

MEMORANDUM

Agenda Item No. 8(N)(4)

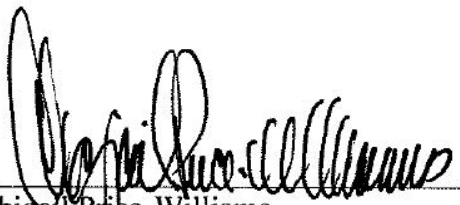
TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: October 6, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving award of a Design-Build Services Agreement with a contract amount not to exceed \$16,184,835.60, inclusive of a contingency allowance of \$788,563.60 and a total contract term of 960 calendar days and a Supplemental Agreement No. 1, increasing contract amount by \$1,487,718.92, to LEAD Engineering Contractors, LLC, for a cumulative total contract amount not to exceed \$17,672,554.52 for a project entitled "Design-Build Services – Phase 2 – The Underline", Contract No. CIP178-DTPW18-CT2 and authorizing the County Mayor to execute same and to exercise the rights contained therein

The accompanying resolution was prepared by the Transportation and Public Works Department and placed on the agenda at the request of Prime Sponsor Commissioner Eileen Higgins.


Abigail Price-Williams
County Attorney

APW/uw

Memorandum



Date: October 6, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

A handwritten signature in blue ink, appearing to read "Carlos A. Gimenez", written over the name in the "From:" field.

Subject: Resolution Approving Award of a Design-Build Services Agreement for Contract No. CIP178-DTPW18-CT2, Project No. DB18-DTPW-01 Entitled "Design-Build Services – Phase 2 – The Underline", to Lead Engineering Contractors, LLC in the Contract Amount of \$16,184,835.60 and Supplemental Agreement No. 1; Increasing the Contract Amount by \$1,487,718.92; for a Total Contract Amount of \$17,672,554.52

Recommendation

The award of "Design-Build Services – Phase 2 – The Underline" for the contract amount of \$16,184,835.60, inclusive of a contingency allowance amount of \$788,563.60 and a contract term of 960 calendar days, and Supplemental Agreement No. 1, increasing the contract amount by \$1,487,718.92 for Contract Number: CIP178-DTPW18-CT2 to LEAD Engineering Contractors, LLC has been prepared by the Department of Transportation and Public Works (DTPW) and is recommended for approval by the Board of County Commissioners (Board) pursuant to Section 2-8.1 of the Code of the County (Code), for a cumulative total contract amount not to exceed \$17,672,554.52.

This recommendation for award will provide for design-build services for approximately 2.14 miles of improvements running within or parallel to the County's Metrorail Right-of-Way that includes separate paved off-street bicycle and pedestrian paths, landscaping, lighting, street furniture, wayfinding signage and pavement markings. Services will include, but are not limited to, civil, landscaping and electrical design, surveys, geotechnical, permitting, signage, public meetings, coordination of design with utility companies and the appropriate government entities, potential archeological monitoring, environmental investigation remediation, reporting, construction, compliance with grants and submittal requirements for the Florida Department of Transportation (FDOT) and any ancillary tasks necessary to build the project and comply with the National Environmental Policy Act Category 1 exclusion requirements.

Supplemental Agreement No. 1 will provide for soil remediation services. These services include soil sampling and testing, preparation and submittal of a soil mixing plan for the Department of Regulatory and Economic Resources' (RER) approval, implementation of such soil mixing plan as approved by RER, labor, equipment and materials to perform all testing required as indicated in the approved soil mixing plan. Additional services include blending of materials on site as indicated in the RER approved soil mixing plan and all monitoring required as indicated in the approved soil mixing plan during the performance of the soil remediation services.

This contract award recommendation and Supplemental Agreement No. 1 is placed for Board review pursuant to the Code Section 29-124(f). This contract award recommendation and Supplemental Agreement No. 1 may only be considered by the Board if the Citizens' Independent Transportation Trust (CITT) has forwarded a recommendation to the Board prior to the date scheduled for Board

consideration or 45 days have elapsed since the filing with the Clerk of the Board of this contract award recommendation and Supplemental Agreement No. 1. If the CITT has not forwarded a recommendation and 45 days have not elapsed since the filing of this contract award recommendation and Supplemental Agreement No. 1, a request for withdrawal of this item will be submitted.

Delegation of Authority

The authority of the County Mayor or County Mayor's designee to execute and implement this contract and the Supplemental Agreement No. 1 is consistent with those authorities granted under the Code. No further delegation is necessary for this contract.

Scope

Once complete, The Underline will be an asset of countywide impact located across Commission Districts 5 and 7 represented by Commissioners Eileen Higgins and Xavier L. Suarez, respectively. The Phase 2 design-build extends from SW 13 Street to SW 19 Avenue, located in County Commission District 5 represented by Commissioner Eileen Higgins.

Fiscal Impact/Funding Source

The fiscal impact for the contract is \$17,672,554.52. This amount includes a contingency allowance amount of \$788,563.60 for unforeseen work and Supplemental Agreement No. 1 in the amount of \$1,487,718.92 for soil remediation services. Funding for this project is included in the FY 2019-20 Adopted Budget and Multi-Year Capital Plan, as well as the FY 2020-21 Proposed Budget.

<u>Funding Source</u>	<u>Amount</u>
FDOT Funds	\$ 8,000,000.00
Road Impact Fees	\$ 6,129,687.52
City of Miami Park Impact Fees	\$ 3,542,867.00
Total Funding:	\$17,672,554.52

The associated operations and maintenance of The Underline is the responsibility of the Underline Management Organization, Inc. pursuant to Board Resolution No. R-120-18.

Background

The Underline is the County's first true mobility corridor uniting all modes of transportation enhancing accessibility to the existing eight Metrorail stations within its path and the neighboring communities. When completed, The Underline will serve 107,000 residents within a 10-minute walk, provide access to public transportation to one University, 24 schools, two hospitals, three urgent care facilities, four major malls and over 10,000 businesses. The Underline will transform 120 acres of County owned land below the existing Metrorail from the Miami River (downtown Miami) to the Dadeland South Metrorail Station into a world-class multimodal corridor. The 10-mile multi-modal corridor will provide separated pedestrian and bicycle paths, improvements to over 30 intersections, access to public transportation, lighting and wayfinding.

In addition to the transportation components, recreational features will include butterfly gardens, playgrounds, exercise equipment, basketball and volleyball courts, soccer fields, picnic areas, dog parks and more. Construction of The Underline will significantly enhance connectivity for area residents and businesses for safer accessibility to jobs, businesses, schools, residential and

commercial districts. The Underline will be built in segments and each segment will demonstrate the County's commitment to improving and enhancing connectivity and an emerging focus on integrating all modes of transportation. Currently there are nine proposed phases. Phase 1 of The Underline, from the Miami River to SW 13 Street (3/4 mile), is anticipated to be completed by December of 2020. This contract, for design-build services, will provide DTPW with a qualified design-build team to provide services for Phase 2 of The Underline, located from SW 13 Street to SW 19 Avenue.

A Request for Design-Build Services (RDBS), inclusive of the Design Criteria Package was advertised under full and open competition on April 26, 2019. Exhibit 1 to this memorandum contains the detailed scope of services, technical certification requirements and other information regarding this Project. Prior to submission, the RDBS solicitation was downloaded 145 times. On May 30, 2019, three proposals were received for the Step 1: "Evaluation of Qualifications" submittal through BidSync. All respondents were found in compliance with the technical certification and Disadvantaged Business Enterprise (DBE) requirements established for this solicitation. At the Step 1 meeting held on August 7, 2019, the Competitive Selection Committee (CSC) appointed by the County Mayor reviewed and ranked the three proposals received. All three firms were evaluated in accordance with Section 2-10.4 of the Code, Implementing Order 3-34 and Administrative Order 3-39. Local preference was not applied because the project has federal provisions that prohibit the application of geographical preferences.

The total scores for the firms were as follows: Firm No. 1, Central Florida Equipment Rentals, Inc. (Central) received 452 Qualitative Points; Firm No. 2, LEAD Engineering Contractors, LLC (LEAD) received 452 Qualitative Points and Firm No. 3, Condotte America Inc. (Condotte) received 445 Qualitative Points. In accordance with the RDBS, the tiebreaker utilized to break the tie for first and second place was the total qualitative score for Criterion 1A – Qualifications of the Firms including the Team Members Assigned to the Project. The qualitative score for Central was 236 points and 233 for LEAD, resulting in a first-place ranking for Central and a second place ranking for LEAD. Based on the CSC's professional judgement, the information provided in the proposals were deemed sufficient to determine the experience and qualifications of the firms. As a result, the CSC voted to advance all three proposers to the Step 2 evaluation process to submit technical and price proposals.

On July 23, 2019, technical and price proposals were received from LEAD and Central through BidSync. Condotte chose not to submit a technical and price proposal. The Step 2 meeting with oral presentations was held on October 16, 2019. The CSC evaluated LEAD and Central's proposals based upon the established Step 2 evaluation criteria. The final ranking for each firm was determined by dividing its bid price by the qualitative score to yield an adjusted bid. The total scores for the firms were as follows: Firm No. 1, LEAD received an adjusted bid of 33,459 and Firm No. 2, Central received an adjusted bid of 40,644. The first negotiation meeting was held on December 4, 2019, in accordance with Section 2-10.4(6) of the Code. After four negotiations, the Negotiation Committee accepted the Design-Builder's lump sum base price of \$15,418,373, that was fair and reasonable to provide design-build services for Phase 2 - The Underline.

During negotiations, it was identified that it would be advantageous and in the best interest of the County to negotiate a supplemental agreement for soil remediation services for contract award because it provides a clear delineation of additional costs associated with remediation, ensures adequate funding is in place and prevents project delays to receive Board approval for the additional

services. The gain is realized through the team striving to achieve mutually accepted project goals offering best solutions and strategies instead of negotiating a supplemental agreement after contract award. As such, the Negotiation Committee arrived at a lump sum price of \$1,487,718.92 to provide for soil remediation services for Supplemental Agreement No. 1. Based on the above, it is recommended that this Design-Build Services Agreement, inclusive of Supplemental Agreement No. 1, be awarded to LEAD Engineering Contractors, LLC in the cumulative total contract amount not to exceed \$17,672,554.52, which includes the contingency allowance account.

According to the Division of Small Business Development's (SBD) database, there are no violations on record within the last three years for LEAD Engineering Contractors, LLC. The Underline project is Local Agency Program (LAP) certified; therefore, the project has been assigned an aspirational Disadvantaged Business Enterprise goal of 10.65% applied in accordance with 49 Code of Federal Regulations Part 26.21, Section II(a) of the LAP and the FDOT DBE Program Plan, Subpart B. According to the Firm History Report, as provided by SBD, within the last three years, LEAD Engineering Contractors, LLC has not held any contracts with the County.

The Project complies with all applicable federal, state and local regulations including the Applicable Wages pursuant to Resolution No. R-54-10 and the Sea Level Rise Ordinance. With Board approval, is it anticipated that the Notice to Proceed to LEAD Engineering Contractors, LLC will be issued on 9/28/2020. Included below are the subconsultants that LEAD Engineering Contractors, LLC has identified for the Project.

Subconsultants

A & P Consulting Transportation Engineers Corp.
CTS Engineering, Inc.
GSLA Design, Inc.
HBC Engineering Company

Manuel G. Vera & Associates, Inc.
Media Relations Group, LLC
Nova Consulting, Inc.
Tierra South Florida, Inc.

Track Record/Monitor

Julie Whiteside of the Internal Services Department is the Procurement Contracting Officer and Leticia Smith of DTPW is the Chief of Contract Services. The County is supervising, monitoring and inspecting all aspects of the Project's implementation, deployment and administration. Irene Hegedus, Chief, Transportation Enhancements, DTPW, is responsible for this Project.

Due Diligence

Pursuant to Resolution R-187-12, and in accordance with ISD's Procurement Guidelines, DTPW staff exercised due diligence to determine Design-Builder's responsibility for LEAD Engineering Contractors, LLC. The lists that were referenced included, but were not limited to: convicted vendors, debarred vendors, delinquent contractors, suspended vendors and federal excluded parties. There were no adverse findings relating to the Design-Builder's responsibility.

There are no evaluations on record for LEAD Engineering Contractors, LLC in the Capital Improvements Information System. In addition, due diligence was conducted by DTPW's Office of Safety and Security to determine contractor responsibility, including verifying corporate safety records. The safety records for LEAD Engineering Contractors, LLC for the last three years were considered. Copies of their Occupational Safety & Health Form 300 – Log of Work-Related Injuries

Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners
Page 5

and Illnesses are on file with DTPW's Office of Safety and Security and are available upon request.
This information is being provided pursuant to Resolution No. R-1181-18.



Jennifer Moon
Deputy Mayor

EXHIBIT 1
ADDITIONAL PROJECT REQUIREMENTS

PROJECT NAME: Design-Build Services - Phase 2 – The Underline

PROJECT NO: CIP178

CONTRACT NO: CIP178-DTPW18-CT2

PROJECT DESCRIPTION

Design-Build services are required for approximately 2.14 miles of improvements running within or parallel to the County's Metrorail Right-of-Way that includes separate paved off-street bicycle and pedestrian paths, landscaping, lighting, street furniture, wayfinding signage, and pavement markings. Services will include, but are not limited to: civil design; landscaping design; electrical design; surveys; geotechnical; permitting; signage; public meetings; coordination of design with utility companies, the County and the City of Miami; potential archeological monitoring; environmental investigation remediation, and reporting; construction; compliance with grants and submittal requirements for the Florida Department of Transportation (FDOT); and any ancillary tasks necessary to build the project and comply with the National Environmental Policy Act (NEPA) Category 1 exclusion requirements. The Underline Project, once all phases are completed, will be a 10-mile linear mobility corridor below the Metrorail.

The Design-Build team shall comply with the conditions set forth in the Type 1 Categorical Exclusion (Cat Ex) Checklist executed in 2016 and those in the NEPA Re-evaluation/Update executed in 2019. The Design-Build Team must comply with all commitments. No construction on the project may commence until the plan review and NEPA process is complete. After award of the project, the Design-Build Team shall provide design documents at 45% and 100% completion to the County and FDOT for review, commenting, problem resolution, coordination and approval prior to construction. Based on coordination with the Design-Build team, the County will review and coordinate with FDOT to determine if changes in the project's proposed design would require a NEPA Re-evaluation/Update. The Design-Build team shall prepare the required NEPA Re-evaluation/Update, including any related analyses needed, and submit it to the County and FDOT for review and approval. FDOT requires a minimum of 15 calendar days (excluding weekends and FDOT observed holidays) to review and comment for all project deliverables. This review time does not include review time performed by outside agencies. If required, FDOT shall conduct all coordination with the appropriate outside agencies during the Design-Build Team's preparation of the Re-evaluation/Update. The Design-Build Team must be qualified to perform FDOT Type 2.0 activities, meet Secretary of Interior's Professional Qualifications Standards, meet the requirements of FDOT's Cultural Resource Management Handbook and the Project Development and Environmental Manual to fulfill the NEPA requirements for this project.

FDOT Responsibility: FDOT will determine if changes in the project's design will require a NEPA Re-evaluation per Federal Highway Administration criteria and coordinate this requirement with the Design-Build team. If necessary, FDOT will coordinate with the appropriate agencies during the preparation of a Re-evaluation and submit for approval.

SUPPLEMENTAL SCOPE

Supplemental Agreement No. 1 provides for soil remediation services, which includes: soil sampling and testing; preparation and submittal of a soil mixing plan for the Department of Regulatory and Economic Resources' (RER) approval; implementation of such soil mixing plan as

EXHIBIT 1
ADDITIONAL PROJECT REQUIREMENTS

approved by RER; labor, equipment and materials to perform all testing required as indicated in the approved soil mixing plan; perform blending of materials on site as indicated in the RER approved soil mixing plan; and perform all monitoring required as indicated in the approved soil mixing plan during the performance of the soil remediation services.

TYPE	CODE	DESCRIPTION
Prime	16.00	General Civil Engineering
Prime	17.00	Engineering Construction Management
Other	3.01	Highway Systems – Site Development and Parking Lot Design
Other	3.02B	Highway Systems – Minor Highway Design
Other	3.04	Highway Systems – Traffic Engineering Studies
Other	3.05	Highway Systems – Traffic Counts
Other	3.07	Highway Systems – Traffic Signal Timing
Other	3.09	Highway Systems – Signing, Pavement Marking, and Channelization
Other	3.10	Highway Systems – Lighting
Other	9.01	Soils, Foundations and Materials Testing – Drilling, Subsurface Investigations Seismographic Services
Other	9.02	Soils, Foundations and Materials Testing – Geotechnical and Materials Engineering Services
Other	9.03	Soils, Foundations and Materials Testing – Concrete and Asphalt Testing Services
Other	10.01	Environmental Engineering – Stormwater Drainage Design Engineering Services
Other	10.05	Environmental Engineering – Contamination Assessment and Monitoring
Other	10.06	Environmental Engineering – Remedial Action Plan Design
Other	10.07	Environmental Engineering – Remedial Action Plan Implementation Operation/Maintenance
Other	10.09	Environmental Engineering – Wellfield, Groundwater, and Surface Water Protection and Management
Other	11.00	General Structural Engineering
Other	13.00	General Electrical Engineering
Other	15.01	Surveying and Mapping – Land Surveying
Other	15.03	Surveying and Mapping – Underground Utility Location
Other	20.00	Landscape Architecture
FDOT PRE-QUALIFICATIONS		
TYPE	CODE	DESCRIPTION
Other	2.0	Project Development & Environmental (PD&E) Studies

CONTRACT AWARD

APPROVAL PATH: Board of County Commissioners

USING DEPARTMENT: Department of Transportation and Public Works

MANAGING DEPARTMENT: Department of Transportation and Public Works

PTP FUNDING: No

EXHIBIT 1
ADDITIONAL PROJECT REQUIREMENTS

GOB FUNDING: No

ARRA FUNDING: No

TOTAL CONTRACT PERIOD: 960 Days (excludes the Warranty Administration Period)*

*A time extension is not required for Supplemental Agreement No. 1.

CONTINGENCY PERIOD: 96 Days

**IG FEE INCLUDED IN
BASE CONTRACT:** No

ART IN PUBLIC PLACES: No

**COMPANY PRINCIPAL
/QUALIFIER:** Mauricio Gonzalez, P.E., President & CEO
COMPANY EMAIL ADDRESS: mgonzalez@lead-ec.com
COMPANY ADDRESS: 5757 Blue Lagoon Drive, Suite 240
Miami, FL 33126
YEARS IN BUSINESS: 4

MINIMUM QUALIFICATIONS EXCEED LEGAL REQUIREMENTS:

No; in addition to the required licenses, it is highly preferred that bidders should be able to demonstrate, through prior experience, the ability to construct projects of similar size and scope, as described in the project's summary of work. Proposers should provide documentation that demonstrates their ability to satisfy all of the minimum qualification requirements.

REVIEW COMMITTEE: Meeting Date: N/A Signoff Date: 11/20/2018

APPLICABLE WAGES (Resolution R-54-10): Yes (Building and Highway)
Responsible Wages/Davis Bacon Wages

MANDATORY CLEARING HOUSE: Yes



MEMORANDUM (Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: October 6, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(N)(4)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(N)(4)
10-6-20

RESOLUTION NO. _____

RESOLUTION APPROVING AWARD OF A DESIGN-BUILD SERVICES AGREEMENT WITH A CONTRACT AMOUNT NOT TO EXCEED \$16,184,835.60, INCLUSIVE OF A CONTINGENCY ALLOWANCE OF \$788,563.60 AND A TOTAL CONTRACT TERM OF 960 CALENDAR DAYS AND A SUPPLEMENTAL AGREEMENT NO. 1, INCREASING CONTRACT AMOUNT BY \$1,487,718.92, TO LEAD ENGINEERING CONTRACTORS, LLC, FOR A CUMULATIVE TOTAL CONTRACT AMOUNT NOT TO EXCEED \$17,672,554.52 FOR A PROJECT ENTITLED “DESIGN-BUILD SERVICES – PHASE 2 – THE UNDERLINE”, CONTRACT NO. CIP178-DTPW18-CT2 AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR’S DESIGNEE TO EXECUTE SAME AND TO EXERCISE THE RIGHTS CONTAINED THEREIN

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Approves Award of a Design-Build Services Agreement with a contract amount not to exceed \$16,184,835.60, inclusive of a contingency allowance of \$788,563.60 and a total contract term of 960 calendar days, and a Supplemental Agreement No. 1, increasing the contract amount by \$1,487,718.92, for a cumulative total contract amount not to exceed \$17,672,554.52, to LEAD Engineering Contractors, LLC for a project entitled “Design-Build Services – Phase 2 - The Underline”, Contract Number CIP178-DTPW18-CT2, in substantially the form attached hereto and made a part hereof.

Section 2. Authorizes the County Mayor or Designee to execute the Design-Build Services Agreement and the Supplemental Agreement No. 1 for and on behalf of Miami-Dade County and to exercise all rights contained therein, including any termination and renewal provisions.

The foregoing resolution was offered by Commissioner _____ ,
who moved its adoption. The motion was seconded by Commissioner _____
and upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Chairwoman

Rebeca Sosa, Vice Chairwoman

Esteban L. Bovo, Jr.

Jose "Pepe" Diaz

Eileen Higgins

Joe A. Martinez

Dennis C. Moss

Xavier L. Suarez

Daniella Levine Cava

Sally A. Heyman

Barbara J. Jordan

Jean Monestime

Sen. Javier D. Souto

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of October, 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

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

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in dark ink, appearing to read "B. L.", is written over a horizontal line.

Bruce Libhaber

**DESIGN-BUILD SERVICES AGREEMENT
FOR
PHASE 2 – THE UNDERLINE**

PROJECT NO.: CIP178
CONTRACT NO.: CIP178-DTPW18-CT2

DESIGN-BUILD SERVICES AGREEMENT

Made as of the ____ day of _____ in the year 20__.

Between MDC: Miami-Dade County Florida, a political subdivision of the State of Florida, acting by and through its **Board of County Commissioners**, hereinafter called the "County", which shall include its officials, successors, legal representatives, and assigns.

And the Design-Builder: LEAD Engineering Contractors, LLC

The term "Design-Builder" shall include its officials, successors, legal representatives, and assigns.

The Miami-Dade County and the Design-Builder agree as set forth herein:

DESIGN-BUILD SERVICES AGREEMENT

TABLE OF CONTENTS

<u>ARTICLE NO.</u>	<u>SUBJECT</u>	<u>PAGE NO.</u>
ARTICLE 1	ABBREVIATIONS AND DEFINITIONS.....	7
1.1	Abbreviations	7
1.2	Definitions	9
ARTICLE 2	INTERPRETATION.....	18
ARTICLE 3	INTENTION OF THE COUNTY.....	19
ARTICLE 4	RESPONSIBILITIES OF THE DESIGN-BUILDER	20
ARTICLE 5	THE PROJECT	22
5.1	Location.....	22
5.2	Term of the Contract.....	23
5.3	Liquidated Damages.....	23
5.4	Project Schedule.....	23
5.5	Reimbursable Services	23
5.6	Adequate Staffing.....	24
5.7	Publishing of Information	24
5.8	Warranty.....	24
ARTICLE 6	SUB-CONSULTANTS.....	25
6.2	Services	25
6.3	List of Firms	25
6.4	Replacement of Firms	25
6.5	Contract Measures	25
ARTICLE 7	SUB-CONTRACTORS	26
7.2	Services	26
7.3	List of Firms	26
7.4	Replacement of Firms	26
7.5	Contract Measures.....	26
ARTICLE 8	SUB-CONTRACTS	27
8.1	Design-Builder Participation.....	27
8.2	Limitations	27
8.3	Sub-contract Documents	27
8.4	Insurance Requirements	27
8.5	Agreement to Schedule	27

ARTICLE 9	MDC’S RESPONSIBILITIES	27
9.1	Information Furnished.....	27
9.2	Project Management.....	28
9.3	Value Engineering Proposals after Contract Award (VEPs)	28
ARTICLE 10	BASIS OF COMPENSATION	28
10.1	Design-Build Services Fee	28
10.2	Fees for Additional Work, Services and Reimbursable Expenses	30
10.3	Dedicated Allowance Account.....	31
ARTICLE 11	PAYMENTS TO THE DESIGN-BUILDER.....	32
11.1	Payments to the Design-Builder.....	32
11.2	Retainage.....	34
11.3	Final Payment	35
11.4	Prompt Payment.....	35
11.5	Payment for Additional Services/ Adjustment for Deletion of Work.....	35
ARTICLE 12	SCOPE OF SERVICES	39
12.1	Scope of Services	39
ARTICLE 13	GENERAL PROVISIONS	41
13.1	Indemnification and Waiver of Liability.....	41
13.2	Errors and Omissions	43
13.3	Insurance	44
13.4	Performance	45
13.5	Project Suspension or Abandonment	45
13.6	Termination of Agreement.....	46
13.7	Design-Builder’s Accounting Records	46
13.8	Ownership and Reuse of the Documents	47
13.9	Compliance with Laws.....	48
13.10	Miscellaneous Provisions.....	54
13.11	Sustainable Buildings Program.....	57
13.12	Claims and Dispute Resolution.....	57
13.13	Certification.....	59
13.14	Corrections of Work or Material.....	59
13.15	Sovereignty	61
13.16	Duration of Agreement	62
13.17	Entirety of Agreement.....	62
13.18	Survival	63
13.19	Remedies.....	63
13.20	Use and Possession Prior to Completion	63
13.21	Independent Contractor.....	63
13.22	Sanctions for Contractual Violation.....	64
13.23	Estimated Time Contingency	64
13.24	Changes.....	64
13.25	Design-Builder’s Office	66

13.26	Plant and Facility Inspections	67
13.27	General Requirements	67
13.28	Permits	67
13.29	Equal Opportunity	67
13.30	General Contract Conditions for the Construction Phase of the South Corridor (South-Dade Transitway) Rapid Transit Project.....	68
13.31	Public Records and Contracts for Services Performed on Behalf of a Public Agency.....	68
13.32	Owner Direct Purchase Procedures.....	69
13.33	Assignment/Assignability.....	72
ARTICLE 14	SIGNATURES.....	73

EXHIBITS

EXHIBIT "A"	Project Schedule
EXHIBIT "B"	Contract Schedule of Values
EXHIBIT "C"	Performance and Payment Bonds with Certificates of Insurance
EXHIBIT "D"	Internal Services Department (ISD) Forms <ul style="list-style-type: none">• ISD Form 6 - Proposed Base Price Form• ISD Form 8DB – Evaluation of Qualifications Form• ISD Form 9 - Fair Subcontracting Policies• ISD Exhibit "F" – Acknowledgement of Addenda
EXHIBIT "E"	Affidavits Required at Time of Proposal/ Condition of Award <ul style="list-style-type: none">• Design-Builder's Affidavit• Debarment Disclosure Affidavit• Criminal Record Affidavit• Public Entity Crimes Sworn Statement• Collusion Affidavit• Contractor Due Diligence Affidavit• Vendor Affirmation Affidavit• U.S. Department of Homeland Security's E-Verify Affidavit
EXHIBIT "F"	Supplemental Requirements <ul style="list-style-type: none">• Miami-Dade County Wages (Building/Highway)
EXHIBIT "G"	Federal Requirements and Provisions <ul style="list-style-type: none">• Buy America Certificate• Certification Regarding Debarment, Suspension and Other Responsibility Matters• Lobbying Certification• Statement for Loan Guarantees and Loan Insurance• Disclosure of Lobbying Activities
EXHIBIT "H"	Disadvantaged Business Enterprise and Affirmative Action Requirements <ul style="list-style-type: none">• Davis Bacon Minimum Wage Rates:<ul style="list-style-type: none">○ Building○ Highway• Forms:<ul style="list-style-type: none">○ Prime and Subcontractors Information Form○ Form 375-030-03 FDOT DBE – Small Commitment Form○ Form 375-040-62 DBE Bid Opportunity Form

EXHIBIT “I”	Safety Requirements <ul style="list-style-type: none">• Construction Manual• Adjacent Safety Manual• Background Check for Contractors ID Procedures
EXHIBIT “J”	Standard Construction General Contract Conditions
EXHIBIT “K”	General Contract Conditions Attachments (Payments Forms) <ul style="list-style-type: none">• Attachment “A”<ul style="list-style-type: none">○ Certificate of Acceptance for Substantial Completion○ Certificate of Final Acceptance• Attachment “B”<ul style="list-style-type: none">○ Contractor Release○ Agreement on Final Quantities and Amounts○ Final Affidavit○ Labor Standards Provisions Final Acceptance○ Memorandum of Understanding○ Certificate of Sub-Contractors Status○ Final Release of Lien• Attachment “C”<ul style="list-style-type: none">○ Sub-Contractor’s/Supplier’s Release of Claim○ Consent of Surety Company to Requisition Payment• Attachment “D”<ul style="list-style-type: none">○ Contractor Agent to Accept Service• Attachment “E”<ul style="list-style-type: none">○ Force Account Daily Report: Labor, Material & Equipment
EXHIBIT “L”	Request for Design-Build Services and all Addenda
EXHIBIT “M”	Design-Builder’s Proposal to perform soil remediation services (dated 4/28/2020)

ARTICLE 1 - ABBREVIATIONS AND DEFINITIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the ABBREVIATIONS and DEFINITIONS set forth below are assumed to be true and correct and are agreed upon by the parties.

Whenever the following terms or pronouns in place of them appear in this Agreement the intent and meaning shall be interpreted as follows:

1.1) ABBREVIATIONS:

AA	Aluminum Association
AABC	Associated Air Balance Council
AAMA	Architectural Aluminum Manufacturers' Assoc.
AAN	American Association of Nurserymen
AASHTO	American Association of State Highway and Transportation Official (successor to AASHO)
ACI	American Concrete Institute
AFBMA	Anti-Friction Bearing Manufacturer's Association
AIA	American Insurance Assoc. (successor to NBFU)
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AMCA	Air Moving and Conditioned Association
ANSI	American National Standards Institute (Successor to USASI and ASA)
ARI	Air - Conditioning and Refrigeration Institute
ARRA	American Recovery and Reinvestment Act
ASHRAE	American Society of Heating, Refrigeration and Air Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASPE	American Society of Plumbing Engineering
ASTM	American Society for Testing and Materials
AWPA	American Wood Preservers' Association
AWPB	American Wood Preservers' Bureau
AWS	American Welding Society
AWWA	American Water Works Association
CFR	Code of Federal Regulations
CISPI	Cast Iron Soil Pipe Institute
CPSC	Consumer Products Safety Council
CRSI	Concrete Reinforcing Steel Institute
DBD	Department of Business Development
DCDPW	Miami-Dade County Department of Public Works
DCDERM	Miami-Dade County Department of Environmental Resources Management
DTPW	Department of Transportation and Public Works
EEI	Edison Electric Institute
EPA	United States Environmental Protection Agency

FDOT	Florida Department of Transportation
FPR	Federal Procurement Regulations
IEEE	Institute of Electrical and Electronics Engineers (Successor to AIEE)
IES	Illuminating Engineering Society
IMSA	International Municipal Signal Association
IPCEA	Insulated Power Cable Engineers Association
ISA	Instrument Society of America
JIC	Joint Industrial Council
MDC	Miami-Dade County
MDT	Miami-Dade Transit
MIL	Military Standardization Documents
NAAMM	National Association of Architectural Metal Manufacturers
NBC	National Building Code
NBS	National Bureau of Standards
NEC	National Electrical Code
NEMA	National Electrical Manufacturer's Association
NFPA	National Fire Protection Association
OSHA	United States Dept. of Labor, Occupational Safety and Health administration; and Occupational Safety and Health Act
P&R	Park and Recreation Department
PCA	Portland Cement Association
PCI	Pre-stressed Concrete Institute
PSC	Public Service Commission
FBC	Florida Building Code
SMACNA	Sheet Metal and Air Conditioning Contractors National Association
SFWMD	South Florida Water Management District
SSPC	Steel Structures Painting Council
TIMA	Thermal Insulation Manufacturer's Association
UL	Underwriters' Laboratories, Inc.
USCE	United States Corps of Architect/Engineers
WASD	Water and Sewer Department

1.2) DEFINITIONS

ACCEPTED EQUAL: The proposed alternative shall be functionally compatible with and of equal or better quality than the item it is proposed to replace. MDC's decision as to whether any material or equipment proposed is equal to that specified shall be subject to the dispute resolution procedures set forth in the Agreement.

ADDENDA: Written errata, interpretations and revisions to the Bid Documents issued by MDC prior to award of the project.

ADDITIONAL SERVICES: Those services, in addition to the design-build services defined in Article 12 “SCOPE OF SERVICES”, which the DESIGN-BUILDER shall perform at the COUNTY’S option and when authorized by task order authorization(s) in accordance with the terms of this Contract.

AGREEMENT or CONTRACT: Means this document, the Contract Documents, the Contract Drawings, the Design Build Criteria Package, Miami-Dade Transit’s Construction Safety Manual, February 2007, Revision No. 5, the Project Manual, addenda, and modifications. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference. As used herein, the term Contract shall mean the same as Agreement.

ALIGNMENT: The horizontal and vertical location of a track, street, highway or some other Work or related component as described by curves, tangents and elevations.

ALTERATION: A change or substitution in the form, character, or detail of the work done or to be done within the original scope of the Contract.

APPLICABLE LAW: Any applicable law (including, without limitation, any Environmental Law), enactment, statute, code, ordinance, administrative order, charter, tariff, resolution, order, rule, regulation, guideline, judgment, decree, writ, injunction, franchise, permit, certificate, license, authorization, or other direction or requirement of any Governmental Authority, political subdivision, or any division or department thereof, now existing or hereinafter enacted, adopted, promulgated, entered, or issued. Notwithstanding the foregoing, “Applicable Laws” and “applicable laws” shall expressly include, without limitation, all applicable zoning, land use, DRI and Florida Building Code requirements and regulations, all applicable impact fee requirements, Chapters 119 and 286 of the Florida Statutes, Section 2-11.15 of the Code (Art in Public Places), Section 9-71 through 9-75 of the Code (Sustainable Buildings Program), and all other applicable requirements contained in this Agreement. All applicable County Rules, Regulations, Ordinances, Resolutions, Administrative Orders, and the County Charter referenced in this Agreement are posted on the County’s website www.miamidade.gov.

APPLICATION FOR PAYMENT: The DESIGN-BUILDER invoice and associated documentation required for submittal to the DTPW to request payments due under the Contract in a format acceptable to the DTPW.

AS-BUILT DRAWINGS: Drawings produced by the DESIGN-BUILDER and provided to the Contracting Officer or Contracting Officer's Representative as a final record of how the Work was actually constructed. These As-built Drawings are created from the DESIGN-BUILDER'S "issued for construction" plans and specifications including all revisions, shop drawings, requests for information and submittals, addendum and Change Order drawings, and the DESIGN-BUILDER as-built date record of the construction plans and specifications. Such as-built drawings are converted into the Record Documents by the DESIGN-BUILDER, stamped by a Florida Professional Engineer, and submitted to the COUNTY in accordance with the Design-Build Criteria Package Specifications.

AWARD: The issuance of a Contract by Miami-Dade County (MDC).

BASIC SERVICES: Those design-build services defined in Article 12 "SCOPE OF SERVICES".

BASE LINE DESIGN: The design of each component, apparatus, systems, subsystems, or materials which have received drawing acceptance and First Article acceptance by MDC.

BASE LINE DESIGN: The design of each component, apparatus, systems, subsystems, or materials which have received drawing acceptance and First Article acceptance by MDC.

BID SECURITY or BID GUARANTEE: The cashier's check, certified check or Bid Bond, accompanying the Bid submitted by the DESIGN-BUILDER, as a guarantee that the DESIGN-BUILDER will enter into a contract with MDC for the performance of the Work and furnish acceptable bonds and insurance if the Contract is awarded to the DESIGN-BUILDER.

BOARD OF COUNTY COMMISSIONERS: The duly elected officials authorized to act on behalf of MDC.

CERTIFICATE OF FINAL ACCEPTANCE: A written notice issued by MDC and concurred to by the DESIGN-BUILDER signifying that all conditions of the permits and regulatory agencies have been met, all design, construction, reconstruction or rehabilitation including corrective Work, has been performed, and all requirements of the Contract Documents have been completed, and the COUNTY has received from DESIGN-BUILDER a release of all liability and liens, release of surety (or a consent of surety agreeable to the COUNTY), release of claims by DESIGN-BUILDER, corrected as-built drawings, record drawings, and all other documents required by this Contract.

CHANGE NOTICE: A document issued by MDC to the DESIGN-BUILDER specifying a proposed change to the Contract Document and requesting a price proposal from the Design-Builder, if applicable, within a specified time period s.

CHANGE ORDER: See Exhibit K – Standard Construction General Contract Conditions, Article 1 – Definitions for "Change Order".

CONDITIONAL ACCEPTANCE: The acceptance of the Project prior to final acceptance. The Project remains conditionally accepted until it is totally responsive to the Specification requirements and corrective action(s) implemented to the Agency and/or MDC's satisfaction.

CONSTRUCTION STAGING AREA: Property which may be available for use by the DESIGN-BUILDER during the construction period for the purpose of storing products and construction equipment and for the purpose of staging the Work. The construction staging area(s), if applicable, are defined in the Contract Documents.

CONSTRUCTION WORK: All Work to build or construct, make, form, manufacture, furnish, install, supply, deliver or equip the Project, and/or the Utility Adjustments. CONSTRUCTION WORK includes any landscaping.

CONTINGENCY ALLOWANCE ACCOUNT(S): An account that establishes a specific amount of time and/or money to be used to perform unknown or unanticipated work, as directed by the Contracting Officer or Contracting Officer's Representative, which is necessary to satisfactorily complete the Project. Any time or money within the Contingency Allowance Account not directly authorized for use by the Contracting Officer or Contracting Officer's Representative remains with the COUNTY.

CONTRACT COMPLETION DATE: The number of days allowed for completion of the Work commencing with the effective date of Notice to Proceed. The effective date of Notice-To-Proceed (NTP) plus the contract duration, to specific milestone events or the specific Contract completion dates, as defined in Article 5 "THE PROJECT". The Contract Time will be stipulated in the Contract Documents unless extended by a Change Order or by a Work Order.

CONTRACT DOCUMENTS: Documents applicable to and specific to the design and construction of an individual contract consisting of the Request For Design Build Services with any and all attachments, Design Build Services Agreement, Design Build Criteria Package, MDT's Construction Safety Manual, February 2007, Revision No. 5, DTPW's Adjacent Construction Manual, July 2017, Contract Drawings, plans and specifications and drawings which are to be developed signed and sealed by DESIGN-BUILDER, addenda, Change Orders, payment and performance bonds, work orders, approved schedules, all contractual forms, approved shop drawings, approved working drawings, and modifications thereto.

CONTRACT DRAWINGS: The plans, profiles, cross-sections, elevations, schedules, details which show locations, character, dimensions, and details of the Work. Contract drawings are confidential under the Florida Public Records Act and the Design-Builder is responsible for maintaining confidentiality during and after the progress of the Work.

CONTRACT PRICE: The amount specified in Article 10 "BASIS OF COMPENSATION", pursuant to the terms and conditions of this Agreement.

CONTRACTING OFFICER: The Director of DTPW who administers the contract on behalf of Miami-Dade County.

CONTRACTING OFFICER'S REPRESENTATIVES: The person or persons designated by the Contracting Officer to act on his behalf in the administration of the contract within the limits of their respective authorization.

CONTRACTOR: Hereinafter may be referred to as the Design-Builder or Contractor. The individual, firm, partnership, or corporation, or combination thereof, private, municipal, or public, including joint ventures, duly licensed under Florida Statutes, which, as an independent Contractor, has entered into a Contract with Miami-Dade County, who is referred to throughout the Contract Documents by singular in number and masculine in gender.

COUNTY or MDC: Miami-Dade County, a political subdivision of the State of Florida. In all respects hereunder, County's performance is pursuant to County's position as MDC of a project. In the event the County exercises its regulatory authority as a governmental body, the exercise of such regulatory authority and enforcement of any rules, regulations, laws and ordinances shall be deemed to have occurred pursuant to County's authority as a governmental body and shall not be attributable in any manner to County as a party to this Contract.

DAYS: Unless otherwise designated, days mean calendar days.

DEFECT: The inability of a system, subsystem, assembly, or component to perform its required function. This shall not cover expendable items that are subject to normal wear and aging unless they do not perform adequately within their expected life span, or are a contributing cause to failures in other components.

DESIGN-BUILDER: The person, firm or corporation selected to perform the work pursuant to this Agreement and be primarily liable for the acceptable performance of, and payment of all legal debts pertaining to the Project. All references in the Contract Documents to third parties under contract or control of DESIGN-BUILDER shall be deemed to be a reference to DESIGN-BUILDER. The DESIGN-BUILDER will be responsible for the provision, installation, and performance of all equipment, materials, and the DESIGN-BUILDER is in no way relieved of the responsibility for the performance of all equipment furnished. The DESIGN-BUILDER shall include a design engineering architecture/staff professional ("Designer") pursuant to Section 287.055, Florida Statutes (2007).

DESIGN BUILD CRITERIA PACKAGE: Means concise, performance-oriented drawings and or specifications of the public construction project. The Design Build Criteria Package shall contain information regarding the County's expectations of a finished project. For a design-build project, the Design Build Criteria Package shall contain sufficient information to permit design-build firms to prepare a bid or a response to an agency's request for proposal, or to permit an agency to enter into an Agreement. The Design Build Criteria Package may be as brief as referencing the applicable standards for utility design to specifying performance-based criteria for a public construction project, including, but not limited to, the legal description of the site, survey information concerning the site, interior space requirements, material quality standards, schematic layouts and conceptual design criteria of the project, cost or budget estimates, design and construction schedules, site development requirements, provisions for utilities, storm water retention and disposal, and parking requirements, as may be applicable to the project.

DESIGN CRITERIA PROFESSIONAL: Miami-Dade County or its authorized representatives, including but not limited to the resident Design Criteria Professional either employed or not employed by the County for the provision of professional architectural or engineering services in

connection with the preparation of the Design Build Criteria Package and other project related work. For the purposes of this paragraph, the Design Criteria Professional for this project is Kimley-Horn and Associates, Inc. and its subconsultants, Horton Lees Brogden Lighting Design, PMA Consultants, LLC and AECOM Technical Services, Inc. The Design-Criteria Professional(s) act as the COUNTY'S REPRESENTATIVE.

DESIGN WORK: All Work of design, engineering or architecture for the Project, including any utility adjustment work.

DIRECT COST: See Exhibit K – Standard Construction General Contract Conditions, Article 1 – Definitions for “Direct Cost”.

EFFECTIVE DATE: The effective date of the Notice to Proceed shall be the date specified therein on which the DESIGN-BUILDER is to begin work on this Contract and on which the Contract time commences to run.

EXTRA WORK: See Exhibit K – Standard Construction General Contract Conditions, Article 1 – Definitions for “Direct Cost”.

FAILURE: The inability of a system, subsystem, assembly, or component to perform its required function. An improper condition requiring the equipment/ System to be withheld from or removed from service for corrective action. Refer to Specification for further details.

FIELD ORDER: A written order issued by MDC or designee which orders minor changes in the Project but which does not involve a change in the total cost or time or performance.

FINAL ACCEPTANCE: The formal written acceptance from the Contracting Officer or the Contracting Officer's Representative to the DESIGN-BUILDER that all of the Work and related requirements, including all physical work and final submittal of record drawings and specifications and all other documentation and services, including any remaining Work items identified at Substantial Completion or thereafter, are completed in accordance with the Contract Documents and accepted by the COUNTY. The status of completion of the Work, or a portion thereof, of a particular project or, by Contract Document formally and separately designated portion thereof, such that, in accordance with the provisions of the Contract Documents and their reasonably assumed intent, the Project or portion thereof, is in a state such that no further Work or Services are required in accordance with the Contract Documents to render complete, and satisfactory work acceptable to the DTPW including any pending items whether or not they were listed after Substantial Completion, and all manuals, certifications, as-built plans and record documents, and any other documentation provided as required by the DTPW or other governing authority. Final Completion excludes the DESIGN-BUILDER responsibilities with respect to warranties and guarantees, including any statutory requirements, specified in, or related to the Contract.

FIRST ARTICLE TEST (FAT): The examination of and approval by MDC of an initial production part, subassembly, major assembly, subsystem, or material, manufactured or assembled by either the Contractor or its subcontractors. Although the exercise of First Article Approval shall

be at MDC's option, the Contractor shall assume that MDC will subject all of the above to First Article examination and approval.

FIRST ARTICLE INSPECTION/TEST/ACCEPTANCE: The physical examination and approval by MDC of an initial part, major assembly, subassembly, system, subsystem, apparatus, or material, manufactured or assembled by either the Contractor or Subcontractors. The first article approval establishes the baseline design and the minimum level of quality. Although the exercise of First Article Approval shall be at MDC's option, the Contractor shall assume that MDC will subject all equipment to first article examination and approval.

FORMS FOR THE SUBMITTAL OF PROPOSAL: A document, specific to the bidding of an individual Contract, containing copies of forms required to be completed and submitted by the Bidder.

FRAGMENT: See Exhibit K – Standard Construction General Contract Conditions, Article 1 – Definitions for "Fragment".

FURNISHING: See Exhibit K – Standard Construction General Contract Conditions, Article 1 – Definitions for "Furnishing".

INDIRECT COSTS: See Exhibit K – Standard Construction General Contract Conditions, Article 1 – Definitions for "Indirect Costs".

INSPECTOR: An authorized representative of MDC assigned to make necessary inspections of materials furnished by the DESIGN-BUILDER and of the work performed by the DESIGN-BUILDER.

INSTALLATION or INSTALLING: See Exhibit K – Standard Construction General Contract Conditions, Article 1 – Definitions for "Installation, Install or Installing".

INSURANCE SPECIFICATIONS: Insurance requirements of the Contract to be provided by the DESIGN-BUILDER and included in the Agreement.

LATENT DEFECT: is a fault during construction that could not have been discovered by a reasonable visual inspection before final acceptance. It is understood that an inspection is not often sufficient to detect certain deficiencies in the product that can only be discovered through destructive testing or other means that a owner could not reasonably be expected to allow under normal conditions. For example, wood beams and interior brickwork often cannot be fully assessed without destructive testing. As such, the term "latent defect" is often used as part of the guarantee clauses in a construction contract so that the owner can recover damages from the contractor if defects turn up in the property after final acceptance. If a latent defect is discovered, the design builder may be required to pay for repairs of any such damage.

LICENSEE: One to whom a license is granted.

LICENSOR: One who owns the project and all portions thereof.

LIMIT OF WORK: See Exhibit K – Standard Construction General Contract Conditions, Article 1 – Definitions for “Limit of Work”.

MANUFACTURER: Shall mean the original manufacturer supplying materials, equipment/ System, or apparatus for installation or usage by MDC.

MATERIAL: Materials incorporated in this Project or used or consumed in the performance of the work.

MILESTONE: A contractually mandated completion date, as defined in the Agreement, represented in the schedule by a zero duration activity.

NOTICE TO OCCUPY SITE: Written notice from MDC to the DESIGN-BUILDER that allows the DESIGN-BUILDER to occupy the project site.

NOTICE TO PROCEED: See Exhibit K – Standard Construction General Contract Conditions, Article 1 – Definitions for “Notice to Proceed”.

NOTICE OF TERMINATION: See Exhibit K – Standard Construction General Contract Conditions, Article 1 – Definitions for “Notice of Termination”.

PERMANENT SUBSURFACE EASEMENT: Underground space required to construct and maintain permanent subsurface facilities.

PERMANENT UTILITY EASEMENT: Area required to construct and maintain utility facilities.

PLANS AND/OR DRAWINGS AND SPECIFICATIONS: The preliminary and final plans and drawings and renderings of the Project and the preliminary outline and final specifications for the design/build services for the Project, which will be prepared by DESIGN-BUILDER, and will be made a part of the Contract Documents upon acceptance by MDC.

PRICE PROPOSAL: The form of which the DESIGN-BUILDER provides his/her prices for the Work in the proposal provided in response to the RDBS.

PROJECT: See Exhibit K – Standard Construction General Contract Conditions, Article 1 – Definitions for “Project”.

PROJECT INITIATION DATE: The date upon which the Contract’s time for performance commences.

PROJECT MANAGER: An individual designated by the Contracting Officer to represent MDC, User Agency, or during the design and construction of the Project.

PROJECT MANUAL: The manual prepared by the COUNTY for the project, which includes the Request for Design Build Services with any and all attachments, Contract Forms, Design Build Agreement, the Construction Safety Manual (Dated June 2012, Revision #6) shall apply without modification and Design Build Criteria Package.

PROJECT SCHEDULE (“BASELINE PROJECT SCHEDULE”): The baseline Project schedule covering the entire scope and duration of the Project prepared in the CPM and cost-loaded based on an agreed Schedule of Values that is developed and submitted by the DESIGN-BUILDER to the Contracting Officer or Contracting Officer’s Representative for compliance review with the Contract Document. The Project schedule indicates the durations and sequence of key activities of architecture, engineering, design, permitting, construction, testing and commissioning, and indicates milestone event dates as required by the Contract, including the Substantial and Final Completion dates.

PROPOSAL DOCUMENTS: Documents applicable to and specific to the Proposal of this Contract, consisting of Project Manual, Contract Drawings, Forms for the Submittal of Proposal, other related documents specified in the Contract, and errata and addenda thereto.

PROVIDE: As used in the Technical Specifications, Division I – General Requirements”, the word “provide” means design, furnish, test to a fully operational condition, and document, in the manner specified, and to the greatest extent compatible with the intent.

QUALIFY: As used in Technical Specifications, Division I – General Requirements shall be the determination that an assembly, sub-assembly, or any part thereof is satisfactory for continued service under the Contractor's warranty, or that the time is suitable for repair or overhaul to restore it to warrantable service, or that the item must be replaced with a new (or warrantable rebuilt) part.

RDBS: Request for Design Build Services; issued by the COUNTY to solicit proposals from firms to perform the Design-Build project.

REQUEST FOR CHANGE: A written request by the DESIGN-BUILDER to the Contracting Officer or Contracting Officer’s Representative requesting issuance of a Change Order for adjustment in period of performance and/or Contract Price.

RESIDENT ARCHITECT/ENGINEER: A Contracting Officer’s Representative authorized by the Contracting Officer to administer the Contract on a day-to-day basis.

RETROFIT: A System wide modification.

RIGHT OF WAY: See Exhibit K – Standard Construction General Contract Conditions, Article 1 – Definitions for “Right-of-Way”.

SAMPLES: Physical examples provided by the DESIGN-BUILDER for review of compliance with the Contract Documents by the COUNTY, which illustrate materials, equipment, fixtures and workmanship which establish standards by which the Work will be judged.

SCHEDULE OF VALUES: See Exhibit K – Standard Construction General Contract Conditions, Article 1 – Definitions for “Schedule of Values”.

SCOPE OF SERVICES: The services to be provided by the DESIGN-BUILDER that includes, but is not limited to, full Design-Build Services necessary to prepare the Architectural Program,

Construction Plans and Specifications, as well as providing Construction Services for a the Project, as described in Article 12 “SCOPE OF SERVICES” of this Agreement.

SCOPE OF WORK (ALSO REFER TO “WORK”): The scope of the engineering, design, permitting, construction/installation, testing and commissioning and providing the necessary labor, materials, equipment, supervision and other services to fulfill all the contractual requirements as indicated in the Contract Documents, including addenda, modifications, or extensions thereto made by authorized changes; includes, but is not limited to: the physical components and facilities of the Project, as well as activities related to designing, building and achieving performance of such components and facilities, all as delineated in the Design Criteria Package.

SERVICE: as in SERVICE USE. The operation of the System under normal conditions with respect to all functions of DTPW operations.

SERVICE PROVEN: (Also “proven”). The historical success of equipment/operating for a stated minimum successful performance of scheduled service under similar conditions at other properties and in accordance with the reliability requirements.

SHOP DRAWINGS: See Exhibit K – Standard Construction General Contract Conditions, Article 1 – Definitions for “Shop Drawings”.

STATE: The State of Florida.

SUB-CONSULTANT: A subconsultant is a person or organization which is properly registered as a professional Architect, Interior Designer, Engineer, Landscape Architect, or other qualified professional in other fields not requiring professional registration, who has signed a Contract with the DESIGN-BUILDER to furnish professional services for the Project Scope of Work. A subconsultant does not furnish trade labor for construction.

SUB-CONTRACTOR: A subcontractor is a person or organization which is properly registered as a General or Trade contractor within the State for the particular trade or craft for which he/she will be performing work, who has signed a Contract with the DESIGN-BUILDER to furnish construction/installation-related services within the Project Scope of Work.

SUBSTANTIAL COMPLETION: See Exhibit K – Standard Construction General Contract Conditions, Article 1 – Definitions for “Substantial Completion”.

SURETY: The surety company or individual which is bound by Contract Bond with and for the DESIGN-BUILDER who is primarily liable and which surety company or individual is responsible for DESIGN-BUILDER’s acceptable performance of the work under the Contract and for the payment of all debts pertaining thereto with Section 255.05, Florida Statutes, as may be amended from time to time.

TECHNICAL PROVISIONS: See Exhibit K – Standard Construction General Contract Conditions, Article 1 – Definitions for “Technical Specifications”.

TEMPORARY CONSTRUCTION EASEMENT LINE: See Exhibit K – Standard Construction General Contract Conditions, Article 1 – Definitions for “Temporary Construction Easement Line”.

TERM OF THE CONTRACT: Means the calendar days specified from NTP to the Final Completion Date, as well as the periods specified for any warranties and/or guarantees.

TOTAL CONTRACT AMOUNT: The sum of the DESIGN-BUILD CONTRACT PRICE together with the COUNTY’S Contingency Account(s) and Dedicated Allowance Account(s) which constitutes all sums under the CONTRACT.

USING AGENCY: Department of Transportation and Public Works hereinafter referred to as the “Department”. The Department’s Contracting Officer or Contracting Officer’s Designee shall act as Project Director on behalf of MDC on all matters pertaining to this Agreement.

VALUE ANALYSIS/ENGINEERING (VA/E): The systematic application of recognized techniques for optimizing both cost and performance and/or providing innovative techniques in a new or existing facility or for eliminating or replacing items to reduce cost without significantly reducing the required functions and/or performance of the facility or system.

VALUE ENGINEERING PROPOSAL (“VEP”): Means a proposal submitted, at the sole option of Design-Builder, pursuant to Section 9.3 below.

WORK: See Exhibit K – Standard Construction General Contract Conditions, Article 1 – Definitions for “Work”.

WORK ORDER/TASK ORDER: See Exhibit K – Standard Construction General Contract Conditions, Article 1 – Definitions for “Work Order”.

WORK SITE: The area enclosed by the Limit of Work indicated in the Contract Documents and boundaries of local streets and public easements in which the DESIGN-BUILDER is to perform work under the Contract. It shall also include areas obtained by the DESIGN-BUILDER for use in connection with the Contract, when contiguous to the Limit of Work.

WORKING DRAWINGS: The drawings, calculations and catalog data, other than Contract Drawings furnished by the COUNTY and Shop Drawings prepared by the DESIGN-BUILDER, necessary or required for the prosecution of the Work. Working Drawings shall be submitted to the COUNTY by the DESIGN-BUILDER, signed and sealed by the DESIGN-BUILDER’s Designer, licensed and registered in the state of Florida, for information only. The COUNTY or its Design Criteria Professional will not review the Working Drawings and will not be responsible for their content or accuracy. They are the sole responsibility of the DESIGN-BUILDER.

ARTICLE 2 - INTERPRETATION

- 2.1 The documents comprising the Contract Documents are complementary and indicate the construction and completion of the Work. Anything mentioned in the Project Manual or Design

Build Criteria Package and not shown on the Contract Drawings, or shown on the Contract Drawings and not mentioned in the Project Manual or Design Build Criteria Package, or shown on the Design Build Criteria Package and not mentioned in the Project Manual or Contract Drawings, shall be of like effect as if shown or mentioned in all three. The COUNTY shall promptly review and respond to Requests for Information (RFI).

- 2.2 Where "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the specifications or drawings accompanying this Agreement unless stated otherwise.
- 2.3 References to Articles or Sections: Refer to Exhibit K, Standard Construction General Contract Conditions, Article 2.E.
- 2.4 Referenced Standards: Refer to Exhibit K, Standard Construction General Contract Conditions, Article 2.G.
- 2.5 In order to ensure that the Agreement is administered in conformity to the laws and regulations governing the same, questions concerning or arising out of or in connection with the performance of the Agreement or the warranty of the Work, as they may involve the construction and interpretation of this Agreement and performance thereunder, will be governed by and decided according to the laws and regulations of Miami-Dade County, the State of Florida, and the United States of America. Any litigation which may arise out of this Agreement shall be commenced either in the Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida, or in the United States District Court, Southern District of Florida.
- 2.6 When words, which have a well known technical or trade meaning are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to laws or regulations of any governmental authority, whether such reference is specific or by implication, shall mean the standard specification, manual, code, laws or regulations in effect at the time of the date of the execution of this Agreement.
- 2.7 Severability: Refer to Exhibit K, Standard Construction General Contract Conditions, Article 12.H.
- 2.8 Effect of Headings: Refer to Exhibit K, Standard Construction General Contract Conditions, Article 2.K.

ARTICLE 3 - INTENTION OF THE COUNTY

- 3.1 It is the intent of the Contract Documents to describe a functionally complete Project to be designed and constructed by DESIGN-BUILDER in accordance with COUNTY-reviewed and fully-permitted Contract Documents prepared by DESIGN-BUILDER and accepted by MDC. Any work, materials or equipment that may reasonably be inferred from the Contract Documents, as being required to produce the intended result will be supplied whether or not specifically called for.

ARTICLE 4 - RESPONSIBILITIES OF THE DESIGN-BUILDER

- 4.1 The parties acknowledge and agree that the COUNTY is purchasing, and the DESIGN-BUILDER is bound to deliver, the final design and construction of the Design-Build Services for Phase 2 – The Underline (the “Project”) and code compliance that will be required to design, permit and construct the Project.
- 4.2 The DESIGN-BUILDER shall be responsible for obtaining all necessary licenses and permits and for complying with applicable Federal, State, County and Municipal laws and latest codes and regulations in connection with the prosecution of the Work.

The DESIGN-BUILDER shall be required to obtain all required permits. The DESIGN-BUILDER shall protect, indemnify and hold harmless MDC and its members, officers, agents and employees against claims and liabilities arising from or based on the violation of requirements of law or permits whether by the DESIGN-BUILDER, his employees, agents or sub-contractors. No time extensions will be allowed for delays in obtaining the permits unless revisions are required to the Contract Drawings or excessive time (more than 100 calendar days beyond the 100-day period identified in Exhibit A – Design-Builder’s Schedule) is utilized by permitting agencies to issue such permits.

- 4.3 It is the DESIGN-BUILDER’s responsibility to have and maintain appropriate Certificate(s) of Competency, valid for the work to be performed and for all persons working on the Project for whom a Certificate of Competency is required. Occupational licenses from Miami-Dade County firms will be required to be submitted within fifteen (15) days of notification of intent to award. Occupational licenses will be required pursuant to Chapter 205, Florida Statutes (2007).
- 4.4 The DESIGN-BUILDER shall be fully responsible for the actions of all personnel working under his control as described in the definition of Design Builder.
- 4.5 The DESIGN-BUILDER is responsible for the professional quality, technical accuracy, completeness, performance and coordination of all work required under the Agreement (including the work performed by DESIGN-BUILDER’s Sub-Consultants), within the specified time period and specified cost. The DESIGN-BUILDER shall perform the work utilizing the skill, knowledge and judgment ordinarily possessed and used by a proficient Architect/Engineer of Record—with respect to the disciplines required for the performance of the work in the State of Florida. The DESIGN-BUILDER is responsible for, and represents that the work conforms to MDC’s requirements as set forth in the Agreement.

Subject to Section 13.10.11 of this Agreement, the DESIGN-BUILDER shall be liable to MDC for all damages to MDC caused by the DESIGN-BUILDER’s negligent acts or errors or omissions in the performance of the Work as specified in Article 13.2 “ERRORS AND OMISSIONS” of this Agreement. In addition to all other rights and remedies, which MDC may have, the DESIGN-BUILDER shall, at its expense, re-perform the services to correct any deficiencies, which result from the DESIGN-BUILDER’s failure to perform in accordance with the above standards. The DESIGN-BUILDER shall also be liable for the replacement or repair of any defective materials

and equipment and re-performance of any non-conforming construction services resulting from the DESIGN-BUILDER's deficiencies for a period from the commencement of this Agreement until twelve (12) months following final acceptance of the Work and for the period of design liability required by applicable law. MDC shall notify the DESIGN-BUILDER in writing of any deficiencies and shall approve the method and timing of the corrections.

Neither MDC's inspection, review, approval or acceptance of, nor payment for, any of the work required under the Agreement shall be construed to relieve the DESIGN-BUILDER or any sub-consultant of its obligations and responsibilities under the Agreement, nor constitute a waiver of any of MDC's rights under the Agreement or of any cause of action arising out of the performance of the Agreement. The DESIGN-BUILDER and its sub-consultants shall be liable to MDC in accordance with applicable law for all damages caused by any failure of the DESIGN-BUILDER or its sub-consultants to comply with the terms and conditions of the Agreement or by the DESIGN-BUILDER or its sub-consultants' misconduct, unlawful acts, negligent acts, errors or omissions in the performance of the Agreement. With respect to the performance of work by sub-consultants, the DESIGN-BUILDER shall, in approving and accepting such work, ensure the professional quality, completeness, and coordination of sub-consultant's work. The DESIGN-BUILDER shall be responsible for deficient, defective services and any resulting deficient, defective construction services re-performed within twelve (12) months following final acceptance and shall be subject to further re-performance, repair and replacement for twelve (12) months from the date of initial re-performance, not to exceed twenty-four (24) months from final acceptance.

- 4.6 The DESIGN-BUILDER agrees to bind specifically every sub-contractor and consultant to the applicable terms and conditions of this Agreement for the benefit of the COUNTY. The DESIGN-BUILDER agrees to incorporate all of the terms of this Agreement into any and all subcontracts.
- 4.7 The DESIGN-BUILDER shall provide and pay for all architecture, engineering, landscape architecture, geotechnical, concrete and material testing (as directed by applicable regulatory agencies), land surveying services, materials, labor, water, tools, equipment, light, power, transportation and other facilities and services necessary for the proper execution and completion of the Project, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Project.
- 4.8 The DESIGN-BUILDER shall at all times enforce strict discipline and good order among its employees, sub-consultants, and sub-contractors at the Project site and shall not employ on the Project any unfit person or anyone not skilled in the work assigned to him or her.
- 4.9 The DESIGN-BUILDER shall maintain, at its sole cost, suitable and sufficient guards and barriers, and at night; suitable and sufficient lighting for the prevention of accidents and thefts.
- 4.10 The DESIGN-BUILDER shall keep itself fully informed of, and shall take into account and comply with, all Applicable laws, all existing and future state and national laws and municipal ordinances and regulations in any manner affecting those engaged or employed in the Project, or the materials used or employed in the Project, or in any way affecting the conduct of the Project, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over

the same and of all provisions required by law to be made a part of this Agreement, all of which provisions are hereby incorporated by reference and made a part hereof. If any specification or term of the Agreement for this Project is in violation of any such law, ordinance, regulation, order or decree, the DESIGN-BUILDER shall forthwith report the same to MDC in writing. The DESIGN-BUILDER shall cause all its agents, employees, sub-consultants and sub-contractors to observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees.

- 4.11 In the event of a change after the effective date of this Agreement in any Applicable laws, national and state laws and municipal codes, ordinances and regulations which in any manner affects the Project, the DESIGN-BUILDER shall advise MDC in writing, and MDC, may initiate a change order, the purpose of which shall be to bring the Project into compliance with all laws, ordinances, codes and regulations as amended or enacted. To the extent there is a change in one or more Applicable Laws after the date of execution of this Agreement, and such change has the effect of increasing the cost or time of performance of the DESIGN-BUILDER's work, DESIGN-BUILDER shall be entitled to a Change Order.
- 4.12 The DESIGN-BUILDER shall pay all applicable sales, consumer, use and other taxes required by law. The DESIGN-BUILDER is responsible for reviewing the pertinent federal, state and local statutes involving taxes and complying with all requirements.
- 4.13 The DESIGN-BUILDER, before commencing work, shall verify all governing dimensions at the site, and shall examine all adjoining work on which his work is in any way dependent for its perfect efficiency according to the intent of the Contract Documents and no disclaimer of responsibility for defective or non-conforming adjoining work will be considered unless notice of same has been filed by the DESIGN-BUILDER, and acceded to in writing by MDC through the Design Criteria Professional before the DESIGN-BUILDER begins any part of the Work.
- 4.14 The DESIGN-BUILDER shall satisfy himself/herself by personal investigation and by such other means as he/she may think necessary or desirable, as to the conditions affecting the proposed work and the cost thereof. Subject to Section 9.1 of this Agreement, no information derived from maps, drawings, specifications or soil condition test included in the Design Build Criteria Package shall relieve the DESIGN-BUILDER from any risk or from fulfilling all terms of the Agreement. The DESIGN-BUILDER shall be responsible for any additional soil tests required in developing the project. In the pricing of the design and construction of the field building, the DESIGN-BUILDER shall consider the cost for removal, disposal, replacement and compaction of material, if necessary.

ARTICLE 5 – THE PROJECT

- 5.1 LOCATION: The Project is located from SW 13th Street to SW 19th Avenue.

The Contractor shall perform a land survey of the construction site as necessary for the design, permitting and construction of the Project. The land survey shall identify property lines, topography and any existing site improvements necessary for the design, permitting and

construction of the Project. The Contractor shall submit to MDT the land survey certified by the appropriate professional of record.

The Contractor shall perform subsurface investigations, including borings as required, for foundation and drainage design for the Project. The Contractor shall employ a geotechnical engineer to prepare and certify a geotechnical report. The Contractor shall submit the boring plan, boring log and geotechnical report, certified by the appropriate professionals of record, to MDT.

- 5.2 TERM OF THE CONTRACT: The Contract Time for this Agreement is 960 calendar days, which includes 240 calendar days for design, 720 calendar days for construction and excludes the warranty administrative period. The DESIGN-BUILDER must engineer, design, permit, build and bring the Work to Substantial Completion within 900 calendar days from the date of Notice to Proceed and Final Completion and Project Closeout within 960 calendar days from the date of Notice to Proceed.

It will be the responsibility of the DESIGN-BUILDER to secure all permits and to provide signed and sealed architectural and engineering construction documents which comply with all regulatory requirements as well as meeting the needs of MDC.

5.3 LIQUIDATED DAMAGES:

If the Design-Builder does not achieve Substantial Completion by the official Substantial Completion Contract Date (plus approved extensions, if any), liquidated damages (LDs) will be assessed and paid to the County by the Design-Builder in the amount of Five Thousand Two Hundred Fifty-four Dollars and Thirty-nine cents (\$5,254.39) per day until such date is achieved. If the Design-Builder does not achieve Final Completion by the official Final Completion Contract Date (plus approved extensions, if any), liquidated damages (LDs) will be assessed and paid to the County by the Design-Builder in the amount of Eight Hundred Dollars (\$800.00) per day until such date is achieved.

These amounts are not penalties but liquidated damages to MDC. Liquidated damages are hereby fixed and agreed upon between the parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by MDC as a consequence of such delay, and both parties desiring to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of the DESIGN-BUILDER to complete the Contract on time.

Furthermore, it is agreed that liquidated damages to the DESIGN-BUILDER shall be MDC's sole monetary remedy for delays caused by the DESIGN-BUILDER.

- 5.4 PROJECT SCHEDULE: Refer to the Design Criteria Package.
- 5.5 REIMBURSABLE EXPENSES: These expenses are those pre-authorized by MDC and consist of actual expenditures made by the DESIGN-BUILDER and the DESIGN-BUILDER's employees, sub-consultants (to include specialty consultants) and sub-contractors in the interest of the Project for the following purposes:

- 5.5.1 Authorized travel, lodging and meals in connection with the Project subject to limitations imposed by Chapter 112.061, Florida Statutes, and County Administrative Orders;
 - 5.5.2 Surveys, soils investigation reports, utilities investigation reports;
 - 5.5.3 Costs/Fees paid for securing approvals of authorities having jurisdiction over the work;
 - 5.5.4 Reproductions, excluding those for the office use of the DESIGN-BUILDER and check/review sets required by the Agreement;
 - 5.5.5 Courier services, except as chosen by DESIGN-BUILDER in order to deliver documents and check/review sets required by the Agreement;
 - 5.5.6 Other equipment or supplies if specifically requested and authorized by MDC.
- 5.6 ADEQUATE STAFFING: In connection with the Design-Build Services to be rendered pursuant to this Agreement, the DESIGN-BUILDER further agrees to maintain an adequate staff of qualified personnel available at all times to ensure its completion within the term specified in the applicable Service Order and in accordance with the approved project schedule. MDC has the right to approve the DESIGN-BUILDER's workforce and to approve specific DESIGN-BUILDER employees, which approval shall not be unreasonably withheld. MDC has the right to have any DESIGN-BUILDER's employee removed from the work, if, in MDC's reasonable judgment, such employee's conduct or performance is detrimental to the project. The DESIGN-BUILDER shall not replace any employee in the team initially proposed by it without prior MDC approval.
- 5.7 PUBLISHING OF INFORMATION: The DESIGN-BUILDER shall make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of this Agreement, without first notifying MDC and securing its consent in writing. The DESIGN-BUILDER also agrees that it shall not publish, copyright or patent any of the data furnished in compliance with this Agreement, that being understood that under Section 13.8 "OWNERSHIP AND REUSE OF DOCUMENTS", hereof such data or information is the property of the County.
- 5.8 WARRANTY: Refer to Exhibit K, Standard Construction General Contract Conditions, Article 7.M – Warranty of Work.
- 5.8.1 MATERIAL: Refer to Exhibit K, Standard Construction General Contract Conditions, Article 7.B – Material.
 - 5.8.2 Disposal of Material Outside the Work Site: Refer to Exhibit K, Standard Construction General Contract Conditions, Article 7.B.10.

ARTICLE 6 SUB-CONSULTANTS

- 6.1 In the event that the DESIGN-BUILDER plans, or its subconsultants plan, to enter into subcontracts for any portion of the Project, the DESIGN-BUILDER and subconsultants shall incorporate in each subcontract all provisions, terms and conditions applicable to the Project which constitute obligations to be assumed and effected by the DESIGN-BUILDER under the Design-Build Contract and any other Design-Build documents and, at the request of the DTPW, shall submit a copy of each such subcontract at all tiers to the DTPW for examination. The COUNTY reserves the right to reasonably reject any subcontract at any tier contemplated by the DESIGN-BUILDER or its subconsultants at any tier for any portion for the Project, whichever is deemed to be in the COUNTY' best interest The County shall have within 15 calendar days to accept or reject. If the County fails to respond in 15 calendar days, the Subcontract shall be deemed accepted.
- 6.2 **SERVICES:** All services provided by the sub-consultants shall be pursuant to appropriate agreements between the DESIGN-BUILDER and the sub-consultants which shall contain provisions that preserve and protect the rights of MDC and the DESIGN-BUILDER under this Agreement, and which impose no responsibilities or liabilities on MDC.
- 6.3 **LIST OF FIRMS:** The DESIGN-BUILDER proposes to utilize the following sub-consultants for the Project:
- Firm Name(s): A & P Consulting Transportation Engineers Corp.
 CTS Engineering, Inc.
 GSLA Design, Inc.
 HBC Engineering Company
 Manuel G. Vera & Associates, Inc.
 Media Relations Group, LLC
 Nova Consulting, Inc.
 Tierra South Florida, Inc.
- 6.4 **REPLACEMENT OF FIRMS:** The DESIGN-BUILDER shall not change any sub-consultant without MDC's prior approval, which approval shall not be unreasonably withheld. A written request from the DESIGN-BUILDER must be submitted to MDC, stating the reasons for the proposed change.
- 6.5 **CONTRACT MEASURES:** The DESIGN-BUILDER is required under this Agreement to achieve the following Contract measures applied to this project as shown in the attached Small Business Commitment Form No. 375-030-83 as presented in the DESIGN-BUILDER's proposal for the project:

Disadvantaged Business Enterprise

Because the Underline project is Local Agency Program (LAP) certified, the aspirational Disadvantaged Business Enterprise (DBE) Goal of 10.65% applies in accordance with 49 Code of

Federal Regulations (CFR) Part 26.21, Section II (a) of the LAP, and the FDOT DBE Program Plan, Subpart B.

ARTICLE 7 SUB-CONTRACTORS

- 7.1 Refer to Exhibit K, Standard Construction General Contract Conditions, Article 6 – Subcontractors.

In the event that the DESIGN-BUILDER plans, or its subcontractors plan, to enter into subcontracts for any portion of the Project, the DESIGN-BUILDER and subconsultants shall incorporate in each subcontract all provisions, terms and conditions applicable to the Project which constitute obligations to be assumed and effected by the DESIGN-BUILDER under the Design-Build Contract and any other Design-Build documents and, at the request of the DTPW, shall submit a copy of each such subcontract at all tiers to the DTPW for examination. The COUNTY reserves the right to reasonably reject any subcontract at any tier contemplated by the DESIGN-BUILDER or its subconsultants at any tier for any portion for the Project, whichever is deemed to be in the COUNTY' best interest The County shall have within 15 calendar days to accept or reject. If the County fails to respond in 15 calendar days, the Subcontract shall be deemed accepted.

- 7.2 SERVICES: All services provided by the sub-contractors shall be pursuant to appropriate agreements between the DESIGN-BUILDER and the sub-contractors which shall contain provisions that preserve and protect the rights of MDC and the DESIGN-BUILDER under this Agreement, and which impose no responsibilities or liabilities on MDC.

- 7.3 LIST OF FIRMS: The DESIGN-BUILDER proposes to utilize the following sub-contractors for the Project:

Firm Name(s): To be identified during the performance of the contract.

- 7.4 REPLACEMENT OF FIRMS: The DESIGN-BUILDER shall not change any sub-contractor without MDC's prior approval, which approval shall not be unreasonably withheld. A written request from the DESIGN-BUILDER must be submitted to MDC, stating the reasons for the proposed change.

- 7.5 CONTRACT MEASURES: The DESIGN-BUILDER is required under this Agreement to achieve the following Contract measures applied to this project as shown in the attached Small Business Commitment Form No. 375-030-83 as presented in the DESIGN-BUILDER's proposal for the project:

Disadvantaged Business Enterprise

Because the Underline project is Local Agency Program (LAP) certified, the aspirational Disadvantaged Business Enterprise (DBE) Goal of 10.65% applies in accordance with 49 Code of

Federal Regulations (CFR) Part 26.21, Section II (a) of the LAP, and the FDOT DBE Program Plan, Subpart B.

ARTICLE 8 SUB-CONTRACTS

- 8.1 **DESIGN-BUILDER PARTICIPATION:** Refer to Exhibit K, Standard Construction General Contract Conditions, Article 6.D – Contractor Participation.
- 8.2 **LIMITATIONS:** The limitations set forth in Section 8.1 of this Article, as to the amount of work that may be subcontracted, do not apply to work performed by equipment-rental agreement. Refer to Exhibit K, Standard Construction General Contract Conditions, Article 6.E – Work Performed by Equipment-Rental Agreement.
- 8.2.1 Where rentals of equipment on an operated basis, from the same lessor, exceed \$10,000 such lessor will be subject to any Affirmative Action Requirements applicable to the project.
- 8.3 **SUB-CONTRACT DOCUMENTS:** The organization of the Contract Documents into divisions, sections and articles, and the arrangement of titles of Contract Drawings shall not control the DESIGN-BUILDER in dividing the Work among sub-contractors nor in establishing the extent of Work to be performed by any trade.
- 8.4 **INSURANCE REQUIREMENTS:** No sub-consultant and/or subcontractor shall be permitted to perform work at the Work site until he/she, or the DESIGN-BUILDER, in compliance with the Insurance Specifications, has furnished satisfactory evidence of required insurance to MDC.
- 8.5 **AGREEMENT TO SCHEDULE:** Each Sub-contractor, as part of his submittal of required documentation under this Article, and prior to starting work, shall submit written certification that he has reviewed the DESIGN-BUILDER's schedule and agrees to work within the time frames specified therein.

ARTICLE 9 MDC'S RESPONSIBILITIES

- 9.1 **INFORMATION FURNISHED:** Refer to Exhibit K, Standard Construction General Contract Conditions, Article 4 – Owner. MDC, at its expense, shall furnish the DESIGN-BUILDER with the following information, or may authorize the DESIGN-BUILDER to provide the information as a Reimbursable Service. The DESIGN-BUILDER will be entitled to rely on the accuracy and completeness of all information provided by MDC.
- 9.1.1 Information regarding the Project budget, MDC'S procedures, safety manuals, guidelines, forms, formats and assistance to establish the Project Program.
- 9.1.2 MDC agrees to furnish to the DESIGN-BUILDER any plans and any other data available in MDC files pertaining to the work to be performed under this Agreement. The DESIGN-

BUILDER is responsible to request any and all plans and data not furnished, which the DESIGN-BUILDER knows or should know, is necessary or appropriate for the rendition of the services described herein.

9.2 PROJECT MANAGEMENT: MDC shall designate a Project Manager to act as liaison between the DESIGN-BUILDER and MDC. The DESIGN-BUILDER shall have general responsibility for management of the Project through all Phases of the work included in this Agreement. The DESIGN-BUILDER shall meet with the Project Manager at periodic intervals throughout the preparation of the Contract Documents to assess the progress of the DESIGN-BUILDER'S work in accordance with approved "Project Development Schedule" to establish and/or review programmatic requirements and scope of Project. The DESIGN-BUILDER and its Sub-consultants should visit the site periodically during the Design Phase to assess existing conditions. The DESIGN-BUILDER shall communicate with MDC in the most efficient manner and using electronic means to the greatest extent possible as directed by MDC.

9.2.1 The Project Manager shall act on behalf of MDC in all matters pertaining to this Agreement, and shall issue written authorizations to proceed to the DESIGN-BUILDER for the work to be performed hereunder. These authorizations are referred to as Work Orders. In case of emergency, MDC reserves the right to issue oral authorizations to the DESIGN-BUILDER with the understanding that written confirmation shall follow immediately thereafter.

9.2.2 The DESIGN-BUILDER shall submit a proposal, in a form acceptable to MDC, upon the Project Manager's request prior to the issuance of a Work Order. No payment shall be made for the DESIGN-BUILDER'S time or services in connection with the preparation of any such proposal. The Project Manager shall confer with the DESIGN-BUILDER before any Work Order is issued to discuss and agree upon the scope, time for completion, compensation method and fee for services to be rendered pursuant to this Agreement.

9.2.3 During the construction phase, the DESIGN-BUILDER shall provide services for the responsibilities assigned to the DESIGN-BUILDER by the "General Conditions" and "Technical Specifications" of the construction contract provided such services are consistent with this Agreement.

9.3 VALUE ENGINEERING PROPOSALS AFTER CONTRACT AWARD (VEPs):

9.3.1 General. Refer to Exhibit K, Standard Construction General Contract Conditions, Article 10.I – Value Engineering Change Proposals.

ARTICLE 10

BASIS OF COMPENSATION

10.1 DESIGN-BUILD SERVICES FEE: MDC agrees to pay the DESIGN-BUILDER, and the DESIGN-BUILDER agrees to accept for Design-Build Services rendered pursuant to this Agreement, the amount computed under this Section called the "Design-Builder's Fee". A Schedule of Values is attached hereto as "Exhibit "B".

10.1.1 Percentage of Construction Cost - NOT APPLICABLE

10.1.2 Agreed Fixed Sum

10.1.2.1 Under this compensation basis, the DESIGN-BUILDER agrees to perform the Design-Build Services described in this Agreement for an agreed fixed dollar amount of compensation as follows:

10.1.2.2 The aggregate sum for all payments to the DESIGN-BUILDER for Design-Build Services authorized on this Project shall be as follows:

DESIGN-BUILD SERVICES

Design Base Amount	\$ 1,500,000.00
Construction Base Amount	<u>\$13,896,272.00</u>
TOTAL BASE CONTRACT AMOUNT	\$15,396,272.00

The DESIGN-BUILDER shall not be entitled to any fees beyond those specified and authorized through applicable Work Orders.

10.1.3 FEE FOR DESIGN OF ALTERNATES: The DESIGN-BUILDER shall not be entitled to compensation for alternates required because of the failure of the DESIGN-BUILDER to design the Project so that it may be constructed within the total allocated construction funds. MDC may recognize exceptional construction market cost fluctuations to relieve the DESIGN-BUILDER of this provision, before exercising this option.

10.1.4 FEE FOR WORK AUTHORIZED FROM THE CONSTRUCTION CONTINGENCY ALLOWANCE: When a portion or all of the Contingency Allowance is utilized to authorize changes to the Construction Contract, except when the change is due to the DESIGN-BUILDER'S errors and/or omissions, the DESIGN-BUILDER will be authorized an Additional Services fee for that amount computed by the method agreed upon under Section 10.2 of this Agreement, provided that such changes are not attributable to errors or omissions of the DESIGN-BUILDER.

10.1.5 FEE FOR CHANGE ORDERS TO THE CONSTRUCTION CONTRACT: The DESIGN-BUILDER will be authorized an Additional Services fee for that amount computed by the method agreed between MDC and the DESIGN-BUILDER as described in Section 10.2 of this Agreement, for additional design fees ascribed to "Change Order Work", provided that such changes are not attributable to errors or omissions of the DESIGN-BUILDER.

10.1.6 For work directly performed by the DESIGN-BUILDER, the DESIGN-BUILDER may add up to 15% maximum mark-up, subject to review and approval by MDC, for its total overhead, profit, impact costs on unchanged work, small tools and incidentals to his actual direct cost.

- 10.1.7 For work directly performed by a sub-consultant or sub-contractor, the sub-consultant or sub-contractor may add up to a 15% maximum mark-up, subject to review and approval by the DESIGN-BUILDER, for its total overhead, profit, impact costs on unchanged work, small tools and incidentals to its actual direct cost. The DESIGN-BUILDER may then add for its own quality control, supervision, coordination, overhead, profit, and impact costs on unchanged work an additional 5% mark-up to the sub-consultant and/or sub-contractor's cost.

10.2 FEES FOR ADDITIONAL WORK, SERVICES AND REIMBURSABLE EXPENSES

- 10.2.1 The DESIGN-BUILDER may be authorized to perform Additional Work and Services, and entitled to Reimbursable Expenses described under Sections 5.4 and 11.5.3 of this Agreement. The fee for Additional Services will be compensated either as an Agreed Fixed Sum or based on Multiple of Direct Salary, as mutually agreed to by MDC and the DESIGN-BUILDER.
- 10.2.2 NOT APPLICABLE
- 10.2.3 NOT APPLICABLE
- 10.2.4 As provided in Section 5.4 the DESIGN-BUILDER shall be compensated on a direct reimbursement basis for certain work related expenditures not covered by burdened direct labor, provided such expenditures are reasonable and previously authorized by MDC. Reimbursable expenses include: expenses for document reproduction, rental of specialized equipment, and purchase of special instruments necessary for the efficient performance of the work, provided that such instruments remain the property of MDC upon work completion. These expenses shall be reimbursed on a direct cost basis. No separate additional payment shall be authorized for the use of AutoCAD workstations (computers).
- 10.2.5 Expenses for travel outside Miami-Dade County (except commuting), transportation and subsistence by DESIGN-BUILDER personnel in the furtherance of the work will be reimbursed according to the provisions of Chapters 112.061, 125.0104, 159.47 of the Florida Statutes and Sections 1.06 and 4.02 of the Miami-Dade County Code, as presently written or hereafter amended. The DESIGN-BUILDER shall obtain prior authorization from MDC for all travel expenses. Failure to obtain such prior authorization shall be grounds for nonpayment of travel expenses.
- 10.2.6 MDC after verifying appropriate bills, invoices or statements will reimburse the DESIGN-BUILDER for the costs of Reimbursable Expenses.
- 10.2.7 This project is a design-build services agreement for the design-build of a facility on public property, therefore an Allowance Account is permissible, per Ordinance No. 00-65. This Allowance Account computed as 6.25% of the design-related portion of the compensation plus 5.00% of the construction-related portion of the compensation, will be used by the Department for unforeseen conditions necessitating additional design,

resulting in additions to the design-build services fee. Expenses provided in the aforementioned allowance accounts are as follows:

- | | |
|-------------------------|--------------|
| ○ Design Services | \$ 93,750.00 |
| ○ Construction Services | \$694,813.60 |

In this regard, the total of the Contingency Allowance Accounts is Seven Hundred and Eighty-Eight Thousand, Five Hundred and Sixty-Three Dollars and Sixty Cents (\$788,563.60).

10.3 DEDICATED ALLOWANCE ACCOUNT

- 10.3.1 At the discretion of MDC, the DESIGN-BUILDER may be authorized to perform services outside the basic services described in Article 12 below, under a Dedicated Allowance Account specifically established for said purpose. Compensation to the DESIGN-BUILDER for any of these services will not exceed the individual amount authorized by MDC through direct negotiation with the DESIGN-BUILDER. Expenses provided in the aforementioned allowance are as follows:

N/A

- 10.3.2 Not Used.

- 10.3.3 If, at any time, the DESIGN-BUILDER believes he is entitled to any part of the Contingency Account, the DESIGN-BUILDER will request such payment with all supporting documentation and justification, including applicable Contract terms and conditions, and the COUNTY will evaluate the DESIGN-BUILDER'S submittal and advise the DESIGN-BUILDER of its findings. The COUNTY is under no obligation to assign any monies from this account to the DESIGN-BUILDER. If the DESIGN-BUILDER is not in agreement with the COUNTY findings, DESIGN-BUILDER may refer to the disputes provisions of the Contract.

Therefore, the TOTAL CONTRACT AMOUNT for this Contract shall be limited to Sixteen Million, One Hundred and Eight-Four Thousand, Eight Hundred and Thirty-Five Dollars and Sixty Cents (\$16,184,835.60).

Any further amounts required for this Contract must be submitted to the County Commission to authorize a change order to the total Contract Amount.

- 10.3.4 The parties agree that the above-mentioned amount of compensation may not be authorized and that the DESIGN-BUILDER shall not be entitled to any fees beyond those specified and authorized through applicable task orders, according to the tasks listed in Section 10.3.1.

ARTICLE 11 PAYMENTS TO THE DESIGN-BUILDER

11.1 PAYMENTS TO THE DESIGN-BUILDER FOR DESIGN SERVICES

- 11.1.1 All payments will be made upon receipt and review of duly certified invoices stating that the services for which payment is requested have been performed per this agreement. The DESIGN-BUILDER will be paid each month for the value of the Work completed less retainage and other authorized deductions, as agreed by the COUNTY'S REPRESENTATIVE during the preceding month and the invoiced cost including applicable sales taxes and shipping value, less retainage, of materials not already used, but which have been furnished by the DESIGN-BUILDER under the Contract Documents, provided that such materials have been delivered, properly stored and inspected by the COUNTY'S REPRESENTATIVE and that payment therefore has been satisfactorily certified by the DESIGN-BUILDER to the COUNTY'S REPRESENTATIVE. The County shall not withhold retainage for the Engineering, Design and Permitting, Technical Support during Construction and other Professional Services as defined in subsection 10.1.2.2 performed under this Agreement.

For the purpose of processing progress payment applications, the DESIGN-BUILDER will be assigned a specific pay application period ending date by the DTPW which will apply to each calendar month throughout the course of the contract until the final application. The DESIGN-BUILDER will be notified of their contract's pay application period ending date at the Post Award meeting.

The Design-Builder shall report via the Business Management Workforce System (BMWS) all sub-consultants and subcontractor agreements entered into listing award amounts or percentage for this Agreement. Additionally, the Consultant shall report all payments made to each sub-consultant and subcontractor participating on the project and verification of payments received must be confirmed by the subconsultants and subcontractors via BMWS. For additional information regarding online BMWS registration, managing County contracts, please contact Small Business Development, at (305) 375-3111 or via email at SBDmail@miamidade.gov.

- 11.1.2 Before the DESIGN-BUILDER can receive any payment, except the first payment, for monies due him as a result of a percentage of the Work completed, he must provide MDC with duly executed release of lien from all sub-consultants, sub-contractors, and suppliers who have performed any work or supplied any material on the project as of the date, stating that said sub-consultants, sub-contractors, or suppliers have been paid their proportionate share of all previous payments. In the event such affidavits cannot be furnished, the DESIGN-BUILDER may, at MDC's sole discretion after the DESIGN-BUILDER demonstrates justifiable reasons, submit an executed Consent of Surety to Requisition, identifying the sub-contractors and the amounts for which the Statement of Satisfaction cannot be furnished. The Partial Affidavit and Release forms will be modified to state that all labor, material, equipment and supplies, exclusive of retainage,

have been paid in full through the assigned pay application period ending date of the previous pay application period.

In addition, the DESIGN-BUILDER must provide the COUNTY'S REPRESENTATIVE with a duly executed affidavit (Certification of Contractor) stating that all subcontractors and suppliers of material and equipment have been paid their full proportionate share of all draws including the last or previous draw for Work performed for the Project up through the pay application period ending date of the previous month. This does not apply to the first payment. The failure of the DESIGN-BUILDER to provide the foregoing affidavit and release from each subcontractor and supplier shall result in the COUNTY withholding the current pay application until the affidavit and release is provided or a Consent of Surety is provided to the DTPW in an approved form for the amount in dispute.

If applicable, the COUNTY will notify the DESIGN-BUILDER and surety by certified letter informing them of the DESIGN-BUILDER'S non-compliance with the Contract Documents.

As a prerequisite for the acceptance of monthly payment applications for completed construction work, the DESIGN-BUILDER shall submit redlines, partially completed as-built plan sheets and fully complete as-built plan sheets, all as required by and satisfactory to, the COUNTY'S REPRESENTATIVE. From NTP, or one hundred twenty (120) days, from NTP, whichever occurs first, the DESIGN-BUILDER will utilize and submit the approved Mobilization and Engineering Schedule to indicate progress in accordance with the Schedule of Values to support request for progress payments. Once the Final Baseline Project Schedule is approved for compliance by the COUNTY'S REPRESENTATIVE, the DESIGN-BUILDER shall prepare a progress update to the current Project cost-loaded Final Baseline Project Schedule and submit six (6) complete print copies and three (3) complete electronic copies (exported into Microsoft Project) to the COUNTY'S REPRESENTATIVE for review and support for the requested progress payment applications for Work completed after NTP or one hundred twenty (120) days from NTP through to Final Completion.

Such schedules shall show the progress of the Work to date and schedule to completion of the Project. If the DESIGN-BUILDER is forecasting that Substantial Completion or Final Completion will occur after the date(s) specified in the Contract, the DESIGN-BUILDER, unless the parties agree that said delay was not caused by the DESIGN-BUILDER, shall submit a recovery plan and schedule showing its planned actions and resources to meet the Contract date(s). The COUNTY may accept such recovery schedule as fulfilling the requirement needed for monthly payment; however, such payment or acceptance shall not constitute adoption of such schedule or a modification of the Contract time, nor shall such payment or acceptance preclude the COUNTY from exercising any right granted it herein in the event that the DESIGN-BUILDER does not finish the Work within the Contract Completions Dates.

For the purpose of preparing a monthly pay application, the DESIGN-BUILDER shall prepare the application and will produce a computer print out to be submitted to the COUNTY'S REPRESENTATIVE. The DESIGN-BUILDER shall provide the COUNTY'S REPRESENTATIVE at the time of preparing the monthly application on the DTPW'S form a list of subcontractors and vendors who have performed services or supplied materials or equipment during the period for which the application is being prepared. The DESIGN-BUILDER and the COUNTY'S REPRESENTATIVE shall, as a part of the preparation of the application, agree and sign off on the DESIGN-BUILDER'S list of required releases. The COUNTY'S REPRESENTATIVE will evaluate the application of the value of all Work done and materials furnished up to the pay application period ending date of each calendar month and will, subject to Sections 11.1.1 and 11.2 of this Agreement, deduct therefrom the retainage, and may deduct all liquidated damages which the COUNTY is contractually allowed to have assessed during that month in accordance with this Article, if any, and all previous payments and charges, and the balance will be paid by the COUNTY to the DESIGN-BUILDER. The retainage deducted from each progress payment is reserved by the COUNTY as partial guarantee of the faithful execution of the Contract by the DESIGN-BUILDER.

When the DESIGN-BUILDER submits the application, DESIGN-BUILDER must submit all required documentation, i.e., (1) two copies of the current updated final Baseline Project Schedule, (2) Certified Payroll (via LCPTracker), reports for the DESIGN-BUILDER and each Subcontractor that provided labor on the Project during that pay period (3) if applicable, the Monthly Utilization and Monthly Employment Data Reports and (4) a DESIGN-BUILDER'S Invoice on the format provided by the DTPW and all required documentation. Additionally, the affidavit and all releases for the previous application shall be submitted in acceptable form. When a complete package of all required submittals has been turned in, and any applicable as-built drawings have been produced to the satisfaction of the COUNTY'S REPRESENTATIVE, and the updated Project Schedule has been received by the DTPW, the application will be processed for payment.

As a consideration for such payment, the COUNTY shall have the right to enter upon and put into proper service, any or all parts of the Work which may be in condition for use. No claim or charge is to be made by the DESIGN-BUILDER for such use, nor is such use to be construed as an acceptance by the COUNTY of any part of the Work so used; however, the one (1) year warranty period shall commence from the date the individual equipment is put into full productive service.

11.2 RETAINAGE

MDC shall retain a portion of each such invoice equal to ten percent (10.00%) of the amount due for burdened labor and fixed fee only, accrued by the DESIGN-BUILDER during the Construction Administration and Construction phases of the Contract. At 50% completion, the COUNTY shall reduce the retainage percentage to five percent (5.00%) of the amount due for burdened labor and fixed fee only, accrued by the DESIGN-BUILDER during the Construction Administration and Construction phases of the Contract. The DESIGN-BUILDER shall provide

for a similar retention in all of his subcontracts. The amount retained by MDC during the aforementioned phases shall be released to the DESIGN-BUILDER upon completion of construction, as specified in Exhibit K, Article 9 - Payments.

- 11.3 FINAL PAYMENT: As soon as the COUNTY'S REPRESENTATIVE is notified by the DESIGN-BUILDER of the Final Completion of the Work and can be assured by tests, inspection or otherwise, that all of the provisions of the Contract have been carried out satisfactorily, the DESIGN-BUILDER will submit a final application of the value of all Work completed and will deduct therefrom all previous payments which have been made. The amount of the pay application, less any charges or damages herein provided for, and the reduction of any unused or unauthorized contingency account funds remaining, will be paid.

The DESIGN-BUILDER must provide the COUNTY'S REPRESENTATIVE with the DESIGN-BUILDER's Invoice and all required documentation, i.e., one (1) original and one copy of the Certified Payroll (via LCPTracker), and two (2) if applicable, original and one copy of the Monthly Utilization and Employment Data Reports, three (3) Certificate of DESIGN-BUILDER for the previous application and a Final Certificate of DESIGN-BUILDER, and (4) Affidavit and Final Release from all Subcontractors and Suppliers.

Once a complete package of duly executed documents has been submitted, and accepted by the DTPW, the package will be processed for payment. DESIGN-BUILDER will be permitted to sign the final application. Should the DESIGN-BUILDER fail to provide the COUNTY'S REPRESENTATIVE with all of the required documentation cited above the DESIGN-BUILDER may be held in default due to such delay. The COUNTY may withhold from payment under this Contract any monies the COUNTY can verify is owed by the DESIGN-BUILDER pursuant to any other contract or other claim.

- 11.4 PROMPT PAYMENT: The successful Bidder's attention is directed to COUNTY Ordinance No. 94-40, providing for expedited payments to small businesses by COUNTY agencies and the Public Health Trust; creating dispute resolution procedures for payment of COUNTY and Public Health Trust obligations; and requiring the DESIGN-BUILDER to issue prompt payments, and have the same dispute resolution procedures as the COUNTY, for all small business subcontractors. Failure of the DESIGN-BUILDER to issue prompt payment to small businesses in accordance with COUNTY Ordinance No. 94-40, or to adhere to its dispute resolution procedures, may be cause for suspension, termination, and debarment, in accordance with the terms of the COUNTY contract or Public Health Trust contract and debarment procedures of the COUNTY.

- 11.5 PAYMENT FOR ADDITIONAL WORK AND SERVICES/ADJUSTMENT FOR DELETION OF WORK (Approved Change Orders)

11.5.1 Payment for approved change orders may be requested monthly in proportion to the Work and services performed.

11.5.2 All payments will be made on duly certified invoices stating that the services for which payment is requested have been performed pursuant to this Contract. All invoices

must be accompanied with a current Monthly Utilization Report (MUR). Payments will not be processed without the MUR pursuant to Administrative Order 3-39.

11.5.3 EXTRA WORK/DELETION OF WORK AND PAYMENT THEREOF

The COUNTY'S REPRESENTATIVE may delete any part of the design and construction from the Contract Scope of Work. In the event this occurs, the DESIGN-BUILDER will submit a cost breakdown of the Work to be reduced and, with the concurrence of the COUNTY'S REPRESENTATIVE, the amount paid to the DESIGN-BUILDER will be reduced by that amount. In case of such deletion of work, the DESIGN-BUILDER shall be entitled to receive payment for costs incurred by reason of such deletion.

The COUNTY'S REPRESENTATIVE may direct Extra Work to the Contract Scope of Work. The DESIGN-BUILDER shall perform Extra Work, for which there is no price included in the Schedule of Values, where directed by the COUNTY'S REPRESENTATIVE. No Extra Work shall be paid for unless requested or directed in writing by the COUNTY'S REPRESENTATIVE.

Extra Work will be paid at lump sum or at unit prices as agreed in writing by the COUNTY'S REPRESENTATIVE and the DESIGN-BUILDER before the Extra Work is performed. Payment for Extra Work shall be based on the following:

The DESIGN-BUILDER shall submit to the COUNTY'S REPRESENTATIVE a proposal containing a complete breakdown of costs for the Extra Work, whether increases or decreases on the Contract Scope of Work, including overhead and profit. Overhead and profit includes all home office expenses, field office expenses, for general supervision and for furnishing and repairing small tools and ordinary equipment used in doing the Extra Work. In addition, the DESIGN-BUILDER shall include the cost of social security taxes, bonding (if applicable), and insurance (if applicable), unemployment insurance, worker's compensation, fringe benefits, inclusive of life and health insurance, pension plans, vacations, and insurance and DESIGN-BUILDER'S public liability and property damage insurance involved in such Extra Work, based on the wages paid to such labor. Specific items to be included in this proposal shall be included on the following basis:

- a) For all materials to be utilized used, the DESIGN-BUILDER shall include the cost of such materials, including freight charges, and applicable sales taxes.
- b) For any construction equipment or special equipment to be utilized, DESIGN-BUILDER shall include maintenance, operation, fuel and lubricant required for the economical performance of Extra Work. The COUNTY shall therefore not pay additionally for small tools and equipment ordinarily used in construction which shall be included in the overhead and profit percentage included. Where there is a question as to whether payment pursuant to this Article is valid the COUNTY'S REPRESENTATIVE, subject to the dispute resolution procedures of this Agreement shall make the determination as to the validity of such payment.

For the purposes of estimating construction equipment cost, the hourly rental price of such construction or special equipment shall not exceed 1/176 part of the monthly rate stated for such equipment in the latest edition of the "Compilation of Rental Rates for Construction Equipment" by Associated Equipment Distributors. Fuel, maintenance and lubrication are included in the calculated rental rates. In the event that the equipment is not owned by the DESIGN-BUILDER or its companies and the equipment is rented from a recognized equipment rental company, the DESIGN-BUILDER will be paid the estimated time that the equipment will work at the hourly rental rate to which shall be added ten percent (10%) for fuel, maintenance and lubrication for rented equipment.

- c) For estimating all labor, a working foreman in direct charge of the specified operations, the DESIGN-BUILDER may charge a sum equal to the current local rate of wages for every hour that the labor is actually performed. For a working foreman who performs labor, the DESIGN-BUILDER may charge one hundred percent (100%) of his/her hourly wage rate; for a foreman who only directs workers in the performance of their work, the DESIGN-BUILDER may charge the following: twenty-five percent (25%) of the working foreman's salary for directing up to two workers in their work; fifty percent (50%) of sum salary for directing up to four workers in their work; seventy-five percent (75%) for directing five (5) workers in their work; and one hundred percent (100%) for directing six (6) workers or more in their work.

If Extra Work is directed, it shall be included in the DESIGN-BUILDER'S monthly application for payment. The DESIGN-BUILDER is required to include a statement certifying that the requested payment for Extra Work is consistent with the Contract Documents, and he has reviewed such requested payments for Extra Work and found them to be accurate, fair and reasonable.

If applicable, as an alternative to the consideration of a proposal as indicated above, the COUNTY'S REPRESENTATIVE may direct that Work be performed at the unit price provided for in the Contract, in the event that Work is of like character and susceptible of classification under a unit price item of the Contract. All Extra Work performed hereunder will be subject to all of the provisions of the Contract.

If the DESIGN-BUILDER performs Work which it contends is Extra Work but which has not been authorized by the COUNTY'S REPRESENTATIVE, the DESIGN-BUILDER shall keep daily records of all amounts expended by the DESIGN-BUILDER in the performance of such Work. At the request of the COUNTY'S REPRESENTATIVE, the DESIGN-BUILDER shall provide certified statements showing the cost of such alleged Extra Work to which shall be attached the original receipted bills covering the costs of the materials, applicable sales taxes and freight charges on all materials used in such Work.

If required, the DESIGN-BUILDER shall produce any books, vouchers, other records, or memoranda which will reasonably assist the COUNTY'S

REPRESENTATIVE in determining the true, necessary cost of Work and materials to be paid for on a cost plus basis.

In no case will the DESIGN-BUILDER be entitled to compensation pursuant to this Article unless the DESIGN-BUILDER has first provided notice, as described below in this section, that the Work is outside the requirements of the Contract. No Extra Work shall be considered authorized until the COUNTY'S REPRESENTATIVE or the DTPW, as appropriate, makes a final determination that the Work is in fact Extra Work required to be performed by the DESIGN-BUILDER, or unless the Work is otherwise denominated by the COUNTY'S REPRESENTATIVE in writing as Extra Work pursuant to, in either circumstance. In the event insufficient funds remain in the contract to pay for such Extra Work, payment to the DESIGN-BUILDER can only be made upon approval of a change order by the Board of County Commissioners before DESIGN BUILDER is obligated to perform such work.

No additional compensation shall be due the DESIGN-BUILDER for Extra Work occasioned as a result of Differing Site Conditions, or as a result of delays, except to the extent specified in Sections 8.C and 10.F of the GENERAL PROVISIONS. If the DESIGN-BUILDER believes that an order or directive of the COUNTY'S REPRESENTATIVE calls for the performance of Work outside the requirements of the Contract, the DESIGN-BUILDER shall so notify the COUNTY'S REPRESENTATIVES in accordance with the procedures specified below.

The supervision of the execution of this Contract is vested in the Contracting Officer of DTPW acting through his representatives, the COUNTY'S REPRESENTATIVE, and his instructions shall be carried into effect promptly and efficiently.

The COUNTY'S REPRESENTATIVE shall determine the amount, quality, fitness and acceptability of the Work and materials to be paid for, and shall decide all questions or differences of opinion that may arise as to the interpretation of the Plans and Specifications or the fulfillment of the terms of the Contract. In the event of such question or difference of opinion, the decision of the COUNTY'S REPRESENTATIVE is to be a condition precedent to the DESIGN-BUILDER'S right to receive any money for the Work or the materials to which the question or difference of opinion relates except as otherwise explicitly provided for herein. The DESIGN-BUILDER shall have the right to proceed with the dispute resolution procedures, but shall provide in accordance with the direction and determination of the COUNTY'S REPRESENTATIVE unless and until the dispute resolution procedures determine differently.

If the DESIGN-BUILDER considers any Work demanded of him to be outside the requirements of this Contract, or if he considers any decision or ruling of the COUNTY'S REPRESENTATIVE to be unfair, he shall, within twenty-four hours, upon such Work being demanded or such decision or ruling being made, ask for written instructions or decisions, whereupon he shall proceed without delay to perform the Work or conform to the decision or ruling. Beginning with the first day of

this Work, the DESIGN-BUILDER and the COUNTY'S REPRESENTATIVE shall fill out daily records for this Work at the end of each day and said record shall be signed by both parties. One copy being submitted to the COUNTY'S REPRESENTATIVE and the other being retained by the DESIGN-BUILDER. This documentation does not constitute acknowledgment of authorization to pay for this Work. In the event that a claim for this Work is approved by the DTPW subsequent to the commencement of Work, an accurate accounting for Work will be agreed upon by both parties upon completion of this Work and will be paid for as Work as provided in the Specifications by Allowance Account if funds are available, or by an approved Change Order by the Board of County Commissioners.

The Work will be paid for either by a unit price item in the Contract or as Extra Work for labor, material and equipment which shall be full compensation to the DESIGN-BUILDER for all overhead and profit and as specified above in this Article in paragraphs (a), (b), and (c).

Unless the DESIGN-BUILDER files such written protest with the COUNTY'S REPRESENTATIVE within twenty-one (21) days of receipt of said written instructions or decisions, he shall be deemed to have waived all grounds for such protest. Subject to the dispute resolution procedures of this Agreement, no payment for this claim will be made in the event that a timely DESIGN-BUILDER's written protest to the COUNTY'S REPRESENTATIVE is formally denied.

If the decision of the Contracting Officer or Contracting Officer's Designee, would result in the Contract Price exceeding that approved by the Board of County Commissioners the DIRECTOR shall request and receive approval for additional funding from the Board of County Commissioners prior to his approving such additional spending.

- 11.5.4 Payment for Additional Services may be requested monthly in proportion to the services performed.
- 11.5.5 All payments will be made on duly certified invoices stating that the services for which payment is requested have been performed pursuant to this agreement. All invoices must be accompanied with a current Utilization Report (UR). Payments will not be processed without the UR pursuant to Administrative Order 3-39.

ARTICLE 12 SCOPE OF SERVICES

12.1 SCOPE OF SERVICES

The scope of services consists of design-build services for the Phase 2 – The Underline which will include but not be limited to, full Architectural and Engineering Services necessary to prepare the

Architectural Program, Construction Plans and Specifications, Construction, and all related services as fully specified in the Design Build Criteria Package.

Design-Build services are required for approximately 2.14 miles of improvements running within or parallel to the County's Metrorail Right-of-Way that includes separate paved off-street bicycle and pedestrian paths, landscaping, lighting, street furniture, wayfinding signage, and pavement markings. Services will include, but are not limited to: civil design; landscaping design; electrical design; surveys; geotechnical; permitting; signage; public meetings; coordination of design with utility companies, the County, and the City of Miami; potential archeological monitoring; environmental investigation remediation, and reporting; construction; compliance with grants and submittal requirements for the Florida Department of Transportation; and any ancillary tasks necessary to build the project and comply with the NEPA Category 1 exclusion requirements. The Underline Project, once all phases are completed, will be a 10-mile linear mobility corridor below the Metrorail.

The Design-Build Team shall comply with the conditions set forth in the Type 1 Categorical Exclusion Checklist executed in 2016 and those in the NEPA Re-evaluation/Update executed in 2019. The Design-Build Team must comply with all commitments. No construction on the project may commence until the plan review and NEPA process is complete. After award of the project, the Design-Build Team shall provide design documents at 45% and 100% completion to the County and FDOT for review, commenting, problem resolution, coordination and approval prior to construction. Based on coordination with the Design-Build Team, the County will review and coordinate with FDOT to determine if changes in the project's proposed design would require a NEPA Reevaluation/Update. The Design-Build Team shall prepare the required NEPA Re-evaluation/Update, including any related analyses needed, and submit it to the County and FDOT for review and approval. The FDOT requires a minimum of 15 calendar days (excluding weekends and FDOT observed holidays) to review and comment for all project deliverables. This review time does not include review time performed by outside agencies. If required, the FDOT shall conduct all coordination with the appropriate outside agencies during the Design-Build Team's preparation of the Re-evaluation/Update. The Design-Build Team must be qualified to perform FDOT Type 2.0 activities, meet Secretary of Interior's Professional Qualifications Standards, meet the requirements of FDOT's Cultural Resource Management Handbook and the PD&E manual to fulfill the NEPA requirements for this project.

Florida Department of Transportation (FDOT) Responsibility:

The FDOT will determine if changes in the project's design will require a NEPA Reevaluation per Federal Highway Administration criteria and coordinate this requirement to the Design-Build Firm. If necessary, the FDOT will coordinate with the appropriate agencies during the preparation of a Reevaluation and submit for approval.

ARTICLE 13 GENERAL PROVISIONS

13.1 INDEMNIFICATION AND WAIVER OF LIABILITY

- 13.1.1 To the extent permitted by law, the DESIGN-BUILDER shall indemnify and hold harmless the County and its officers and employees, from any and all claims damages, losses or expenses, including reasonable attorneys' fees arising out of or resulting from the negligence, recklessness, or intentional wrongful misconduct of the DESIGN-BUILDER or persons employed by or utilized by the DESIGN-BUILDER in the performance of this Agreement, the DESIGN-BUILDER shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the COUNTY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon.-The DESIGN-BUILDER expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the DESIGN-BUILDER shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers and employees as herein provided.
- 13.1.2 Notwithstanding any provision herein to the contrary, the DESIGN-BUILDER agrees and recognizes that the County and its officers, employees, agents and instrumentalities shall not be held liable or responsible for any claims, which may result from any actions, errors or omissions of the DESIGN-BUILDER. In reviewing, approving or rejecting any submissions by the DESIGN-BUILDER or other acts of the DESIGN-BUILDER, the COUNTY in no way assumes or shares any responsibility or liability of the DESIGN-BUILDER or sub-consultants, the registered professionals (architects and/or engineers) under this Agreement.
- 13.1.3 **CONTRACT SECURITY:** The DESIGN-BUILDER agrees to execute and deliver within fourteen (14) days after the design is 100% complete, a Design-Builder's Performance and Payment Bond prepared on the applicable bond form included in the RDDBS. The Surety Performance and Payment Bond shall be in the amount of 100% of the construction cost. The Bond must be in the form of a Surety Bond written through a local surety bond agency, rated as to Management and strength as set forth below.
- 13.1.4 **Surety Bond Qualifications:** Refer to Exhibit K, Standard Construction General Contract Conditions, Article 12.I – Payment and Performance Bonds.

The following specifications shall apply to bid, performance, payment, maintenance, and all other types of bonds. All bonds shall be written through surety insurers authorized to do business in the State of Florida as surety, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A. M. Best Company, Oldwick, New Jersey:

Bond Amount	Best Rating
\$500,001 to \$1,500,000	B V
\$1,500,001 to \$2,500,000	A VI
\$2,500,001 to \$5,000,000	A VII
\$5,000,001 to \$10,000,000	A VIII
Over \$10,000,000	A IX

- 13.1.5 The DESIGN BUILDER may, in lieu of a surety performance bond and a surety payment bond, submit Two (2) cash bonds, conditioned upon the faithful performance of the work in strict accordance with this Contract and with the Plans, Specifications and the completion of the same free from all liens and within the time limit herein specified; said Bonds shall be so worded as to make the Contract a part thereof and shall contain a clause providing the right of suit or action for those benefits said bond shall be executed as disclosed by the text of said Bonds and Contract to the same extent as if he or they were the obligee or obligees therein specifically mentioned, and all such persons shall be held or deemed to the obligee thereof.
- 13.1.6 Florida Statutes 255.05 provide for the following conditions to be made in all Performance and Payment Bonds relating to public projects.
- 13.1.6.1 A claimant, except a laborer, who is not in privity with the Principal and who has not received payment for his labor, materials, or supplies shall, within forty-five (45) days after beginning to furnish labor, materials, or supplies for the prosecution of the work, furnish the Principal with a notice that he intends to look to the bond for protection.
- 13.1.6.2 A claimant who is not in privity with the Principal and who has not received payment for his labor, materials, or supplies shall, within ninety (90) days after performance of the labor or after complete delivery of the materials or supplies, deliver to the Principal and to the Surety written notice of the performance of the labor or delivery of the materials or supplies and of the non-payment.
- 13.1.6.3 No action for the labor, materials, or supplies may be instituted against the Principal or the Surety unless both notices have been given. No action shall be instituted against the Principal or the Surety on the bond after one (1) year after Final Acceptance.
- 13.1.7 SURETY OBLIGATIONS: If the DESIGN-BUILDER is in default pursuant to the Contract and MDC has declared the DESIGN-BUILDER in default and terminated the DESIGN-BUILDER, the Surety promptly may:
- 13.1.7.1 Complete the construction work through the DESIGN-BUILDER or otherwise;

- 13.1.7.2 Arrange for the completion of the construction work by a firm other than the DESIGN-BUILDER acceptable to MDC and secured by performance and payment bonds equivalent to those for the Contract issued by a qualified surety. The Surety shall make available as the construction work progresses sufficient funds to pay the cost of completion of the construction work less the Contract Balance up to the Bond Sum.

13.2 ERRORS AND OMISSIONS

- 13.2.1 The DESIGN-BUILDER, to the extent of its failure to perform in accordance with the standard of care set forth in this Agreement, is responsible for the professional quality, technical accuracy, completeness, performance and coordination of all work required under the Agreement (including the work performed by sub-consultants and sub-contractors), within the specified time period and specified cost. The DESIGN-BUILDER shall perform the work utilizing the skill, knowledge and judgment ordinarily possessed and used by a proficient DESIGN-BUILDER with respect to the disciplines required for the performance of the work in the State of Florida. The DESIGN-BUILDER is responsible for, and represents that the work conforms to MDC'S requirements as set forth in the Agreement. Subject to Section 13.10.11 of this Agreement, the DESIGN-BUILDER shall be liable to MDC for all damages to MDC to the extent caused by the DESIGN-BUILDER'S negligent acts or errors or omissions in the performance of the work. In addition to all other rights and remedies, which MDC may have, the DESIGN-BUILDER shall, at its expense, re-perform the services to correct any deficiencies, which result from the DESIGN-BUILDER'S failure to perform in accordance with the above standards. MDC shall notify the DESIGN-BUILDER in writing of any deficiencies and shall approve the method and timing of the corrections. Neither MDC'S inspection, review, approval or acceptance of, nor payment for, any of the work required under the Agreement shall be construed to relieve the DESIGN-BUILDER or any sub-consultant or sub-contractor of its obligations and responsibilities under the Agreement, nor constitute a waiver of any of MDC'S rights under the Agreement or of any cause of action arising out of the performance of the Agreement. The DESIGN-BUILDER and its sub-consultants and sub-contractors shall be and remain liable to MDC in accordance with applicable law for all damages to MDC to the extent caused by any failure of the DESIGN-BUILDER or its sub-consultants and sub-contractors to comply with the terms and conditions of the Agreement or by the DESIGN-BUILDER'S or sub-consultants' or sub-contractors' misconduct, unlawful acts, negligent acts, errors or omissions in the performance of the Agreement. With respect to the performance of work by sub-consultants and sub-contractors, the DESIGN-BUILDER shall, in approving and accepting such work, ensure the professional quality, completeness, and coordination of sub-consultant's and sub-contractor's work.
- 13.2.2 The DESIGN-BUILDER shall be responsible for deficient, defective services and any resulting deficient, defective construction services re-performed within twelve (12) months following final acceptance and shall be subject to further re-performance, repair

and replacement for twelve (12) months from the date of initial re-performance, not to exceed twenty-four (24) months from final acceptance.

13.3 INSURANCE

13.3.1 The Design-Builder shall maintain coverage as required in A - C below throughout the term of this agreement. The Design Builder shall furnish to the Department of Transportation and Public Works Certificate (s) of Insurance which indicates that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation Insurance for all employees of the Design-Builder pursuant to Chapter 440, Florida Statutes to include Employers Liability in amount not less than \$1,000,000 per accident.
- B. Commercial General Liability in an amount not less than \$5,000,000 per occurrence, and \$10,000,000 in the aggregate, not to exclude Explosion Collapse and Underground Hazards. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the agreement, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

DESIGN PHASE

In addition to the insurance required in A – C above, a certificate of insurance must be provided as follows:

- D. Professional Liability Insurance in the name of the Design-Builder or the licensed design professional employed by the Design-Builder in an amount not less than \$1,000,000 per claim.

CONTINUITY OF COVERAGE

The Design-Builder shall be responsible for assuring that the insurance documentation required in conjunction with this subsection remain in force for the duration of the agreement period, including any and all option years. The Design-Builder will be responsible for submitting renewal insurance documentation prior to expiration.

The Risk Management Division of Miami-Dade County Internal Services Department shall have the right to reasonably amend insurance requirements and approve all companies providing coverage.

All required insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength by Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Financial Services.

**NOTE: CERTIFICATE HOLDER MUST READ: MIAMI-DADE COUNTY
111 NW 1ST STREET
SUITE 2340
MIAMI, FL 33128**

- 13.3.2 The DESIGN-BUILDER shall not receive an authorization to begin until it has obtained all insurances required hereunder. The DESIGN-BUILDER shall maintain all required insurances for the full term of this Agreement.

13.4 PERFORMANCE

- 13.4.1 Not Used.

- 13.4.2 Time for Performance: The DESIGN-BUILDER agrees to start all work hereunder upon receipt of a Work Order issued by MDC and complete each Phase within the time stipulated in each Work Order. A reasonable extension of time for the completion of the Phases will be granted by MDC should there be a delay not due to the fault of the DESIGN-BUILDER. Such extension of time may not be cause for a claim by the DESIGN-BUILDER for additional compensation.

- 13.4.2.1 Each time any portion of the Project Development Schedule prepared by the DESIGN-BUILDER is not met for unapproved/unjustified causes (other than MDC caused) MDC may notify DTPW and any other entity established by MDC for tracking the performance of unsatisfactory performance, and may notify the DESIGN-BUILDER'S Surety.

- 13.4.3 Performance Evaluations: Performance evaluations of the services rendered under this Agreement shall be performed by MDC and shall be utilized by the County as evaluation criteria for future solicitations.

13.5 PROJECT SUSPENSION OR ABANDONMENT

- 13.5.1 Refer to Exhibit K, Standard Construction General Contract Conditions, Article 11.D.5) – Suspension of Work.

If the Project is to be suspended for the convenience of MDC for more than six (6) months, or abandoned in whole or in part for the convenience of MDC under any phase, the DESIGN-BUILDER shall be permitted to terminate the Agreement and, in the event such termination takes place, the County's obligation should be as though the contract was terminated for convenience. The DESIGN-BUILDER shall be paid, pursuant to and in accordance with Section 13.6.1, for services authorized by Service Order which were

performed prior to such suspension or abandonment. The DESIGN-BUILDER shall be entitled to receive payment for costs incurred by reason of such termination.

13.6 TERMINATION OF AGREEMENT

- 13.6.1 By COUNTY For Convenience: Refer to Exhibit K, Standard Construction General Contract Conditions, Article 11.D.1 – Termination for Convenience and 4) – Implementation of Termination.
- 13.6.2 By the COUNTY for Cause: Refer to Exhibit K, Standard Construction General Contract Conditions, Article 11.D.2 – Termination for Default of Contractor and 4) – Implementation of Termination.

In the event the DESIGN-BUILDER fails to comply with the material provisions of this Agreement, MDC may declare the DESIGN-BUILDER in default by thirty (30) days prior written notification. If the DESIGN-BUILDER fails to cure the default or take reasonable steps to cure the default within that time frame, then the COUNTY may terminate the DESIGN-BUILDER for cause. In such event, the DESIGN-BUILDER shall only be compensated for any completed professional services found acceptable to MDC. In the event partial payment has been made for such professional services not completed, the DESIGN-BUILDER shall return such sums to MDC within ten (10) days after receipt of written notice that said sums are due. The DESIGN-BUILDER shall be compensated on a percentage of the professional services which have been performed and found acceptable to MDC at the time MDC declares a default. Any dispute arising out of this Section shall be resolved in accordance with Section 13.12 “RIGHTS OF DECISIONS AND DISPUTE RESOLUTION”.

13.7 DESIGN-BUILDER’S ACCOUNTING RECORDS

- 13.7.1 MDC reserves the right to audit the DESIGN-BUILDER’S financial records, including but not limited to audited financial statements, balance sheets, and other financial records, during the performance of this Agreement and for three year after final payment under this Agreement. The DESIGN-BUILDER agrees to furnish copies of any records reasonably necessary to approve any requests for payment by the DESIGN-BUILDER.
- 13.7.2 MDC reserves the right to audit the DESIGN-BUILDER’S financial records, including but not limited for purposes of verifying that certified cost or pricing data submitted or identified by the DESIGN-BUILDER in conjunction with the negotiation of this Agreement or any modification/change order to this Agreement, the DESIGN-BUILDER shall, for a period of three (3) years after Final Acceptance under this Agreement:
 - 13.7.2.1 Maintain such certified cost of pricing data, including books, records, documents, papers, computations, projections and other supporting data. All such certified cost or pricing data shall be clearly identified, readily

accessible and, to the extent feasible, kept separate and apart from all unrelated documents.

13.7.2.2 Permit authorized representatives of MDC and the State of Florida to examine such books, records, documents, papers, computations, projections and other supporting data upon reasonable notice and during normal working hours.

13.7.3 Unless governed elsewhere in the contract, in the event any information provided by the DESIGN-BUILDER during initial contract negotiations or any supplemental agreement negotiations is later determined by MDC not to have been complete, accurate or current at the time of the submittal, an appropriate reduction or increase in the total compensation amount will be made to the contract attributable to any incorrect, inaccurate or otherwise deficient cost data. If this determination is made by MDC after final payment, MDC shall use all available means to recover said funds including withholding funds due the DESIGN-BUILDER on other MDC contracts. The DESIGN-BUILDER agrees to insert these audit clauses in all of his subcontracts.

13.8 OWNERSHIP AND REUSE OF THE DOCUMENTS

13.8.1 All notes, correspondence, documents, designs, drawings, renderings, calculations, specifications, models, photographs, reports, surveys, investigations, and any other documents and copyrights thereto for Services performed or produced in the performance of this Agreement, whether in paper or other hard copy medium or in electronic medium, except with respect to copyrighted standard details and designs owned by the DESIGN-BUILDER or owned by a third party and licensed to the DESIGN-BUILDER for use and reproduction, shall become the property of the County. However, the County may grant an exclusive license of the copyright to the DESIGN-BUILDER for reusing and reproducing copyrighted materials or portions thereof as authorized by the County in advance and in writing. In addition, the DESIGN-BUILDER shall not disclose, release, or make available any document to any third party without prior written approval from the County. The DESIGN-BUILDER shall warrant to the County that he/she has been granted a license to use and reproduce any standard details and designs owned by a third party and used or reproduced by the DESIGN-BUILDER in the performance of this Agreement. Subject to Section 13.9.1.1 of this Agreement, nothing contained herein shall be deemed to exclude any document from Chapter 119 of the Florida Statutes.

13.8.2 If MDC elects to re-use the plans and specifications for other sites and/or purposes other than those for which it was prepared, it shall be at MDC's sole risk and MDC shall indemnify and hold the DESIGN-BUILDER harmless from and against any liability arising out of any reuse of the DESIGN-BUILDER's documents.

13.8.3 The DESIGN-BUILDER shall bind all sub-consultants and sub-contractors to the Agreement requirements for re-use of plans and specifications.

- 13.8.4 All notes, correspondence, documents, designs, drawings, renderings, calculations, specification, models, photographs, reports, surveys, investigations, computer files that have “read” and “write” capability, data and any other documents and copyrights thereto for Services performed or produced in the performance of this Agreement, whether in paper or other hard copy medium, or in electronic medium, shall become the property of MDC; however, MDC may grant to the DESIGN-BUILDER a non-exclusive license of the copyright to the DESIGN-BUILDER for reusing and reproducing copyrighted materials or portions thereof as authorized by MDC in advance and in writing. In addition, the DESIGN-BUILDER shall not disclose, release, or make available any document to any third party without written approval from MDC. Subject to Section 13.9.1.1 of this Agreement, nothing contained herein shall be deemed to exclude any document from Chapter 119 of the Florida Statutes.

13.9 COMPLIANCE WITH LAWS

- 13.9.1 Refer to Exhibit K, Standard Construction General Contract Conditions, Article 7.E – Permits and Compliance with Laws.

The Agreement shall be governed by the laws of the State of Florida and may be enforced only in a court of competent jurisdiction in Miami-Dade County, Florida.

- 13.9.1.1 In accordance with Florida Statutes 119.07(3)(ee), “Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, ... or other structure owned and operated by an agency as defined in F.S. 119.011 are exempt ...” from public records to ensure the safety of government infrastructure and to ensure public safety. Information made exempt by this paragraph, with prior approval from the Department, may be disclosed: (i) to another entity to perform its duties and responsibilities; (ii) to a licensed architect, engineer, or contractor who is performing work on or related to the Project; or (iii) upon a showing of good cause before a court of competent jurisdiction. The entities or persons receiving such information shall maintain the exempt status of the information.
- 13.9.1.2 Each employee of the DESIGN-BUILDER and its sub-consultants and sub-contractors that will be involved in the Project, shall sign an agreement stating that they will not copy, duplicate, or distribute the documents unless authorized by MDC.
- 13.9.1.3 The DESIGN-BUILDER and its sub-consultants and sub-contractors agree in writing that the project documents are to be kept and maintained in a secure location.
- 13.9.1.4 Each set of the project documents are to be numbered and the whereabouts of the documents shall be tracked at all times.

13.9.1.5 A log shall be developed by the DESIGN-BUILDER and all sub-consultants and sub-contractors contracted by the DESIGN-BUILDER to track each set of documents logging in the date, time, and name of the individual (s) that work on or view the documents. MDC shall prepare and maintain a log to track each set of documents logging in the date, time, and name of the individual (s) that work on or view the documents.

13.9.2 In addition to the above requirements in this article, the DESIGN-BUILDER agrees to abide by all Federal, State and County Procedures, Ordinances, Resolutions and Administrative Orders which may have a bearing on the work involved under this Agreement, including but not limited to:

Federal Statute(s)

- 2 CFR 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements
- 23 CFR 172: Procurement, Management, and Administration of Engineering and Design Related Services
- 49 CFR Part 21 (Title VI of the Civil Rights Act of 1964): Nondiscrimination in Federal Projects
- 23 USC 112(b)(2)(A): Letting of Contracts

Florida Statute(s)

- Section 119.07- Inspection and Copying of Records; Photographing Public Records; Fees; Exemptions.
- Section 119.0701 - Contracts; Public Records
- Section 287.055 - Consultants Competitive Negotiation Act
- Section 287.133 - Public Entity Crimes
- Section 287.135 - Prohibition against contracting with scrutinized companies
- Section 295.187 - Florida Veteran Business Enterprise Opportunity Act

Ordinance(s)

- 77-13 – Financial Disclosures Requirements
- 00-85 - Amending Section 2-8.9 of the Code of Miami-Dade County, The Living Wage Ordinance
- 00-96 - Code of Business Ethics: Amending Section 2-8.1(i) of the Code
- 01-105 - Amending Section 2-10.4 of the Miami-Dade County Code for the acquisition of professional architectural, engineering, landscape architecture or land surveying and mapping services
- 03-107 - Amending Section 2-11.1 (s) of the Conflict of Interest and Code of Ethics
- 07-65 – Sustainable Buildings Program
- 08-113 - Amending Sections 2-8.1.1 and 10-33.1 of the Miami-Dade County Code relating to bids from related parties to include a prohibition on collusive bidding
- 11-90 - Relating to the Collection of Data for a Disparity Study
- 14-79 - Sea-Level Rise Ordinance
- 18-33 – Pertaining to Small Business Enterprise Programs (Implementation of LCP Tracker)

- 72-82 - Conflict of Interest Ordinance; as amended by Ordinance No. 00-01 and Ordinance No. 00-46
- 77-13 - Financial Disclosure
- 82-37 - Affirmative Action Plan
- 90-133 - Disclosure of MDC, Collective Bargaining Agreement, and Employee Wages, Health Care Benefits, Race, National Origin, and Gender
- 90-143 - Responsible Wages and Benefits
- 91-142 - Family Leave, as Amended by Ordinance No. 92-91 - Family Leave, superseded by Ordinance No. 93-118 Family Leave Act, as amended by Resolution R-1499-91 and Resolution R-183-00
- 92-15 - Drug-free Workplace, as Amended by Ordinance No. 00-30
- 94-73 - Value Analysis and Life-Cycle Costing
- 95-178 - Proposers are to verify that all delinquent and currently due fees or taxes have been paid as a condition of award
- 97-35 - Fair Subcontracting Practices as amended by Ordinance No. 98-124.
- 97-104 - Listing of Sub Contractors and Suppliers on County Contracts.
- 97-172 and Administrative Order 3-26 - Amending Section 2-10.4, requiring certain agreements for Professional Architectural and Engineering Services to include Value Analysis as part of the scope of services
- 97-215 - Inspector General
- 98-30 - County Contractors Employment and Procurement Practices
- 99-5 - Domestic Violence Leave
- 99-152 - False Claim Ordinance

Resolution(s)

- R-182-00 – Compliance with ADA and other Laws
- R-183-00 - Family Leave Requirements
- R-185-00 – Domestic Violence Leave
- R-273-05 - Public Involvement Planning
- R-516-96 - Independent Private Sector Inspector General (IPSIG) Services
- R-617-17 – Envision Rating System
- R-744-00 - Requiring the continued engagement of critical personnel in contracts for professional services for the duration of the Project.
- R-994-99 - Code of Business Ethics
- R-1049-93 - Affirmative Action Plan Furtherance and Compliance
- R-1106-15 – Aspirational Policy of Miami-Dade County

Administrative Order(s)

- 3-19 – Prompt Payment
- 3-20 - Independent Private Sector Inspector General (IPSIG) Services
- 3-24 – Responsible Wages and Benefits for County Construction Contracts
- 3-26 - Establishing the Threshold and Guidelines for Feasibility and Value Analysis/Engineering VA/E Studies for Miami-Dade County Construction Projects
- 3-39 - Acquisition of Professional Services.
- 10-10 - Duties and Responsibilities of County Departments for Compliance with the Americans with Disabilities Act (ADA)

Implementing Order(s)

- 10-13 - Public Involvement Plan
- 7-7 – Policies and Procedures Establishing a Public Service Honor Code for Elected and Appointed County Officials and County Employees

Miami-Dade County Code(s)

- Section 2-8.1 - Contracts and Purchases
- Section 2-8.8 – Fair Subcontracting Practices
- Section 2-10.4 - Acquisition of Professional Architectural, Engineering, Landscape Architectural or Land Surveying and Mapping Services
- Section 2-10.7 - Sales Tax Exemption Program
- Section 2.11.1 - Conflict of Interest and Code of Ethics
- Section 2-11-15 – Works of art in public places
- Section 10-34 - Listing of Subcontractors Required

13.9.3 The DESIGN-BUILDER shall comply with the financial disclosure requirements of Ordinance 77-13, by filing within 30 days of the execution of this Agreement and prior to July 15th of each succeeding year that the Agreement is in effect, one of the following with the Supervisor of Elections, P.O. Box 521550, Miami, Florida 33152-1550:

- A Source of Income Statement
- A Statement of Financial Interests
- A copy of the DESIGN-BUILDER'S current federal income tax return

13.9.4 AFFIRMATIVE ACTION

13.9.4.1) The DESIGN-BUILDER'S Affirmative Action Plan submitted pursuant to Ordinance 82-37, as approved by the Miami-Dade County's Small Business Development Department and any approved update thereof, are hereby incorporated as contractual obligations of the DESIGN-BUILDER to Miami-Dade County hereunder. The DESIGN-BUILDER shall undertake and perform the affirmative actions specified herein. The Director may declare the DESIGN-BUILDER in default of this agreement for failure of the DESIGN-BUILDER to comply with the requirements of this paragraph.

13.9.5 PROMPT PAYMENT TO SMALL BUSINESS SUB-CONSULTANTS AND SUB-CONTRACTORS

13.9.5.1 The DESIGN-BUILDER'S attention is directed to Miami-Dade County Ordinance No. 94-40, and Section 2-8.1.4 of the Code of Miami-Dade County providing for expedited payments to small businesses by County agencies and the Public Health Trust; creating dispute resolution procedures for payment of County and Public Health Trust obligations; and requiring the prime Contractor to issue prompt payments, and have the same dispute resolution procedures as the County, for all small business subcontractors.

The time for which payment shall be due is thirty (30) days from the receipt of a proper invoice. Failure of the DESIGN-BUILDER to issue prompt payment to small businesses, in accordance with COUNTY Ordinance No. 94-40, or to adhere to its dispute resolution procedures, may be cause for suspension, termination, and debarment, in accordance with the terms of the County contract or Public Health Trust contract and debarment procedures of the County.

13.9.6 OFFICE OF THE COUNTY INSPECTOR GENERAL AND INDEPENDENT PRIVATE SECTOR INSPECTOR GENERAL

13.9.6.1 The Office of the Miami-Dade County Inspector General (IG) shall have the authority and power to review past, present and proposed County programs, accounts, records, contracts and transactions. The IG shall have the power to subpoena witnesses, administer oaths and require the production of records. Upon ten (10) days written notice to the DESIGN-BUILDER from IG, the DESIGN-BUILDER shall make all requested records and documents available to the IG for inspection and copying.

The DESIGN-BUILDER shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this contract, for examination, audit, or reproduction, until three years after final payment under this contract or for any longer period required by statute or by other clauses of this contract. In addition:

(1) If this contract is completely or partially terminated, the DESIGN-BUILDER shall make available the records relating to the work terminated until three years after any resulting final termination settlement; and

(2) The DESIGN-BUILDER shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

The IG shall have the power to report and/or recommend to the Board of County Commissioners whether a particular project, program, contract or transaction is or was necessary and, if deemed necessary, whether the method used for implementing the project or program is or was efficient both financially and operationally. Monitoring of an existing project or program may include reporting whether the project is on time, within budget and in conformity with plans, specifications, and applicable law. The IG shall have the power to analyze the need for, and reasonableness of, proposed change orders.

The IG may, on a random basis, perform audits on all County contracts throughout the duration of said contract (hereinafter "random audits"). This random audit is separate and distinct from any other audit by the County.

- 13.9.6.2 INDEPENDENT PRIVATE SECTOR INSPECTOR GENERAL: The attention of the DESIGN-BUILDER is hereby directed to the requirements of AO 3-20 and R-516-96; the County shall have the right but not the obligation to retain the services of an independent private-sector inspector general (IPSIG) who may be engaged to audit, investigate, monitor, oversee, inspect and review the operations, activities and performance of the DESIGN-BUILDER and County in connection with this contract. The scope of services performed by an IPSIG may include, but are not limited to, monitoring and investigating compliance with Contract Specifications; project costs; and investigating and preventing corruption and fraud.

The IPSIG may perform its services at all levels of the contracting and procurement process including but not limited to project design, establishment of bid specifications, bid submittals, activities of DESIGN-BUILDER, its officers, agents and employees, lobbyists, county staff and elected officials.

Upon ten (10) days written notice to DESIGN-BUILDER from an IPSIG, the DESIGN-BUILDER shall make all requested records and documents available to the IPSIG for inspection and copying. The IPSIG shall have the right to examine all documents and records in the DESIGN-BUILDER's possession, custody or control which in the IPSIG's sole judgment pertain to performance of the Contract, including but not limited to original estimate files, bid and change order estimates, worksheets, proposals and agreements from and with successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, bid and contract documents, back-charge document, 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.

- 13.9.7 Reserved.
- 13.9.8 Not Used.
- 13.9.9 The DESIGN-BUILDER must also submit with the executed agreement, to be filed with the Clerk of the Board, any required executed affidavit.
- 13.9.10 UTILIZATION REPORT (UR): Pursuant to Administrative Order (A.O.) 3-32 Community Business Enterprise (CBE-A&E) Program, and A.O. 3-39 for the Resolution Repealing County Administrative Orders 3-33, 3-14, and 3-28, and

Establishing Administrative Order 3-39 Standard Process For Construction Of Capital Improvements, Acquisition Of Professional Services, Construction Contracting, Change Orders and Reporting, the DESIGN-BUILDER is required to file utilization reports with MDC's contracting department monthly, unless designated otherwise. The UR is required to accompany every invoice, which is due on or before the tenth working day following the end of the month the report covers. The UR should indicate the amount of contract monies received and paid as a DESIGN-BUILDER, including payments to sub-consultants and sub-contractors (if applicable), from the County pursuant to the project. Authorized representatives of each listed sub-consultant(s) shall sign the report, verifying their participation in the work contracted and receipt of the monies listed. The monthly reports are to be submitted to the Miami-Dade Department of Small Business Development, 111 N.W. 1st Street, 19th Floor, Miami, Florida, 33128, in the format attached hereto and titled "Monthly Utilization Report".

- 13.9.11 CERTIFICATION OF WAGE RATES:. The DESIGN-BUILDER hereby certifies and warrants that wage rates and other factual unit costs, as submitted in support of the compensation provided are accurate, complete and current as of the date of this Agreement. It is further agreed that said compensation shall be adjusted to exclude any significant costs where MDC shall determine that the contract price of services was increased due to inaccurate, incomplete or unclear wage rates or other factual unit costs. All such contract compensation adjustments shall be made within one (1) year following the end of the contract, or acceptance of the work by MDC, whichever is later.

TRUTH IN NEGOTIATION: pursuant to A.O. 3-39 and Florida State Statutes Chapter 287.055 5(a): For all lump sum costs or costs plus a fixed fee contract in which a fee will exceed one hundred fifty thousand dollars (\$150,000; 287.017 - Category 4), the COUNTY will require the firm receiving the award to execute a Truth-In-Negotiation Certificate as required by Chapter 287, Florida Statutes. The above language suffices as the Truth-In-Negotiation Certificate when included in a contract in which a fee will exceed the above-referenced amount.

- 13.10 MISCELLANEOUS PROVISIONS: Refer to Exhibit K, Standard Contract General Contract Conditions, Article 12 – Miscellaneous Provisions.

- 13.10.1 This Agreement does not confer on the DESIGN-BUILDER any exclusive rights to MDC'S work. Service Orders will be issued under this agreement at the sole discretion of MDC. MDC reserves at all times, the right to perform any and all architectural engineering services in-house or with other professional architects or engineers as provided by Section 287.055, Florida Statutes, and Section 2-10.4, Code of Miami-Dade County, or as otherwise provided by law.

- 13.10.2 Fees for these Design-Build Services shall be determined as mutually agreed upon by MDC and the DESIGN-BUILDER in accordance with Section 10.1.2.2 of this Agreement. MDC will confer with the DESIGN-BUILDER before any work offer is issued to discuss the Scope to Work and the services required, the time to complete the work and the compensation for the proposed services. No payment will be made for

the DESIGN-BUILDER'S time or services in connection with the preparation of any such proposal.

- 13.10.3 The DESIGN-BUILDER may submit proposals for any design-build services, which they are qualified to perform, for which Proposals may be publicly solicited by MDC, outside of this Agreement.
- 13.10.4 The DESIGN-BUILDER shall obtain the services of a licensed laboratory to verify the presence or absence of the hazardous materials or contaminants in any form and, in the event such material or substance is found to be present, to cause it to be rendered harmless by blending the material on site and obtain concurrence from the Owner that the material or substance has been rendered harmless.

The DESIGN BUILDER shall obtain the services of a licensed environmental consultant to review existing Phase I and Phase II for The Underline and prepare a site specific Soil Management Plan (SMP)/Health & Safety Plan (HASP)/Dust Control Plan (DCP)/Air Monitoring Plan (AMP) and Engineering Control Plan (ECP) to support proposed improvements involving earthwork and drainage. The Design Builder shall coordinate any methods proposed to address contaminated soils including but not limited to soil mixing with DERM and obtain written concurrence from DERM for the sampling plan and confirmation sampling in relation to contaminated soil mixing/handling. The approved SMP/HASP/DCP/AMP/ECP shall be included in the construction drawings. By Change Order, the amount of the Agreement shall be increased in the amount of the DESIGN-BUILDER's reasonable additional costs for a quantity of 61,173.30 square yards, at the rate of \$24.32 for every square yard of excavated material to perform remediation work as demonstrated in Exhibit M.

- 13.10.6 FORCE MAJEURE: For the purpose of determining delay and events of force majeure, an event of "Force Majeure" is defined to include an event beyond the control of the Party claiming Force Majeure, which prevents such Party from fulfilling its obligations, and includes, without limitation, acts of God (including floods, hurricanes and other adverse weather), war, riot, civil disorder, acts of terrorism, disease, epidemic, strikes and labor disputes, actions or inactions of government or other authorities, law enforcement actions, curfews, closure of transportation systems or other unusual travel difficulties, or inability to provide a safe working environment for employees. The DESIGN-BUILDER shall not be liable for any delays due to a force majeure event and shall be entitled to a Change Order for an extension of time to substantially complete its work.
- 13.10.7 Standard of Care: In the performance of its services, DESIGN-BUILDER shall exercise that degree of care and skill customarily exercised by other professionals performing similar services in the same locality and time period.
- 13.10.8 Responsibility for Others: DESIGN-BUILDER shall be responsible to MDC for Design-Build Services and the services of DESIGN-BUILDER sub-consultants and sub-contractors. DESIGN-BUILDER shall not be responsible for the acts or omissions

of MDC or other parties engaged by MDC nor for their construction means, methods, techniques, sequences, or procedures, or their health and safety precautions and programs.

- 13.10.9 Cost Estimates: DESIGN-BUILDER'S opinions of construction and materials cost estimates provided herein are to be made on the basis of DESIGN-BUILDER'S experience and qualifications and represent DESIGN-BUILDER'S best judgment as an experienced and qualified professional generally familiar with the industry. However, since DESIGN-BUILDER has no control over the costs of labor, materials, equipment, or services furnished by others, or over any contractor's methods of determining prices or over competitive bidding, or market conditions, DESIGN-BUILDER cannot and does not guarantee that proposals, bids or actual construction cost will not vary from the opinions prepared by DESIGN-BUILDER.
- 13.10.10 Right of entry: MDC grants to DESIGN-BUILDER, if the project site is owned by the County, permission for a right of entry by the DESIGN-BUILDER, its employees, agents and sub-consultants and sub-contractors, upon the project site for the purpose of providing the services. If the project site is not owned by the County, the DESIGN-BUILDER is responsible for making arrangements with property owner for right of entry from time to time by DESIGN-BUILDER, its employees, agents and sub-consultants and sub-contractors, upon the project site for the purpose of providing the services. Extensions of time may be provided by MDC to the extent the owner unreasonably prohibits the DESIGN-BUILDER from entering the property. MDC recognizes that the use of investigative equipment and practices may unavoidably alter the existing site conditions and affect the environment in the area being studied, despite the use of reasonable care. In the event existing site conditions have been altered, the DESIGN-BUILDER shall restore site to original condition.
- 13.10.11 Claims for Consequential Damages. Notwithstanding anything to the contrary and to the extent not covered by insurance coverages required under the Agreement, the Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Design-Build Contract. This mutual waiver includes, but is not limited to:
1. Damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
 2. Damages incurred by the Design-Builder for loss of financing, business and reputation, loss of bonding capacity, and for loss of profit except anticipated profit arising directly from the Work.
 3. Punitive or special damages

13.11 SUSTAINABLE BUILDINGS PROGRAM

- 13.11.1 The primary mechanism for determining compliance with the program shall be the U. S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Rating System. All construction projects are required to meet the standards delineated in Ordinance 07-65 and Implementing Order 8-8. Compliance shall be determined by completing a formal certification process with the U.S. Green Building Council, or as otherwise directed by the County's Sustainability Manager.
- New Construction: All new construction projects shall be required to attain "Silver" or higher level rating under the LEED-NC Rating System.
 - Major Renovations & Remodels: All major renovations/remodels shall attain "Certified" or higher level rating under the LEED-NC Rating System.
 - Non-major Renovations/Remodels: All non-major renovations/remodels begun shall attain "Certified" or higher level rating under the appropriate LEED Rating System such as LEED-NC, LEED-EB or LEED-CI.
- 13.11.2 Renovations, remodels, and other building upgrades not meeting the above criteria are encouraged to incorporate the maximum number of LEED-approved green building practices as are feasible from a practical and fiscal perspective; however, LEED Certification will not be required.
- 13.11.3 Substitution of Standard: The requirement for applying the appropriate LEED standard under any of the above-referenced categories may be exempted or modified due to special circumstances of the project. Such exemption or modification shall be for the express purpose of ensuring the use of the most appropriate or relevant rating standard, and shall not, in any way, exempt the requirement to apply green building practices to the maximum extent possible. For example, infrastructure projects shall pursue the Institute for Sustainable Infrastructure Envision certification rating system, Level Silver, in accordance with Miami-Dade County Legislative Resolution No. R-617-17 (Legistar File Number 171122). This substitution process shall be administered by and through the County's Sustainability Manager.

13.12 CLAIMS AND DISPUTE RESOLUTION

13.12.1 Disputes

- 1) The following provisions shall govern disputes under this Contract.
 - a. In the event the Contractor and Owner are unable to resolve their differences concerning any determination made by the Architect/Engineer or Owner on any dispute or claim arising under or relating to the Contract (referred to in this Section as a "Dispute"), either the Contractor or Owner may initiate a dispute in accordance with

the procedure set forth in this article. Exhaustion of these procedures shall be a precondition to any lawsuit permitted hereunder.

- b. All Disputes shall be decided by the Department Director or designee.
- c. As soon as practicable, the Department Director or designee shall adopt a schedule for the Contractor and Owner 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. Within 20 working days of the date on which such written submissions are filed, the Department Director or designee shall afford each party an opportunity to present a maximum of one hour of argument. The Department Director or designee 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 Contract. As part of such decision, the Department Director or designee shall determine the timeliness and sufficiency of each notice of claim and claim at issue as provided in this article. The Department Director or ~~OOM~~ designee 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 Department Director or designee 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) by summary disposition.
- d. In the event that the Department Director or designee 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 shall not exceed one day in duration per side, including opening statements and closing arguments, if allowed by the Department Director or designee at his reasonable discretion.
- e. No formal discovery shall be allowed in connection with any proceeding under this article. Notwithstanding the foregoing, both parties agree that all of the audit, document inspection, information and documentation requirements set forth elsewhere in this contract shall remain in force and effect throughout the proceeding. The Department Director or designee 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. The continued failure of a party to comply with the

document inspection, examination, or submission requirements set forth in this contract shall constitute a waiver of that party's claims and/or defenses, as applicable. 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 or defense of a claim shall be a criteria in determining the sufficiency and validity of a claim.

- f. The Department Director or designee shall issue a written decision within 15 working days after conclusion of any testimonial proceeding and, if no testimonial proceeding is conducted, within 45 days of the filing of the last written submission. This written decision shall set forth the reasons for the disposition of the claim and a breakdown of any specific issues or subcontractor claims. As indicated previously, the decision of the Department Director or designee is not binding on the parties, but will be admissible in a court of competent jurisdiction.
- g. Not Used.
- h. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Engineer's interpretation. Any presentation or request by the Contractor under this article will be subject to the same requirements for Submittal of Claims in this article.

13.13 CERTIFICATION

- 13.13.1 The DESIGN-BUILDER certifies that no companies or persons, other than bonafide employees working solely for the DESIGN-BUILDER or the DESIGN-BUILDER'S County approved sub-consultants and sub-contractors, have been retained or employed to solicit or secure this Agreement or have been paid or guaranteed payment of any fees, commissions, percentage fees, gifts or any other considerations contingent upon or resulting from the award or making of this Agreement. The DESIGN-BUILDER also certifies that no County personnel, whether a full-time or part-time employee, has or shall be retained or employed in any capacity, by the DESIGN-BUILDER or the DESIGN-BUILDER'S County approved sub-consultants and sub-contractors, to accomplish the work contemplated under the terms of this Agreement. For breach or violation of this Certification, MDC shall have the right to annul this Agreement without liability.

13.14 CORRECTIONS OF WORK OR MATERIAL

If at any time before the Final Completion of the Project, defects in the Work or materials, unsatisfactory Work or material, poor workmanship, damaged, destroyed, or incorrect Work, are found by the COUNTY'S REPRESENTATIVE, or any other Governmental Agency having jurisdiction over the Work, the DESIGN-BUILDER so notified shall correct such Work at its expense using whatever material and labor necessary in accordance with the plans and

specifications. DESIGN-BUILDER may submit notice of a claim if it disagrees with the COUNTY'S REPRESENTATIVE.

Previous inspection of such Work or prior approval of any design submittals for compliance will not relieve the DESIGN-BULDER of its responsibility for any of the above deficiencies, although they may have been overlooked by the COUNTY's REPRESENTATIVE or may have been the results of damage from any cause. Neglect to make good for any of the above Work shall result in the COUNTY'S REPRESENTATIVE giving notice in writing to the DESIGN-BUILDER specifying the conditions pertaining thereto and directing the DESIGN-BUILDER to correct same. If the DESIGN-BUILDER does not correct such conditions within fifteen (15) days after receipt of such notice, it shall be sufficient grounds for the COUNTY'S REPRESENTATIVE to order the subject Work discontinued and have the Work completely remedied at the expense of the DESIGN-BUILDER.

All materials are to be inspected before use and the DESIGN-BUILDER shall notify the COUNTY'S REPRESENTATIVE in time to enable it to inspect any inaccessible Work or materials before being covered. The DESIGN-BUILDER shall furnish at its expense necessary personnel and facilities for inspection of such Work or materials after being covered, if so required. If in the COUNTY'S REPRESENTATIVE'S opinion the materials or finished items already installed, whether exposed or covered up, are damaged, destroyed or not in compliance with specifications, the COUNTY'S REPRESENTATIVE shall notify the DESIGN-BUILDER in writing, specifying the Work or materials which shall not be incorporated in the Work without replacement or corrective Work sufficient to obtain the COUNTY'S REPRESENTATIVE'S approval. All costs for the correction of said Work or materials shall be borne by the DESIGN-BUILDER.

If, in the opinion of the COUNTY'S REPRESENTATIVE, the structural, mechanical, or electrical integrity of installed Work or materials on Site is questionable, the COUNTY'S REPRESENTATIVE may direct the DESIGN-BUILDER to perform necessary tests to determine the acceptability of the item in question. The DESIGN-BUILDER shall immediately employ a Professional Engineer licensed to practice in the State of Florida, to submit a testing procedure for approval as well as corrective methods of repair or replacement of the Work if required. Engineering, testing and any required corrective Work shall be performed immediately to minimize delays to the Project. If the tested Work or materials are found to have deficiencies or not be in accordance with the best practices of the trade; even if the Department for its' convenience elects to accept the Work or materials, all engineering, testing, and corrective costs shall be borne by the DESIGN-BUILDER. Should the Work or material in question be found to be without deficiencies and in accordance with the best practices of the trade, said costs will be borne by the COUNTY to the extent of actual costs for said services. Any office overhead or other charges will remain with the DESIGN-BULDER. A non-compensable time extension will be granted if no corrective measures are required by the COUNTY'S REPRESENTATIVE.

In all cases of corrective Work, including tests, prior to performing any Work, the DESIGN-BUILDER must submit its method of correction and obtain approval from the COUNTY'S REPRESENTATIVE prior to correcting, removing, or replacing this Work. The COUNTY'S

REPRESENTATIVE will only approve the completed Work when it is satisfactorily performed. All costs for this Work, including testing, shall be borne by the DESIGN-BUILDER.

13.15 SOVEREIGNTY

13.15.1 COUNTY'S Rights as Sovereign. It is expressly understood that notwithstanding any provision of this Contract and the COUNTY'S status thereunder:

- (1) The COUNTY retains all of its sovereign prerogatives and rights as a COUNTY under Florida laws and shall in no way be stopped from withholding or refusing to issue any approvals of applications for building, zoning, planning or development under present or future laws and regulations of whatever nature applicable to the planning, design, construction and development of the Project and the Site or the operation thereof, or be liable for the same; and
- (2) The COUNTY shall not by virtue of this Contract be obligated to grant the Project Developer any approvals of applications for building, zoning, planning or development under present or future laws and ordinances of whatever nature applicable to the planning, design, construction, development and/or operation of the Project and the Site.

13.15.2 No Liability for Exercise of Police Power. Notwithstanding and prevailing over any contrary provision in this Contract or in any of the Contract Documents, any COUNTY covenant or obligation that may be contained in this Contract or any of the Contract Documents, including but not limited to the following:

- (1) To cooperate with, or provide good faith, diligent, reasonable or other similar efforts to assist the DESIGN-BUILDER regardless of the purpose required for such cooperation;
- (2) To execute documents or give approvals, regardless of the purpose required for such execution or approvals;
- (3) To apply for or assist the DESIGN-BUILDER in applying for any COUNTY, City or third party permit or needed approval; or
- (4) To contest, defend against, or assist the DESIGN-BUILDER in contesting or defending against any challenge of any nature shall not bind the Board, the Department, Regulatory and Economics Resources or any other COUNTY, City, federal or state department or authority, committee or agency 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 agencies in the exercise of its police power; and the COUNTY shall be released and held harmless, by the DESIGN-BUILDER

from any liability, responsibility, claims, consequential or other damages, or losses to the DESIGN-BUILDERS or to any third parties resulting from denial, withholding or revocation (in whole or in part) of any zoning or other changes, variances, permits, waivers, amendments, or approvals of any kind or nature whatsoever. Without limiting the foregoing, the Parties recognize that the approval of permits may require the COUNTY to exercise its quasi-judicial or police powers. Notwithstanding any other provision of this Contract, the COUNTY shall have no obligation to approve, in whole or in part, any application by the DESIGN-BUILDER. The COUNTY'S obligation to use reasonable good faith efforts in the processing and obtaining of such permits shall not extend to any exercise of quasi-judicial or police powers, and shall be limited solely to ministerial actions, including the timely acceptance and processing of any applications. Moreover, in no event shall a failure of the COUNTY to adopt any of the permits be construed a breach or default of this Contract.

13.16 DURATION OF AGREEMENT

13.16.1 Refer to Section 5.2 – Term of the Contract.

13.17 ENTIRETY OF AGREEMENT

13.17.1 This Agreement represents the entire and integrated Agreement between MDC and the DESIGN-BUILDER and supersedes all prior negotiations, representations, or agreements, written or oral. This Agreement may not be amended, changed, modified, or otherwise altered in any particular, at any time after the execution hereof, except by resolution of the Board of County Commissioners of Miami-Dade County and written agreement by the DESIGN-BUILDER and MDC.

13.17.2 If any portion of this Agreement is deemed illegal or unenforceable by a court of law, the remainder of the contract remains valid.

13.17.3 Since proceeds from the Charter County Transit System Sales Surtax levied pursuant to Section 29.121 of the Code of Miami-Dade County may be used to pay for all or some part of the cost of this contract, no award of this contract shall be effective and thereby give rise to a contractual relationship with the County unless and until the following have occurred: 1) the County Commission awards the contract, and such award becomes final (either by expiration of 10 days after such award without veto by the Mayor, or by Commission override of a veto); and, 2) either, i) the Citizens' Independent Transportation Trust (CITT) has approved same, or, ii) in response to the CITT's disapproval, the County Commission re-affirms its award by two-thirds (2/3) vote of the Commission's membership and such reaffirmation becomes final.

13.18 SURVIVAL

The parties acknowledge that any of the obligations in the Contract which by nature would continue beyond the termination, cancellation or expiration of the Contract including, indemnification, shall survive termination, cancellation or expiration thereof.

13.19 REMEDIES

Subject to the terms of this Agreement, the Parties may avail themselves of each and every remedy herein specifically given to it now or existing at law or in equity, and each and every such remedy shall be in addition to every other remedy so specifically given or otherwise so existing and may be exercised from time to time and as often and in such order as may be deemed expedient by the Parties. The exercise or the beginning of the exercise, of one remedy shall not be deemed a waiver of the right to exercise, at the same time or thereafter, of any other remedy. The Parties' rights and remedies as set forth in the Contract are not exclusive and are in addition to any other rights and remedies in law or in equity.

13.20 USE AND POSSESSION PRIOR TO COMPLETION

13.20.1 The County has the right to take possession of or use any completed portion or partially completed portion of the Work. Such possession or use shall not be deemed as acceptance of the Work or any portion thereof. While the County is in possession of such portion of the Work, the Contractor shall be relieved of the responsibility for loss or damage to only that portion of the Work, except for loss or damage resulting from the Contractor's, Subcontractor's or Supplier's fault or negligence. The Contractor shall, however, remain responsible for completion of such portion of the Work in accordance with Contract Documents.

13.20.2 Notwithstanding the use and possession by the COUNTY of any completed portion or partially completed portion of the Work, the applicable time period for the Contractor's guarantee, warranties and Warranty Bond shall not commence until issuance of Substantial Completion on phases of the work and beneficial occupancy.

13.21 INDEPENDENT CONTRACTOR

13.21.1 The Contractor shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which it performs the Work required under the terms of the Contract Documents. The Contractor shall be liable for its own acts and omissions as well as those of its employees, agents, Subcontractors and Suppliers. Nothing contained herein shall be construed as creating an employment or agency relationship between the County and the Contractor.

13.21.2 Terms in the Contract Documents referring to direction from the County or the County shall be construed as providing for direction as to policy and the result of the Work only, and not as to means by which such result is obtained.

13.22 SANCTIONS FOR CONTRACTUAL VIOLATIONS

Proposal and contract documents shall provide that, notwithstanding any other penalties for firms that have discriminated in violation of Article VII of Chapter 11A of the Code, the County may terminate the contract or require the termination or cancellation of the sub consultant contract. In addition, a violation by a respondent or sub consultant to the respondent, or failure to comply with the Administrative Order (A.O.) 3-39 may result in the imposition of one or more of the sanctions listed in the A.O.

13.23 ESTIMATED TIME CONTINGENCY

This Contract contains a Contingency Allowance time extension not to exceed ten percent (10%) of the original Contract Duration. Pursuant to a written request by the Design-Builder for a time extension, that affects the critical path schedule of the Contract or any previously approved changes; written documentation that supports the justification of a time extension, review and concurrence by the COUNTY A/E, a Contract Contingency Allowance Expenditure Authorization will be created for execution by all parties. Once executed the time extension will adjust the scheduled completion date. The cumulative total of all Contingency Allowance time extensions shall not exceed ten percent (10 %) of the original Contract Duration rounded off to the next whole number.

13.24 CHANGES

13.24.1 Refer to Exhibit K, Standard Construction General Contract Conditions, Article 10 – Changes. The County may, at any time, without invalidating the Agreement and without notice to the Sureties, by a written Change Order, order modifications in the Work and/or the Contract Documents, including changes, modifications, additions or deletions.

13.24.2 The Contractor may, at any time, submit in writing to the County proposed modifications to the Work. The County will review such proposals and recommend the approval or denial of such proposed modifications to the County, and the County, at its sole discretion, may either approve or deny such proposed modifications.

Upon accepting modifications proposed by the Contractor, the County will execute and issue a Change Order. The denial by the COUNTY of the Contractor's proposed modification shall neither provide the Contractor with any basis for a claim for damages nor an adjustment of the Time of Completion, nor shall denial release the Contractor from its contractual responsibilities under the Contract Documents.

13.24.3 Except as herein provided, no order, statement or conduct of the County shall be treated as a Change Order or entitle the Contractor to additional compensation or an equitable adjustment hereunder.

- 13.24.4 If any Change Order causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work, an equitable adjustment will be made and the Agreement will be accordingly modified in writing.
- 13.24.5 Within fifteen (15) days or a mutually agreed upon timeframe of receiving a request from the County or upon submission of a proposed modification the Contractor shall submit, with each change, modification, addition or deletion, involving an increase or decrease in the cost of performing the Work, an itemized cost breakdown covering any Subcontractor's work as well as its own. The Contractor shall also indicate proposed payment terms and any increase or decrease in the Time of Completion as a result of the proposed modification. The itemized breakdown shall include, but is not limited to, the following:
- (A) Material quantities and unit prices;
 - (B) Engineering costs;
 - (C) Labor costs (identified with the specific item manufactured or installed or operation performed);
 - (D) Equipment costs;
 - (E) Overhead as determined by an independent audit in accordance with FAR Part 31 of the Contractor's overhead rates and approval by the County;
 - (F) Profit – not to exceed 15%; and
 - (G) Employment taxes under the Federal Insurance Contributions Act and Federal Unemployment Tax Act.

The Contractor shall also include, as part of its submission, a subnet schedule showing a complete breakdown of all of the tasks required to complete the proposed modification, including the impact of the modification on the Project Schedule. This subnet schedule shall be in the same format as, and fully integrated into, the Project Schedule.

- 13.24.6 Adjustments in the Contract Sum resulting from a change, modification, addition or deletion in the Work shall be determined by one or more of the following:
- (A) By agreement;
 - (B) By unit price adjustment as determined by MDC; or
 - (C) By the County on the basis of the County's estimate of an equitable increase or decrease in the Contract Sum.

If adjustments in the Contract sum are implemented the Contractor, if not in agreement may pursue the Dispute Resolution Procedures.

- 13.24.7 No allowance shall be made, or recovery be allowed, to the Contractor for loss of anticipated profit or overhead recovery as a result of a portion of the Work not being performed by reason of a change, modification, addition or deletion in the Work.
- 13.24.8 Adjustments in the Time of Completion of the Contract shall only be allowed if the Work included in the change, modification, addition or deletion falls on the critical path of the Project Schedule or alters such critical path so as to extend the time required for completion of the Work. The critical path will be determined from the latest approved version of the Contractor's Project Schedule.
- 13.24.9 MDC shall have the right at any time during the progress of the Work to increase or decrease the Work. Promptly after being notified of a change, Contractor shall submit an itemized estimate of any cost or time increases or savings it foresees as a result of the change. Except in an emergency endangering life or property, or for minor changes ordered by the Contracting officer which may result in increased compensation from MDC to the Contractor, no addition or changes to the Work shall be made except upon written order of MDC, and MDC shall not be liable to Contractor for any increased compensation or adjustment to the Contract Time without such written order. No officer, employee or agent of MDC is authorized to orally direct any increase or decrease in the Work.
- 13.24.10 The Contractor's written acceptance of a Change Order, absent a written reservation of rights, shall constitute the Contractor's final and binding agreement to the provisions thereof and a waiver by the Contractor of any direct claims, resulting therefrom. Disagreement with a Change Order shall in no way excuse the Contractor from complying with, and prosecuting, the work set forth in the Change Order. Should the Contractor disagree with any Change Order, it shall, within thirty (30) days after receipt of the Change Order, submit to the County a written statement specifically setting forth the nature and monetary extent of such disagreement. No such claim by the Contractor shall be considered if it is asserted after the earlier of thirty (30) days of Contractor's receipt of the Change Order or after final payment under the Agreement has been made.

13.25 DESIGN-BUILDER'S OFFICE

At least thirty (30) days prior to the shipment of the first equipment related to the Phase 2 – The Underline, to the County's property and thereafter, until the issuance of the Acceptance Certificate by the County, the Contractor shall maintain an office in Miami-Dade County, Florida, to maintain close communication with the County.

13.26 PLANT AND FACILITY INSPECTIONS

The County and/or their authorized representative, may inspect, the Contractor's plant(s) or facility(ies) during normal business hours, any materials, parts or equipment procured or manufactured at said plant or facility, as well as, may inspect, at the source of supply, any materials, parts or equipment procured and/or manufactured by a Subcontractor or Supplier or other person, for installation into, or to be used for, or the Work. The County, or its authorized representative, shall have escorted entry at all times, during normal business hours, to such parts of the plants that pertain to the manufacture or production of Phase 2 – the Underline or materials, parts or equipment to be installed into or used for Phase 2 – the Underline. Adequate facilities to make the necessary inspection shall be furnished, at no cost, to the County. The responsibility for providing Phase 2 – the Underline and materials, parts and equipment to install into, or use for, Phase 2 – the Underline or the Work and properly completing the Work rests entirely with the Contractor, notwithstanding any prior inspections or tests by the County, the County or their authorized representative.

13.27 GENERAL REQUIREMENTS

Payment of the Contract lump sum price for Pay Item No. 1 “GENERAL REQUIREMENTS” will be made in the following manner:

13.27.1 The cost for bonds and insurance, include in the General Requirements lump Sum price, will be paid after receipt of certified invoices from the Contractor showing that the Contractor has paid them. The balance of the General Requirements amount shall be paid in equal monthly payments for the duration of the contract.

13.28 PERMITS

The Permit(s)’s actual amount will be paid at invoice cost from the General Requirements Bid Item Account.

13.29 EQUAL OPPORTUNITY

13.29.1 EQUAL EMPLOYMENT OPPORTUNITY

The DESIGN-BUILDER shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, ancestry, marital status, physical handicap, place of birth or national origin. The DESIGN-BUILDER shall take affirmative actions to insure that applicants are employed and that employees are treated during their employment without regard to their race, religion, color, sex, age, marital status, physical handicap or national origin. Evidence of such actions shall be reported on forms supplied by the COUNTY.

Such actions shall include, but shall not be limited to the following: employment; upgrading, transfer or demotion; recruitment or recruitment advertising; layoff or termination; rates of pay or other form of compensation and selection for training,

including apprenticeship. The DESIGN-BUILDER agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the COUNTY setting forth the provisions of this Equal Opportunity Clause.

The DESIGN-BUILDER shall comply with all applicable provisions of the Civil Rights Acts of 1964; Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375; Executive Order 11625 of October 13, 1971; the Age Discrimination in Employment Act, effective June 12, 1968; the rules and regulations, and relevant orders of the Secretary of Labor; Florida Statutes, Chapter 760 (Florida Civil Rights Act of 1992, as amended) and Dade County Ordinance 75-46.

13.29.2 NONDISCRIMINATION

During the performance of this Agreement, the DESIGN-BUILDER agrees to state in all solicitations or advertisements for employees placed by or on behalf of the DESIGN-BUILDER that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, age, marital status, physical handicap or national origin. If requested to do so the DESIGN-BUILDER shall furnish all information and reports required by Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375 and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to their books, records and accounts by the COUNTY, and compliance review agencies for purposes of investigation to ascertain compliance with such rules and regulations and orders.

13.30 STANDARD CONSTRUCTION GENERAL CONTRACT CONDITIONS FOR THE CONSTRUCTION PHASE OF THE SOUTH CORRIDOR (SOUTH-DADE TRANSITWAY) RAPID TRANSIT PROJECT

13.29.1 The Standard Construction General Contract Conditions for the Construction Phase of the South-Corridor (South-Dade Transitway) Rapid Transit Project supersedes the General Provisions included in Article 13.

13.31 PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF A PUBLIC AGENCY

If applicable, the Design-Builder shall comply with the Public Records Laws of the State of Florida, including but not limited to, (1) keeping and maintaining all public records that ordinarily and necessarily would be required by Miami-Dade County (County) in order to perform the service; (2) providing the public with access to public records on the same terms and conditions that the County would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensuring that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (4) meeting all requirements for retaining public records and transferring, at no cost, to the County all public records in possession of the Design-Builder upon termination of the contract and destroying any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements upon such

transfer. In addition, all records stored electronically must be provided to the County in a format that is compatible with the information technology systems of the County. Failure to meet any of these provisions or to comply with Florida's Public Records Laws as applicable shall be a material breach of the agreement and shall be enforced in accordance with the terms of the agreement.

IF THE DESIGN-BUILDER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DESIGN-BUILDER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 375-5773; ISD-VSS@MIAMIDADE.GOV; 111 NW 1 STREET, SUITE 1300, MIAMI, FLORIDA 33128.

13.32 OWNER DIRECT PURCHASE PROCEDURES

PART 1 - GENERAL

1.01 REQUIREMENTS INCLUDED

- A) The Contractor has included Florida State Sales Tax and other applicable taxes in his bid for material, supplies and equipment. The Owner, being exempt from sales tax, reserves the right to make direct purchases of various construction equipment, materials or supplies included in the Contractor's bid and/or contract, substantially in accordance with this Section.

PART 2 - PRODUCTS

2.01 GENERAL

- A) Any equipment, materials or supplies directly purchased by the Owner that are included in the Contractor's contract shall be referred to as Owner Direct Purchased Materials and the responsibilities of both Owner and the Contractor, as the case may be, relating to such Owner Direct Purchased Materials shall be governed by the terms and conditions of these procedures.
- B) Material suppliers shall be selected by the Contractor awarded the contract. The Contractor has included the price for all construction materials plus applicable taxes in his bid.

PART 3 - EXECUTION

3.01 PROCEDURES

- A) Contractor shall provide Owner's Representative a list of all intended suppliers, vendors, and materialmen for consideration as Owner Direct Purchased materials. This list shall be submitted at the same time as the preliminary schedule of values and the Project schedule. The Contractor shall submit a description of the materials to be supplied, estimated quantities and prices.
- B) Upon request from Owner, and in a timely manner, Contractor shall submit the attached Purchase Order Requisition Form to the Owner's Representative, to specifically identify the

materials which Owner has, at its sole option, elected to purchase directly. On the Purchase Order Requisition Form, the Contractor will provide the Owner the required quantities of material at the price established in the vendor's quote to the Contractor, less any sales tax associated with such price.

- C) Such Purchase Order Requisition Forms are to be submitted to Owner's designated representative no less than two (2) weeks prior to the need for ordering such Owner Direct Purchased Materials, in order to provide sufficient time for Owner review and approval and to assure that such Directly Purchased Materials may be directly purchased by Owner and delivered to the Project site so as to avoid any delay to the Project.
- D) After receipt of the Purchase Order Requisition Form, Owner shall prepare its Purchase Order for equipment, materials or supplies which the Owner chooses to purchase directly. Promptly upon receipt of each Purchase Order, Contractor shall verify the terms and conditions of the Purchase Order prior to its issuance to supplier and in a manner to assure proper and timely delivery of items. After such verification by the Contractor, The Owner shall issue the Purchase Order to the supplier or vendor. The Purchase Order shall require that the supplier provide the required shipping and handling insurance. The Purchase Order shall also require the delivery of the Owner Direct Purchased Materials on the delivery dated provided by the Contractor in the Purchase Order Requisition Form and shall indicate F.O.B. jobsite. The Owner's Purchase Order shall also provide that the supplier shall invoice the Owner directly for the items purchased and not the Contractor. Owner shall immediately provide Contractor with copies of such invoices it receives. The Owner's Purchase Orders shall contain or be accompanied by the Owner's exemption certificate and must include the Owner's name, address, and exemption number with issue and expiration date shown. The Owner shall issue each supplier or vendor a Certificate of Entitlement on the Certificate of Entitlement Form attached hereto with each Purchase Order.
- E) All shop drawings and submittals shall be made by the Contractor in accordance with the Project Specifications.
- F) Contractor shall be fully responsible for all matters relating to the receipt of materials in accordance with these Procedures, including, but not limited to, verifying correct quantities, verifying documentation of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees in favor of and for the benefit of the Owner required by the Contract Documents, inspection and acceptance of the goods at the time of delivery. At the time of, and subsequent to, the delivery of such materials, the Owner shall be liable for all and loss or damage to equipment and materials purchased pursuant to the Purchase Order. The Contractor shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Contractor for the particular materials furnished. The Contractor shall provide all services required for the unloading, handling and storage of materials through installation. The Contractor agrees to indemnify and hold harmless the Owner from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions or directions of Contractor. Notwithstanding the foregoing, the Owner shall be responsible for payment off the invoices issued by the supplier or vendor pursuant to the procedures in Paragraph G below.

- G) As Owner Direct Purchased Materials are delivered to the jobsite, the Contractor and the Owner's Representative, shall visually inspect all shipments from the suppliers, and approve the vendor's invoice issued to the Owner for material delivered. The Contractor shall assure that each delivery of Owner Direct Purchased Material is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier delivered to the Owner (and provided to Contractor) conforming to the Purchase Order, together with such additional information as the Owner or Contractor may require. The Contractor shall verify in writing to the Owner's Representative that the Materials were received in order for the Owner to agree to approve the invoice for payment of the invoice issued. The Owner shall have the right to assign Owner personnel to verify and audit the accuracy of all Direct Purchase documents.
- H) The Contractor shall insure that Owner Direct Purchase materials conform to the Specifications, and determine prior to incorporation into the Work if such materials are patently defective, and whether such materials are identical to the materials ordered and match the description on the bill of lading. If the Contractor discovers defective or nonconformity's in the Owner Direct Purchased Material upon such visual inspection, the Contractor shall not utilize such nonconforming or defective materials in the Work and instead shall promptly notify the Vendor of the defective or non-conforming condition in order to pursue repair or replacement of those materials without any undue delay or interruption to the Project. Additionally the Contractor shall notify the Owner of such occurrence. If the Contractor fails to perform such inspection and otherwise incorporates Owner Direct Purchased materials, the condition of which it either knew or should have known by performance of an inspection, Contractor shall be responsible for all damages to Owner resulting from Contractor's incorporation of such materials into the Project, including liquidated or delay damages.
- I) The Contractor shall be responsible for obtaining and managing all warranties and guarantees in favor of and for the benefit of the Owner for all materials and products as required by the Contract Documents. All repairs, maintenance or damage repair calls shall be forwarded to the Contractor for resolution with the appropriate supplier or vendor.
- J) The transfer of possession of Owner Direct Purchased Materials from the Owner to the Contractor shall constitute a bailment for mutual benefit of the Owner and the Contractor. The Owner shall be considered the bailor and the Contractor the bailee of the Owner Direct Purchased materials. Owner Direct Purchased Materials shall be considered returned to the Owner for purposes of its bailment at such time as they are incorporated into the Project or consumed in the process of completing the Project. Bailee shall have the duty to safeguard, store and protect all Owner Direct Purchased Materials.
- The Contractor shall maintain insurance in favor of and for the benefit of the Owner pursuant to the requirements set forth in the Owner and Contractor Agreement which shall be sufficient to protect against any loss of or damage to Owner Direct Purchased equipment, materials or supplies. Such insurance shall cover the value of any Owner Direct Purchased Materials not yet incorporated into the Project from the time the Owner first takes title which shall be at the time of delivery and acceptance of the materials by the Contractor as provided in Paragraph F above.

- K) On a monthly basis, Contractor shall be required to review invoices submitted by all suppliers of Owner Direct Purchased Materials delivered to the Project site during that month and either concur or object to the Owner's issuance of payment to the supplier, based upon Contractor's records of materials delivered to the site and any defects in such materials.
- L) In order to arrange for the prompt payment to the supplier, the Contractor shall provide to the Owner, a list indicating the acceptance of the goods or materials in accordance with the established monthly Payment Request Schedule. The list shall include a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the Owner. Upon receipt and verification of the appropriate documentation, the Owner shall prepare a payment to the supplier based upon the receipt of data provided. This payment will be released, delivered and remitted directly to the supplier by the Owner. The Contractor agrees to assist the Owner to immediately obtain partial or final release of lien waivers as appropriate.
- M) Salvage materials shall be the property of the Owner and stored or removed from the site by the Contractor at the Owner's discretion.
- N) From the time of delivery and acceptance, the Owner shall have and retain title to any and all Owner Direct Purchased materials.

13.33 ASSIGNMENT/ASSIGNABILITY:

ASSIGNMENT: The Design-Builder shall not assign, transfer, or otherwise dispose of this Contract, including any rights, title or interest therein, or their power to execute such Contract to any person, company or corporation without the prior written consent of DTPW. DTPW's consent for an assignment will not be unreasonably withheld.

ASSIGNABILITY: DTPW may assign its rights and obligations under the Contract to any successor to the rights and functions of DTPW or to any governmental agency to the extent required by applicable laws or governmental regulations or to the extent that DTPW deems necessary or advisable under the circumstances.

ARTICLE 14
SIGNATURES

IN WITNESS HEREOF, the parties hereto have caused this agreement to be executed by their appropriate officials as of the date first above written.

WHEN THE DESIGN-BUILDER IS A CORPORATION

ATTEST:

Secretary:



Signature


Lead Engineering Contractors, LLC
Legal Name of Corporation

By:

Lead Engineering Contractors, LLC
Legal Name of Corporation



Signature



(Corporate Seal)

Mauricio Gonzalez, President
Legal Name and Title

**WHEN THE DESIGN-BUILDER IS A SOLE PROPRIETORSHIP
OR OPERATES UNDER A TRADE NAME**

ATTEST:

Witness:

Signature

Legal Name of Firm

Witness:

Signature

Legal Name of Firm

Date Signed

By: _____
Signature

WHEN THE DESIGN-BUILDER IS A PARTNERSHIP

ATTEST:

Witness:

Signature

Legal Name of Partnership

Witness:

Signature

Legal Name and Title

Date Signed

By:

Signature

(Seal)

Legal Name and Title

By:

Signature

WHEN THE DESIGN-BUILDER IS AN INDIVIDUAL

Witness:

Signature

Legal Name

Witness:

Signature

Signature

MIAMI-DADE COUNTY, FLORIDA

Approved as to Insurance Requirements:

Approved for Legal Sufficiency:

Risk Management Division

Assistant County Attorney

Date:

Date:

IN WITNESS WHEREOF the said MIAMI-DADE COUNTY, FLORIDA, has caused this Agreement to be executed in its name by the County Manager, attested by the Clerk of the Board of County Commissioners, and has caused the seal of the Board County Commissioners to be set hereto, as executed and attested by the undersigned this day and year first above written.

ATTEST:

FOR:
**BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA**

**HARVEY RUVIN
Clerk of the Court**

Deputy Mayor

By: Kay Sullivan, Clerk of the Board

By:

Signature

Signature

Date:

Distribution:

One Original to Clerk of the Board
One Original to User Department's Project File
One Original to Internal Services Department
One Original to Office of Civil Rights
One Original to Design-Builder
One Original to Project Manager

SUPPLEMENTAL AGREEMENT NO. 1 TO THE
DESIGN-BUILD SERVICES AGREEMENT
BETWEEN MIAMI-DADE COUNTY, FLORIDA
AND LEAD ENGINEERING CONTRACTORS,
LLC

This First Supplemental Agreement is made and entered into as of the ____ day of _____
2020 by and between Miami-Dade County, Florida, a public body, hereinafter referred to as the
“COUNTY”, and LEAD Engineering Contractors, LLC, hereinafter referred to as the “DESIGN-
BUILDER”).

W I T N E S S E T H

WHEREAS, the COUNTY and the DESIGN-BUILDER entered into a Design-Build Services
Agreement to provide Design-Build Services for Phase 2 – the Underline, Contract Number CIP178-
DTPW18-CT2; and

WHEREAS, the parties wish to make certain revisions in the Agreement as provided below as a
result of negotiations to provide soil remediation services for Contract Number CIP178-DTPW18-CT2
entitled: “Design-Build Services for Phase 2 – the Underline”.

NOW, THEREFORE, the parties hereto do mutually agree to amend the Design-Build Services
Agreement as follows:

SECTION II – PROFESSIONAL SERVICES

Add, Paragraph 12.2 as follows:

12.2. The additional tasks to perform soil remediation services are as follows:

1. Soil sampling and testing.
2. Preparation and submittal of soil mixing plan for DERM's approval.
3. Implementation of such soil mixing plan as approved by DERM.
4. Labor, equipment and materials to perform all testing required as indicated in the approved soil mixing plan.
5. Labor, equipment and materials to perform blending of materials on site as indicated in the DERM approved soil mixing plan; and
6. Labor, equipment and materials to perform all monitoring required as indicated in the approved soil mixing plan during the performance of the soil remediation services.

Refer to the Design-Builder's Proposal to perform soil remediation services dated April 28, 2020.

ARTICLE 10 – BASIS OF COMPENSATION

Under Article 10, Section 10.1.2.2, append with the below new section as follows:

10.1.2.2 The aggregate sum for all payments to the DESIGN-BUILDER for Design-Build Services for Supplemental Agreement No. 1 authorized on this Project shall be as follows:

SUPPLEMENTAL AGREEMENT NO. 1 SERVICES

Supplemental Agreement No. 1

Construction Base Amount	\$1,487,718.92
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The DESIGN-BUILDER shall not be entitled to any fees beyond those specified and authorized through applicable Work Orders.

Under Article 10, at the end of Section 10.3.3, the second paragraph shall be deleted and replaced with the following text:

Therefore, the TOTAL CONTRACT AMOUNT for this Contract shall be limited to Seventeen Million, Six Hundred and Seventy-Two Thousand, Five Hundred and Fifty-Four Dollars and Fifty-Two Cents (\$17,672,554.52).

This Agreement, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida, and venue shall be in Miami-Dade County, Florida.

IN WITNESS THEREOF the parties hereto have executed these presents this 15th day of May, 2020.

ATTEST:

HARVEY RUVIN

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

By: _____

By: _____
COUNTY MAYOR

Approved by County Attorney

as to Form and Legal Sufficiency:

ATTEST:

LEAD ENGINEERING
CONTRACTORS, LLC
(Corporate Seal)

By: 
Sandra Franco


By: 
Munier Gonzalez



Memorandum



To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Javier A. Betancourt, Executive Director 

Date: September 24, 2020

Re: CITT AGENDA ITEM 7B:
RESOLUTION BY THE CITIZENS' INDEPENDENT TRANSPORTATION TRUST
RECOMMENDING THE BOARD OF COUNTY COMMISSIONERS (BCC) APPROVE
AWARD OF A DESIGN-BUILD SERVICES AGREEMENT WITH A CONTRACT
AMOUNT NOT TO EXCEED \$16,184,835.60, INCLUSIVE OF A CONTINGENCY
ALLOWANCE OF \$788,563.60 AND A TOTAL CONTRACT TERM OF 960 CALENDAR
DAYS AND A SUPPLEMENTAL AGREEMENT NO. 1, INCREASING CONTRACT
AMOUNT BY \$1,487,718.92, TO LEAD ENGINEERING CONTRACTORS, LLC, FOR A
CUMULATIVE TOTAL CONTRACT AMOUNT NOT TO EXCEED **\$17,672,554.52** FOR A
PROJECT ENTITLED "DESIGN-BUILD SERVICES – PHASE 2 – THE UNDERLINE",
CONTRACT NO. CIP178-DTPW18-CT2 AND AUTHORIZE THE COUNTY MAYOR OR
THE COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME AND TO EXERCISE THE
RIGHTS CONTAINED THEREIN **(DTPW – BCC LEGISLATIVE FILE NO. 201609) NO
SURTAX FUNDS REQUESTED**

On September 23, 2020, the CITT voted (10-0) to forward a favorable recommendation to the Board of County Commissioners (BCC) for the approval of the above referenced item, CITT Resolution No. 20-027. The vote was as follows:

Joseph Curbelo, Chairperson – Aye
Alfred J. Holzman, 1st Vice Chairperson – Aye
Oscar J. Braynon, 2nd Vice Chairperson – Aye

Glenn J. Downing, CFP® – Aye
Joe Jimenez – Aye
Jonathan Martinez – Aye
Marilyn Smith – Aye
Robert Wolfarth – Aye

Ashley V. Gantt, Esq. – Absent
Hon. Anna E. Lightfoot-Ward, Ph.D. – Absent
Paul Schwiep, Esq. – Aye
L. Elijah Stiers, Esq. – Aye

c: Jennifer Moon, Deputy Mayor
Bruce Libhaber, Assistant County Attorney