is the Developer's responsibility in accordance with Appendix 10 (Insurance Requirements) at the same levels and on the terms required by this Project Agreement are at such cost that the County, owners or others having a substantially similar interest in property such as the Project are not insuring against such risk with Qualified Insurers, and such premium payable, terms or conditions do not arise, directly or indirectly from Developer Fault or the fault of any Project Contractor;

then such circumstance shall constitute an "**Insurance Unavailability Event**" hereunder.

(B) Termination by County. If and for so long as an Insurance Unavailability Event has occurred and is continuing, after the exhaustion of the cure period as specified in subsection 20.3(A)(2)(a) (Notice and Remedy or Remedial Program), the County may by notice to the Developer terminate this Project Agreement, whereupon the Developer shall be entitled to compensation upon termination as provided in Section 3 (No-Fault Termination) of Appendix 13 (Compensation on Termination).

(C) Continuance of Project Agreement. During any period prior to the Termination Date in which an Insurance Unavailability Event has occurred and is continuing, and the County has not exercised its termination right under subsection (B) of this Section or the County has exercised such right but the Termination Date has not yet occurred:

(1) The Developer will not be obligated to maintain such Required Insurance and references in this Project Agreement to such Required Insurance will be construed accordingly. During such period the Service Fee shall be adjusted in accordance with Section 16.6 (Extraordinary Items) by agreement of the parties, acting reasonably, to reflect any savings in the Developer's insurance cost as a result of the Developer not having to provide such Required Insurance; and

(2) On the occurrence of any property damage with respect to which an Insurance Unavailability Event has occurred, the County will pay to the Developer an amount equal to the insurance proceeds that would have been payable directly to the Developer or to the relevant third party (in the case of third-party liability insurance)

under the relevant policy of insurance had the relevant insurance continued to be available and in effect, and this Project Agreement will continue.

(D) Subrogation. If the County makes any payment to the Developer pursuant to subsection (C)(2) of this Section, then the County, to the extent of the amount paid, will be subrogated to the Developer's rights against any third party (other than Developer Persons) in respect of the occurrence or claim as a result of which the payment was made.

(E) County Right to Purchase Replacement Insurance Coverage. During the continuance of any Insurance Unavailability Event, the County may, but shall not be obligated to, purchase insurance policies in the commercial insurance market providing the coverage intended to be provided by the Required Insurance that is unavailable due to an Insurance Unavailability Event. The Service Fee shall be adjusted in accordance with Section 16.6 (Extraordinary Items) to reflect a credit in the amount of the cost to the County of any such replacement insurance coverage, but only to the extent that such costs would be considered commercially reasonable without giving effect to the occurrence of the Insurance Unavailability Event. By way of example, if the premium on a policy of Required Insurance was costing the Developer $5 and it suddenly jumps to $100 due to an Insurance Unavailability Event, the Service Fee reduction would be $5, not $100.

SECTION 14.6. CONTINUING ATTEMPTS TO OBTAIN INSURANCE.

During any period when an Insurance Unavailability Event has occurred and is continuing, the Developer shall approach the insurance market on a regular basis and in any event at regular intervals of no longer than six months to establish whether the Required Insurance remains unavailable.

ARTICLE 15

COMPENSATION EVENTS AND CHANGES IN LAW

SECTION 15.1. COMPENSATION EVENTS.

(A) Developer Reinstatement. If all or any part of the Project is damaged or destroyed on account of a Compensation Event, the Developer shall promptly repair, replace or restore the part of the Project so damaged or destroyed to at least the character or condition with materials of like kind and quality and without deduction for depreciation at the time and place of loss, and in compliance with Applicable Law, and in accordance with the requirements of Section 14.3 (Developer's Obligations Upon Material Damage or Destruction).

(B) Schedule Relief. If a Compensation Event occurs:

(1) The Scheduled Occupancy Readiness Date and the Longstop Date shall be extended as and to the extent provided in Section 8.5 (Scheduled Occupancy Readiness Date and Longstop Date); and

(2) The occurrence of a Compensation Event shall not extend the period of time during which the Developer is obligated to provide the Contract Services and entitled to receive the Service Fee beyond 30 years from the Scheduled Occupancy Readiness Date.

(C) Performance Relief. If a Compensation Event occurs, the Developer shall be relieved from its relevant obligations under this Project Agreement to perform the Contract Services in accordance with Article 13 (Supervening Event Procedures), and the County shall not

have the right to impose Deductions for Unavailability Events or Performance Failures, to the extent caused by a Compensation Event.

(D) Compensation Relief for Compensation Events Occurring Prior to the Occupancy Readiness Date. If a Compensation Event occurs prior to the Occupancy Readiness Date, the County shall pay the Developer an amount equal to the Change in Costs to the Developer of performing the Design-Build Work or the Facility Management Services in accordance with Applicable Law (including increased design, construction, operation, maintenance, repair and replacement costs, including the Developer's own increased costs as well as increased amounts payable to the Design-Builder, the Facility Manager, or subcontractors), to the extent resulting from such Compensation Event, which amount shall be payable as soon as practicable by the County following agreement of the parties, pursuant to Section 16.12 (Negotiated Lump Sum Pricing of Additional Work) or Section 16.13 (Cost Substantiation of Additional Work), as applicable, as to such cost or other appropriate relief measures; and

An amount equal to the Financing Costs, in accordance with subsection 15.1(F) (Financing Costs).

No amounts other than those provided for in this subsection shall be payable by the County on account of such Compensation Event that occurs prior to the Occupancy Readiness Date. The obligation of the Developer to perform the work necessitated by the occurrence of a Compensation Event occurring prior to the Occupancy Readiness Date for which the Developer is entitled to compensation as provided in this subsection is conditioned on the availability of funds as provided in subsection 7.22(B) (Conditions to Certain Developer Performance Obligations During the Design-Build Period).

(E) Compensation Relief for Compensation Events On or After the Occupancy Readiness Date. If a Compensation Event occurs on or after the Occupancy Readiness Date, the Service Fee shall continue to be payable, but shall be:

(1) Reduced by an amount equal to Avoidable Costs; and

(2) Increased by an amount necessary to compensate the Developer for any Change in Costs to the Developer of performing the Contract Services in compliance with Applicable Law (including increased design, construction, operation, maintenance, repair and replacement costs), to the extent resulting from the Compensation Event.

(F) Financing Costs.

(1) To the extent that any Financing Costs become due for payment or repayment by the Developer during the Delay Period, the County shall pay to the Developer an amount equal to such Financing Costs no later than ten (10) Business Days prior to the date that such Financing Costs become due for payment or repayment provided the Developer provides the County with an invoice for such amounts no less than ten (10) Business Days prior to the date that payment is required from the County to the Developer.

(2) No later than twenty (20) Business Days after the Occupancy Readiness Date, the parties shall calculate (such calculation being referred to below as the "**Reconciliation**"), in accordance with Section 17.2 (Financial Model Updates), the extent to which Developer, taken as a whole, was left in a better or worse position as a result of the Delay Period, taking into account the payments made to the Developer by the County pursuant to subsections 15.1(D) and 15.1(F)(1).

(3) To the extent that the Reconciliation demonstrates that the Developer, taken as a whole, was left in a worse position notwithstanding the payments made to the Developer by the County pursuant to subsection 15.1(F)(2) or otherwise as a result of the Compensation Event or the Force Majeure Event, the County shall, within thirty (30) days of completion of the Reconciliation, make a lump-sum payment to the Developer in an amount equal to that which would result in the Developer, taken as a whole, being left in a no better and no worse position.

(4) To the extent that the Reconciliation demonstrates that the Developer, taken as a whole, was left in a better position as a result of the payments made to the Developer by the County pursuant to subsection 15.1(F)(2) or otherwise as a result of the Compensation Event or the Force Majeure Event, the Developer shall make a lump-sum payment to the County in an amount equal to that which would result in Developer, taken as a whole, being left in a no better and no worse position; provided, however, that the parties understand and agree that payment by the County of Financing Costs prior to the Occupancy Readiness Date shall result in a commensurate adjustment to the Capital Charge portion of the Service Fee during the Facility Management Period.

(5) Any reference in this Project Agreement to "**no better and no worse**" or to leaving the Developer in a "**no better and no worse position**" will be construed by reference to the Developer's:

(i) rights, duties and liabilities under or arising pursuant to performance of this Project Agreement, the Senior Financing Agreements, the Project Contracts and the performance bonds and the payment bonds; and

(ii) ability to perform its obligations and exercise its rights under this Project Agreement, the Senior Financing Agreements, the Project Contracts and the performance bonds and the payment bonds.

SECTION 15.2. DISCRIMINATORY CHANGES IN LAW OR SPECIFIED CHANGES IN TAX LAW.

(A) Changes Prior to the Occupancy Readiness Date. If a Discriminatory Change in Law or a Specified Change in Tax Law occurs prior to the Occupancy Readiness Date, the Developer or the County, as applicable, shall be entitled to additional compensation for any revenue loss for the Developer or any Unit Holder (as the case may be) directly attributable thereto, such additional compensation to the Developer shall be payable by the County directly to the Developer pursuant to Section 7.22 (Payment Obligations of the County During the Design-Build Period) and any revenue gain to the Developer shall result in a reduction of the Service Fee payable by the County.

(B) Changes On or After the Occupancy Readiness Date. If a Discriminatory Change in Law or a Specified Change in Tax law occurs on or after the Occupancy Readiness Date, the Developer or the County shall be entitled to additional compensation for any revenue loss or revenue gain relative to the most recent Financial Model to the Developer or any Unit Holder (as the case may be) directly attributable thereto and any such revenue gain to the Developer or any Unit Holder shall result in a reduction of the Service Fee payable by the County.

SECTION 15.3. AD VALOREM TAXES.

Under Applicable Law and as of the Effective Date of this Project Agreement, the County and the Project Site are immune from ad valorem taxation. If any ad valorem real property taxes shall be levied in respect of the interest of the Developer in the Courthouse during

the Term of this Project Agreement, the Developer shall, to the extent permitted by then Applicable Law, be permitted to increase the amount of the Service Fee otherwise due to the Developer by the County by the amount of the ad valorem tax.

ARTICLE 16

SERVICE FEE AND OTHER PAYMENTS

SECTION 16.1. SERVICE FEE GENERALLY.

(A) Service Fee Payment Obligation. From and after the later of the (1) Scheduled Occupancy Readiness Date and (ii) the Occupancy Readiness Date, and through the Termination Date, except as provided in subsection (B) of this Section, the County shall pay the Service Fee to the Developer as compensation for the Developer's performance of the Contract Services.

(B) Service Fee Payments Where Occupancy Readiness Date Occurs Prior to Scheduled Occupancy Readiness Date. In the event the Occupancy Readiness Date occurs prior to the Scheduled Occupancy Readiness Date, the County shall have no obligation to pay the Service Fee and no right to occupy the Project during the period between the Occupancy Readiness Date and the Scheduled Occupancy Readiness Date, except as may be agreed by the parties in accordance with Section 8.8 (County Right of Occupancy).

(C) Limitation on Payments. Other than the revenues and profits to be derived by Developer at the Restaurant pursuant to subsection 9.8(C) and the payments and compensation amounts expressly provided for herein, the Developer shall have no right to any further payment from the County in connection with the Contract Services or otherwise in connection with the Project.

SECTION 16.2. SERVICE FEE FORMULA.

The Service Fee shall be calculated in accordance with the following formula:

SF = CC + FMC ± DC ± EI ± IFMC
Where,

SF = Service Fee

CC = Capital Charge

FMC = Facility Management Charge

DC = Deductions Credit

EI = Extraordinary Items

IFMC = Incremental Facility Management Charge

SECTION 16.3. CAPITAL CHARGE.

(A) Capital Charge Amount. The Capital Charge per 12 month Contract Year shall be $21,296,266, shall be adjusted as and to the extent required under or pursuant to

subsection (B) of this Section, shall be fixed for the Term as of the Financial Close Date, and shall not be Index-Linked.

(B) Adjustments to the Capital Charge. The Capital Charge may be adjusted pursuant to Section 11 (Revision of the Capital Charge to Reflect Changes in Benchmark Interest Rate Risk) of Appendix 3 (Financial Close Procedures and Conditions) and Section 12 (Revision of the Capital Charge to Reflect Changes in Design-Build Contract Price Following the Proposal Validity Period End Date) of Appendix 3. The parties shall execute a Contract Administration Memorandum on the Financial Close Date reflecting the effect of any such adjustments as of the Financial Close Date.

SECTION 16.4. FACILITY MANAGEMENT CHARGE.

(A) Facility Management Charge. The Facility Management Charge per 12 month Contract Year shall be $3,758,165.

(B) Incremental Facility Management Charge. The Incremental Facility Management Charge per 12 month Contract Year after the completion of the Incremental Facility shall be $12,240.

(C) Escalation. On the Occupancy Readiness Date and at the start of each subsequent Contract Year the Index-Linked percentage change will be calculated and that percentage change will be used to escalate each monthly Facility Management Charge and each monthly Incremental Facility Management Charge for that Contract Year. The indexes and weightings used to calculate the Index-Linked percentage change are as follows:

Index	**Percentage of Facility Management Charge to be Escalated**	**Source**
CPI-U (Miami-Fort Lauderdale- West Palm Beach)	53.36%	https://www.bls.gov/regions/southeast/fl_miami_msa.htm
GDP Deflator	46.43%	https://fred.stlouisfed.org/series/GDPDEF
Consumer Price Index (CPI)	0.21%	https://www.bls.gov/cpi/

SECTION 16.5. DEDUCTIONS CREDIT.

The Deductions Credit shall be the sum of all Deductions imposed pursuant to Appendix 11 (Deductions) hereunder. Examples of the calculation of Deductions are included in Appendix 12 (Example Calculations of Deductions from Service Fee).

SECTION 16.6. EXTRAORDINARY ITEMS.

(A) Extraordinary Items. The Extraordinary Items component of the Service Fee, which may be a charge or a credit, shall be equal to the net amount of the following items (each an "**Extraordinary Item**" hereunder):

(1) Any adjustments reflecting the County's share of any Refinancing Gain payable under Section 6.5 (Refinancing);

(2) Any amount payable by the County on account of reasonable out-of-pocket expenses incurred by the Developer in seeking such financing contemplated by subsection 6.7(B) (Developer Financing);

(3) Any payment relating to Hazardous Substances to be made by or to the County pursuant to subsection 7.5(E) (Hazardous Substances);

(4) Any amount payable by the County on account of a County-directed Design and Construction Requirement Charge which is chargeable to the County hereunder pursuant to Section 7.12 (Design and Construction Requirement Changes Made at County Direction), net of any Avoidable Costs incurred by the Developer that would have been saved or avoided if the Developer had acted reasonably and in accordance with this Project Agreement;

(5) Any adjustment (including additions or deductions) to the Service Fee resulting from Vandalism pursuant to subsection 9.4(B) (Vandalism);

(6) Any adjustment to the Service Fee resulting from increased or decreased operation, maintenance, repair and replacement costs directly attributable to a Capital Modification or a Facility Management Services Change under the provisions of Article 10 (Capital Modifications and Facility Management Services Changes) or resulting from a Design and Construction Requirement Change made at the direction of the County pursuant to Section 7.12 (Design and Construction Requirement Changes Made at County Direction), but only to the extent such costs are not already covered by insurance;

(7) Any adjustment reflecting savings in insurance costs, or additional insurance costs paid by the County for replacement insurance coverage, pursuant to Section 14.5 (Unavailability of Insurance);

(8) Any amount payable by the County for increased operation, maintenance or other costs incurred on account of subsection 15.1(E) (Compensation Relief for Compensation Events On or After the Occupancy Readiness Date), net of any Avoidable Costs achieved by the Developer in mitigating the effects of the occurrence of such a Compensation Event;

(9) Any adjustment resulting from the exercise by the County of its rights under Article 19 (Remedies of the Parties and County Step-In Rights);

(10) Any indemnification payments owed by the Developer pursuant to Section 24.1 (Developer's Obligation to Indemnify) or any other provision hereof;

(11) Any payments required to be made by the Developer pursuant to Appendix 8 (Facility Management Requirements);

(12) Any payments required to be made by the County to the Developer on account of additional costs associated with special events pursuant to section 9.1(D) (Special Events); and

(13) Any other payment or increase or reduction in the Service Fee provided for under any other provision of this Project Agreement.

(B) Payment. Each Extraordinary Item shall be paid as a lump sum in accordance with Section 16.7. If the County determines that a lump sum payment for an Extraordinary Item is not feasible, the County and the Developer shall confer to determine the most cost efficient method of funding or financing such amounts. To the extent that any such alternative funding arrangement is agreed to by both parties, a Contract Administration Memorandum and a Project Agreement Amendment, as applicable, shall be executed.

SECTION 16.7. BILLING AND PAYMENT.

(A) Installments. The County shall pay the Service Fee in monthly installments in an amount equal to the sum of:

(1) One-twelfth (1/12) of the Capital Charge as scheduled in Section 16.3;

(2) One-twelfth (1/12) of the Facility Management Charge and one-twelfth (1/12) of the Incremental Facility Management Charge as scheduled and Index-Linked in Section 16.4;

(3) Any Deductions Credit;

(4) Any Extraordinary Items that are determined on a monthly basis; and

(5) Any adjustments, plus or minus, to reconcile any prior Service Fee payments.

Any overpayment from prior monthly periods shall be credited against the next monthly Service Fee payment.

(B) Invoicing and Service Fee Payment Due Date. The Developer shall provide the County with an invoice for each Billing Period by the fifteenth day following the end of such Billing Period. The invoice shall set forth the amount of the Service Fee due with respect to such Billing Period and, in addition, shall state the annual Service Fee and each component thereof as calculated for the then-current Contract Year, together with the accumulated payments for each component to the date of such invoice and such other documentation or information as the County may reasonably require to determine the accuracy and appropriateness of the invoice in accordance with this Project Agreement. It is the policy of Miami-Dade County that payment for all purchases by the County be made in a timely manner and that interest payments be made on late payments. In accordance with Section 218.74 of the Florida Statutes, and Section 2-8.1.4 of the Code of Miami-Dade County, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. All payments due from the County, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. In accordance with Miami-Dade County Implementing Order 3-9, Accounts Receivable Adjustments, if money is owed by the Developer to the County, whether under this Project Agreement or for any other purpose, the County reserves the right to retain such amount from payment due by County to the Developer under this Contract. Such retained amount shall be applied to the amount owed by the Developer to the County. The Developer shall have no further claim to such retained amounts which shall be deemed full accord and satisfaction of the amount due by the County to the Developer for the applicable payment due herein.

Invoices and associated back-up documentation shall be submitted in duplicate by the Developer to the County as follows:

Miami-Dade County
Internal Services Department
111 NW 1st Street, Suite 2100
Miami, FL 33128
Attention: Dan Chatlos

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

(C) Late Service Fee Payments. In the event the County fails to make a Service Fee Payment when due under subsection (B) of this Section:

(1) Interest shall accrue thereon, as and to the extent provided in subsection 16.7(B); and

(2) If such failure continues for the period described in subsection 21.1(1) (County Events of Default), then such failure shall constitute a County Event of Default as provided in such subsection and the Developer shall have the right to terminate this Project Agreement as provided in subsection 22.2(B) (Developer Termination Rights).

SECTION 16.8. ESTIMATES AND ADJUSTMENTS.

(A) First and Last Billing Periods. If the first or last Billing Period is a partial month, any computation made on the basis of a Billing Period shall be adjusted on a pro-rata basis to take account of the partial period of service.

(B) Annual Service Fee Estimate for County Budgeting Purposes. For County budgeting purposes, the Developer shall provide to the County a written estimate statement setting forth for such upcoming Contract Year its aggregate Index-Linked Service Fee, each component thereof, and all calculation in support thereof. Upon concurrence by the County, this written estimate statement shall establish the basis for Billing Period invoicing for such upcoming Contract Year, subject to annual settlement pursuant to this Article. However, this estimate shall not be binding on the Developer.

SECTION 16.9. ANNUAL SETTLEMENT.

Within 60 days after the end of each Contract Year during the Facility Management Period, the Developer shall provide to the County an annual settlement statement (the "**Annual Settlement Statement**") setting forth the actual aggregate Service Fee payable with respect to such Contract Year and a reconciliation of such amount with the amounts actually paid by the County with respect to such Contract Year (taking into account intra-Contract Year reconciliations pursuant to subsection 16.7(A)(5) (Installments)). The County or the Developer, as appropriate, shall pay all known and undisputed amounts within 60 days after receipt or delivery of the Annual Settlement Statement. If any amount is then in dispute or is for other reasons not definitely known at the time the Annual Settlement Statement is due, the Annual Settlement Statement shall identify the subject matter and reasons for such dispute or uncertainty and, in cases of uncertainty, shall include a good faith estimate by the Developer of the amount in question. When the dispute is resolved or the amount otherwise finally determined, the Developer shall file with the County an amended Annual Settlement Statement which shall, in all other respects, be subject to this Section.

SECTION 16.10. SALES TAXES.

The Developer acknowledges that construction materials and supplies initially acquired by the Developer, the Project Contractors or any Subcontractors in connection with the Design-Build Work or any Capital Modification, and operating supplies relating to the performance of the Facility Management Services, are subject to State and local sales tax, and that these taxes have been priced into the Service Fee. The Developer shall pay all such taxes without reimbursement from the County.

SECTION 16.11. RISK OF ADVERSE TAX OR ACCOUNTING TREATMENT.

There shall be no adjustment of the Service Fee or any other amount payable to, and no relief from any obligation of, the Developer hereunder on account of:

(1) Except as provided in Section 15.1 (Compensation Events) with respect to a Discriminatory Change in Law, any change in any provision of Income Tax law to take effect after the Effective Date pertaining to the transactions contemplated hereby which affects the Developer or any other person (including, without limitation, any provisions thereof pertaining to Income Tax rates or to the Income Tax treatment of the Service Fee or any other payment between the parties), notwithstanding any assumptions made by the Developer in entering into this Project Agreement or any Material Contract as to the provisions of Income Tax law which would be applicable to this transaction or their effect on the Developer or such other person,

(2) Any administrative or judicial determination which is adverse to the Developer or any other person as to any Income Tax treatment or consequence arising in connection herewith, including any such determination made with respect to depreciation, amortization or credits with respect to equity invested in the Project or with respect to the exclusion of interest on any obligation issued to finance the Project where such interest was intended to be excludable from taxpayer gross income,

(3) Any inability of the Developer or other person to fully utilize any Income Tax benefits which may have been assumed to accrue on account of the transactions contemplated hereby, or

(4) Any application of or change in accounting standards to the transactions contemplated hereby which may be inconsistent with the accounting standards or application thereof which may have been assumed by the Developer or any other person in connection with such transactions.

SECTION 16.12. NEGOTIATED LUMP SUM PRICING OF ADDITIONAL WORK.

This Project Agreement obligates the County to pay for certain additional costs resulting from Compensation Events and otherwise as more specifically provided herein. It is the expectation of the parties, in general, that the County will pay for such costs in accordance with Section 16.13 (Cost Substantiation of Additional Work) below based on an itemized and competitively bid prices for labor, time, and materials. However, alternatively, Developer and the County can agree on a lump sum basis, and, in such case, the lump sum price will be negotiated in advance of the Developer's performance of the work. To facilitate the determination and Cost Substantiation or, for lump-sum pricing, to facilitate such negotiations, the Developer shall furnish the County with all information reasonably required by the County regarding the Developer's expected costs of performing the work and its mark-up. If the parties agree to a lump sum price, the Developer's actual costs of performance shall not be subject to Cost Substantiation unless after-the-fact Cost Substantiation with respect to all or a portion of the Developer's actual costs was agreed to by the parties in establishing the lump sum price.

SECTION 16.13. COST SUBSTANTIATION OF ADDITIONAL WORK.

(A) Cost Substantiation Generally. The Developer shall provide a Cost Substantiation Certificate in accordance with subsection (C) of this Section for any additional costs for which the County is financially responsible hereunder, unless the County opts to instead undergo a lump sum price negotiation. For costs which are or may be subject to Cost Substantiation, the Developer shall utilize competitive practices to the maximum reasonable extent (including, where practicable, obtaining three competing quotes or estimates for costs

expected to be in excess of $10,000 (CPI-Linked)), and shall enter into Subcontracts on commercially reasonable terms and prices in light of the work to be performed and the County's potential obligation to pay for it; provided, however, that during the Design-Build Period, the Developer shall not be required to utilize competitive practices for additional work self-performed by a Subcontractor that is an original party to (and not an assignee under) Subcontracts that pre-existed the need and request for additional work. If the Developer is not required to utilize competitive practices, it shall instead demonstrate to the County that the costs for which the County is financially responsible are commercially reasonable. The County shall approve, in advance, all cost estimates, contracts and budgets for additional costs for which it is responsible hereunder and Developer shall not incur any costs for which it expects County reimbursement without the County's prior, written approval. Cost Substantiation shall be provided as soon as reasonably practicable after the costs which require substantiation have been determined by the Developer and prior to entering into any contracts or undertaking any work. Cost Substantiation shall also be required where the parties agree that the Developer shall perform additional work on a guaranteed maximum price basis, subject to the limitations set forth in subsection (D) of this Section.

(B) Emergency Work. In the case of a condition that creates, or where there is an imminent threat that a condition will be created, that poses a likelihood of (1) serious bodily harm or injury, including death, to Facility Users, Developer Persons, or the public, or (2) significant physical damage to the Courthouse or other real property in the vicinity of the Courthouse, either of which must be remedied immediately and without sufficient time to provide, in advance, all of the Cost Substantiation in accordance with the procedures set forth herein and for which costs the County is financially responsible hereunder, then Developer shall notify the County Representative in writing as soon as is practicable of the aforementioned condition to seek the County Representative's approval to undertake the necessary work immediately and to provide the Cost Substantiation at a later date. The County Representative shall use commercially reasonable efforts to respond to the request within twenty-four (24) hours. For clarity, the procedure set forth in this subsection 16.13(B) shall apply exclusively to emergency work that constitutes additional work pursuant to subsection 16.13(A) above.

(C) Cost Substantiation Certificate. Any certificate delivered hereunder to substantiate cost shall state the amount of such cost and the provisions of this Project Agreement under which such cost is chargeable to the County, shall describe the competitive or other process utilized by the Developer to obtain the commercially reasonable price, and shall state that such services and materials are reasonably required pursuant to this Project Agreement. The Cost Substantiation certificate shall be accompanied by copies of such documentation as shall be necessary to reasonably demonstrate that the cost as to which Cost Substantiation is required has been paid. Such documentation shall be in a format reasonably acceptable to the County and shall include reasonably detailed information concerning all Subcontracts and, with respect to self-performed work:

(1) The amount and character of materials, equipment and services furnished or utilized, the persons from whom purchased, the amounts payable therefor and related delivery and transportation costs and any sales or personal property Taxes;

(2) A statement of the equipment used and any rental payable therefor;

(3) Employee hours, duties, wages, salaries, benefits and assessments; and

(4) Profit, administration costs, bonds, insurance, Taxes, premiums overhead, and other expenses.

The Developer's entitlement to reimbursement for the costs of self-performed work shall be subject to Cost Substantiation and the limitations set forth in this Section.

(D) Evidence of Costs Incurred. To the extent reasonably necessary to confirm direct costs subject to Cost Substantiation, copies of timesheets, invoices, canceled checks, expense reports, receipts and other documents, as appropriate, shall be delivered to the County, with the request for reimbursement of such costs.

(E) Mark-Ups. For any self-performed work requiring Cost Substantiation, the Developer shall be entitled to a mark-up of 15% for a combination of overhead, risk, profit and contingency for costs of its own personnel. For any subcontracted work requiring Cost Substantiation, the Developer shall be entitled to a mark-up of 5% for a combination of overhead, risk, profit and contingency for costs of its Subcontractors.

SECTION 16.14. COUNTY'S RIGHT OF SET OFF.

Once the County determines that any credits, payments, reimbursements or liquidated damages are owed to the County in accordance with the terms and conditions of this Project Agreement and have not been reflected in any previously submitted Billing Statement, the County shall notify the Developer and the Developer shall include such amounts as an Extraordinary Item in the next Billing Period invoice provided to the County under this Article. In the event the Developer does not include such amounts in the next Billing Period invoice provided to the County in accordance with this Section, the County shall have the right to offset the Service Fee otherwise payable for such Billing Period invoice by the amount of such credits, payments, reimbursements or liquidated damages. Notwithstanding the foregoing, the County shall have the right to offset the Service Fee otherwise payable to the Developer for the final three Billing Period invoices during the Term by the amount of any credits, payments, reimbursements or liquidated damages due to the County under this Project Agreement.

SECTION 16.15. BILLING STATEMENT DISPUTES.

If the County disputes in good faith any amount billed by the Developer, the County shall pay all undisputed amounts when due but may withhold payment of the disputed amount, and shall provide the Developer with a written objection indicating the amount being disputed and the reasons then known to the County for the dispute. When any billing dispute is finally resolved, if payment by the County to the Developer of amounts withheld is required, such payment shall be made within 30 days of the date of resolution of the dispute, without interest.

ARTICLE 17

FINANCIAL MODEL

SECTION 17.1. FINANCIAL MODEL.

(A) Copy Accessible. A copy of the Financial Model is accessible to the parties as detailed in Appendix 17 (Financial Model).

(B) Risk of Errors or Omissions. The Developer shall bear the entire risk of any errors in or omissions from the Financial Model and shall not be entitled to any compensation from or other redress against the County in relation to any loss or damage that it suffers in consequence of such error or omission.

(C) No Guaranteed Return. In no event shall the agreement of the parties to establish and maintain the Financial Model for certain purposes hereunder be construed to mean that the Developer is entitled to receive a guaranteed rate of return on equity invested in connection with the Project.

SECTION 17.2. FINANCIAL MODEL UPDATES.

(A) Updates. The Financial Model shall only be updated in the following circumstances:

(1) At Financial Close in accordance with Appendix 3 (Financial Close Procedures and Conditions) of this Project Agreement;

(2) In connection with a Qualifying Refinancing in accordance with Section 6.5 (Refinancing) of this Project Agreement; and

(3) As otherwise required from time to time, to reflect changes as required by this Project Agreement (including Compensation Events and Force Majeure Events), upon agreement of both parties.

The Financial Model update shall only incorporate (a) changes to revenues and expenses that arise directly from the circumstances described above, and (b) consequential changes to the Senior Debt draw down schedule, funding and release of reserves, financing costs, debt service profile, equity draw down schedule, and the Developer's profile of Distributions. The Financial Model update shall not (x) generally update projections through the end of the Term based on current market conditions, or (y) incorporate information or assumptions based on the Developer's actual financial performance, except by mutual agreement as set forth in Section 2 (Data and Projections Required for the Calculation of Refinancing Gain) of Appendix 18 (Calculation and Payment of Refinancing Gains) of this Project Agreement. Following approval by the County, the Financial Model update shall become the Financial Model and shall be attached to this Project Agreement.

(B) Financial Model Audits. Any Financial Model update required under subsection (A) of this Section shall be audited by an independent audit firm, and the Developer shall deliver a copy of the firm's audit and opinion to the County prior to such Financial Model update becoming effective under this Project Agreement. In such a case, the Developer shall solely bear the cost of the audit.

(C) Developer Preparation. The Developer shall prepare the Financial Model updates and shall provide the County with each Financial Model update and a complete set of the updated and revised assumptions, and other data that form a part of the Financial Model as updated, including updated and revised Projections and calculations with respect to revenues, expenses, the repayment of Senior Debt and Distributions.

(D) Access and Challenges. The County shall have the right at all times to gain access, on an open book basis, to the Financial Model and each Financial Model update and the set of updated and revised assumptions and other data that form part of each such model. The County shall have the right to challenge the validity, accuracy or reasonableness of any Financial Model update or the related updated and revised assumptions and data. In the event of a challenge, the immediately preceding Financial Model version that has not been challenged shall remain in effect pending the outcome or the challenge or until a new Financial Model update is issued and unchallenged by the County.

(E) Changes to Financial Model Formulas. In no event shall the Financial Model formulas be changed except with the prior written agreement of both parties.

(F) County Audit. Prior to making any use of the output of the Financial Model, the County may, at its own expense, review and audit the Financial Model and all amendments and updates thereto prepared by the Developer. The Developer shall provide such information as is reasonably required by the County to conduct such audit on an annual basis and as otherwise required from time to time.

ARTICLE 18

DISPUTE RESOLUTION

SECTION 18.1. FORUM AND PROCESS FOR DISPUTE RESOLUTION.

The Developer and the County each agree that the exclusive venue for all Legal Proceedings related to this Project Agreement or to the Project or to any rights or any relationship between the parties arising therefrom or to any Dispute shall be the dispute resolution procedures under this Article which shall exclusively govern claims under this Project Agreement. The Developer and the County further agree that: (i) the speedy resolution of any Disputes between them pursuant to this Section 18.1 (Forum and Process for Dispute Resolution) is a mutual and material inducement to enter into this Project Agreement; (ii) the party initiating and filing for the commencement of a Dispute Resolution Procedures proceeding shall pay any filing fees associated therewith; and (iii) the Dispute Resolution Procedures under this Section 18.1 is intended to be the sole and exclusive dispute resolution mechanism with respect to Disputes under this Project Agreement and otherwise relating to the Project.

(A) In the event the Developer and the County are unable to resolve any Dispute, either the Developer or the County may initiate a resolution of said Dispute in accordance with the procedure set forth in this Article 18. The Developer shall also be permitted to join any Project Contractor to the dispute resolution process set forth herein to the extent that it is necessary to allow a full resolution of the pending Disputes. Whomever initiates a dispute under this Article 18 shall pay for all costs of the Hearing Examiner, technical expert, filing fees, and court reporter fees until final resolution of the Dispute. Exhaustion of these procedures shall be a precondition to any lawsuit permitted hereunder.

(B) Any and all Disputes arising under this Project Agreement shall be decided by a Hearing Examiner jointly selected and appointed by the County and the Developer. If the Developer and the County are unable to agree upon and appoint a Hearing Examiner, then either the Developer or the County may submit a request to the court of competent jurisdiction for the appointment of a Hearing Examiner. The decisions rendered by the Hearing Examiner, as applicable (and interchangeably referred to herein as the Hearing Examiner) shall be binding on the parties.

(C) As soon as practicable, the Hearing Examiner shall adopt a schedule for the Developer and the County to file written submissions stating their respective positions and the bases therefore. The written submissions shall include copies of all documents and sworn statements in affidavit form from all witnesses relied on by each party in support of its position. If the Dispute(s) involve matters of a technical nature for which the Hearing Examiner reasonably determines an independent technical expert is necessary, the Hearing Examiner shall have the right to retain the services of a technical expert to assist it in evaluating the evidence and argument presented by the parties. The costs of any such technical expert shall be borne by the party initiating the Dispute until such time as the Dispute is finally resolved. Within 30 Days of the date on which such written submissions are filed, or such longer period as is reasonably necessary as a result of the Hearing Examiner's retention of a technical expert, the Hearing Examiner shall afford each party an opportunity to present a maximum of one hour of argument.

The Hearing Examiner may decide the Dispute on the basis of the affidavits and other written submissions if, in his opinion, there is no issue of material fact and the party is entitled to a favorable resolution pursuant to the terms of this Project Agreement. As part of such decision, the Hearing Examiner shall determine the timeliness and sufficiency of each notice of claim and claim at issue as provided in this Article. The Hearing Examiner shall have the authority to rule on questions of law, including Disputes over contract interpretation, and to resolve claims, or portions of claims, via summary judgment where there are no disputed issues of material fact. Furthermore, the Hearing Examiner is authorized by both parties to strike elements of claims seeking relief or damages not available under the contract (such as, but not limited to, claims for lost profits, off-site overhead, loss of efficiency or productivity claims or claim's preparation costs) via summary judgment.

(D) In the event that the Hearing Examiner determines that the affidavits or other written submissions present issues of material fact he shall allow the presentation of evidence in the form of lay or expert testimony directed solely to the issues which he may specifically identify to require factual resolution. The testimonial portion of the process, including opening statements and closing arguments, shall be conducted expeditiously, as determined by the Hearing Examiner at his reasonable discretion.

(E) No formal discovery shall be allowed in connection with any proceeding under this Section 18.1. Notwithstanding the foregoing, both parties agree that all of the audit, document inspection, information and documentation requirements set forth elsewhere in this Project Agreement shall remain in force and effect throughout the proceeding. Hearing Examiner shall not schedule the hearing until both parties have made all their respective records available for inspection and reproduction and the parties have been afforded reasonable time to analyze the records. Hearsay evidence shall be admissible but shall not form the sole basis for any finding of fact. Failure of any party to participate on a timely basis, to cooperate in the proceedings, or to furnish evidence in support of a defense of a claim shall be a criteria in determining the sufficiency and validity of a claim.

(F) The Hearing Examiner shall issue a written decision within 30 Business Days after conclusion of any testimonial proceeding, and if no testimonial proceeding is conducted, within 45 Business Days of the filing of the last written submission. The Hearing Examiner's written decision must set forth the reasons for the disposition of the Dispute and a breakdown of any specific issues or claims. The decision of the Hearing Examiner shall be conclusive, final, and binding on the parties, subject only to the limited right of review specified herein. If either party wishes to appeal the decision of the Hearing Examiner, such party may commence an appeal in the Appellate Division of the Circuit Court for the Eleventh Judicial Circuit of Florida (or similar appellate court of competent jurisdiction) no later than 30 calendar days from the issuance of the Hearing Examiner's written decision, it being understood that the review of the court shall be limited to the question of whether or not the Hearing Examiner's determination was arbitrary and capricious, unsupported by any competent evidence, or so grossly erroneous to evidence bad faith.

(G) The prevailing party shall be relieved of any responsibility for the costs of the hearing, including but not limited to, the costs of the hearing room, the Hearing Examiner, any technical expert retained by the Hearing Examiner, the court reporter appearance fees and transcript fees if required by the Hearing Examiner. If the prevailing party initially paid for all such costs, then the non-prevailing party shall reimburse the prevailing party within 30 days of the issuance of the Hearing Examiner's final decision for all such costs. If both parties prevailed on issues raised in the Dispute Resolution process, then the Hearing Examiner shall make a determination as to a reasonable allocation of the costs of the hearing between the County and the Developer and the paying party shall be reimbursed accordingly by the non-paying party with respect to the costs of the hearing.

(H) Pending final decision of a Dispute hereunder, the Developer and the County shall proceed diligently with the performance of the Project Agreement and in accordance with the County's interpretation. This Article 18 shall survive the expiration or termination of this Project Agreement.

SECTION 18.2. NON-BINDING MEDIATION GENERALLY.

(A) Rights to Request and Mandatory Mediation. Either party may request Non-Binding Mediation of any dispute arising under this Project Agreement, whether technical or otherwise. Non-Binding Mediation shall not be a pre-condition to the procedures set forth in Section 18.1 above. The non-requesting party may decline the request for Non-Binding Mediation. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply. The costs of the Mediator shall be divided equally between the County and the Developer.

(B) Procedure. The Mediator shall be a professional mutually acceptable to the parties who has no current or on-going relationship to either party. The Mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the Mediator's program to resolve the dispute until and unless the parties reach agreement with respect to the disputed matter or one party determines in its discretion that its interests are not being served by the mediation.

(C) Non-Binding Effect. Mediation is intended to assist the parties in resolving disputes over the correct interpretation of this Project Agreement. No Mediator shall be empowered to render a binding decision.

(D) Relation to Dispute Resolution Procedures. Nothing in this Section shall operate to limit, interfere with or delay the right of either party under this Article to commence the Dispute Resolution Procedures upon a breach of this Project Agreement by the other party or in respect of any Dispute under this Project Agreement, whether in lieu of, concurrently with, or at the conclusion of any Non-Binding Mediation.

ARTICLE 19

REMEDIES OF THE PARTIES AND COUNTY STEP-IN RIGHTS

SECTION 19.1. REMEDIES FOR BREACH.

The parties may exercise their rights and remedies for breach as and to the extent provided in Section 19.9 (Exercise of Remedies). Neither party shall have the right to terminate this Project Agreement for breach except as provided or referred to in Section 20.4 (County Termination Right), Section 21.2 (Developer Options Upon County Event of Default) or Article 22 (Termination). The foregoing is subject to the provisions of Section 19.11 (No Special, Consequential or Punitive Damages) and Section 19.2 (County Liquidated Damage Rights).

SECTION 19.2. COUNTY LIQUIDATED DAMAGE RIGHTS.

(A) County Liquidated Damage Rights Defined. The County's rights under this Project Agreement include the right (each of the following, a "**Liquidated Damage Right**"):

(1) To retain the proceeds of a draw on the Financial Close Security under the circumstances set forth in Appendix 3 (Financial Close Procedures and Conditions); and

(2) To impose Deductions from the Service Fee under the circumstances set forth in Appendix 11 (Deductions).

(B) Sole Remedy; Exceptions. The parties acknowledge and agree that the County's actual damages or losses in each such circumstance are impossible to ascertain as of the Effective Date and that the amounts payable to, or to be retained by, the County through the exercise of any Liquidated Damage Right are a fair and reasonable estimate of fair compensation to the County for the intended circumstance, as applicable, shall constitute liquidated damages in each such circumstance and are not a penalty against the Developer. The Developer is expressly estopped from claiming, and waives any right to claim, that the exercise of any Liquidated Damage Right by the County amounts to a penalty or is not enforceable. The liquidated damages resulting from the County's exercise of a Liquidated Damage Right shall constitute the only damages payable by the Developer to the County to compensate the County for the damages or losses resulting from the specific circumstances contemplated by such Liquidated Damage Right, and the exercise of such right by the County shall constitute the County's sole remedy in respect of such circumstances; provided, however, that such limitation is subject and without prejudice to:

(1) Any entitlement of the County to specific performance of any obligation of the Developer under this Project Agreement;

(2) Any right of the County under subsection 9.7(B) (Additional Developer Obligations) to require the Developer to take additional action upon the repeated or persistent occurrence of unexcused Unavailability Events or Performance Failures;

(3) Any entitlement of the County to injunctive relief;

(4) The County's step-in rights under this Article;

(5) Any right of the County to declare the occurrence of a Developer Event of Default under subsection 20.1(A) (Developer Events of Default Defined), including a Developer Event of Default resulting from the significant accumulation of Deductions based on the occurrence of Unavailability Events or Performance Failures;

(6) The Developer's indemnification obligations under Article 24 (Indemnification) in respect of third-party claims;

(7) The determination of Developer liability in respect of a termination for Developer Event of Default made pursuant to Section 4.1 (Calculation) of Appendix 13 (Compensation on Termination); or

(8) Any other express right of the County pursuant to this Project Agreement.

SECTION 19.3. COUNTY'S TEMPORARY STEP-IN RIGHTS DURING THE FACILITY MANAGEMENT PERIOD.

If during the Facility Management Period the County reasonably considers that a breach by the Developer of any obligation under this Project Agreement or an event:
(a) Has resulted in a public health or safety emergency or is imminently likely to create an immediate and serious threat to the health or safety of any Facility User, any property, the environment or the long-term integrity of, or public confidence in, the Project and any related operations, or (b) is prejudicial to the ability to carry on County Activities to a material degree, then the County, acting reasonably, may either:

(1) If it considers that there is sufficient time and that it is likely that the Developer shall be willing and able to provide assistance, require the Developer by notice to take such steps as are necessary or expedient to mitigate or rectify such state of affairs including, if applicable due to breach of any terms or conditions of this Project Agreement, and the Developer shall use all reasonable efforts to comply with the County's requirements as soon as reasonably practicable; or

(2) If it considers there is not sufficient time, or that the Developer is not likely to be willing and able to take the necessary steps, take such steps as it considers are appropriate (either itself or by engaging others) to mitigate or rectify such state of affairs and to ensure performance of the relevant Contract Services to the standards required by this Project Agreement (or as close as possible to those standards as the circumstances permit). The County will carry out such steps as quickly as is practicable, and in such manner as will minimize interference with the Developer's performance of its obligations under this Project Agreement.

The Developer shall ensure that all Project Contracts and Subcontracts permit the County to exercise its rights under this Article.

SECTION 19.4. COUNTY'S RECTIFICATION RIGHTS.

If the County gives notice to the Developer under Section 19.3 (County's Temporary Step-In Rights During the Facility Management Period) and the Developer either:

(1) Does not confirm, within five Business Days of such notice, or such shorter period as is appropriate in the case of an emergency, that it is willing to take such steps as are required in such notice or present an alternative plan to the County to mitigate, rectify and protect against such circumstances then the County may, within a further five Business Days, or such shorter period as is appropriate in the case of an emergency, accept or reject, acting reasonably; or

(2) Fails to take the steps as are referred to or required in such notice or accepted alternate plan within such time as set forth in such notice or accepted alternate plan or within such time as the County, acting reasonably, will stipulate, then the County may take such steps as it considers necessary or expedient to mitigate, rectify or protect against such circumstances either itself or by engaging others to take any such steps. Such steps may include the partial or total suspension of the right and obligation of the Developer to provide the relevant Contract Services, but only for so long as the circumstances referred to in Section 19.3 (County's Temporary Step-In Rights During the Facility Management Period) subsist.

SECTION 19.5. NOTICE OF CAPITAL MODIFICATION.

The County shall notify the Developer of any Capital Modification which the County intends to make pursuant to the exercise of the County's rights under Section 19.3 (County's Temporary Step-In Rights During the Facility Management Period) or Section 19.4 (County's Rectification Rights) and provide the Developer a reasonable opportunity, taking into account all the circumstances, to comment on the proposed Capital Modification. In making such Capital Modification, the County will reasonably consider comments received in a timely manner from the Developer on the proposed Capital Modification.

SECTION 19.6. NO EFFECT ON CONTRACT SERVICES.

The exercise by the County of any of its rights under this Article 19 (Remedies of the Parties and County Step-In Rights) shall not reduce or affect in any way the Developer's responsibility hereunder to perform the Contract Services.

SECTION 19.7. ALLOCATION OF COSTS AND PROVISION OF RELIEF FOR COUNTY'S EXERCISE OF STEP-IN RIGHTS.

To the extent that any of the circumstances set forth in Section 19.3 (County's Temporary Step-In Rights During the Facility Management Period) arise as a result of any breach by the Developer of its obligations under this Project Agreement, then the Developer shall pay the County the amount of all costs and expenses reasonably incurred by the County in exercising its rights under Section 19.3 (County's Temporary Step-In Rights During the Facility Management Period) or Section 19.4 (County's Rectification Rights) and an additional mark-up of 20% of such costs and expenses in respect of indirect costs and overhead not otherwise directly attributable to the exercise of such rights. In all other cases, the County shall: (a) compensate the Developer, and provide schedule and performance relief to the Developer, for actions taken by the County under Section 19.3 (County's Temporary Step-In Rights During the Facility Management Period) or Section 19.4 (County's Rectification Rights) in the manner provided in Article 15 (Compensation Events and Changes in Law) which materially interfered with, delayed or increased the cost of performing the Contract Services by the Developer as if such circumstances constituted a Compensation Event affecting the Developer; and (b) any Deduction that would have or that did accrue for circumstances addressed by the County in exercising its rights under Section 19.3, shall be deemed to have not accrued.

SECTION 19.8. WAIVER OF REMEDIES.

No failure to exercise, and no delay in exercising, any right or remedy under this Project Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Project Agreement will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

SECTION 19.9. EXERCISE OF REMEDIES.

(A) Remedies Exclusive. The respective rights and remedies of the parties set out in this Project Agreement shall be the exclusive rights and remedies for breach of this Project Agreement, and the parties shall have no obligations or liabilities in connection with this Project Agreement and the Contract Services except as expressly set out in this Project Agreement.

(B) Similar Rights and Remedies. A party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter.

(C) Single or Partial Exercise of Remedies. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

SECTION 19.10. NO DUPLICATIVE RECOVERY OR CLAIMS OUTSIDE CONTRACT.

Every right to claim compensation, indemnification or reimbursement under this Project Agreement shall be construed so that recovery is without duplication to any other amount recoverable under this Project Agreement. Neither party shall be entitled to make any claim against the other party for compensation, indemnification or reimbursement other than as provided under this Project Agreement.

SECTION 19.11. NO SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.

In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other party any special, incidental, consequential, punitive or similar losses or damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Project Agreement, or any representation made in this Project Agreement being materially incorrect, whether such claims are based upon contract, tort, negligence, warranty or any other legal theory. This Section shall not limit the recovery of any such losses or damages under Article 24 (Indemnification) in respect of claims by third parties.

ARTICLE 20

DEVELOPER EVENTS OF DEFAULT

SECTION 20.1. DEVELOPER EVENTS OF DEFAULT.

(A) Developer Events of Default Defined. For the purposes of this Project Agreement, "**Developer Event of Default**" means any of the following events or circumstances:

(1) The occurrence of a Developer Bankruptcy-Related Event;

(2) The Developer discontinues work on the Project during the Design-Build Period by failing to perform a material part of the Contract Services for a continuous period in excess of 30 days (not taking into account any days impacted by a Supervening Event) where such failure is not consistent with the Project Schedule, as applicable, and is not expressly permitted or excused by the terms of this Project Agreement other than pursuant to its right to suspend performance or terminate in accordance with this Project Agreement;

(3) The Financial Close Date does not occur before the Financial Close Deadline as provided in Section 5.2 (Financial Close Deadline) and Appendix 3 (Financial Close Procedures and Conditions);

(4) The Occupancy Readiness Date does not occur on or before the Longstop Date as provided in Section 8.7 (Failure to Achieve Occupancy Readiness by the Longstop Date);

(5) The Developer breaches Section 6.5 (Refinancing);

(6) A Restricted Change in Ownership occurs;

(7) The Developer fails to comply with Section 23.1 (Assignment and Transfer by Developer; Fundamental Changes);

(8) A Persistent Breach by the Developer occurs;

(9) During the Design-Build Period, a Bankruptcy-Related Event arises with respect to the Design-Builder or any member comprising the Design-Builder or any Design-Builder guarantor, unless:

(a) the Developer enters into a replacement design-build contract or guarantee (as applicable) with a reputable counterparty that possesses the

technical and financial capability to perform all remaining Design-Build Work, reasonably acceptable to the County within ninety (90) days of the relevant Bankruptcy-Related Event, or within such longer period as agreed with the County (acting reasonably) not to exceed one hundred-twenty (120) days which is reasonably necessary to effect such replacement, so long as the Developer is diligently pursuing such replacement; or

(b) in the absence of entering into a replacement design-build contract or guarantee, the Developer demonstrates to the satisfaction of the County that either (i) the Developer possesses the technical and financial capability to perform all remaining Design-Build Work in accordance with this Project Agreement or (ii) with respect to (A) Design-Builder that is a joint venture or (B) a Design-Builder guarantor, the Developer demonstrates to the satisfaction of the County that the remaining Design-Builder member or Design-Builder guarantor, as applicable, with respect to which a Bankruptcy-Related Event has not occurred possesses the technical and financial capability to perform all remaining Design-Build Work in accordance with this Project Agreement;

(10) A Bankruptcy-Related Event arises with respect to a Facility Manager, unless:

(a) the Developer enters into a replacement facilities management services agreement or guarantee (as applicable) with a reputable counterparty that possesses the technical and financial capability to perform all Facility Management Services, reasonably acceptable to the County within ninety (90) days of the relevant Bankruptcy-Related Event, or within such longer period as agreed with the County (acting reasonably) not to exceed one hundred-twenty (120) days which is reasonably necessary to effect such replacement, so long as the Developer is diligently pursuing such replacement; or

(b) in the absence of entering into a replacement facilities management services agreement or guarantee (as applicable), the Developer demonstrates to the reasonable satisfaction of the County that either (i) the Developer possesses the technical and financial capability to perform all remaining Facility Management Services in accordance with this Project Agreement or (ii) the Facility Manager or the Facility Manager guarantor, as applicable, possesses the technical and financial capability to perform all remaining Facility Management Services in accordance with this Project Agreement;

(11) The Design-Build Contract is terminated (other than non-default termination on its scheduled termination date) and the Developer has not entered into a replacement design-build contract or guarantee, as applicable, with a reputable counterparty that possesses the technical and financial capability to perform all remaining Design-Build Work, reasonably acceptable to the County, within ninety (90) days of the termination of the Design-Build Contract, or within such longer period as agreed with the County (acting reasonably) not to exceed one hundred-twenty (120) days which is reasonably necessary to effect such replacement, so long as the Developer is diligently pursuing such replacement;

(12) The Facility Services Management Agreement is terminated (other than non-default termination on its scheduled termination date) and the Developer has not either:

(a) entered into a replacement facilities services management agreement or guarantee (as applicable) with a reputable counterparty that possesses the technical and financial capability to perform all Facility

Management Services, reasonably acceptable to the County, within ninety (90) days of the termination of the Facility Services Management Agreement, or within such longer period as agreed with the County (acting reasonably) not to exceed one hundred-twenty (120) days which is reasonably necessary to effect such replacement, so long as the Developer is diligently pursuing such replacement; or

(b) in the absence of entering into a facilities services management agreement or guarantee, as applicable, the Developer demonstrates to the reasonable satisfaction of the County that either (i) the Developer possesses the technical and financial capability to perform all remaining Facility Management Services in accordance with this Project Agreement or (ii) the Facility Manager or the Facility Manager guarantor, as applicable, to perform all remaining Facility Management Services in accordance with this Project Agreement;

(13) A failure by the Developer to:

(a) Maintain the policies of Required Insurance to be maintained by the Developer under this Project Agreement and to comply with its obligation under Appendix 10 (Insurance Requirements) to name the County as an insured party; or

(b) Provide the payment bond and performance bond required under subsection 11.2(D) (Payment and Performance Bond) and Appendix 2 (County Legal Requirements) of this Project Agreement;

(14) A failure by the Developer to comply with its obligation under:

(a) Section 14.1 (Relief Events) to repair, replace or restore the Project following the occurrence of a Relief Event; or

(b) Section 15.1 (Compensation Events) to repair, replace or restore the Project following the occurrence of a Compensation Event;

(15) The Developer fails to immediately take all appropriate and action required by this Project Agreement in the event that the County notifies the Developer under 19.3 (County's Temporary Step-In Rights During the Facility Management Period) that a public health or safety emergency exists or is imminently likely to exist due to the Developer's failure to comply with the Contract Standards, including all action required under Section 19.3 (County's Temporary Step-In Rights During the Facility Management Period);

(16) The Developer fails to comply with any Governmental Approval or Applicable Law in any material respect;

(17) The Developer fails to promptly comply with any written suspension order issued by the County in accordance with Section 19.4 (County's Rectification Rights), except to the extent that such failure arises as a direct result of a Supervening Event;

(18) The Developer makes any written repudiation of this Project Agreement; or

(19) A failure by the Developer to pay any amount due and owing to the County under this Project Agreement on the due date (which amount is not being disputed in good faith).

(B) Persistent Breach

(1) If the Developer commits a breach of this Project Agreement (other than (x) any breach for which a Deduction could have been assessed or (y) any breach that arises as a direct result of the occurrence of a Supervening Event) that:

(a) continues for more than thirty (30) consecutive days; or

(b) occurs more than three (3) times in any six (6)-month period, the County may serve a notice (an "**Initial Warning Notice**") on the Developer, in accordance with subsection 20.1(B)(2).

(2) An Initial Warning Notice must:

(a) specify that it is an Initial Warning Notice;

(b) give reasonable details of the relevant breach; and

(c) state that the relevant breach is a breach which, if it recurs frequently or continues, may result in termination of this Project Agreement for Persistent Breach.

(3) If, after the date of service of the Initial Warning Notice, the breach specified in the Initial Warning Notice:

(a) continues for more than thirty (30) consecutive days; or

(b) recurs three (3) or more times within the six (6)-month period after such date,

the County may serve another notice (a "**Final Warning Notice**") on the Developer, in accordance with subsection 20.1(B)(4).

(4) A Final Warning Notice must:

(a) specify that it is a Final Warning Notice;

(b) state that the breach specified has been the subject of an Initial Warning Notice served within the six (6)-month period prior to the date of service of the Final Warning Notice; and

(c) state that if the breach:

(i) continues for more than thirty (30) consecutive days after the date of service of the Final Warning Notice; or

(ii) recurs three (3) or more times within the six (6)-month period after the date of service of the Final Warning Notice,

a Developer Event of Default will occur under subsection 20.1(A) (Developer Events of Default Defined) and this Project Agreement may be terminated.

(5) An Initial Warning Notice must not be served with respect to any incident or breach for which an Initial Warning Notice or Final Warning Notice has been served and is outstanding.

SECTION 20.2. NOTIFICATION BY THE DEVELOPER.

The Developer shall notify the County of the occurrence, and details, of any Developer Event of Default and of any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Developer Event of Default, in either case promptly on the Developer becoming aware of its occurrence.

SECTION 20.3. CURE AND REMEDIAL PROGRAM.

(A) Notice and Remedy or Remedial Program.

(1) After the occurrence of a Developer Event of Default and while it is subsisting, the County may serve a notice ("**Developer Default Notice**") on the Developer specifying in reasonable detail the type and nature of the Developer Event of Default.

(2) Upon receipt of a Developer Default Notice, the Developer shall have the following cure periods:

(a) for a Developer Event of Default under subsections 20.1(A)(2), and 20.1(A)(13), 20.1(A)(14), 20.1(15), and 20.1(19) a period of 20 Business Days after the Developer received the Developer Default Notice;

(b) for a Developer Event of Default under subsections 20.1(A)(16), 20.1(A)(17), and 20.1(A)(18):

(i) a period of 20 Business Days after the Developer receives the Developer Default Notice; or

(ii) if, despite the Developer's commencement of meaningful steps to cure immediately after receiving the Developer Default Notice, the Developer Event of Default cannot be cured within such 20 Business Day period, the Developer will have such additional period of time, up to a maximum cure period of one hundred fifty (150) days, as is reasonably necessary to cure the Developer Event of Default;

(c) for a Developer Event of Default under subsections 20.1(A)(1), 20.1(A)(3), 20.1(A)(4), 20.1(A)(5), 20.1(A)(6), 20.1(A)(7), 20.1(A)(8), 20.1(A)(9), 20.1(A)(10), 20.1(A)(11), and 20.1(A)(12), there is no cure period.

(3) A Developer Event of Default under subsection 20.1(A)(16) will be regarded as cured when the adverse effects of such Developer Event of Default are cured.

(4) If either the County (as set forth in its notice) or the Developer reasonably considers that a Developer Event of Default cannot reasonably be remedied within any relevant cure period set out in subsection 20.3(A)(2) (Notice and Remedy or Remedial Program), the Developer shall deliver to the County within 10 Business Days of such Developer Default Notice, a reasonable remedial program (set forth, if appropriate, in stages) for remedying the Developer Event of Default. The remedial program will specify in reasonable detail the manner in, and the latest date by which the Developer Event of Default is proposed to be remedied.

(B) County Acceptance or Non-Acceptance. If the Developer puts forward a remedial program in accordance with subsection (A)(4) of this Section, the County will have 10 Business Days from receipt of the remedial program within which to notify the Developer that the County, acting reasonably, does not accept the remedial program. The County's failure to provide notice of a rejection within 10 Business Days shall be deemed an acceptance of the

proposed remedial program. If the County notifies the Developer that it does not accept the remedial program as being reasonable, the parties will use all reasonable efforts within the following five Business Days to agree to any necessary amendments to the remedial program put forward. In the absence of an agreement within such five Business Days, the question of whether the remedial program (as it may have been amended by agreement) will remedy such Developer Event of Default in a reasonable manner and within a reasonable time period (and, if not, what would be a reasonable program) may be referred by either party to Non- Binding Mediation. If the County notifies the Developer that its remediation program is acceptable, the Developer shall implement such remediation program in accordance with its terms.

(C) Remediable Program. The remedial program provisions of this Section shall apply only to those Developer Events of Default referred to in subsections 20.3(A)(2)(a) and 20.3(A)(2)(b).

SECTION 20.4. COUNTY TERMINATION RIGHT.

(A) Termination Right. If:

(1) Any Developer Event of Default occurs;

(2) The Developer Event of Default has not been cured within any relevant cure period set out in subsection 20.3(A)(2); and

(3) Either:

(i) No remedial program has been put forward by the Developer under subsection 20.3(A)(4) (Notice and Remedy or Remedial Program);

(ii) The Developer puts forward a remedial program pursuant to subsection 20.3(A)(4) (Notice and Remedy or Remedial Program) which has been accepted by the County (including after agreement under Section 20.3 (Cure and Remedial Program) to amendments to the program) and the Developer fails to achieve any material element of the remedial program or the end date for the remedial program, as the case may be; or

(iii) Any remedial program put forward by the Developer pursuant to subsection 20.3(A)(4) (Notice and Remedy or Remedial Program), after good faith negotiations, is rejected by the County as not being reasonable, then the County may (if the Developer Event of Default continues unwaived and unremedied), subject to subsection 22.2(G) (Continued Performance) and the terms of the Lenders' Remedies Agreement, terminate this Project Agreement by notice to the Developer. The right of the County to terminate this Project Agreement under this Section is in addition, and without prejudice, to any other right which the County may have in connection with the Developer's non-compliance with this Project Agreement, including those set forth in Article 19 (Remedies of the Parties and County Step-In Rights).

(B) Supervening Events Affecting Performance of Remedial Program. For the purposes of subsection (A)(3)(ii) of this Section, if the Developer's performance of the remedial program is adversely affected by the occurrence of a Supervening Event or a breach by the County of its obligations under this Project Agreement, then, subject to the Developer complying with the mitigation and other requirements in this Project Agreement concerning such events, the

time for performance of the program or any relevant element of it will be deemed to be extended by a period equal to the delay caused by such events.

(C) Lenders' Remedies Agreement. The rights of the County under this Section are subject to the terms of the Lenders' Remedies Agreement.

ARTICLE 21

COUNTY EVENTS OF DEFAULT

SECTION 21.1. COUNTY EVENTS OF DEFAULT.

For the purposes of this Project Agreement, "**County Event of Default**" means any of the following events or circumstances:

(1) A failure by the County to pay the Service Fee within 15 days of the due date for the Service Fee as provided in subsection 16.7(B);

(2) A failure by the County to pay an amount due during the Design-Build Period as provided or referred to in Section 7.22 (Payment Obligations of the County During the Design-Build Period) within 15 days of the due date for such amount as provided in subsection 16.7(B);

(3) A failure by the County to pay such Termination Amount within 15 days of the Termination Amount Due Date as provided in subsection 16.7(B);

(4) A failure by the County to pay any other amount due from the County to the Developer hereunder within 15 days of the due date for such amount as provided in subsection 16.7(B);

(5) Any failure by the County to comply with Section 23.4 (Assignment by the County); or

(6) Except as provided in subsections (1), (2), (3), (4), or (5) of this Section, a breach, or series of breaches, by the County of any material term, covenant or undertaking to the Developer (other than a breach that arises as a direct result of the occurrence of a Supervening Event that is not caused by a Government Entity) or any representation or warranty made by the County to the Developer in Section 2.1 (Representations and Warranties of the County) of this Project Agreement being incorrect, misleading or inaccurate when made, which has a material and adverse effect on the Developer.

SECTION 21.2. DEVELOPER OPTIONS UPON COUNTY EVENT OF DEFAULT

After the occurrence of a County Event of Default and while a County Event of Default is continuing, the Developer may, at its option, serve notice on the County of the occurrence and specifying the details of such a County Event of Default. If the relevant matter or circumstance has not been rectified or remedied by the County:

(1) in the case of a County Event of Default under subsections 21.1(1), (2), (3), (4) or (5) within 10 days of such notice; or

(2) in the case of a County Event of Default under subsection 21.1(6) within 30 days of such notice or within such longer period, not to exceed 150 days, as is reasonably required for the County to rectify or remedy such County Event of Default as long as the County is diligently pursuing such rectification or remedy, the Developer may serve a further notice on the County and, if no favorable resolution to the County Event of Default is reached, terminating this Project Agreement with immediate effect and, in the case of a County Event of Default under subsections 21.1(1), (2), (3), (4), or (5) within 30 days of such notice, the Developer also may bring an action to enforce payment of the amount due.

ARTICLE 22

TERMINATION

SECTION 22.1. EXCLUSIVE RIGHTS OF TERMINATION.

(A) Termination Prior to Financial Close Date. Prior to the Financial Close Date, the parties' sole right to terminate this Project Agreement shall be as set forth in Appendix 3 (Financial Close Procedures and Conditions).

(B) Termination Subsequent to Financial Close Date. Subsequent to the Financial Close Date, the parties' sole right to terminate this Project Agreement shall be as set forth in this Article (other than subsection (A) of this Section).

(C) Exclusive Termination Rights. This Article, together with any other provisions of this Project Agreement expressly referred to in this Article and (subsequent to the Financial Close Date) the provisions of the Lender's Remedies Agreement, contain the entire and exclusive provisions and rights of the parties regarding termination of this Project Agreement, and any and all other rights to terminate at law or in equity are hereby waived to the maximum extent permitted by Applicable Law; provided that termination of this Project Agreement shall not relieve the Developer, insurer, surety or financial institution that provides security for performance hereunder of its obligation for claims arising prior to termination.

SECTION 22.2. TERMINATION RIGHTS.

(A) County Termination Rights. This Project Agreement may be terminated by the County prior to the Expiration Date:

(1) In its discretion and for its convenience at any time, by delivery of notice to the Developer stating that the termination is for the convenience of the government (a "**Termination for Convenience**"), together with a written summary of the basis for its reasonable expectation that it will be able to pay the applicable Termination Amount in full and in a timely manner, both of which must be delivered no less than 60 days prior to the intended Termination Date;

(2) In connection with a Developer Event of Default, pursuant to Article 20 (Developer Events of Default);

(3) In connection with a Force Majeure Event, pursuant to Section 14.2 (Force Majeure Events);

(4) In connection with the unavailability of Required Insurance pursuant to Section 14.5 (Unavailability of Insurance);

(5) In the event of a Termination by Court Ruling; or

(6) In connection with a Key Financial Event, pursuant to Appendix 3, Section 5.1,

(B) Developer Termination Rights. This Project Agreement may be terminated by the Developer prior to the Expiration Date:

(1) In connection with a County Event of Default, pursuant to Article 21 (County Events of Default);

(2) In connection with a Force Majeure Event, pursuant to Section 14.2 (Force Majeure Events);

(3) In the event of a Termination by Court Ruling; or

(4) In connection with a Key Financial Event or Market Disruption Event, pursuant to Appendix 3, Section 5.2.

(C) Extent of Termination Rights. Except as provided or referred to in subsections (A) and (B) of this Section or subsection 22.1(A) (Termination Prior to Financial Close Date), neither party shall have the right to terminate this Project Agreement.

(D) Termination Date. The Termination Date for any early termination of this Project Agreement as provided in subsections (A) or (B) of this Section shall be the date specified in the table below, subject to the rights of the Senior Lenders under the Lenders' Remedies Agreement. It shall not be a condition to the establishment of the Termination Date that the County shall have made the applicable Termination Amount, provided, however that the obligations and covenants regarding the payment of the Termination Amount shall survive termination of the Project Agreement.

Termination Circumstance	Termination Date
Termination for Convenience by the County	The date specified in the County's written notice of termination which shall be no less than 60 days after the date on which such termination notice is given
Termination Upon an Event of Default	The date notice of termination is delivered by the terminating party
Termination by Court Ruling	The date of issuance of a final, non-appealable court order by a court of competent jurisdiction
Termination for Extended Force Majeure	The date that is 30 days from the delivery of notice thereof by the terminating party

(E) Termination Amount Due Date. The County shall pay the Termination Amount by the date provided in Section 7.1 (Termination Amount Due Date) of Appendix 13 (Compensation on Termination).

(F) Consideration for Convenience Termination Amount. The right of the County to terminate this Project Agreement for its convenience and in its discretion in accordance with this Article constitutes an essential part of the overall consideration for this Project Agreement, and the Developer shall not be entitled to any damages (other than damages for

failure to pay the Termination Amount provided for in Appendix 13 (Compensation on Termination) by reason of a County breach of this Project Agreement, including a breach of the County's implied covenant of good faith and fair dealing, in the exercise of its right to terminate this Project Agreement under subsection 22.2(A)(1) (County Termination Rights) for the convenience of the government.

(G) Continued Performance. The parties shall continue to perform their obligations under this Project Agreement (including the County continuing to pay the Service Fee) until the Termination Date, notwithstanding the giving of any notice of default or notice of termination.

(H) Completion or Continuance by County. After the Termination Date, subject to Section 22.4 (Transitional Arrangements), the County may at any time (but without any obligation to do so) take any and all actions necessary or desirable to continue and complete the Contract Services so terminated, including entering into contracts with other operators and contractors.

SECTION 22.3. TRANSFER TO THE COUNTY OF ASSETS, CONTRACTS AND DOCUMENTS

(A) Transfer Responsibilities. On or promptly after the Termination Date:

(1) If the Termination Date occurs prior to the Occupancy Readiness Date:

(a) the Developer shall preserve and protect the structures, equipment, materials and other property comprising the Project as so far constructed; and

(b) insofar as any transfer will be necessary to fully and effectively transfer property to the County, the Developer shall transfer to, and there will vest in, the County, free from all financial encumbrances, such part of the Project as has been constructed on or has become affixed to the Project Site and, if the County so elects:

(i) the construction plant and equipment will remain available to the County for the purposes of completing the Design-Build Work; and

(ii) all other Project-related plant and all materials on or near the Project Site will remain available to the County for the purposes of completing the Design-Build Work, subject to payment by the County of the Design-Builder's reasonable charges, provided those charges have not already been accounted for and included in the Termination Payment;

(2) If the County so elects, the Developer shall cause any or all of the Project Contracts (and any related contracts which govern the obligations between the Developer and the Project Contractor whose obligations have been assigned (such as a coordination or interface agreement)) to be novated or assigned to the County, provided that if termination occurs under Section 21.2 (Developer Options Upon County Event of Default) the consent of the applicable Project Contractor will be required;

(3) The Developer shall, or will cause all Project Contractors to, offer to sell to the County at the Fair Market Value, free from any security interest all or any part of the stocks of material and other assets, spare parts and other moveable property owned by the Developer or any Project Contractor and reasonably required by the County in connection with the operation of the Project or the provision of the Contract Services;

(4) The Developer shall deliver to the County (to the extent not already delivered to the County):

(a) all existing designs, plans and other documents produced in connection with the Project and in the control of the Developer or all Project Contractors;

(b) one complete set of existing constructions drawings showing all alterations made to the Project since the commencement of operation of the Project;

(c) one complete set of existing, up-to-date maintenance, operation and training manuals for the Project, subject to reasonable generally applicable third-party licensing terms;

(d) relevant information pertaining to any Legal Proceedings against the Developer by the Project Contractors, any Subcontractors or other third parties relating to the termination of the Design-Build Work or the Facility Management Services (or any Subcontracts); and

(e) copies of all Subcontracts, together with a statement of:

(i) the items ordered and not yet delivered pursuant to each agreement;

(ii) the expected delivery date of all such items;

(iii) the total cost of each agreement and the terms of payment; and

(iv) the estimated cost of canceling each agreement;

(5) The Developer shall use all reasonable efforts to ensure that the benefit of existing Project Intellectual Property and all warranties in respect of mechanical and electrical plant and equipment used or made available by the Developer under this Project Agreement and included in the Project but not previously assigned or licensed to the County are assigned, licensed or otherwise transferred to the County;

(6) To the extent permitted by Applicable Law, the Developer shall assign to the County all Governmental Approvals;

(7) The Developer shall deliver to the County all books, records and files required to be kept by the Developer hereunder (the Developer having the right to retain copies thereof) unless such documents are:

(a) required by Applicable Law to be retained by the Developer or a Project Contractor or Subcontractor, in which case complete copies will be delivered to the County; or

(b) privileged from production pending resolution of any outstanding dispute, in which case such records will be delivered forthwith upon resolution of such dispute, provided that any records that are necessary for the performance of the Contract Services will be delivered to the County no later than the Termination Date;

(8) The Developer shall give written notice of termination of the Project Agreement, promptly under each policy of Required Insurance maintained by the Developer pursuant to its obligations under Appendix 10 (Insurance Requirements) (with a copy of each such notice to the County), but permit the County to continue such policies thereafter at its own expense, if possible; and

(9) The Developer shall take such other actions, and execute such other documents as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise necessary or desirable to minimize the County's costs, and take no action which shall increase any amount payable by the County under this Project Agreement.

(B) No Additional Compensation. The Developer shall ensure, subject to the security interest of the Senior Lenders, that provision is made in all applicable contracts to ensure that the County will be in a position to exercise its rights, and the Developer shall be in a position to comply with its obligations, under this Section without additional payment or compensation to any person.

(C) Use of Design Documents Following Termination During the Design- Build Period. If this Project Agreement is terminated during the Design-Build Period and the County (or any designee of the County) uses any Design Documents or other Intellectual Property developed by or on behalf of the Developer without the involvement of the Design-Builder and the Architect for such work, then the Design-Builder and the Architect are hereby thereupon released from all liability on account of such use, except to the extent caused by any of the matters referred to in subsections (1) though (6), inclusive, of Section 24.1 (Developer's Obligation to Indemnify).

SECTION 22.4. TRANSITIONAL ARRANGEMENTS.

(A) Vacating the Project and Stoppage of Contract Services. The Developer shall, in connection with the expiration or termination of this Project Agreement:

(1) Stop the Contract Services on the Termination Date;

(2) On the Termination Date deliver to the County:

(a) all keys, access codes or other devices required to operate the Project; and

(b) any Project Intellectual Property required to be delivered by the Developer pursuant to subsection 22.3(A)(5) (Transfer Responsibilities);

(3) As soon as practicable after the Termination Date vacate, and cause the Developer Persons to vacate, the Project Site, and leave the Project Site and the Project in a safe, clean and orderly condition;

(4) On request by the County and on payment of the Developer's reasonable costs by the County, for a period not to exceed 90 days after the Termination Date, co-operate fully with the County and any successor providing to the County services in the nature of any of the Contract Services or any part of the Contract Services, in order to achieve a smooth transfer of the manner in which the County obtains services in the nature of the Contract Services and to avoid or mitigate in so far as reasonably practicable any inconvenience or any risk to the health and safety of the employees of the County and members of the public;

(5) As soon as practicable following the Termination Date, remove from the Project Site all property of the Developer or any Developer Person that is not acquired by the County pursuant to Section 22.3 (Transfer to the County of Assets, Contracts and Documents) (or not belonging to the County) and if it has not done so within 60 days after any notice from the County requiring it to do so, the County may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and will hold any proceeds less all costs incurred to the credit and direction of the Developer; and

(6) Comply with all requirements of Section 9.12 (Project Handback), except in the event of an early termination.

SECTION 22.5. DEVELOPER TO COOPERATE.

After the Termination Date, Developer shall, upon the written request of the County, cooperate with the County and assist any new entity providing Contract Services, including but not limited to, by providing information in the Developer's control or possession which the County or the new entity providing Contract Services may reasonably require. If any such post-Termination Date services are required of the Developer, the Developer shall be entitled to reimbursement for all reasonable out of pocket expenses and internal costs incurred in connection with the foregoing services. If the County wishes to conduct a competition prior to the Termination Date with a view to entering into an agreement for the provision of services (which may or may not be the same as, or similar to, the Contract Services or any of them) following the Termination Date, the Developer shall prior to the Termination Date cooperate with the County fully in such competition process, including by:

(1) Providing any information in the Developer's control or possession which the County may reasonably require to conduct such competition, except that information which is commercially sensitive to the Developer or a Developer Person (and, for such purpose commercially sensitive means information which would if disclosed to a competitor of the Developer or a Developer Person give that competitor a material competitive advantage over the Developer or the Developer Person and thereby prejudice the business of the Developer or the Developer Person); and

(2) Assisting the County by providing any participants in such competition process with access to the Project Site and the Project provided such access does not affect the Contract Services in a way that results in any reduction in Service Fee.

ARTICLE 23

ASSIGNMENT AND CHANGE IN CONTROL

SECTION 23.1. ASSIGNMENT AND TRANSFER BY DEVELOPER; FUNDAMENTAL CHANGES.

(A) Assignment by the Developer. Subject to subsection 23.1(B) (Security), the Developer shall not assign, transfer, mortgage, pledge or otherwise encumber or dispose of any of its rights or obligations under this Project Agreement without the written consent of the County.

(B) Security. The provisions of subsection 23.1(A) (Assignment by the Developer) do not apply to the grant of any security, substantially in a form approved by the County, acting reasonably, for any financing or loan made to the Developer (directly or indirectly) under any Senior Financing Agreement and provided the Senior Lenders enter into the Lenders' Remedies Agreement or to the enforcement of the same.

(C) Change of Organization or Name. The Developer shall not change the legal form of its organization without providing prior written notice to the County. If either party changes its name, such party agrees to promptly (and in any event within ten (10) Business Days of such change) furnish the other party with written notice of such name change and appropriate supporting documentation.

SECTION 23.2. CHANGE IN OWNERSHIP.

(A) Restricted Change in Ownership. For purposes of this Project Agreement a "**Restricted Change in Ownership**" will constitute a Developer Event of Default for purposes of subsection 20.1(A) (Developer Events of Default Defined) and will arise if:

(1) prior to the second (2nd) anniversary of Occupancy Readiness Date, without the prior written consent of the County, any Qualified Investor ceases to own or control (directly or indirectly) the same percentage of the issued shares, units or membership interests in the Developer that it owned or controlled (directly or indirectly) on the date of this Project Agreement, other than as a result of an Additional Equity Investment;

(2) any Change in Ownership occurs which involves the transfer of any shares or membership interests to a Restricted Person; or

(3) any Change in Ownership occurs which would be reasonably likely to have a material adverse effect on the Developer's ability to perform its obligations under this Project Agreement with respect to the Facility Management Services, taking into account the financial strength and integrity of the transferee, compared to that of the transferor.

(B) Exceptions. A Restricted Change in Ownership will not arise pursuant to subsection 23.2(A) (Restricted Change in Ownership) as a direct result of:

(1) The grant, enforcement or the exercise of rights of security in favor of the Senior Lenders over or in relation to any shares, units or membership interests in the Developer or an Equity Member under a Senior Financing Agreement;

(2) A change in legal or beneficial ownership of any shares or other securities that are listed on a recognized public stock exchange, including such transactions involving any initial public offering;

(3) A change in possession of the power to direct or control the management of Developer or a material aspect of its business due solely to a bona fide transaction involving beneficial interests in the ultimate parent organization of an Equity Member (but not if the Equity Member is the ultimate parent organization); or

(4) A transfer of interests to or between managed entities that are under common control or ownership interests (whether directly or indirectly) or to or between the general partners, manager or the parent company of such general partner or manager and any managed entities under common ownership or control with such general partner or manager (or parent company of such general partner or manager), if the transfer to relevant entities and the general partner or manager of such entities (or the parent company of such general partner or manager) would not reasonably be likely to have a have a materially adverse effect on the Developer's ability to perform its obligations under

this Project Agreement, taking into account the financial strength and integrity of the transferee, compared to that of the transferor.

For the purposes of this Section 23.2 (Change in Ownership), a person will only be deemed to own shares or membership interest in another person if such person owns the legal, beneficial, and equitable interest in the relevant shares or membership interest of that other person.

SECTION 23.3. FACTORS THE COUNTY MAY CONSIDER.

In determining whether to provide its consent under subsections 23.1(A) (Assignment by the Developer), and without limiting the County's discretion thereunder, it will be reasonable for the County to refuse its consent if:

(1) The proposed assignee or the new party in control of the Developer, as the case may be, or any of their Affiliates, is a Restricted Person;

(2) The proposed assignee cannot comply with the County's conflict of interest requirements or other requirements of Applicable Law;

(3) The proposed assignee or the new party in control of the Developer, as the case may be, is, in the reasonable opinion of the County, less creditworthy than the assignor;

(4) The experience, background or reputation of the proposed assignee and the Key Personnel in operating projects or Facility of a similar nature, in the reasonable opinion of the County, is not sufficient to meet the Developer's obligations under this Project Agreement; or

(5) The assignment or Change in Control could, in the reasonable opinion of the County, have a material and adverse effect on the County or the Project.

SECTION 23.4. ASSIGNMENT BY THE COUNTY.

The County may, upon prior written notice to the Developer, but without the Developer's consent, assign, transfer or otherwise dispose of all or any portion of its rights, title and interest in and to this Project Agreement, the Project, the Project Site or the performance bond to any other Government Entity that:

(1) Succeeds to the governmental powers and authority of the County;

(2) Has sources of funding to perform the payment obligations of the County under this Project Agreement that are at least as adequate and secure as the County's, or has a credit rating that is at least as high as the County's, at the time of assignment; and

(3) Assumes all of the County's obligations under this Project Agreement.

Notwithstanding the foregoing, the County may assign, transfer or otherwise dispose of all or any portion of its rights, title and interest in and to this Project Agreement, the Project Site, or the performance bond to any other entity that does not satisfy the conditions set forth above provided the County first obtains the prior written consent of the Developer.

SECTION 23.5. NOTIFICATION; COSTS OF REQUEST FOR CONSENT.

With respect to any change in legal or beneficial ownership that requires the County's consent pursuant to this Article 23 (Assignment and Change in Control), the Developer shall provide the County with at least thirty (30) days' prior written notice of any Change in Ownership. If the Developer requests consent to an assignment, transfer or disposition pursuant to this Article 23 (Assignment and Change in Control), the Developer shall pay the County's reasonable internal administrative and personnel costs and all out-of-pocket costs in connection with considering any such request. After the decision of the County is rendered, the County will invoice the Developer for the amounts due under this Section with reasonable substantiation of such costs and Developer shall remit payment to the County within thirty (30) days from the date of the invoice.

ARTICLE 24

INDEMNIFICATION

SECTION 24.1. DEVELOPER'S OBLIGATION TO INDEMNIFY.

The Developer shall defend, indemnify and keep each County Indemnitee indemnified at all times from and against all Loss-and-Expense that any County Indemnitee may sustain (except to the extent such Loss-and-Expense is caused by, in each case, the misconduct, negligence or other intentional act of the County Indemnitee seeking indemnity) in connection with (i) any loss of or physical damage to property or assets of any County Indemnitee, or (ii) any claim made by one or more third parties (including for loss of or physical damage to property or assets), or (iii) any claim for, or in respect of, the death, personal injury, disease or illness of any person, including any County Indemnitee, arising by reason of any:

(1) Breach of any representation or warranty by the Developer under this Project Agreement;

(2) Negligent act or omission of the Developer in connection with the Project Agreement;

(3) Willful misconduct of the Developer in connection with the Project Agreement;

(4) Non-compliance by the Developer with any of the provisions of this Project Agreement or any document, instrument or agreement delivered to the County as required under this Project Agreement;

(5) Developer Hazardous Substances; or

(6) Breach by the Developer of, or non-compliance by the Developer with, any Governmental Approval or Applicable Law, or the failure of the Developer to obtain all necessary Governmental Approvals in accordance with this Project Agreement, except to the extent caused by a County Fault, or a County Event of Default. The Developer's indemnity obligations under this Section shall not be limited by any coverage exclusions or other provisions in any policy of Required Insurance or other insurance maintained by the Developer which is intended to respond to such events. This Section may be relied upon by the County Indemnitees and may be enforced directly by any of them against the Developer in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and the Developer.

SECTION 24.2. INDEMNIFICATION PROCEDURES.

(A) Notice. If a County Indemnitee receives any notice, demand, letter or other document concerning any claim for which it appears that the County Indemnitee is, or may become entitled to, indemnification or compensation under this Project Agreement in respect of the claim, the County Indemnitee shall give notice in writing to the Developer as soon as reasonably practicable and in any event within 20 Business Days of receipt thereof, provided, however, that failure to give notice within 20 Business Days shall not relieve Developer of its indemnity and defense obligations unless it has been materially prejudiced by said belated notice.

(B) Developer Right to Dispute Claim. If notice is given as provided in subsection (A) of this Section, the Developer shall be entitled to dispute the claim in the name of the County Indemnitee at the Developer's own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations. The County Indemnitee will give the Developer all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim.

(C) Conflicts of Interest. In defending any claim as described in subsection (B) of this Section in which there is a conflict of interest between the Developer and the County Indemnitee, the County Indemnitee may appoint independent legal counsel in respect of such claim and, if it is determined that the County Indemnitee is entitled to indemnification by or compensation from the Developer, all reasonable costs and expenses incurred by the County Indemnitee in so doing (including but not limited to the cost and expense of in-house legal counsel) will be included in the indemnity or compensation from the Developer.

(D) Rights and Duties of the Parties. With respect to any claim conducted by the Developer pursuant to subsection (B) of this Section:

(1) The Developer shall keep the County Indemnitee reasonably informed and consult with it about material elements of the conduct of the claim;

(2) The Developer shall demonstrate to the County Indemnitee, at the reasonable request of the County Indemnitee, that the Developer has sufficient means to pay all costs and expenses that it may incur by reason of conducting the claim; and

(3) The Developer shall not pay or settle such claims without the consent of the County Indemnitee, such consent not to be unreasonably withheld or delayed.

(E) County Indemnitee Rights to Conduct Defense. The County Indemnitee may take conduct of any defense, dispute, compromise or appeal of the claim and of any incidental negotiations if:

(1) The Developer is not entitled to take conduct of the claim in accordance with subsection (B) of this Section; or

(2) The Developer fails to notify the County Indemnitee of its intention to take conduct of the relevant claim within 30 days of the notice from the County Indemnitee under subsection (B) of this Section or notifies the County Indemnitee that it does not intend to take conduct of the claim; or

(3) The Developer fails to comply in any material respect with subsection (D) of this Section.

(F) Transfer of Conduct of Claim to County Indemnitee. The County Indemnitee may at any time give notice to the Developer that it is retaining or taking over, as the case may be, the conduct of any defense, dispute, compromise, settlement or appeal of any claim,

or of any incidental negotiations, to which subsection (B) of this Section applies. On receipt of such notice the Developer will promptly take all steps necessary to transfer the conduct of such claim to the County Indemnitee, and will provide to the County Indemnitee all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim.

(G) Infringement of Intellectual Property Rights. In response to any claim of infringement or alleged infringement of the Intellectual Property rights of any person, the Developer may replace such infringing or allegedly infringing item provided that:

(1) The replacement is performed without cost to the County; and

(2) The replacement has at least equal quality performance capabilities when used in conjunction with the Project.

SECTION 24.3. COUNTY'S OBLIGATION TO INDEMNIFY.

The County agrees to defend and indemnify Developer from and against any Loss-and-Expense that the Developer, Project Contractor or any of their respective subcontractors may sustain (except to the extent such Loss-and-Expense is caused by, in each case, the misconduct, negligence or other intentional act of any Developer Person) in connection with any claim made by one or more third parties in connection with such Hazardous Substances (except for Developer Hazardous Substances); provided that: (1) the Developer shall promptly (and in any event within ten Business Days' receipt of any written notice thereof) notify the County of incidents, potential claims and matters which would reasonably be expected to give rise to any such third-party claim; (2) the County may give written notice to the Developer to tender defense of any such third-party claim to the County at any time, in which case the Developer shall promptly tender defense of such claim and cooperate with the County as necessary or reasonably requested by the County to defend such third-party claim; (3) unless and until the County assumes defense of any third-party claim, the Developer shall keep the County reasonably informed at all times regarding such third-party claim; and (4) the Developer shall not enter into any agreements or settlement with respect to any such third-party claim without the prior written approval of the County. The County shall have no other defense or indemnity obligations to any Developer Person except as expressly set forth in this Section 24.3.

ARTICLE 25

MISCELLANEOUS PROVISIONS

SECTION 25.1. OWNERSHIP OF THE PROJECT.

The Project shall be owned by the County at all times.

SECTION 25.2. RELATIONSHIP OF THE PARTIES.

The Developer is an independent contractor of the County and the relationship between the parties shall be limited to performance of this Project Agreement in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this Project Agreement shall be deemed to constitute either party a partner, agent or legal representative of the other party. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to any party's agent or employee as a result of this Project Agreement or the performance thereof.

SECTION 25.3. NO OTHER BUSINESS.

The Developer shall not engage in any business or activity other than the business or activities conducted for the purposes of the Project or otherwise as expressly permitted hereunder.

SECTION 25.4. DEVELOPER PERSONS.

The Developer shall, as between itself and the County, be responsible for, and not relieved of its obligations hereunder by, the acts, omissions, breaches, defaults, non- compliance, negligence and willful misconduct of each Developer Person, and all references in this Project Agreement to any act, omission, breach, default, non-compliance, negligence or willful misconduct of the Developer shall be construed accordingly to include any such act, omission, breach, default, non-compliance, negligence or willful misconduct committed by a Developer Person.

SECTION 25.5. GENERAL DUTY TO MITIGATE.

(A) Mitigation by the Developer. In all cases where the Developer is entitled to receive any relief from the County or exercise any rights, including the right to receive any payments, costs, damages or extensions of time, whether on account of Supervening Events or otherwise, the Developer shall use all reasonable efforts to mitigate such amount required to be paid by the County to the Developer under this Project Agreement, or the length of the extension of time. Such mitigation measures shall include reasonable, good faith efforts to comply with all procedures and other requirements necessary to obtain any available waiver or exemption from Taxes that would otherwise be borne directly or indirectly by the County. Upon request from the County, the Developer shall promptly submit a detailed description, supported by all such documentation as the County may reasonably require, of the measures and steps taken by the Developer to mitigate and meet its obligations under this subsection.

(B) Mitigation by the County. In all cases where the County is entitled to receive from the Developer any compensation, costs or damages, but not in any other cases, the County shall use all reasonable efforts to mitigate such amount required to be paid by the Developer to the County under this Project Agreement, provided that such obligation shall not require the County to:

(1) Take any action which is contrary to the public interest, as determined by the County in its reasonable discretion;

(2) Undertake any mitigation measures that might be available arising out of its status as a Governmental Body, but which measure would not normally be available to a private commercial party; or

(3) Alter the amount for Deductions it is entitled to make in accordance with Appendix 11 (Deductions).

The County shall have no obligation to mitigate, implied or otherwise, except as set forth in this subsection or otherwise as expressly provided in this Project Agreement. Upon request by the Developer, the County shall promptly submit a detailed description, supported by all such documentation as the Developer may reasonably require, of the measures and steps taken by the County to mitigate and meet its obligations under this subsection.

SECTION 25.6. OPPORTUNITIES.

Except as may be specifically agreed in writing between the County and the Developer during the Term and except for the Restaurant, the County reserves the right to all commercial and other opportunities for, or related to, the Project.

SECTION 25.7. PROJECT AGREEMENT ADMINISTRATION.

(A) Authority of County Representative. The Developer understands and agrees that the County Representative has only limited authority with respect to the implementation of this Project Agreement, and cannot bind the County with respect to any Project Agreement Amendment, to waivers, or to incurring costs in excess of the amounts appropriated therefor. Within such limitations, the Developer shall be entitled to rely on the written directions of the County Representative. The County Representative shall have the right at any time to issue the Developer a written request for information relating to this Project Agreement. Any written request designated as a "priority request" shall be responded to by the Developer within three Business Days.

(B) Facility Management Notices. Facility Management Notices hereunder shall be given by e-mail, and may be given personally or by telephone promptly followed by e-mail confirmation. Facility Management Notices to the Developer shall be given by the County Representative and Facility Management Notices to the County shall be given by the Developer Representative.

(C) Administrative Communications. The parties recognize that a variety of contract administrative matters will routinely arise throughout the Term. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings, by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of these matters, once resolution is reached, can be formally reflected in the common records of the parties so as to permit the orderly and effective administration of this Project Agreement.

(D) Contract Administration Memoranda. The principal formal tool for the administration of routine matters arising under this Project Agreement between the parties which do not require a Project Agreement Amendment shall be a "**Contract Administration Memorandum**". A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by the County and the Developer as to matters of interpretation and application arising during the course of the performance of their obligations hereunder. Such matters may include, for example:

(1) Issues as to the meaning, interpretation or application of this Project Agreement in particular circumstances or conditions;

(2) Calculations required to be made;

(3) Notices, waivers, releases, satisfactions, confirmations, further assurances, consents and approvals given hereunder; and

(4) Other similar routine contract administration matters.

(E) Procedure. Either party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of the County reflecting the resolution. Contract Administration Memoranda shall be serially numbered, dated, signed by the County Representative and the Developer Representative. The County and the Developer each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate

and distinct from Project Agreement Amendments and all other documents relating to the administration and performance of this Project Agreement.

(F) Effect. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and application of the terms and conditions of this Project Agreement.

SECTION 25.8. PROJECT AGREEMENT AMENDMENTS.

(A) Amendments Generally. Notwithstanding the provisions of Section 25.7 (Project Agreement Administration), no change, alteration, revision or modification of the terms and conditions of this Project Agreement shall be made except through a written amendment to this Project Agreement (a "**Project Agreement Amendment**") duly authorized, approved or ratified by the County and duly authorized by the Developer. Project Agreement Amendments shall be dated and signed by the County Representative and the Developer Representative. Notwithstanding the foregoing, and prevailing over any other contrary provision in this Project Agreement, consent or approval for Project Agreement Amendments that: (1) increase the financial commitments of the County to the Developer or for the Project beyond those authorized and approved by the Board via resolution; (2) materially changes the Design and Construction Standards for the Project; (3) materially changes the Facility Management Requirements for the Project; or (4) provide extensions of time to the Occupancy Readiness Date beyond those authorized and approved by the Board via resolution, will only be effective following the approval of the Board, and those Project Agreement Amendments that materially amend this Project Agreement will only be effective following the consent of the Federal Transit Administration, the Florida Department of Transportation, and the Board. The County covenants and agrees to present, through the County Mayor or Mayor's designee, all proposed Project Agreement Amendments that materially amend this Project Agreement to: (1) the Federal Transit Administration and the Florida Department of Transportation for their review and approval within ten Business Days of the preparation and agreement in principal of the proposed Project Agreement Amendment by the Developer Representative and the County Representative; and (2) the Board for its consideration within 30 days of the Federal Transit Administration's and Florida Department of Transportation's approval of the proposed Project Agreement Amendment.

(B) Project Agreement Amendments and Contract Administration Memoranda. In order to maintain a complete file of all agreements made with respect to the administration of this Project Agreement, when a Project Agreement Amendment or other agreement with respect to this Project Agreement is entered into and executed by the parties, a Contract Administration Memorandum shall be prepared attaching and acknowledging this Project Agreement Amendment or other agreement, but need not be executed by the Developer Representative.

SECTION 25.9. COUNTY APPROVALS AND CONSENTS.

When this Project Agreement requires any approval or consent by the County to a Developer submittal, request or report, the approval or consent shall, within the limits of the authority of subsection 25.7(A) (Authority of County Representative), be given by the County Representative in writing and such writing shall be conclusive evidence of such approval or consent, subject only to compliance by the County with the Applicable Law that generally governs its affairs. Unless expressly stated otherwise in this Project Agreement, and except for (1) approvals provided for in Section 4.3 of Appendix 6 (Design-Build Work Review Procedures), which shall be governed by the terms of such Appendix, and (2) requests, reports and submittals made by the Developer that do not, by their terms or the terms of this Project Agreement, require a response or action, if the County does not find a request, report or submittal acceptable, it shall provide written response to the Developer describing its objections and the reasons therefor within 30 days of the County's receipt thereof. If no response is received, the request, report or submittal shall be deemed rejected unless the County's approval or consent may not be unreasonably delayed by the express terms hereof, and the Developer may resubmit the same,

with or without modification. Requests, reports and submittals that do not require a response or other action by the County pursuant to some specific term of this Project Agreement shall be deemed acceptable to the County if the County shall not have objected thereto within 30 days of the receipt thereof.

SECTION 25.10. DISCLOSED DATA.

It is the Developer's responsibility to have conducted its own analysis and review of the Project and, before the execution of this Project Agreement, to have taken all steps it considers necessary to satisfy itself as to the accuracy, completeness and applicability of any Disclosed Data upon which it places reliance and to assess all risks related to the Project. Without limiting the Developer's right to claim relief for Differing Site Conditions and Regulated Site Conditions pursuant to this Project Agreement, the Developer shall not be entitled to and will not make (and will ensure that no Project Contractor or Subcontractor makes) any claim against any County Indemnitee, whether in contract, tort or otherwise, including any claim in damages for extensions of time or for additional payments under this Project Agreement on the grounds:

(1) Of Any misunderstanding or misapprehension in respect of the Disclosed Data; or

(2) That incorrect or insufficient information relating to the Disclosed Data was given to it by any person other than the County, nor will the Developer be relieved from any obligation imposed on or undertaken by it under this Project Agreement on any such ground.

SECTION 25.11. ACTIONS OF THE COUNTY IN ITS GOVERNMENT CAPACITY

Nothing in this Project Agreement shall be interpreted as limiting the rights and obligations of the County (or any department or agency thereof) under Applicable Law in their governmental capacity (including police power actions to protect health, safety and welfare), or as limiting the right of the Developer to bring any action against the County (or any department or agency thereof), not based on this Project Agreement, arising out of any act or omission of the County (or any department or agency thereof) in their governmental capacity. The County retains all its sovereign prerogatives and rights as a county (the "**Sovereign**") under State and local law with respect to the planning, design, construction, development and operation of the Project. It is expressly understood that notwithstanding any provisions of this Project Agreement and the County's status thereunder:

(A) The County retains all of its sovereign prerogatives and rights and regulatory authority (quasi-judicial or otherwise) as a county under State and local law and shall in no way be estopped from withholding or refusing to issue any approvals or applications for building, zoning, planning or development under present or future laws and regulations whatever nature applicable to the planning, design, construction and development of the Project, or the operation thereof, or be liable for the same.

(B) The County shall not by virtue of this Project Agreement be obligated to grant the Developer any approvals of applications for building, zoning, planning, development or otherwise under present or future Applicable Laws of whatever nature applicable to the planning, design, construction, development and/or operation of the Project.

(C) Notwithstanding and prevailing over any contrary provision in this Project Agreement, any County covenant or obligation that may be contained in this Project Agreement shall not bind the Board, the Regulatory and Economic Resources Department and its Division of Environmental Resources Management, or any other County, city, federal or State department

or authority, committee or agency (i.e., any Governmental Body) to grant or leave in effect any zoning changes, variances, permits, waivers, contract amendments, or any other approvals that may be granted, withheld, or revoked in the discretion of the County or other applicable Governmental Body in the exercise of its/their police power(s).

SECTION 25.12. COUNTY FUNDING OBLIGATIONS.

(A) The County's obligations under this Project Agreement to make Service Fee payments and to make any other payments under this Project Agreement as they become due and owing are contractual commitments of the County and are special and limited obligations of the County, payable solely from Legally Available Non-Ad Valorem Revenues and other legally available revenues budgeted and appropriated and actually deposited into the accounts created pursuant to this Project Agreement, all as provided for herein. Nothing herein shall be deemed to create a pledge of or lien, legal or equitable, on the Legally Available Non-Ad Valorem Revenues, the ad valorem tax revenues, or any other revenues of the County, or to permit or constitute a mortgage or lien upon any assets owned by the County. None of the parties to this Project Agreement shall ever have the right to compel any exercise of the ad valorem taxing power of the County for any purpose, including, without limitation, to make any payment required under this Project Agreement or to maintain or continue any of the activities of the County which generate user service charges, regulatory fees or any other Legally Available Non-Ad Valorem Revenues.

(B) The County hereby covenants and agrees to:

(1) include in the County Mayor's proposed annual budget, which the County Mayor shall submit to the Board each calendar year during the Term on or before the date required by the Miami-Dade County Home Rule Amendment and Charter and State law, a request for appropriation of funds (including authorization for the County Mayor or Mayor's designee to administratively pay such funds as they come due under the Project Agreement) sufficient to pay the amounts due and owing or scheduled to become due and owing from the County to the Developer during the succeeding fiscal year;

(2) have the County Mayor present to the Board any necessary budget amendments or adjustments for any additional amounts that may become due and owing to the Developer from the County during any fiscal year and that were not contemplated at the time of the adoption of the ensuing fiscal year's budget; and

(3) create and establish an account in which Legally Available Non-Ad Valorem Revenues and other legally available revenues budgeted and appropriated for Service Fee payments and any other payment obligations under this Project Agreement will be deposited.

(C) The obligations of the County under this Project Agreement will survive any failure to appropriate sufficient amounts to pay the amounts due and owing or scheduled to become due and owing from the County to the Developer under this Project Agreement and any expiration or termination of this Project Agreement and such obligations shall not be impaired, reduced or otherwise affected by any such failure.

SECTION 25.13. CONFIDENTIALITY.

(A) Confidential Information. Subject to subsection (B) of this Section, each party will hold in confidence any Confidential Information received from the other party, except that this Section will not restrict either party from disclosing or granting access to such information to its professional advisers and consultants, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Project

Agreement, and provided further that the Developer may, subject to obtaining confidentiality restrictions similar to those set forth in this Project Agreement:

(1) Provide to the rating agency, Senior Lenders and other potential lenders, equity providers, underwriters, arrangers, investment dealers, insurers and their respective advisors such documents and other information as are reasonably required by them in connection with raising financing for the Project or complying with the terms of the Senior Financing Agreement or related agreements; and

(2) Provide to a Project Contractor and its advisors, or provide or cause to be provided to other third parties, Confidential Information which is necessary to enable the Developer to perform (or to cause to be performed) its obligations under this Project Agreement.

(B) Exceptions. Subject to any restrictions on the Confidential Information which are imposed by a third party that may own any Confidential Information, the obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:

(1) Which is or comes into the public domain otherwise than through any disclosure prohibited by this Project Agreement;

(2) To the extent any person is required to disclose such Confidential Information by Applicable Law or, in the case of the County, by generally applicable County information disclosure policies and Public Records Laws;

(3) To the extent consistent with County's policy concerning the County's Confidential Information, the details of which have been provided to the Developer in writing prior to the disclosure;

(4) Any Governmental Body which requires the information in relation to the Project; or

(5) That the County may be entitled to receive from the Developer pursuant to this Project Agreement for the operation, maintenance or improvement of the Project in the event of, or following, termination of this Project Agreement.

(C) Security Plan. If requested by the County, the Developer shall prepare a security plan to assure that Confidential Information obtained from the County or as a consequence of the performance of the Contract Services is not used for any unauthorized purpose or disclosed to unauthorized persons. The Developer shall advise the County of any request for disclosure of information or of any actual or potential disclosure of information.

(D) Public Communications of Confidential Information. Unless expressly provided in this Project Agreement or otherwise required by Applicable Law (but only to that extent), neither party will make or permit to be made any public announcement or disclosure whether for publication in the press, radio, television or any other medium of any Confidential Information, without the written consent of the other party (which will not be unreasonably withheld or delayed).

(E) Equitable Relief. Without prejudice to any other rights and remedies that the other party may have, each of the parties agrees that damages may not be an adequate remedy for a breach of subsection (A) of this Section, and that the other party will, in such case, be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of subsection (A) of this Section.

SECTION 25.14. PUBLIC RECORDS.

(A) The Developer shall comply, and shall require all of its Architect, Design-Builder, and all other Developer Persons to comply with Public Records Laws, specifically to:

(1) Keep and maintain all records required by the public agency to perform the service.

(2) Upon request from the County Representative, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in the Public Records Law or as otherwise provided by Applicable Law.

(3) Ensure that Public Records that are exempt or confidential and exempt from Public Records' disclosure requirements are not disclosed except as authorized by law for the Term, and following expiration of the Term or the earlier termination thereof, if the Developer does not transfer the records to the County.

(4) Upon expiration of the Term, or the earlier termination thereof, transfer, at no cost, to the County all Public Records in possession of the Developer or keep and maintain for inspection and copying all Public Records in its possession. If the Developer, upon expiration of the Term, or the earlier termination thereof: i.) transfers all Public Records to the County, the Developer shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements; and ii.) keeps and maintains Public Records, the Developer shall meet all Applicable Law and requirements for retaining Public Records. All records stored electronically must be provided to the County, upon request from the County's custodian of Public Records, in a format that is compatible with the information technology systems of the County.

(B) If the Developer fails to provide Public Records to the County within a reasonable amount of time, this may be subject to penalties under Florida Statutes Chapter 119 and shall be deemed an Event of Default under this Project Agreement.

IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, THE DEVELOPER SHALL CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773, ISD-VSS@MIAMIDADE.GOV, 111 NW 1ST STREET, SUITE 1300, MIAMI, FLORIDA 33128

(C) The County shall notify the Developer if the County receives a request for disclosure of any information that the Developer has informed the County that it reasonably believes is Trade Secret Information (as Trade Secret Information is defined by Applicable Law) or is information protected from disclosure to the public by any other Applicable Law so that Developer may defend any claims or disputes arising from efforts by others to cause such Trade Secret Information or other legally protected information to be disclosed as a public record. The County shall have no liability, however, for any disclosure (x) which the County determines in good faith is required by Applicable Law, or (y) of information the County had not been advised was Trade Secret Information as provided above. Notwithstanding the foregoing: (a) the County will not have any further obligations of confidentiality or secrecy with respect to any of the Trade Secret Information or other legally protected information to the extent that such information becomes public knowledge or is published, disseminated or circulated in the public domain, unless such initial publication results from the breach of this Project Agreement by the County; and (b) nothing will prevent representatives of the County from testifying either in court or through depositions or other discovery proceedings in the context of litigation or administrative proceedings. Notwithstanding and prevailing over any other provision of this Project Agreement

to the contrary, a breach of this subsection shall not entitle the Developer to terminate this Project Agreement. Rather, their exclusive remedy for such breach will be entitlement to whatever actual damages are proven in a court of competent jurisdiction and/or injunctive relief ordered by a court of competent jurisdiction. Furthermore, no breach of this sub-section by the County shall excuse the Developer or any Project Contractor from providing such other information, records and reports as are required by this Project Agreement to the County.

SECTION 25.15. COMPLIANCE WITH MATERIAL AGREEMENTS.

The Developer shall comply with its obligations under agreements of the Developer which are material to the performance of its obligations under this Project Agreement. The County shall comply with its obligations under agreements of the County which are material to the performance of its obligations hereunder.

SECTION 25.16. BINDING EFFECT.

This Project Agreement shall inure to the benefit of and shall be binding upon the County and the Developer and any assignee acquiring an interest hereunder consistent with Article 23 (Assignment and Change in Control).

SECTION 25.17. CONSENTS.

Any consent required to be given under this Project Agreement shall be in writing.

SECTION 25.18. NOTICES.

(A) Procedure. All notices, consents, approvals or written communications given pursuant to the terms of this Project Agreement (other than Facility Management Notices as provided in subsection 25.7(B) (Facility Management Notices) will be in writing and will be considered to have been sufficiently given if delivered by hand or transmitted by electronic transmission to the address, or electronic mail address of each party set forth below in this Section, or to such other address, or electronic mail address as any party may, from time to time, designate in the manner set forth above. Any such notice or communication will be considered to have been received:

(1) if delivered by hand during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, upon receipt by a responsible representative of the receiver, and if not delivered during business hours, upon the commencement of business hours on the next Business Day;

(2) if delivered by electronic mail during business hours (and in any event, at or before 5:00 p.m. local time in the place of receipt) on a Business Day, upon receipt, and if not delivered during business hours, upon the commencement of business hours on the next Business Day.

(B) County Notice Address. Notices (other than Facility Management Notices) required to be given to the County shall be addressed as follows:

Miami-Dade County Internal Services Department
Attention: Dan Chatlos
111 NW 1st Street, Suite 2100
Miami, FL 33128
Telephone: 305-375-4812
Email: chatlos@miamidade.gov

with a copy to:

Miami-Dade County Attorney's Office
111 N.W. 1st Street, Suite 2810
Miami, FL 33128
Attention: Eduardo Gonzalez, Monica Rizo Perez and Oren Rosenthal
Telephone: 305-375-5151
Email: EduardoCAO.Gonzalez@miamidade.gov
Monica.Rizo@miamidade.gov
Oren.Rosenthal@miamidade.gov

(C) Developer Notice Address. Notices required to be given to the Developer shall be addressed as follows:

Plenary Justice Miami LLC
555 West 5th Street, Suite 3150
Los Angeles, CA 90013
Attention: Vice President
Telephone: 424-278-2173
Email: Notices@plenarygroup.com

with a copy to:

Plenary Group (Canada) Ltd.
400 Burrard Street, Suite 2000
Vancouver, BC V6C 3A6
Attention: Vice President

SECTION 25.19. NOTICE OF LITIGATION.

In the event the Developer or County receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims, or investigations in connection with the Project, the party receiving such notice or undertaking such defense or prosecution shall give the other party timely notice of such proceedings and shall inform the other party, to the extent possible, in advance of all hearings regarding such proceedings. For purposes of this Section only, "timely notice" shall be deemed given if the receiving party has a reasonable opportunity to provide objections or comments or to proffer to assume the defense or prosecution of the matter in question, given the deadlines for response established by the relevant rules of procedure.

SECTION 25.20. FURTHER ASSURANCES.

The parties will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, declarations, affidavits, reports and opinions) and things as the other party may reasonably request for the purpose of giving effect to this Project Agreement or for the purpose of establishing compliance with the representations, warranties and obligations of this Project Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Project Agreement to be executed by their duly authorized representatives on the day and year first above written.

PLENARY JUSTICE MIAMI LLC

Notary Public

By: _____

Name: Brian Budden

Notary Seal

Title: President

Date: 12/19/19

Notary Public

By: _____

Name: Mike Schutt

Notary Seal KATRINA MARIE BALENTYNE MY COMMISSION # GG010216 EXPIRES July 10, 2020 (407) 398-0153 FloridaNotaryService.com

Title: Vice President

Date: 12/19/19

ATTEST:

MIAMI-DADE COUNTY, FLORIDA

Clerk of the Board

COUNTY COMMISSIONERS MIAMI-DADE COUNTY FLORIDA

By: _____

Name: Carlos A. Gimenez

Title: Mayor

Date: 12/19/19

APPROVED FOR FORM AND LEGAL SUFFICIENCY
This 19 day of December, 2019

Assistant County Attorney